



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

Case Reference : **CHI/24UC//LSC/2016/0036**

Property : **17 The Maltings Petersfield Hants
GU31 4JH**

Applicant : **Mr R K Ward MBE**

Representative : **In person**

Respondent : **The Maltings (Petersfield) RTM
Company Ltd**

Representative : **Biscoes**

Type of Application : **S27A and s20C Landlord and
Tenant Act 1985**

Tribunal Members : **Mrs F J Silverman Dip Fr LLM
Mr S D Barnden MRICS**

**Date and venue of
paper consideration** : **Petersfield
05 October 2016**

Date of Decision : **10 October 2016**

DECISION

The Tribunal declares that the sums demanded by the Respondent in respect of service charges for the service charge year 2014-2015 and 2015-2016 are reasonable and are payable in full by the Applicant in the proportion specified in his lease (6.48% of the total charge).

The Tribunal makes no order under s20C Landlord and Tenant Act 1985.

The Tribunal refuses the Respondent's application for costs.

REASONS

1 The Applicant is the tenant of the premises known as 17 The Maltings Petersfield Hampshire GU31 4JH (the property) and the Respondent RTM company is the freeholder having responsibility for carrying out the landlord's repairing and other obligations contained in the lease subject to which the property is held.

2 The Applicant filed an application against the Respondent on 5 April asking the Tribunal to assess the reasonableness of the service charges administration charges and sums due in respect of major works in respect of service charge years 2014-2015 and 2015-2016.

3 Directions were issued by the Tribunal on 19 April and 20 May 2016. The parties chose not to ask the Tribunal to conduct an oral hearing and therefore the matter was considered by a Tribunal on 5 October 2016 who inspected the property prior to making their decision which was based on the bundle of papers supplied by the parties and included statements from the Applicant, John Butler (managing agent) and Mark Hall (a Director of the Respondent company).

4 Page references below relate to the relevant pages in that bundle.

5 The Tribunal inspected the property on 5 October 2016 in the presence of the Applicant.

6 The Maltings is a small development of 21 residential units together with grounds and parking areas situated in a quiet cul-de-sac in a conservation area near the centre of Petersfield and within walking distance of all main facilities. The majority of the units are flats contained in the renovated and converted maltings building. Further apartments have been built above the car parking block and the development also includes a terrace of three two storey houses with individual gardens one of which is owned by the Applicant and is the subject of the present application. The development as a whole is well maintained and of a pleasing appearance.

7 The Applicant does not dispute the amount of any of the items charged to the service charge account for the years in question (see Direction 6 of the Directions dated 20 May 2016) and has not produced any alternative estimates.

8 The Applicant's sole contention is that he should only be liable under the service charge provisions of the lease for those sums which relate to parts of the estate from which he benefits. He maintains that as he has no access to the main block of flats or to areas containing the flats above the garage block he should not have to pay any sums in respect of repairs to those areas of the

estate (described by the word 'complex' in the Clause 1.9 of the lease). He has indicated which of the service charge items he feels he should be exempted from either in whole or in part (Schedule exhibited as MH3).

9 The Applicant's case rests on his interpretation of the provisions of the lease in respect of which it is noted that he has declined to obtain legal advice.

10 Clause 3.2 of the lease requires the tenant (the Applicant) to pay service charges in accordance with the Third Schedule of the lease. The Applicant does not appear to dispute the terms of the Third Schedule. The Fifth Schedule of the lease itemises the services to be provided by the landlord, for which the tenants will share the costs in accordance with their allocated percentage (6.48% in the Applicant's case). Although some of the matters itemised in the Fifth Schedule, such as carpeting common parts, would only be relevant to the flats contained in the main maltings building, the drafting of the lease does not restrict payment for those items solely to those who use them or benefit from them. Conversely, occupants of the maltings building would be liable to contribute to the costs of repairing or re-roofing the other buildings in the complex, including the Applicant's own home should that become necessary. The Applicant's view that he only has to pay for the items from which he benefits is erroneous and his interpretation of the lease, in which he attempts to distinguish between 'property' 'building' and 'complex' (despite these phrases being adequately defined within the lease itself) is misconceived.

12 The Applicant asked the Tribunal to make an order under s20C which was opposed by the Respondent. Having considered the matter the Tribunal declines to make an order under s20C. The Applicant has not succeeded in his application and the Respondent, subject to the terms of the lease, should not be prevented from adding its reasonable costs to the service charge.

13 The Respondent asked that the costs of the application should be borne by the Applicant but filed no legal submissions or schedule of costs in support of their application. In the absence of these documents and of proof that the Applicant has had an opportunity to comment upon them the Tribunal declines to make an order for costs.

14 The Applicant is recommended to seek legal advice from a professionally qualified person about his service charge liability under the lease.

15 The Tribunal has no jurisdiction to deal with matters of company law. This application is not concerned with the variation of a lease. Neither of the above matters were therefore considered by the Tribunal during their deliberation.

16 **The Law**

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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) the appropriate 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 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.

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 the appropriate 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 the appropriate 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).

Judge F J Silverman as Chairman
Date 10 October 2016

Note:
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