



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CHI/29UC/LIS/2018/2019**

Property : **Flat 1 Bridge Hill House, Higham Lane
Bridge, Canterbury, Kent, CT4 5AY**

Applicant : **Bridge Hill House Management
Co. Ltd**

Representative : **Mr Wales, BW Residential Ltd**

Respondent : **Judith Summerhill**

Representative : **In person**

Type of Application : **s.27A 1985 Act**

Tribunal Members : **Judge D Dovar
Mr R Athow FRICS MIRPM**

**Date and venue of
Hearing** : **25th February 2019, Canterbury**

Date of Decision : **27th February 2019**

DECISION

Introduction

1. This is an application, dated 24th September 2018, under s.27A of the Landlord and Tenant Act 1985 for the determination of the payability of service charges in respect of the Property for the years ending 31st December 2013 to 2018.
2. Bridge Hill House is a large imposing period country residence built about 150 years ago with rendered and colourwashed elevations, sliding sash windows, all under a slate roof, and there are many distinctive ornamental features.
3. The property was converted into seven self-contained residential units in more recent years. It is situated in a quiet cul-de-sac on the outskirts of the village of Bridge, about 3 miles from Canterbury city centre.
4. The approach to the house is via a long gravel driveway which is shared with adjoining properties. The grounds are extensive and mainly to the rear of the property with a large lawn and many mature trees.

Application

5. For each year the sum claimed, as set out in the application, is as follows:
 - a. 2013, £1,798 by way of interim service charge;
 - b. 2014, £1,798 by way of interim service charge, plus £600 for gardening;
 - c. 2015, £899, £899 and £418.71 each by way of interim service charge;
 - d. 2016, 2 lots of £901.43 by way of interim service charge;
 - e. 2017, 2 lots of £983.57 by way of interim service charge;
 - f. 2018, 2 lots of £1,200 by way of interim service charge.

6. In addition, and following previous proceedings between the Applicant and another leaseholder, a credit was applied on 22nd August 2018 of £2,830.47. That was said by the Applicant to reflect the difference between the interim charges and the actual expenditure for the years ending 2013 to 2017.
7. Following a case management hearing on 22nd October 2018, the total actual expenditure for the years in question was confirmed (with the Respondent's 1/7th share in parenthesis) as:
 - a. 2013, £4,411.61, (£630.23);
 - b. 2014, £9,219.25, (£1,317.04);
 - c. 2015, £11,078.05, (£1,582.58);
 - d. 2016, £10,722.39, (£1,531.77);
 - e. 2017, £10,692.33, (£1,527.48).
8. It was not until the case management hearing that the Respondent was provided with copies of the underlying vouchers for the expenditure claimed. At that hearing, the Respondent confirmed that she had paid, and had no objection to, the on account demand for the year end 2018. That therefore plays no further part in this determination.

Invoices and Credits

9. In her statement dated 12th November 2018, the Respondent contended that the statement of account asserted by the Applicant was incorrect as it included a number of interim service charge demands that the Applicant had historically reversed. She stated:

'At that meeting with ALL residents present. It was decided that the company [The Applicant] would 'write off alleged arrears' in respect of Flat 1 (my flat), and I would thereafter commence payment of all service charges as they became due. It was NOT a unilateral decision, but one made in agreement with ALL residents.

Mr Fairweather subsequently instructed Fell Reynolds on 16th September 2015, to issue Credit Notes against demands that had previously been issued ...

Fell Reynolds subsequently issued the relevant Credit Notes...

Then for some reason, in November 2016, Mr Roderick Baker of Fell Reynolds, acting as Company Secretary, suggested that the credits should be rescinded and 'alleged' arrears reinstated....'

10. This action was reflected in the Respondent's statement of account which showed the following:
 - a. Interim Service charge demands in 2013, 2014 and 2015 being levied from time to time in the amounts claimed in this application;
 - b. On 1st October 2015, all charges at that time from 2013 were reversed by the allocation of a credit for each;
 - c. New charges were levied from 1st October 2015, which were paid by the Respondent;
 - d. On 11th November 2016, the original interim charges, which had been credited, were reintroduced by new entries as at 11th November.
11. It was also reflected in the credit notes that were issued to the Respondent from Fell Reynolds in 2015, which were stated to be 'as per Directors instructions'.
12. On 11th December 2018, pursuant to the Tribunal's directions, the Applicant provided their statement in response. In that statement Mr Wales, the Applicant's current managing agent, refers to the statement of account compiled by the Applicant which includes the new interim charges that were levied in November 2016 in respect of the years ending 2013 to 2015. Significantly, he does not address the issue raised by the Respondent, namely that those sums had been initially charged and then credited to her account. At the outset of the hearing, he clarified that the Applicant's case was that the original reversal of the demands was of no

legal effect. He did not rely on the subsequent demands in November 2016, but on the fact that the original demands levied from time to time in 2013 to 2015 remained valid.

13. After the Respondent had presented her case, Mr Wales requested that Ms Westendarp, a director of the Applicant company, provide the Tribunal with oral evidence as to the circumstances in which the credits had been given. After a short exposition, the Tribunal decided to refuse to entertain any further evidence as:
 - a. The Applicant, by this oral evidence, was intending to raise a significant dispute on an issue of fact, for the first time, midway through the hearing;
 - b. The Applicant had not provided this information in accordance with the directions given as to the filing of witness statements; and
 - c. The Applicant's primary case was that legally, the reversals were of no effect and therefore the original demands stood. It did not rely on any factual matters, but that as a matter of 'landlord and tenant law' it was not possible to reverse the interim charges.
14. The Tribunal disagrees. The reversal of the original interim service charge demand did have legal effect. It is entirely in the gift of landlord to waive the requirement for payment of service charges (interim or final). In this case, the Landlord was, as it was entitled to do, waiving those demands. Indeed, the Respondent clarified and the Applicant agreed, that it did so:
 - a. to avoid a legal claim that had been threatened by the Respondent; and
 - b. to ensure future payments.
15. Further, as Mr Wales, candidly accepted, the subsequent reintroduction of the amounts in 2016 were ineffective as they were not in accordance with the terms of the lease. Under the terms of the Respondent's lease, it was not possible to raise an on-account demand after the actual costs had

been incurred; as was the case here. Further, the demands falling over 18 months from the date the expenditure had actually been incurred would have been barred by section 20B of the Landlord and Tenant Act 1985.

16. For those reasons the Tribunal finds that the interim demands claimed for the years 2013 to 2015, save for the sum of £418.71 for 2015, are not payable. This latter sum is, subject to what is said below, payable as it was not credited, it was demanded contemporaneously and was levied and paid as a result of the compromise reached.

Individual items

17. In light of the above, the only remaining sums to consider are
 - a. For the year 2015, but, as said above, only the sum of £418.71;
 - b. two demands for £901.43 for the year ending 2016;
 - c. two demands for £983.57 for the year ending 2017.
18. It was only during the course of these proceedings that the Respondent received the vouchers underlying each years expenditure. As a result of that she challenged a number of items for the years 2013 to 2015 and 2017. Given the conclusion above, it is not necessary for the Tribunal to make any determination as to the years 2013 to 2014, but given that it heard submissions on these points it does make the following observation. All of the sums claimed would have been payable, save for:
 - a. Those items which related to internal works to flats, the lease does not permit such expenditure to be run through the service charge. The Applicant contended that it was permitted if it was as result of their neglect of exterior maintenance such that that caused damage to the interior of a flat. The Tribunal does not consider that that justifies putting the cost through the service charge. It is a cost that arises out of the landlord's breach of covenant and therefore falls to the landlord to pay out of its own pocket. This relates to £520 in 2013 for LA Building and Maintenance; £580 in 2014 for CPS

Decorators and £180 for S&T Property Maintenance; £72 in 2015 for Emerald Electrical Services;

- b. Company costs, for the purchase of a share certificate book and for the late filing of the company accounts. The first should have been included in the agent's fees, the second is due to the Applicant's neglect and should not fall to the service charge; being in 2015 £65.96 and £19.79 and £150;
 - c. The £150 in 2015 spent on instructing debt collectors. This was entirely unnecessary.
19. In relation to the relevant years for which a demand was made and not reversed. The Tribunal determines as follows.
20. The sum demanded for 2015 of £418.71 on account was a reasonable charge and was far exceeded by the actual costs for that year. The Tribunal considers that this sum is payable (and indeed has been paid). No other sum has been demanded.
21. The Respondent did not challenge any of the actual expenditure for the year ending 2016. The actual expenditure was £1,531.77 and the Tribunal determines that this sum is payable. The interim charge of £1,802.86 exceeded the actual costs incurred for that year of £1,531.77 and so a credit of £271.09 is due.
22. Finally, for the year ending 2017, the total interim charge was £1,967.04 being in excess of the actual expenditure claimed of £1,527.48. Further, the Respondent challenged a number of items of expenditure for that year being:
- a. Clarkes Landscape invoices of £330, £350 and £1050 for grass cutting, hedge strimming and waste removal. The Tribunal considers that these sums were reasonably incurred. They were less than the previous contractors' fees and did not appear to be so outside the range of what was permissible to warrant any interference by this Tribunal;

- b. Charles Westendarp, a surveyor, had kindly offered to survey the building for free and provide a report, asking only for the cost of his indemnity insurance cover to be met; being £200. The Tribunal considers that in order to obtain the survey, which the Respondent had no issue with, paying £200 was more than fair and so this sum is allowed.
 - c. Peter Kemp invoice of £823.20. This was for repairs to the windows to a flat. These fell within the landlord's repairing obligation. The Tribunal was told that other parts of this work, which were not within that obligation, were paid directly by the leaseholder. The Tribunal considers that this sum is payable.
 - d. Fell Reynolds were the previous managing agents who had charged £3,000 for this year for management. Both parties were content for the Tribunal to assess these fees in the same manner as they done in relation to proceedings with Flat 2. The Tribunal considers that only £1,000 should be allowed for these fees given the poor service provided by these managing agents; not least the failure to reconcile accounts.
23. Accordingly, an additional £2,000 is reduced from the total service charge for this year, amounting to a reduction in the actual expenditure recoverable from the Respondent of £285.71. Therefore, the total sum payable for this year is £1,241.77 as against interim charges totalling £1,967.14. A credit is therefore due to this account in the sum of £725.37.

Conclusion

24. The Tribunal determines the following sums payable:
- a. For the years ending 2013 to 2014, nothing;
 - b. For the year ending 2015, £418.71;
 - c. For the year ending 2016, £1,531.77;
 - d. For the year ending 2017, £1,241.77.

25. This does not take into account the sums that have actually been paid by the Respondent. Further, although the Applicant has applied a credit to the account following the proceedings with Flat 2, given that that credit was erroneously predicated on the original interim demands remaining payable, it follows that that credit is not applicable to the Respondent's account.
26. The Respondent has been substantially successful and the confusion has arisen in large part due to the poor management by the previous managing agents. The Respondent applied for and the Tribunal makes an order under s.20C of the Landlord and Tenant Act 1985 precluding the Applicant from recovering the cost of these proceedings from the Respondent through the service charge.

Judge D Dovar

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.