



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

Case Reference : **MAN/OOBW/LSC/2018/0048**

Property : **Apartment 1a Chester Street, Leigh WN7 1LS**

Applicant : **December Group Limited**

Respondent : **Mr. Keith Woolley**

Type of Application : **Landlord and Tenant Act 1985 - s27A & s20C
Commonhold and Leasehold Reform Act 2002 -
Sch 11 para 5**

Tribunal Members : **Mr J Murray LLB
Ms A Ramshaw FRICC**

Date of Determination : **12 March 2019**

Date of Decision : **19 March 2019**

DECISION

DECISION

1. The Tribunal determines that the Service Charges for the years under review are payable by the Respondent other Applicant as follows:-
 - (a) 1 January 2014 - 31 March 2014 £223.04
 - (b) 1 April 2014 - 31 March 2015 £893.83
 - (c) 1 April 2015 - 30 September 2015 £664.47
 - (d) 1 October 2015 - 31 March 2016 £664.47
 - (e) 1 April 2016 - 30 September 2016 £656.21
 - (f) 2016 Accounts Levy £200
 - (g) 1 October 2016 - 31 March 2017 £656.21
 - (h) 1 April 2017 - 30 September 2017 £694.38
 - (i) Totaling £4652.61
2. The Tribunal determines that the Administration Charges sought by the Applicant are not payable.
3. The Tribunal makes an order under s20C Landlord and Tenant Act 1985 prohibiting the Applicant from adding the costs of these proceedings to the service charge.

REASONS FOR DECISION

INTRODUCTION

1. The Applicant issued proceedings in the County Court Money Claims Centre for determination of service charges ground rent of £5559.33 together with administration fees of £288 and costs of £840 for the Property totaling £6687.33. The Respondent submitted a defence asserting that the Applicant had failed to comply with s47 Landlord and Tenant Act 1985 by providing an address for service accompanying demands for payment.
2. The claim as it related to service charges and administration charges was submitted to the Tribunal for determination by Order of District Judge O'Brien sitting in the County Court at Stafford dated 15 June 2018. The charges were sought by the Applicant from the Respondent in respect of Apartment 1a Chester Street Leigh WN7 1LS ("the Property") for the service charge years 2014 - 2017.

THE PROCEEDINGS

3. Directions were made by a Procedural Judge on 19 September 2018 for the parties to sequentially exchange statements of their respective cases, and to agree a single bundle of documents. A hearing was to take place during December 2018 or January 2019, the Applicant's solicitors having indicated to the Tribunal that they wanted an oral hearing. The Respondent subsequently advised the Tribunal that he was unable to participate in the proceedings due to health issues and the Tribunal proposed that the determination should be made on the papers, without an oral hearing or inspection of the Property.

THE PROPERTY

4. The Property is a flat in a development of four dwellings, three of which share communal facilities, and one which does not. Three (including the Property) pay a "block charge" for services. All four pay an "estate charge" for services.

THE LEASE

5. The Property was let to the Respondent originally by Jevans Realty Services Limited by a lease dated 7 January 2011 for a term of 250 years from 7 January 2011.
6. The Applicant is now the Freeholder with responsibility for administering and charging for service charges and ground rents.
7. The Respondent covenanted in Clause 3.2 of the lease to pay "the tenant's Proportion in accordance with the provisions of Part 1 of Schedule 5 to the lease.
8. By Clause 4.1 of Part 1 of Schedule 5 of the Lease the Tenant was to pay to the Landlord the Tenant's Proportion of the Maintenance Expenses in the following manner: half yearly in advance on 1 April and 1 October in every year throughout the term on half of the Tenant's Proportion of the amount estimated from time to time by the Landlord or its managing agents as the Maintenance Expenses for the year, the first payment to be apportioned (if necessary) from the date of this Lease.
9. By Clause 2 of the Lease, the lessee is to pay Ground Rent, in advance on 1 April each year.
10. By Clause 3.4 of the Lease, the lessee is to pay the costs as a consequence of any breach.

11. The Maintenance expenses are defined in Schedule Five, and are for a Fair Proportion of the amount attributable to the matters mentioned in clause 5 of whatever of the matters referred to in Part 2 of the Schedule (the "Block Service Charge" and the matters referred to in Part 3 of the Schedule ("the Estate Service Charge").

THE LEGISLATION

The relevant legislation is contained in s27A Landlord and Tenant Act 1985 which read as follows:

s27A Liability to pay service charges: jurisdiction.

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—
 - (a) the person by whom it is payable, .
 - (b) the person to whom it is payable, .
 - (c) the amount which is payable, .
 - (d) the date at or by which it is payable, and .
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and .
 - (e) the manner in which it would be payable.

- (4) No application under subsection (1) or (3) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject of an application under subsection (1) or (3).
- (7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Common hold and Leasehold Reform Act 2002 Schedule 11 paragraph 5:

- (1) An application may be made to a [leasehold valuation tribunal] for a determination whether an administration charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.

SUBMISSIONS

THE APPLICANT

12. The Applicant filed a statement dated 9 October 2018 by Nusrat Kamal, a Trainee Solicitor in the Applicant's firm of solicitors.
13. She stated that the Applicant is the head lessor responsible for management of the Property. The Respondent as leaseholder is responsible to pay service charges to the Applicant, and the Applicant is able to charge administration charges to the Respondent for late payment of service charges under the terms of the lease.
14. Statements showing the total charges sought were exhibited to the statement marked DGL3. Details of the charges year end accounts and service charge demands were exhibited at DGL4.
15. At paragraph 18 of her statement she summarised service charges for the periods in question, totalling £4652.61. This was for block service charges and Estate charges.
16. At paragraph 19, administration charges were set out over the period in question, being for interest and reminder charges, referring the matter to a Debt Collection Agency, Land Registry and Debt Collecting Agency fees totalling £598.12. All the charges related to the period 2014 to 2017 and were incurred in contemplation of proceedings for forfeiture in accordance with clause 3.4 of the Lease.
17. The Applicant also filed a statement by Phillip Green Managing Director of Edge Property Management Limited the Applicant's agents responsible for collection of service charge and administration charges on behalf of the Applicant. She confirmed that demands were sent with budget breakdowns drafted by her company on behalf of the Applicant to leaseholders to show their contribution towards service charges in any given years and at the end of the financial year actual accounts of expenditure were drawn up and sent to each leaseholder.
18. She stated that the sum that was the original subject of this claim was for the period 1 January 2014 to 30 September 2017. She stated that a refund of £446 was due on the account as there was a duplication of the charges in 2014 dated 10 October 2018.
19. She stated that several letters had been sent to remind the Respondent to make payment, at pages 70 - 73 of her bundle. Her company referred the matter to an external debt collection agency in light of the Respondent's failure to pay. There was no response, so proceedings were issued.

20. She accepted that the Applicant had used a care off address on the demands for payment, being Unit 1, Stiltz Building, Ledson Road Wythenshawe M23 9GP. She confirmed that this was the managing agent's address as well as the Applicant's business address as evidenced on their bank statement (page 117 of Exhibit PG1). She further stated that demands had been re-served on the Respondent on 7 June 2018 with the Applicant's registered address (7 Christie Way Christie Fields Manchester M21 7QY contained in them. (Pages 118 - 126 of Exhibit PG1).
21. She stated that to date the sum of £5250.73 remained outstanding and payable.

THE RESPONDENT

22. The Respondent filed a statement of case dated 17 January 2019 via his "litigation friend" (not formally appointed by this Tribunal but presumably assisting his solicitors with his submissions) Ms. Janice Peake
23. The Respondent stated that he had received nine demands between 3rd February 2014 and 1 November 2017 for the sums sought, and a further nine demands or around 8th June 2018 for the same period, but put the Applicant to proof that these demands were compliant with s47(1)(a) Landlord and Tenant Act 1987, and further that they were compliant with s21B Landlord and Tenant Act 1985, and in particular that each was accompanied by a summary of rights and obligations. The Respondent further challenged the Applicant to prove that with the period of 18 months beginning with the date when the relevant costs were incurred, the Respondent was notified in writing that those costs had been incurred (in accordance with s20B Landlord and Tenant Act 1985).
24. In relation to the service charges, the Respondent relying upon s19 Landlord and Tenant Act 1985 denied that the amounts claimed by the Applicant were payable, asserting that the costs were not reasonably incurred, and that the works or services were not of a reasonable standard. No further details to support this assertion were made.
25. The Applicant attached a schedule of service charges and administration charges, identifying disputed items, giving reasons, and offering amounts. In relation to all of the quarterly service charges between 1.1.2014 and 1.4.2017 the reason for dispute was "Costs not reasonably incurred, works/services not of a reasonable standard". No detail or information at all was provided to support these assertions. The Respondent offered an amount of £50 per and £100 for some charges, and £0 for the 2016 Accounts levy. The Respondent offered nothing for the administration charges sought, being interest, reminder charges and debt collection costs.

26. In relation to the administration charges, the Respondent relying upon Schedule 11 of the Commonhold and Leasehold Reform Act 2002 denied that the amounts claimed by the Applicant were payable as the amount of the charges were not reasonable.
27. The Respondent further sought an order under s20C Landlord and Tenant Act 1985 preventing the Applicant recovering the costs of these proceedings through the service charge; and an order under paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002 reducing or extinguishing the Respondents' ability to pay a particular administration charge in respect of costs incurred in connection with the proceedings.

THE APPLICANT'S RESPONSE

28. The Applicant filed a response to the Respondent's statement of case in accordance with the directions, with a further statement of Nusrat Kamal dated 1 February 2019. The statement asserted that the Respondent had failed to identify the items of service charge in dispute, and simply disputed the advance service charge demand in full for each period; this made it difficult to respond to particular items disputed, as they were not identified.

THE DETERMINATION

Service Charges

29. It is open to a Landlord to retrospectively validate incorrect demands for service charges. The Applicant re-served the demands on the 7th June 2018 containing their registered address. The Tribunal therefore has jurisdiction to consider whether the service charges are payable in accordance with s27A Landlord and Tenant Act 1985.
30. It is correct that the tenant is not liable to pay service charges or administration charges until such time as the Landlord has complied with s47 Landlord and Tenant Act 1987; s47(2) has the effect however of confirming that this "bar" is lifted once corrected. This was confirmed by HHJ Bridge in the Upper Tribunal (Lands Chamber) in the case Cannon and Cannon v 38 Lambs Conduit Street [2016] YJYT 371 (LC). The service charge only becomes payable once the deficiency in a notice has been corrected.
32. The Tribunal consider the Respondent's assertion that the demands had been validly made in accordance with s21B Landlord and Tenant Act 1985, and in particular that they were accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. The re-served demands at pages 118 to 126 of Phillip Green's witness statement were said by Mr. Kamal's statement of 1 February 2019 to be accompanied with a summary

of tenant's rights and obligations, and example of which was exhibited at DGL1 p 35 - 37. In the circumstances the Tribunal was satisfied that the summary of rights and obligations had accompanied the corrected (but not necessary the original demands).

33. The Tribunal considered the Respondent's assertion that the time limit imposed by s20B Landlord and Tenant Act 1985 prevented the Applicant recovering service charges incurred more than eighteen months before the corrected demands were served. However, a demand is still a demand even if it not compliant as confirmed by the Upper Tribunal in *Johnson v County Biedford Ltd* [2012] UKUT 457 (LC).
34. The Tribunal being satisfied that it has jurisdiction to determine the payability of service charges, proceeded to do so. The Tribunal noted that the Respondent had failed to identify any aspects of the service charges he was dissatisfied with, either in terms of costs being unreasonably incurred or works or services not being to a reasonable standard, and in those circumstances, was unable to make any findings that the costs were not reasonably incurred. The Tribunal noted that the service charges had increased over the years, but in the absence of an inspection, or any representations by the Parties as to why this may have been the case was unable to go behind the Applicant's documentation.

Administration Charges

35. As the Tribunal found that the service charges were not payable until the notice had been rectified on the 7th June 2018, consequently the Applicant had no power to raise administration charges which were sought from the Respondent in the County Court proceedings are not payable.

S20 Application

35. Similarly, as the Tribunal found that the service charges were not payable until the corrected notices were served, on the 7th June 2018, it would seem appropriate for the Tribunal to make an order that the Respondent be not entitled to the costs of these proceedings which were issued prematurely, before the service charges were payable. The Tribunal makes an order under s20C Landlord and Tenant Act 1985 that the costs incurred in connection with these proceedings do not be added to the service charges.

Tribunal Judge Murray
19 March 2019