



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

Case Reference : CHI/19UD/LSC/2013/0017

Property : 46 Cuthbury Gardens, Wimborne, Dorset BH21 1YB

Applicant : Fairbar Limited

Representative : Ms C McQueen-Prince, Peverel Property Management

Respondent : James Leonard Taylor

Representative : In person

Type of Application : Service charges – Sections 20C & 27A Landlord and Tenant Act 1985 (Court transfer)

Tribunal Members : Judge MJ Greenleaves
Miss RBE Bray MRICS

Date and venue of Hearing : 24 April 2013 & 17 July 2013
Bournemouth County Court

Date of Decision : 8 August 2013

DECISION

- 1) The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that the sum of £711.16 in respect of gardening & grass cutting costs is a reasonable sum for service charges in respect of which the Applicant is required to pay under the lease of the Property referred to above.
- 2) The Tribunal makes no Order under Section 20C of the Landlord and Tenant Act 1985.
- 3) The Tribunal Orders the Respondent to pay the Applicant the sum of £250 towards the Applicant's costs of these proceedings under the Commonhold and Leasehold Reform Act 2002 Schedule 12 Paragraph 10.

Reasons

Preliminary

- 4) This matter was transferred to the Tribunal by Bournemouth and Poole County Court (2YMO1223) by Order dated 7 January 2013 in the following terms: "The question whether the service charges claimed by the claimant are recoverable and if so in what amount is referred to the Leasehold Valuation Tribunal for determination."
- 5) In his defence in those proceedings, the Respondent admitted certain heads of charge but also said "payment for grass has never been in any agreement, never cut anyway...". On 5 December 2012 the Court had written to Dickinson Dees, Solicitors stating that the Judge "requires clarification from the defendant as to what precisely is now in dispute following the admission as to £442. Therefore in respect of the figure of £1174.53 – how much is disputed and precisely on what items in the statement of account dated 3 August 2012 is the dispute based? As to the £230 – is this disputed and if so why?" In reply to that letter, on 19 December 2012, the Respondent wrote:

“The items in dispute in the statement dated 3 August 2012 are as follows,

“Grass maintenance dated March 09 to May 2012, total figure of £744.59. Grass has not been cut in this period a (sic), section of grass within this cost does not exist on Property plans, I would like an application to go to the leasehold valuation tribunal for a determination of reasonableness, and to determine whether this is included in the lease.

“I would also like to dispute items marked administration fee, a total of £31.76, and would like an application to go to the leasehold valuation tribunal for a determination of reasonableness and clarification.

“As to the figure of £230 for legal fees, I question whether this should have gone to small claims Court.”
- 6) After the transfer of the case to the Tribunal on 7 January 2013, the Respondent sought to add issues to his case as to the payability of service charges alleging that he had not received service charge demands.

- 7) The Applicant submitted that the matters transferred to the Tribunal were by reason of the statements in the Respondent's letter, limited to reasonableness of charges for grass maintenance and administration fees.
- 8) The Tribunal considered the position and those representations and was satisfied that in the circumstances the issues transferred by the Court for determination were those matters set out in the Court order as referred to above, but as limited by the Respondent's letter. Furthermore, that the Tribunal does not have jurisdiction to consider legal fees or interest charges.
- 9) Accordingly the Tribunal proceedings were limited to grass maintenance (although the Tribunal decided that any references to grass maintenance, garden maintenance and grounds maintenance should be treated as one and the same) and administration fees and the Respondent's application for a Section 20C order.

Further limitation to the proceedings

- 10) In respect of grass cutting, the Respondent alleged that grass cutting for March to June 2009 had not taken place at all, producing photographs to support his allegation. The applicant subsequently ascertained that some costs related to gardens of 6 units instead of just the 3 units of which his flat was one.
- 11) The Tribunal was referred to a statement of account dated 3 August 2012 for the Respondent in relation to 46 Cuthbury Gardens, that account totalling £1174.53 i.e. the amount of service charges in dispute in the Court proceedings.
 - a) Because of the allegations made by the Respondent as referred to in the paragraph 10) above, the Applicant had conceded that for all items variously called grass maintenance, garden maintenance, grounds maintenance during the period March 2009 to June 2012, only one half was actually chargeable by the Respondent.
 - b) Furthermore that in view of his allegation concerning grass cutting for March, April and June 2009, the remaining half of the grass cutting charges for those months should be cancelled entirely.
 - c) Furthermore, the Applicant was prepared to forego the administration charges in full.

Resulting issues for determination

- 12) Accordingly the Tribunal records that of the total of £1174.53, the Applicant agreed that a total sum of £463.37 was not payable at all. The proceedings before the Tribunal are therefore limited to determining whether the remaining one half costs of grass maintenance, (including garden and grounds maintenance items which probably include grass cutting) referred to in that account are reasonable sums.

Inspection

- 13) The Tribunal inspected the Property and the external garden and grounds areas in the presence of the Respondent and his father on 24 April 2013. The Property and gardens the subject of the application are situated in a housing estate. The subject Property is in a block of 3, each of which has a garden area, partly bounded by hedges. On inspection, the grass was cut and the hedges were also cut. The enclosed garden area is situated on the south east of the building and the other grassed area on the north. There are none others surrounding the building.

Hearing

- 14) On 24 April 2013 the Tribunal commenced a hearing in the presence of the Applicant's representatives and of Mr Taylor and his father. In the course of an adjournment for him to consider the Applicant's papers, Mr Taylor indicated he was feeling unwell and unable to continue with the hearing. The Tribunal considered that the interests of justice required the Tribunal to adjourn the hearing. Included in consequent directions, the Tribunal directed:
- a) By 7 May 2013 the Applicant shall re-serve its trial bundle of papers on the Applicant at 22 Parkwood Road, Wimborne.
 - b) If the Respondent, Mr Taylor, wishes to serve any written response to those papers, he shall send it to the Applicant and a copy to the Tribunal no later than 31 May 2013.
 - c) The parties will be notified of the date, time and place fixed for that hearing.
 - d) The hearing will in any event take place and the issues determined on that date so notified UNLESS the Respondent, Mr Taylor, shall, no later than 7 days before that date, provide to the Tribunal a full Medical Report as to his health and whether or not he is fit to attend and take part in a hearing.
 - e) If the Report indicates he is not fit, it shall explain full reasons and if any on-going condition is indicated, it shall specify the prognosis.
 - f) The Report will be considered by the Tribunal in considering whether or not the hearing shall proceed and its decision in that respect will be notified to the parties.
- 15) The Respondent did not make further representations on the issues before the Tribunal. In his letter to the Tribunal of 10 July 2013 he said "Regrettably due to ongoing ill-health I am not going to be able to attend the Tribunal on 17 July 2013, please find enclosed a doctor's letter." The letter from Dr Syed Hussein is dated 27 June 2013 and says "This is to confirm Mr James Taylor has been seeing me for stress. I believe he has a panel meeting with you which feels is impacting on this (sic). In view of this it may be advisable to take this into account for any further meetings." The Tribunal considered the report and Mr Taylor's letter. The doctor's letter did not give a prognosis. Taking also into account that Mr Taylor had not made any statement or reply in reply to the trial bundle re-served by the Applicant, it appeared he did not intend to take an active part in the proceedings and that it was in the interests of justice that the matter be determined without further delay. The Respondent was duly informed of that decision in advance of the hearing.
- 16) Accordingly the hearing on 17 July proceeded in the presence only of Ms McQueen Prince and Mr Fildes. The Tribunal considered all the case papers and heard submissions and evidence from them, particularly considering the documentary evidence relating to the tendering for the work, the cost of the accepted tenders, whether those costs were a reasonable rate of charge, to what areas those costs related and whether the work had been carried out.

Service charges

17) Are the grass cutting charges included in the lease?

- a) The lease of the Property (then known as flat 52 Minster Gardens Wimborne) is dated 12 October 1984 and made between Barratt Southampton Ltd and Jennifer Ann Miles.
- b) Clause 5 of the lease contains a covenant by the lessor to observe and perform the obligations set out in the Sixth Schedule. That schedule at paragraph 6 states "as often as may in the opinion of the lessor be necessary to properly cultivate and maintain in good order and condition the garden which is included in the demised premises".
- c) The demised premises are defined in the Seventh Schedule to include, at paragraph 5(c), "all that the garden ground for or parts (sic) the purpose of identification only shown coloured orange on the said plan...". The plan shows coloured orange the parts the subject of this application.
- d) Clause 4 of the lease is a covenant by the lessee with the lessor and others "that the lessee will observe and perform the obligations on the part of the lessee set out in the Fifth Schedule hereto". Paragraph 7 of the schedule states "where the demised premises include part of the garden in the block then the lessee will pay to the lessor the amount which the lessor may from time to time expend in maintaining the same in good order and condition and properly cultivated".
- e) Accordingly the Tribunal found that the Respondent is required by his lease to pay these charges, whether described as grass maintenance, grounds maintenance or otherwise.

18) Are the charges reasonable?

- a) The Applicant had found that the work being carried out by the contractor included garden/grassed areas for 6 units i.e. two blocks rather than just the one block including the Property owned by the Respondent. As a result it had halved the cost of the work to be charged to the Respondent and this is reflected in the figures submitted as reasonable.
- b) When an invoice for work done is received by the Applicant's managing agent, it does not check that the work has been done. The management takes place from their office in Luton. They do not have any local representation. There is no provision for payment of management fees. They rely on the assumption that work has been done if there is no indication from lessees to the contrary. The Applicant made the point that there had been no complaint at all from the Respondent that work had not been done until the Respondent filed his defence in the Court proceedings on 21 September 2012. While the Tribunal does not accept that this is a satisfactory means of management of services, the fact that the lessee did not complain until proceedings were commenced against him satisfies the Tribunal that, other than for the period March to June 2009, the Respondent would have complained if other grass cutting had not been carried out and on the balance of probabilities the work had been carried out.

- c) The Respondent had not filed any evidence as to reasonableness of charges. Other than the letter of 19 December 2012 referred to above, he had written the following letters to which the Tribunal adds its own comment:
- i) 21 March 2013 enclosing service charge statements he had received, noting they were different from some submitted by the Applicant; he also made some comments as to aspects which did not relate to reasonableness or costs; he also enclosed a set of photographs dated 13 March 2009 – 24 June 2009 showing grass and hedges uncut which had resulted in the applicant cancelling the charges from March to June 2009;
 - ii) 26 March 2013 enclosing his Section 20C application;
 - iii) 30 March 2013 in which he referred to “previous photographs sent as evidence show the grass, hedge had not been cut, the hedge was overhanging and blocking the pavement in December 2012,...”. He also said “I enclose copies of photographs from the site in question dated 25/5/2013 as is clear only half of the grass has been cut.” (The latest date in the account before the Court being June 2012, his information was not material to the issues before the Tribunal);
 - iv) 10 July 2013 enclosing his doctor’s letter; stating “regrettably due to ongoing ill health I am not going to be able to attend on the 17th of July 2013, please find enclosed doctors letter.” He also enclosed copy letters from the Applicant which, other than setting out costs conceded and their proposals for settlement (19 June 2013), did not assist on the question of reasonableness of charges;
 - v) 15 July 2013 in which he said he had a phone call with Peverel “in the early part of 2009 ... that some of the grass did not exist and that a tenant had been cutting the grass” but this had been denied by Peverel. The Tribunal was satisfied that these comments had been dealt with by cancellation of grass cutting charges from March to June 2009.
 - vi) 16 July 2013 in which he indicated he wished to appeal against the decision not to adjourn the hearing on 17 July 2013 and other matters of the Tribunal’s conduct, but no information as to reasonableness of charges.
- d) Having considered all the relevant documents, using its knowledge and experience of costs for such work, the Tribunal determined that the service charges the subject of this application are reasonable.

Costs applications

19) Section 20C

- a) The Respondent applied for an order under section 20C of the Landlord and Tenant Act 1985 to limit the amount of the costs of the Applicant in relation to these proceedings which might be recovered against him by way of service charge.
- b) As to contribution towards lessor’s expenses constituting service charges, the only provision in the lease is that specified in paragraph 7 of the Fifth Schedule as set out above. There is no other contribution required, let alone any contribution to costs incurred by the landlord, save as mentioned in the next paragraph.
- c) By clause 3 of the lease, the lessee covenants with the lessor to observe and perform the obligations on the part of the lessee set out in the Fourth Schedule

hereto. Paragraph 4 of that schedule is in the following terms: "The lessee will pay all costs charges and expenses (including solicitors costs and surveyors fees) incurred by the lessor for the purpose of and incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court".

- d) That provision is relied upon by the Applicant in support of its contention that it can recover its costs in respect of these proceedings, which it puts at more than £5000. It did not contend that there was any other provision in the lease on which it could rely.
 - e) The Applicant submitted it was entitled to its costs of the proceedings under paragraph 4 in relation to section 146 of the Law of Property Act 1925 as being incurred for the purpose of and incidental to the preparation and service of a notice under that section. Statutory provisions which may be relevant to that question are:
 - i) Section 168 and 169(7) of the Commonhold and Leasehold Reform Act 2002
 - ii) In submissions received after the hearing from the Applicant, the Applicant says that Section 81 of the Housing Act 1996 applies so that it is able to recover its costs under paragraph 4.
 - f) The Tribunal does not need to make any determination on whether any of those provisions applies in this case. In relation to the Respondent's application, a section 20 C order, could only protect a lessee from costs being recovered by way of service charge. By Section 18 of the Act, service charge "means an amount payable by a tenant of a dwelling as part of or in addition to rent – (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's management costs, and (b) the whole or part of which varies or may vary according to the relevant costs". The costs etc. referred to in paragraph 4 do not fall within that definition of service charge and, as the Applicant accepts, there is no other provision in the lease for the costs of these proceedings to be recovered by way of service charge, , the Tribunal decided there is no purpose in making the order requested by the Respondent. That does not necessarily prevent costs under paragraph 4 being recovered in the course of any appropriate proceedings under that paragraph.
- 20) Commonhold and Leasehold Reform Act 2002, Schedule 12 paragraph 10
- a) The Applicant applies for an order for costs under the Commonhold and Leasehold Reform Act 2002, Schedule 12 paragraph 10 on the basis that the Respondent has acted unreasonably in connection with these proceedings. Those provisions do not apply to cases commenced before the Tribunal since 1 July 2013 but remain applicable to this case. Any such order made by the Tribunal would be limited to not more than £500.
 - b) The Applicant alleges the Respondent's unreasonable conduct in failing to consider or deal with offers made by the Applicant for settlement outside the Tribunal and also insisting on hearings when, the Applicant says, he could have agreed the matter being dealt with by a paper determination.

- c) Since these proceedings were transferred to the Tribunal by the Court, the fact that the Respondent was being charged his share for grass cutting/gardening for 2 blocks instead of one block has become apparent from the Applicant's enquiries. He is therefore not to be criticised for asking for the matter to be transferred to the Tribunal. He has insisted on oral hearings, as is his absolute right. He had not agreed written proposals made by the Applicant to dispose of the case, proposals which the Tribunal considered to be reasonable. He had not filed any evidence as to reasonableness of charges. The Tribunal refers to paragraph 18c) above. For those reasons the Tribunal found that he had acted unreasonably and that an order under paragraph 10 should be made.
 - d) The Tribunal decided that the standard of management directly contributed to the matter coming before the Tribunal: had the Applicant actually checked whether or not work had been done and whether it was being carried out for the areas for which the Respondent was actually liable, the need for the proceedings might have been obviated. The Tribunal further takes into account that the Applicant's representatives are based in Luton, had to travel and stay overnight in Bournemouth in respect of the 2 hearing dates and that has very substantially contributed to their costs. It is for the Applicant to decide how to run the management of the Property, but if it chooses to do so from a considerable distance it would be wholly unreasonable for the Respondent to bear any part of the resulting significantly increased costs.
 - e) The Tribunal also notes the email dated 19 March 2013 (document 156) suggesting hearing costs for one day of £2,200 plus VAT to include preparation for the final hearing, attending the final hearing, overnight accommodation, travel costs and hearing fee. It then refers to an increase of costs for "e.g. preparing witness statements and considering your statement of case is likely to increase costs by a further of £660 plus VAT". By the two references to preparation, there is some duplication in the quoted costs. The Applicant did not provide any breakdown of its costs.
 - f) The Respondent should not be penalised in any costs order if he is unfortunately not well enough to continue with the first day of the hearing. On balance, the Tribunal decided that the costs payable by the Respondent be limited to a reasonably proportionate sum of £250.
- 21) The Tribunal made its decisions accordingly.

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.

Judge MJ Greenleaves