



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

Case Reference : **CAM/22UN/LSC/2014/0001**

Property : **2A Maria Street, Harwich, Essex CO12 3HT**

Applicant : Mrs Patricia Janet Davis, 2A Maria Street, Harwich
CO12 3HT

Respondent : Ground Rent Trading Limited, 5th Floor, 112 Station
Road, Edgware, Middlesex HA8 7BJ

Representative : Moreland Estate Management, 5th Floor, 112 Station
Road, Edgware, Middlesex HA8 7BJ

Type of Application : For determination of liability to pay service charges
for the year 2014 [LTA 1985, s.27A]

Tribunal Members : G K Sinclair and R Thomas MRICS

**Date and place
of determination** : Monday 7th April 2014
at the tribunal office, Great Shelford

Date of Decision : 10th April 2014

DECISION

1. As in 2012¹ and 2013² Mrs Davis, tenant of the upstairs flat in a modern detached block of two flats, applies to the tribunal for a determination that her landlord's managing agent is not entitled to recover anything more by way of service charge than the actual cost of obtaining insurance for the property. Yet again, that same managing agent has ignored the tribunal entirely and failed to comply with its directions for disclosure and filing of a statement of case justifying the claimed service charge. Yet again, it is rewarded by a determination that only the actual insurance premium of £381.78 is recoverable, of which the applicant's share is one half.

Material lease provisions

2. Clause 1 of the lease dated 11th March 2005 provides that the lessee shall pay the rent specified in the Particulars and, by way of further rent, such monies as shall be paid out by the lessor in insurance premiums for the demised premises pursuant to the covenant in clause 3(e). These obligations are reinforced by the lessee's covenant in clause 2(1).
3. By clause 2(3) the lessee covenants with the lessor to pay a contribution as set out in the Particulars towards the cost and expense of repairing maintaining and renewing the items set out in the Sixth Schedule. The Second Schedule contains the Particulars, identifies the payment date as 1st January and the contribution as one half of the total expenditure. The items to be repaired, listed in the Sixth Schedule, are the main structure, gas and water pipes, drains, wires and cables used in common, and any common pathway. The lease plans do not suggest that there are any pathways used in common. There is no mention of how or when this contribution is to be paid, or that the service charge account requires audit. In particular, there is no mention in the lease of any reserve fund, or power for the landlord to accumulate any surplus service charge funds in such a reserve.

Material statutory provisions

4. Section 18 of the Landlord and Tenant Act 1985 defines the expression "service charge", for the tribunal's purposes, as follows :
 - (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
 - (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
 - (3) For this purpose-
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

¹ CAM/22UN/LSC/2012/0008 – Decision dated 12th April 2012

² CAM/22UN/LSC/2012/0167 – Decision dated 5th April 2013

5. The overall amount payable as a service charge continues to be governed by section 19, which limits relevant costs :
 - a. only to the extent that they are reasonably incurred, and
 - b. where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.

6. The tribunal's powers to determine whether an amount by way of service charges is payable and, if so, by whom, to whom, how much, when and the manner of payment are set out in section 27A of the Landlord and Tenant Act 1985. The first step in finding answers to these questions is for the tribunal to consider the exact wording of the relevant provisions in the lease. If the lease does not say that the cost of an item may be recovered then usually the tribunal need go no further. The statutory provisions in the 1985 Act, there to ameliorate the full rigour of the lease, need not then come into play.

Material before the tribunal

7. As neither party requested an oral hearing the application was dealt with on the basis of the documents submitted. An inspection was not considered necessary but, as the previous tribunals' decisions makes clear, the building is a modern brick-built structure under a tiled roof, with one flat on the ground floor flat and another (the subject premises) upstairs. Each flat has its own external entrance, parking space and rear garden.

8. In addition to the application and a directions order dated 3rd February 2014 the applicant put before the tribunal :
 - a. a copy of the lease
 - b. a statement of budgeted service charge expenditure for year end 31st December 2014, and a letter by the applicant dated 14th December 2013 querying items mentioned in a revised invoice (the invoice or demand not being provided)
 - c. A document dated 11th September 2013 confirming placement of insurance with AXA at a premium of £381.78
 - d. a signed statement of case by the applicant dated 24th February 2014
 - e. some most unusual service charge accounts for the year ended 31st December 2012 (purportedly signed by L B Ladenheim ACA CPA on 28th April 2013)
 - f. miscellaneous correspondence in mid-2013, and
 - g. the 2013 tribunal decision.

9. Amongst the correspondence is a letter from Moreland Estate Management dated 20th June 2013, informing the applicant that accounts have been finalised (but not enclosing a copy), that expenditure was less than the budgeted figure, and that it has
...therefore arranged for the surplus of £929.26 to be transferred to the reserve fund to be used towards capital projects such as internal or external redecoration as required in the lease.

Findings

10. The tribunal notes that the lease makes no provision for a reserve fund, and neither does the Sixth Schedule refer to works of redecoration, whether internal (which would be within the demise and therefore a tenant responsibility) or

external.

11. It also considers the accounts provided to be most odd. They purport to be partly audited and partly not, the accountant's report including the following :

The scope of our audit has been limited to examining the supporting vouchers and invoices of the Service Charge Expenditure during the year and reviewing the accounting records of the managing agent. We have included expenditure not vouched having relied on representations made by the Managing Agents. A schedule of such expenditure is available on request.

No audit work has been performed on the Amounts Demanded or Collected from Lessees, nor on any Balances Brought or Carried Forward. Our audit is not a value for money audit.

12. The accounts do not seem to take any account of the fact that the 2012 tribunal decision deprived the managing agent of any fee whatever. The 2013 decision was even more restrictive, allowing only the insurance premium. Both of these decisions should have been available to the accountant, and as the applicant had paid only the amounts determined by previous tribunals this would have altered the balance shown for the 2012 year-end accounts by reducing it.
13. Of course the accounts do not concern the year ending 31st December 2013, and strictly are irrelevant to what anticipated expenditure should be budgeted for this year. Nonetheless, they show a rather cavalier approach to service charge accounting, which this tribunal does not consider justifies the £80 audit fees in the 2014 budget.
14. The tribunal notes from the 2013 decision that the budget for that year did not include any audit fee, although that for the subject year (2014) does.
15. Given the history of the subject premises where a landlord and managing agent have carried out no work at all in the past, and without either deigning to tell the tribunal why a figure of £280 for general maintenance is considered reasonable, this sum is also deleted.
16. The insurance premium is allowed in the sum actually incurred for 2013-14, so no over-payment shall accrue.
17. Yet again, the landlord and its managing agent have chosen to ignore the tribunal entirely, and reasonable enquiries by the applicant on specific points have gone unanswered. While minimal work may have been undertaken in the arranging of buildings insurance no explanation has been offered about the market testing that may or ought to have been undertaken and, in reflecting its disapproval, the tribunal shall again disallow the management fee in full.
18. The only sum payable by the applicant is therefore her half share of the insurance premium.
19. Pursuant to rule 13(2) the tribunal orders that the respondent shall reimburse the tribunal application fee of £90 paid by the applicant.

20. No application having been made for an order under section 20C of the Landlord and Tenant Act 1985, no such order is made.

Dated 10th April 2014

Graham K Sinclair
Tribunal Judge