

10605



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

Case Reference MAN/00EM/LSC/2014/0090

Property Cobber Cottage, 58A New Ridley Road,
Stocksfield, Northumberland NE43 7EE

Applicant Miss Margaret Anne Watson
Representative (Unrepresented)

Respondent William Ronald Bolton &
Vivien Adeline Bolton
Representative Nicholson Portnell Solicitors

Type of Application Landlord and Tenant Act 1985 - s27A and s20C

Tribunal Members Mr S Moorhouse LLB
Mr IR Harris BSc FRICS
Mrs S Aldred

Date and venue of : 6 January 2015 - Manor View House,
Hearing Kings Manor, Newcastle upon Tyne
NE1 6PA

Date of Decision 29 January 2015

DECISION

DECISION

- (i) The total amount of service charge payable by the Applicant for the service charge years ending 31 December 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013 and 2014 is £1,878.42. A breakdown appears in the annex.
- (ii) The Tribunal makes an Order under section 20C of the Landlord & Tenant Act 1985.

REASONS

The Application

1. The Application is made under section 27A of the Landlord & Tenant Act 1985 ('the Act'). A Case Management Conference ('CMC') was held at Consett Magistrates Court on 4 September 2014. It was noted at the CMC that forfeiture proceedings (referred to in the Application) had not been initiated at that time. Various directions were issued.
2. An inspection was conducted by the Tribunal on 6 January 2015, followed by the hearing. The Applicant and the Respondents attended the inspection and hearing. The hearing was additionally attended by Mr Brough, to assist the Applicant and as a witness, and by the Respondents' solicitor Mrs E.M. Heather of Nicholson Portnell Solicitors.

Preliminary matters

3. At the commencement of the hearing the Chairman identified four areas to be addressed as preliminary matters: the structure of legal interests in the Property and adjoining properties; the scope of the Application; the admissibility of certain documents; and identifying the charges demanded and the amounts paid.

Structure of legal interests

4. It is common ground that the lease of the Property, assigned to the Applicant on 8 September 2005, expresses an intention that the freehold interest in the Property and the properties to either side will be transferred by the Respondents to a management company 'Old Bakery Cottages Management Ltd'. It was confirmed at the CMC that this transfer had taken place and it was directed following the CMC that accordingly the management company would be named as the Respondent in the present proceedings.
5. Title documents submitted to the Tribunal in readiness for the hearing identified Mr & Mrs Bolton as the current freehold proprietors. Mr & Mrs Bolton confirmed that the freehold transfer to the management company had not taken place after all.
6. The Tribunal therefore further directed, within the hearing, that Mr & Mrs Bolton should be reinstated as Respondents.

7. It was clarified within the hearing that Mr & Mrs Bolton currently let one of the adjoining properties as a holiday cottage and that the other is currently let on a 6 month tenancy. The Property is the only one of the three that is the subject of a long lease. The decision to sell the Property on a leasehold basis avoided the creation of a 'flying freehold' since the first floor of the Property extends above the ground floor of an adjoining property.
8. The Respondents also clarified within the hearing that upon accountancy and tax advice they use the management company to collect service charges in respect of the Property. The management company is not a party to the Applicant's lease, it has no direct contractual relationship with the Applicant but acts as the Respondents' agent. Service costs relating to the Property are charged to the company and costs relating to the adjoining properties are handled separately where possible.
9. The Respondents state that if the management company is invoiced for costs that relate to all three properties, only the Applicant's share is taken into account in setting the monthly charge. The management company has no income other than the Applicant's monthly payments. The absence of any contribution to any costs attributable to the adjoining properties and any arrears on the part of the Applicant contribute to a deficit in company funds. This deficit is financed by loans from the Respondents as the directors.
10. It was apparent to the Tribunal that the Applicant and, to some extent the Respondents, have not understood the way in which the management arrangements for the Property have been structured.

Scope of Application

11. At the CMC it was confirmed that the service charge items in dispute were limited to accountancy fees, buildings insurance and painting costs. The scope of the Application was amended, with the agreement of the Respondents, to encompass additional service charge years. In the course of completing a Scott Schedule pursuant to directions, the Applicant challenged additional service charge items.
12. With the agreement of the Respondents the Tribunal further directed, within the hearing, that the scope of the Application should extend to all service charge items. The additional items can be summarised as: other property repairs, legal fees, Companies House filing fees and bank charges.

Admissibility

13. The Applicant states that certain documents or parts of documents, including title and insurance information, were not received in time to take them into consideration in making her written submissions. The documents have however been received in time for the Applicant to take them into consideration in preparing for the hearing.
14. The Tribunal directed within the hearing that all of the documents within the hearing bundle would be admitted as evidence and noted the Applicant's comment that her written submissions were made without reference to all of the documents.

Charges demanded & paid

15. It is common ground that the lease of the Property provides for monthly service charge payments, adjustable on an annual basis having regard to actual service costs in the past year and estimated service costs for the coming year. The lease provides for one third of overall service costs for the three properties to be allocated to the Property.
16. The Respondents clarified that demands for service charges had been issued in recent years in the form of letters to the Applicant from the Respondents, their solicitors and their accountants and that a monthly schedule identifying payments due and payments made had been supplied. Additionally, the Respondents state that they have provided to the Applicant copies of the management company's statutory accounts on an annual basis and the Applicant acknowledges that these have been received in some service charge years.
17. It is acknowledged by the Respondents that they have not complied with a requirement in the lease for the provision to the Applicant of an annual audited service charge account and that the Applicant has never been given a statutory statement of her rights and responsibilities. On this latter point the Tribunal drew the parties' attention to the provisions of section 21B of the Act.
18. A document headed 'service charge rent analysis' has been prepared on the Respondents' behalf to assist in the present proceedings. This list itemises service charge expenses for each service charge year in question, identifies the amount payable by the Applicant, the amount due based on the monthly charge and the amount actually received.
19. The Respondents additionally submitted a written breakdown of payments and arrears identifying service charge arrears of £245 at the end of August 2014. The Respondents have clarified, pursuant to a later enquiry by the Tribunal, that the Applicant has made further payments since that time but that (on the Respondents calculations) the level of arrears has increased.

The Law

20. The provisions of sections 19 and 27A of the Landlord & Tenant Act 1985 ('the Act'), were drawn to the attention of the parties in the course of the hearing, prior to the parties submissions on the individual service charge items being heard. Extracts from these sections are set out below.

s19 - Limitation of service charges: reasonableness

(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 provision 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 adjustments shall be made by repayment, reduction or subsequent charges or otherwise.*

s27A - Liability to pay service charges: jurisdiction

(1) *An application may be made to a 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.*

Accountancy Fees & Companies House Filing Fees

Submissions

21. The Applicant disputes her liability to pay accountants fees. These appear in the service charge analysis prepared on the Respondent's behalf in each of the years in question. The Applicant states that she had thought she was paying all of the accountant's fees through her monthly payments. The Applicant is aware that the accountant undertakes other work for the Respondents and is concerned that she may be contributing. The Applicant queries why accountant's fees are payable as a service charge given that the service is provided to the management company and not to her as a leaseholder.
22. The Applicant also states that she has tried to obtain information from the accountants about their charges without success. The Applicant states that she has attended the accountant's office but has been turned away by the receptionist. The Applicant points out that she is a shareholder in the management company.
23. The Respondents state that one third of the accountant's fee for preparing the management company's annual accounts has been allocated to the Applicant via the monthly service charge. They state that their accountant is not permitted to disclose information to the Applicant and they identify additional fees of £120 charged by the accountants relating to the Applicant's contact with the accountants that have been treated by the Respondents as being rechargeable to the Applicant in their entirety.
24. In response to the Applicant's query as to why the accountant's fee for preparing company accounts is charged to her via service charge and, in response to a request by the Tribunal to address this by reference to the lease, the Respondents rely on the provisions of the Third Schedule to the Applicant's lease. The Respondents contend that the opening sentence of the Third Schedule, read along with paragraph 4 of the Schedule, make provision for the recovery (via service charge) of the accountant's fees for preparing the management company's accounts. These provisions are as follows:

'THE THIRD SCHEDULE

This schedule relates to the costs and expenses of running and maintaining the Development in respect of which the Current Service Charge Rent is payable

4. The fees and disbursements paid to any accountant or other professional person in relation to the preparation auditing or certification of any accounts of the costs expenses outgoings and matters referred to in the Schedule'

25. The parties later make submissions on the recovery of Companies House filing fees incurred by the management company. These are addressed here since the issues are very similar.
26. The Respondents confirm that one third of each Companies House filing fee incurred by the management company has been treated as being recoverable from the Applicant via the monthly service charge. The Applicant disputes her liability for this. The Respondents quote paragraph 3 of the Third Schedule to the lease. Paragraph 3 reads as follows:

'3. The fees and disbursements payable to any management agents appointed by the Lessor in respect of the Development or a reasonable allowance to the Lessor in respect of its own management cost.'

Findings

27. The Tribunal finds that there is no provision within the Applicant's lease for the recovery via service charge of an accountant's fee for the preparation of company accounts.
28. Clause 3.3 of the lease states: *'The Lessor will supply to the Lessee a copy of audited accounts showing the computation of the Current Service Charge Rent payable or paid for the year to which such computation relates'*. This requirement, which the Respondents acknowledge has not been met, relates to the preparation of service charge accounts. It is clear that paragraph 4 of the Third Schedule was intended to allow for the recovery of accountancy fees for the preparation or auditing of such accounts.
29. There is no provision within the lease for the recovery of the cost of preparing a company's statutory accounts, even if the company is engaged as the managing agent. There is provision at paragraph 3 of the Third Schedule to the lease for the recovery of fees and disbursements paid to managing agents, however in the Tribunal's opinion this is intended to relate to fees and disbursements incurred by an agent in the fulfilment of its appointment, not the agent's own costs of preparing its company accounts.
30. The accountant's fee charged in relation to the Applicant's contact with the accountants and attendance in reception does not appear to be recoverable under the terms of the lease or to have been reasonably incurred. On the issue of reasonableness, the Respondents have failed each year to provide the requisite service charge accounts and to provide the statutory statement of rights and obligations as an accompanying document to any demands. As a consequence the

Applicant has not received the service charge information she requires and has not been told how to pursue the information she is entitled to.

31. Turning to the Companies House filing fees, the Tribunal finds that these are not recoverable from the Applicant as service charge. The filing fees fall into a similar category as accountancy fees for the preparation of company accounts. They relate to the running of the company itself, not to the company's role as the Respondents' managing agent. In the Tribunal's view, paragraph 3 of the Third Schedule is intended to relate only to fees and disbursements paid to a managing agent in connection with the services it provides.

Buildings Insurance

Submissions

32. The Applicant submits that she has been unable historically to obtain adequate insurance particulars from the Respondents. The information she has obtained gives rise to various causes for concern, and as such she disputes her liability for the amounts that are recharged to her via the monthly service charge.
33. The Applicant questions whether rebuilding sums are sufficient, these being £273,000 in 2011 and £279,000 in 2012 for rebuilding the three properties. The Applicant queries an administrative charge of £18.33 mentioned in correspondence from the insurance broker and the inclusion of cover for 'loss of rent'. The Applicant contends that an increase in premium of £57 between 2011 and 2012 may have been attributable to insurance claims relating to adjoining properties and that she is therefore being penalised for the claims history of the Respondents. The Applicant confirms that she arranges her own contents insurance and has relied upon the buildings insurance arranged by the Respondents, but it is apparent that the Respondents' insurance policy includes contents insurance for other properties.
34. The Respondents state that the rebuilding sum is established upon advice from their broker. The administrative charge of £18.33 is charged by the broker and is recoverable along with the premium itself. The Respondents contend that the 'loss of rent cover' is of benefit to the Applicant as it would provide cover for the cost of alternative accommodation should that be required. The Respondents state that in preparing the service charge rent analysis to assist at the hearing they have, where possible, separated out the contents insurance premiums and have not sought to allocate any part of these to the Applicant.
35. In relation to the Respondents' claims history in respect of adjoining properties, the Respondents confirmed that storm damage in 2010 came to £611, of which £204 was treated as being rechargeable to the Applicant via monthly service charge. The Respondents clarified that they subsequently made a successful insurance claim, the proceeds of which were paid into their 'cottages account'. Accordingly the sum of £204 was due to be credited to the Applicant.

Findings

36. The Tribunal finds that one third of the buildings insurance premium (including the broker's administrative charge), is recoverable from the Applicant via the monthly service charge. However the Applicant is not required to contribute to any contents insurance premiums in respect of the adjoining properties, or to any loss of rent insurance premiums. In this regard the Tribunal considers that the loss of rent insurance relates primarily to the Respondents' business of offering holiday lets and short term tenancies in the adjoining properties.
37. The Tribunal therefore finds that, in so far as any additional premiums for loss of rent or contents insurance are identifiable within the documentation before the Tribunal, these should be disregarded in calculating the one third contribution to be collected from the Applicant via monthly service charge.
38. The Tribunal does not consider that the Applicant's contribution should be adjusted by reference to claims history but does note that an amount of £204 is due to be credited to the Applicant on account of a successful insurance claim for storm damage.

Painting

Submissions

39. The service charge rent analysis prepared on the Respondents' behalf identified painting costs of £405 in 2008 and £1000 in 2013. In each case a one third share is treated as being recoverable via monthly service charge (figures of £135 and £333 respectively).
40. The Applicant states that she is content that the work was done and is content with the charge. She queries why the invoice for painting in 2013 predates the commencement of the work by one month and she would have liked to have been consulted. The Applicant says that she asked the Respondents if she could have input to management company discussions (being a shareholder) and if she could have some input in relation to the works, but was denied these opportunities.
41. The Respondents clarify that the invoice date in 2013 arose as a consequence of a change in the management company's year end. They state that that they would not expect to involve the Applicant in proposed works where the costs are so low.
42. The Tribunal has drawn the parties' attention to the statutory consultation requirements set out at section 20 of the Act and provided the opportunity to comment on the applicability of these requirements to the present case. The requirements provide that where relevant costs in carrying out works exceed an appropriate amount (currently a £250 charge to any leaseholder) a leaseholder's contribution is limited to that amount unless the statutory consultation requirements have been complied with.
43. It is common ground that the painting in 2008 falls below the £250 threshold and that the painting in 2013 exceeds the threshold.

Findings

44. The Tribunal finds that a contribution of £135 is recoverable via the monthly service charge in respect of painting in 2008 and that the sum of £250 is recoverable via the monthly service charge in respect of painting in 2013. This latter figure reflects the Respondents' non-compliance with statutory consultation requirements.

Other property repairs

Submissions

45. The only significant concerns raised by the Applicant on other property repair matters relate to some re-pointing work to the rear of the Property carried out in 2011. The total invoice came to £270 of which £90 has been treated as being rechargeable to the Applicant via the monthly service charge. The Tribunal was shown at inspection that whilst re-pointing work has been undertaken to an area of wall in the rear garden to the Property, another area is in need of re-pointing.

Findings

46. Whilst it is arguable that the re-pointing work that was undertaken was not completed to a reasonable standard (given that an area which appears to require re-pointing was omitted), the sum of £270 (of which the Applicant is required to contribute one third via monthly service charge) represents a reasonable charge for the work actually undertaken.

Legal Fees

Submissions

47. The Respondents clarified that legal fees of £100 in 2006 and £240 in 2012 are in fact administrative charges incurred in the enforcement of the Applicant's service charge liabilities.

Findings

48. The Tribunal finds that the legal fees are outside the scope of the Application since they fall outside the definition of service charges set out at section 18 of the Act. The Tribunal simply observes that these appear to relate to the enforcement of service charges that the Applicant would have been entitled to withhold in any event pursuant to section 21B of the Act.

Bank Charges

Submissions

49. Bank charges of typically £2-£6 per annum are treated, in their entirety, as being rechargeable to the Applicant via monthly service charge. The Applicant queries why these are payable.

Findings

50. These amounts relate to the management company's management function, and not to the running of the company. Adopting the principles applied in the context of accountancy fees and filing fees the charges are recoverable (as to a one third share) via the monthly service charge.

Determination

51. A table is annexed to this decision applying these findings to the Respondents' service charge rent analysis. The amounts that the Respondents are entitled to recover from the Applicant via monthly service charge are shown in the column headed 'Amount payable'. The total amount, for the service charge years in question, is £1,878.42.

52. This total includes the service charge payable for the service charge year 2005 in its entirety, notwithstanding the Applicant purchased the Property on 8 September of that year. The Tribunal has no information before it as to any agreement reached between the Applicant and her predecessor in title on the apportionment of service charge (or any future adjustment) and recognises that credit awarded by the Tribunal in respect of that service charge year may need to be apportioned by the Applicant between her and her predecessor in title.

53. Based on the information provided by the Respondents for the hearing the Applicant has paid the amounts shown in the Annex under the heading 'Paid' in respect of the service charge years in question. These payments, calculated up to the end of August 2014, come to a total of £3665. Later information supplied to the Tribunal by the Respondents indicates that the Applicant has made some further payments towards the amounts being requested by the Respondent.

54. The Applicant is therefore substantially in credit and is entitled to be reimbursed the difference between the total amount paid in respect of the service charge years in question and the amount of £1,878.42 determined by the Tribunal to be the amount payable.

55. Future monthly service charges assessed in accordance with the lease and in the light of the Tribunal's determination will be payable by the Applicant to the extent that these are lawfully demanded.

Costs

56. The Applicant has applied under section 20C of the Act for an Order that the costs incurred by the Respondent in the present 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 Applicant.

57. The Respondents state that they have no objection to a section 20C Order being made. They would not intend to seek to recover their costs via service charge and do not consider that the lease makes provision for this in any event.

58. The Tribunal accordingly makes an Order under section 20C of the Act.

59. Any application for costs or reimbursement of fees pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 is required to be made within 28 days after the date upon which the Tribunal's decision is issued. No such application has been made prior to the issue of the Tribunal's decision and the Tribunal makes no order under Rule 13 of its own volition.

ANNEX

Service Charge Year	Expense Item	Amount payable	Paid
2005	Metal railings	£50.00	
	Insurance	£94.00	
	Accountancy fee & Filing Charges	£0.00	
	Bank Charges	<u>£0.66</u>	
	Year Total	£144.66	£360.00
2006	Property Repairs	£100.00	
	Insurance	£109.00	
	Accountancy fee & Filing Charges	£0.00	
	Bank Charges	<u>£0.66</u>	
	Year Total	£209.66	£360.00
2007	Property Repairs	£120.00	
	Insurance	£106.00	
	Accountancy fee & Filing Charges	£0.00	
	Bank Charges	<u>£1.66</u>	
	Year Total	£227.66	£360.00
2008	Painting	£135.00	
	Insurance	£108.00	
	Accountancy fee & Filing Charges	£0.00	
	Bank Charges	<u>£2.00</u>	
	Year Total	£245.00	£360.00
2009	Property Repairs	£0.00	
	Insurance	£110.00	
	Accountancy fee & Filing Charges	£0.00	
	Bank Charges	<u>£1.33</u>	
	Year Total	£111.33	£420.00
2010	Property Repairs	£0.00	
	Insurance	£107.08	
	Accountancy fee & Filing Charges	£0.00	
	Bank Charges	<u>£2.00</u>	
	Year Total	£109.08	£420.00
2011	Property Repairs	£90.00	
	Insurance	£170.00	
	Accountancy fee & Filing Charges	£0.00	
	Bank Charges	<u>£1.33</u>	
	Year Total	£261.33	£420.00
2012	Property Repairs	£0.00	
	Insurance	£155.90	
	Accountancy fee & Filing Charges	£0.00	
	Bank Charges	<u>£1.33</u>	
	Year Total	£157.23	£345.00
2013	Painting	£250.00	
	Insurance	£0.00	
	Accountancy fee & Filing Charges	£0.00	
	Bank Charges	<u>£1.00</u>	
	Year Total	£251.00	£90.00
2014	Property Repairs	£0.00	
	Insurance	£160.14	
	Accountancy fee & Filing Charges	£0.00	
	Bank Charges	<u>£1.33</u>	
	Year Total	£161.47	£530.00
TOTALS OF ALL YEARS		£1,878.42	£3,665.00*

* includes all payments up to the end of August 2014