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

Case Reference : CAM/22UG/LSC/2016/0025
County Court reference: C11YJ483

Property : 26 Oxtan Close, Rowhedge, Colchester CO5 7JJ

Applicant : Waterwitch Management Company Ltd
Representative : Paul Mertens (col) & Kierran Clarke

Respondent : Ian Gerald Pettitt & Ian Christopher Pettitt
Representative : Ian Gerald Pettitt (in person)

Type of Application : determination of reasonableness and payability of service charges for the year 2015 and administration charges [LTA 1985, S.27A; CLRA 2002, Sch.11]

Tribunal Members : G K Sinclair, E Flint DMS FRICS IRRV & O N Miller BSc

Date and venue of Hearing : 27th July 2016 at Colchester Magistrates Court

Date of decision : 5th August 2016

DECISION

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Summary

1. This case began in the County Court at Colchester as a claim by the applicant management company for recovery of overdue service charges for the year 2015 (and administration charges incurred by it in chasing for payment). By order of Deputy District Judge Wilson dated 31st March 2016 the case was transferred to this tribunal for determination of “the unreasonableness and probability of the service charges in question.” (sic) The tribunal assumes that the reference should be to their “payability”.
2. For the reasons which follow the tribunal determines :
 - a. That the service charges levied for the year 2015 are and were reasonable, but that
 - b. Although they purport to do so, the service charge invoices in fact fail to include the landlord’s name and address and therefore fall foul of section 47 of the Landlord and Tenant Act 1987. In the circumstances the service charges demanded shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.
 - c. When a valid demand or invoice is served for the service charges for 2015 in the amounts already levied then they will be payable by the respondent tenants.
3. Although the court order does not specifically refer to the administration charges claimed as expenses incurred in chasing payment, as the service charges were and are not yet due the tribunal considers, and respectfully advises the court, that not only are they irrecoverable but the entire court proceedings are premature. As yet there is no enforceable debt.

Relevant lease provisions

4. The lease in question is dated 28th June 2002; the parties being Redrow Homes (Southern) Ltd as landlord, Waterwitch Management Company Ltd as management company, and Martin Paul Wilson and Laura Marianne Royan as tenant. Clause 1 identifies all the essential definitions, including (at sub-clause (16)) that the service charge means the expenditure referred to in the Fifth Schedule and (at (15)) that the accounting period means 1st January to 31st December.
5. By clause 2(2) the tenant covenants to pay to the management company the service charge specified in the Fifth Schedule and, at 2(24) :
 - ... to pay to the landlord all costs charges and expenses (including solicitor’s counsel’s and surveyor’s costs charges and fees) reasonably incurred by the landlord in contemplation of any proceedings in respect of this lease under sections 146 and 147 of the Law of Property Act 1925... and in granting any consent or approving any plans or specifications

under any provisions of this lease.

6. At the hearing the applicant also laid stress on clause 2(25), viz :
At all times to keep the landlord and the company indemnified against all actions proceedings costs damages claims demands and liability for or in respect of any breach during the term of any of the covenants or agreements on the part of the tenant contained in this lease of any restrictive covenant or other agreement for the benefit of third parties affecting the flat.
7. The landlord's covenants appear in clause 3 and, in clause 4, the management company covenants to maintain and keep the building in good repair, to maintain the paths, roads and other facilities on the estate enjoyed by the tenant in common with others, to insure, etc.
8. In the Fifth Schedule paragraph 1 deals with the mechanics of payment of the service charge and paragraph 2 with the costs that may lawfully be charged. The tenant agrees at 1.1 to pay "a fair proportion" of the costs and charges later defined as reasonably and properly incurred. The management company has chosen to interpret that as paying specific proportions of up to three separate schedules : one for estate costs, one for the costs of maintaining, etc the exterior of the specific block in which the flat is situate, and (for those buildings with internal common parts) a third schedule for internal cleaning, maintenance and repair.
9. This is justified because there are some freehold houses enjoying estate facilities such as the communal gardens, but which are responsible for their own insurance, repair and maintenance. There are also several blocks of flats with no internal communal stairs or corridors. All three schedules are applicable to the subject flat, being 1/76 of estate costs, 1/56 of costs for all flats, and 1/46 of costs for flats in buildings with internal common parts.

Material statutory provisions

10. Section 18 of the Landlord and Tenant Act 1985 defines the expression "service charge", for the tribunal's purposes, as :
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...
11. 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.
12. 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.

13. By section 21 of the same Act a tenant may require the landlord in writing to supply him with a written summary of the costs incurred over the previous twelve months. The landlord shall comply with the request within one month of the request or within six months of the end of the period referred to in subsection (1)(a) or (b) whichever is the later.¹ The section sets out the requirements of a summary of costs to be supplied under section 21, and if the relevant costs are payable by the tenants of more than four dwellings the summary must be certified by a "qualified accountant".²
14. Section 22 of the Act entitles a tenant, within six months of obtaining the above summary, to require the landlord in writing to afford him reasonable facilities for inspecting the accounts, receipts and other documents supporting the summary and for taking copies or extracts from them. The landlord shall make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made, and shall do so free of charge.
15. Two further provisions, concerning demands for payment of service charge, are relevant to this case and were explored at the hearing. First, by section 47 of the Landlord and Tenant Act 1987, where any written demand is given to a tenant of premises for rent or other sums payable under the lease (which expression would include a demand for payment of service charge), the demand must contain the name and address of the landlord.
16. Secondly, since 1st October 2007 section 21B of the 1985 Act provides that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. The content of that summary is prescribed by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007.³ The document must contain the prescribed heading and text and must be legible in a typewritten or printed form of at least 10 point.⁴
17. Finally, on the subject of administration charges, paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 defines an administration charge (inter alia) as an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly... (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.

Inspection, hearing and evidence

18. The premises are to be found in a small estate just off the main road entering the

¹ See s.21(4). Subsection (1)(a) refers to cases – as here – where the accounts are made up for periods of 12 months, the request being limited to the last such period ending not later than the date of the request

² See s.21(6)

³ SI 2007/1257

⁴ *Op cit*, reg 3

village of Rowhedge from the north; an 11 minute drive from the southern edge of Colchester town centre. The tribunal inspected the internal common parts of the building containing the respondents' flat, its exterior, and the estate in general – paying particular regard to the communal gardens and the external condition of the buildings. Some are constructed partly of brick and pre-coloured cement board while other buildings, including the subject premises, are part-brick but largely rendered and painted, with some timber-clad detailing.

19. The internal common parts are minimal. The building is only two storeys in height, so there is only a single staircase and a ground floor corridor leading to a communal entrance door at each side of the building. While the main entrance appears to be on the southern side the dedicated car parking space for this flat is in a nearby communal car park next to another building beyond the estate road on the northern side of this building.
20. The external condition of the building appeared in reasonable order, and to the south is a small patch of garden stocked with shrubs. The main communal lawns and gardens run the full length of the estate on the north side, closest to the river. A public footpath between the subject estate and the next gives direct access to the riverbank and convenient moorings which, the tribunal was informed, can be rented from Colchester Borough Council.
21. At the hearing the tribunal was provided with a 196 page bundle, although with some duplication – including the lease. Section 1 comprised the court pleadings and orders, and one copy of the lease. The respondents had filed a handwritten Defence which seemed to focus on difficulties in obtaining responses from the management company and its agreement to allowing them to inspect receipts and other service charge documents. Costs for “this small flat” of over £600 were disputed, as was the addition of other charges by a collection agency.
22. As directed by the tribunal, the applicant filed evidence in the form of accounts, itemised cost schedules, and a witness statement by Mr Keirran Clarke, property manager. Unfortunately, as the applicant was unclear precisely what the basis of the respondents' challenge was – other than alleged unwillingness to permit inspection of receipts, etc – the witness statement focussed on that issue. The essence of his evidence, confirmed by numerous e-mails, was that questions that Mr Pettitt had raised in late 2015 had been answered fully, and that when he asked to inspect receipts in early 2016 the accounts for the year ending 31st December 2015 had not yet been prepared (the inference being that they were with the accountant). Once accounts were available in April offers were made to Mr Pettitt that he suggest a date to come and inspect them, but he never replied.
23. Mr Pettitt did file a statement of case with supporting documents. Apart from his primary focus upon alleged non-disclosure and the unexplained involvement of various agents on behalf of the applicant his specific challenges to the merits of the service charge can be summarised as challenges to :
 - a. The insurance cost, which he said had risen by 60% since 2014 despite the Association of British Insurers stating that the cost of building cover had dropped on average by 6%
 - b. The cost of cleaning and maintenance, which he said was all undertaken by two men and very sporadically

- c. The management fee of £157.87 per flat, which he said would produce an approximate surplus of £12 000 that had not been accounted for.
24. On the issue of insurance Mr Pettitt had obtained a quote, but it was for his own flat – not the whole estate – and was not landlord’s insurance. In any event, the applicant’s counsel pointed out, the insurance cost included in the 2015 service charge (and in the previous year) was less than the figure that he had obtained. Any increase in insurance costs took place in the following year (which was not before the tribunal) and had risen due to a substantial claim arising from a leak in another building perhaps caused by a design or construction defect that was now out of NHBC 10 year cover. In answer to a question from the tribunal Mr Clarke confirmed that his company went to the market every year, and for each development separately, to ensure that the annual premium was always in line with market rates. There is no overarching block policy.
25. As for the costs of cleaning, window cleaning and maintenance, etc Mr Pettitt was unable to produce any real challenge to the costs proved, or to advance a lower figure that he would consider reasonable. The same applied to the management fee.
26. In answer to a question from the tribunal, prompted by the three invoices in the bundle dated 10th July 2014 [page 90], 2nd December 2014 [92] and 8th June 2015 [94], Mr Clarke said that – although not copied – each had printed on the reverse a copy of the statutory summary of tenant’s rights and obligations concerning service charges. All that appeared in the bundle immediately after each invoice was the summary appropriate for administration charges. Upon further enquiry by Mr Clarke’s colleague who was present in court a copy invoice was e-mailed to his mobile phone and, after it was shown to Mr Pettitt, he confirmed that that was what he had received.
27. However, a related comment from the tribunal raised another fundamental issue. It was noted that the first invoice for the second payment due in 2014 (relevant only because Mr Pettitt’s refusal to pay it caused the generation of a late payment reminder fee) failed to comply with section 47 of the Landlord and Tenant Act 1987 because the only addresses shown were those for the applicant’s managing agent, Sapphire Property Management, and although the invoice was described as being “for and on behalf of Waterwitch Management Ltd” the notice under sections 47 and 48 stated merely that “all notices (including notices in proceedings) may be served upon the landlord”. Nowhere is the address for the landlord mentioned.
28. The tribunal then commented that by the time of the first relevant demand for the year 2015 (on 2nd December 2014) [92] this had been corrected, with the notice in the middle of the page now stating :
- This application for payment is issued on behalf of Waterwitch Management Company Ltd. Notice is hereby given pursuant to the Landlord and Tenant Act 1987 sections 47 and 48 that all notices (including notices in proceedings in England & Wales) may be served upon the Landlord, Waterwitch Management Company Ltd, Sapphire House, Whitehall Road, Colchester, Essex CO2 8YU.

Landlord's address for notices : Sapphire House, Whitehall Road,
Colchester, Essex CO2 8YU

29. Puzzled by certain of Mr Clarke's responses the tribunal asked exactly what Waterwitch's status was : was it a tenant-owned management company that had bought the freehold? He said that it was not. Further enquiry revealed that he did not know exactly who the landlord was, that Waterwitch's involvement was only as management company, and that as he was not directly involved with the insurance side of the business he could not say who was named as landlord on the policy or annual renewal certificate.
30. From comments by Mr Pettitt and Mr Clarke's colleague it appears that title to the freehold changed hands as recently as April this year, and that this may have been only the latest in a number of transfers. Different managing agents had also been involved at various times prior to the involvement of Sapphire on behalf of the named management company, Waterwitch.
31. It was therefore clear that, although relevant invoices were served together with the correct summary of tenant's rights about service charges (contrary to initial impressions), the invoices were defective due to the failure to supply the correct name and address of the landlord.

Discussion and findings

32. Having considered the evidence the tribunal is satisfied that, as he acknowledged quite openly, Mr Pettitt has no understanding of property management or the relevant law and that in proceedings such as this, having not bothered to obtain legal advice, he was totally out of his depth.
33. Mr Pettitt was not able to produce any convincing argument that the amounts charged for cleaning and maintenance were unreasonable, and he was forced to admit that the actual insurance charge levied for his flat was less than his own quote. Any increase for the year 2016 was not an issue before the tribunal, which was only asked to consider the service charge for 2015 – the only year mentioned in the court proceedings.
34. The tribunal regards the management fee for the flat as entirely appropriate for a flat on a modern development which is about 15 years old and where there is yet to be any major work such as external decoration undertaken. This should be a relatively straightforward task, but the estate requires insurance, cleaning and gardening and the collection of service charges. (Ground rent is dealt with by some other party unknown).
35. However, Mr Pettitt should consider himself lucky, as the invoices served upon him do not include the name and address of the correct landlord (misleadingly suggesting that it was Waterwitch) and thus do not comply with section 47 of the Landlord and Tenant Act 1987. The consequence is that no sum is yet recoverable by way of service charge. As such it was incorrect to add additional fees for written reminders, the legality of which this tribunal need not consider, or for instructing a debt collector to pursue the tenant. The court proceedings themselves are also premature.

36. When a fresh and legally compliant invoice for the service charges in question, and as approved by this tribunal, is served upon the respondents then it will be both reasonable and payable. Such invoice should not include the administration charges claimed in the court proceedings.
37. The tribunal so reports to the court.

Dated 5th August 2016

Graham Sinclair

Graham Sinclair
Tribunal Judge