10596

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/29UL/LIS/2014/0027**
Property	:	**Ground Floor Flat, 4 Connaught Road, Folkestone, Kent, CT20 1DA**
Applicant	:	**Croydon (Unique) Ltd**
Representative	:	**Mr J Harvey-Hunter, G H Property Management Services Ltd**
Respondent	:	**Mr A J Bailey**
Representative	:	**In person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay service and administration charges**
Tribunal Members	:	**Judge I Mohabir** **Mr R Athow FRICS MIRPM** **Mr P A Gammon MBE BA**
Date and venue of Hearing	:	**Folkestone Magistrates Court**
Date of Decision	:	**8 December 2014**

DECISION

Introduction

1. The Applicant commenced proceedings in the County Court against the Respondent to recover arrears of service charges, ground rent and other monies totalling £4,194.71.

2. The Respondent is the lessee of the property known as Ground Floor Flat, 4 Connaught Road, Folkestone, Kent, CT20 1DA pursuant to a lease dated 19 October 1990 for a term of 99 years from 24 June 1988 ("the lease"). The Applicant is the present freeholder. For reasons that will become apparent, it is not necessary to set out here the relevant service charge provisions in the lease.

3. The pleaded sum claimed is broken down as follows:

£2,124.73	service charges for the period ending 31.10.13
£1,949.98	service charges in relation to "opening service charges"
£30.00	Administration charges
£228.31	Buildings insurance for the period ended 19.09.14
£50.00	Ground rent for the period ended 24.03.14
£90.00	Solicitors costs

4. It seems that on 6 February 2014, the Respondent paid the sum of £278.31 in relation to the buildings insurance premium and ground rent. However, by a Defence dated 24 February 2014, he defended the remainder of the claim on the basis that, despite requesting this, the Applicant had not provided him with evidence that the service and administration charges had been incurred and were reasonable. In other words, the Respondent put the Applicant to proof.

5. By an order dated 16 April 2014 made by DDJ Edgington at the County Court in Dartford, the claim was transferred to the Tribunal to determine whether the service and administration charges are reasonable and payable.

6. A telephone case management hearing took place on 23 July 2014 and issued Directions dated the same date. It seems that with the agreement of the parties, the scope of the service charge costs in issue (in addition to the administration charges set out above) were identified as being as follows:

Period ended 25.03.08	£300
Period ended 25.03.09	£450
Period ended 25.03.10	£400
Period ended 25.03.11	£300
Period ended 25.03.012	£4,074.71
Period ended 25.03.013	£1,500
Period ended 25.03.14	Unparticularised
Period ending 25.03.15	£408.50

7. The Respondent clarified that his challenge to the costs claimed for the period ended 25 March 2012 was on two grounds. Firstly, that the Applicant had failed to (validly) carry out statutory consultation under section 20 of the Act in relation to external decorations and/or repairs to the building. Secondly, that the costs were excessive and the works were not carried out to a reasonable standard.

8. Paragraph 7 of the Tribunal's directions provided that the years ending 25 March 2008, 2014 and 2015 could only be determined by the Tribunal on condition that the Respondent issued a separate application under section 27A of the Act by 11 August 2014. No such application appears to have been made by the Respondent. Therefore, this decision only concerns with the remaining years. Although the directions do not expressly say so, the inference to be drawn is that those years fall within the County Court claim, as the Tribunal alludes to this at paragraph 6 of the directions and presumably this was clarified with the parties at the CMH.

9. Primarily as a result of a failure on the part of the Applicant to comply with the Directions dated 23 July 2014, the Tribunal issued supplementary Directions dated 11 November 2014 and set the case down for a hearing on 26 November 2014.

10. The Applicant's solicitors, Dutton Gregory LLP, made two applications to adjourn the hearing largely on the basis that they were without instructions. Both applications were refused.

Relevant Law

11. This is set out in Appendix annexed hereto.

Decision

12. The hearing in this matter took place on 26 November 2014 at Folkestone Court following the Tribunal's external inspection of the building. It should be noted that the inspection revealed that some external parts of the property appeared to be in disrepair and there was no apparent evidence of external repairs and/or redecorations having been carried out for some time.

13. The Applicant was represented by Mr Harvey Hunter of G H Property Management Services Ltd, who is the present managing agent. The Respondent appeared in person.

14. Mr Harvey Hunter attended the hearing with a number of hearing bundles that had been prepared by Dutton Gregory LLP. He said he had no previous involvement in the case and could not comment on any of the service and administration charges in issue. He had simply been instructed by either the Applicant or its solicitors the previous day to attend the hearing with the bundles. In addition, he could offer no reason at all why the Applicant had failed generally to comply with the Tribunal's Directions including the filing and service of the hearing bundles.

15. The Tribunal adjourned the hearing for a short while to give the Respondent an opportunity to consider the bundle and say whether he objected to any of its contents.

16. At the resumed hearing, the Respondent did object to the evidence contained in the bundle on the basis that it did not contain any statement of case from the Applicant and there were a number of documents in the bundle that he had not seen before. Furthermore, there was no details or analysis of the computation of the sum claimed; merely a collection of demands and statements, none of which totalled the sum claimed.

17. Having regard to the way this litigation has been conducted on the part of the Applicant and the absence generally of any good reason for failing to comply with the Tribunal's Directions, including the filing and serving of the hearing bundles, the Tribunal had little difficulty in upholding the Respondent's objection and refused to admit the evidence contained in the hearing bundles. Indeed, the Tribunal's Directions expressly put the parties on notice that this sanction was available to the Tribunal in the event of non-compliance with those Directions.

18. In the absence of any evidence from the Applicant, it was unable to prove its case. Consequently, the Tribunal made the following findings:

(a) that the Applicant could not establish the contractual basis on which the service and administration charges in issue are payable under the lease.
(b) that there was no evidence that the service and administration charges in issue had been incurred.
(c) in the alternative, that there was no evidence that the service and administration charges in issue had been reasonably incurred.

(d) in the alternative, that there was no evidence that the service and administration charges in issue were reasonable in amount and/or any works carried out were of a reasonable standard.

19. Accordingly, the Tribunal held that none of the service and administration charges in issue as set out in paragraph 6 above, but excluding the years ending ended 25 March 2008, 2014 and 2015 are payable by the Respondent.

Section 20C & Fees

20. The Respondent had made an oral application under section 20C of the Act at the CMH in relation to the Applicant's costs incurred in the Tribunal proceedings.

21. For the reasons set out at paragraph 17 above, the Tribunal considered it just and equitable to make an order under section 20C preventing the Applicant from recovering any of the costs it may have incurred in these proceedings through the service charge account as relevant costs.

22. Also for the same reasons, the Tribunal makes no order requiring the Respondent to reimburse the Applicant any fees it has paid to the Tribunal to have this case heard.

Judge I Mohabir
8 December 2014

PERMISSION TO APPEAL

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.

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(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.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

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.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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 matter of an application under sub-paragraph (1).