

11497



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

Case Reference : **CHI/29UM/LSC/2015/0063**

Property : **12 Alefe Way, Iwade, Sittingbourne,
Kent, ME9 8TX**

Applicant : **Mrs Julie Sweeney**

Respondent : **Mr Douglas Lockwood**

Type of Application : **s27A LTA85**

Tribunal Members : **Judge D Dovar
Mr C Harbridge FRICS**

**Date and venue of
Hearing** : **4th April, Medway**

Date of Decision : **8th April 2016**

DECISION

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Introduction

1. This is an application under s27A of the Landlord and Tenant 1985 ('the Act') for the determination of the payability of services charges for the period 2009 -2015.
2. The application is dated 23rd September 2015 and directions were given on 9th October and 17th December 2015. The parties represented themselves at the hearing.

Inspection

3. The Tribunal inspected the Property accompanied by Mrs Sweeney. Mr Lockwood arrived late, but when told what the Tribunal had seen indicated that that was sufficient.
4. The Property comprises a self-contained flat in a building of two similar units, both accessed by a communal entrance hall and landing; there is no lift. The Property is sited on a corner lot, and is of irregular shape with frontages to both streets. The two storey building was constructed as part of a comprehensive development which was built in about 2002. Construction is traditional with cavity external walls having brick elevations with painted timber cladding to the front first floor elevations. The roof is of pitched and tiled design and construction with exposed roof eaves. All window openings are fitted with timber framed casements.
5. The site is defined at the rear by a timber fence which encloses a shared paved patio area and at the front by metal railings. There are two shared car parking lots at the rear of the building, one of which is dedicated to the Property with access over a communal drive to the public highway
6. The Tribunal inspected the interior of the communal access areas and noted that the redecoration referred to in the Tribunal bundle was limited to the painting of walls and ceiling. The Tribunal also noted the external redecoration referred to in the Tribunal bundle was beginning

to flake, and that the rear patio paving was uneven and sunken in places, and that the metal railings showed signs of minor corrosion.

Lease Terms

7. Mrs Sweeney holds a lease of the Property dated 31 May 2002 ('the Lease'). She took an assignment of the Lease towards the end of 2008 from Messrs Armstrong and Costa.

8. The relevant provisions of the Lease are:

a. Clause 1, Definitions:

1.4 'Service Obligations' means the obligations undertaken by the Landlord to provide the services set out in clause 5.2';

1.5 'Service Charge' means the cost of the Service Obligations;

1.6 'Tenant's Contribution' means 50% of the Service Charge

b. Clause 3, Rent:

The tenant shall pay to the Landlord: ...

3.2 within 28 days of demand the Tenant's Contribution
...

c. Clause 5.2, Service Obligations:

The Landlord covenants with the Tenant that provided the Tenant pays to the Landlord the Tenant's Contribution the Landlord Shall:

5.2.1 Pay all outgoings in respect of the Common Parts;

5.2.2 Keep the Common Parts and the Service Conduits in the Building in repair and rebuild or replace any parts that require to be rebuilt or replaced

5.2.3 Keep the Common Parts adequately lit

Background

9. Mr Lockwood informed the Tribunal that, at the request of Messrs Costa and Armstrong, he had come to an arrangement whereby they would contribute £350 per annum to a reserve fund. It appears that that arrangement was only operated once before they assigned the Lease to Mrs Sweeney. Mr Lockwood relied on pre-contract enquiries raised by Mrs Sweeney's solicitors in which the issue of the reserve fund (referred to as a maintenance accrual) was disclosed as evidence that she was aware of and had agreed to this arrangement. Whilst that correspondence did not make the situation entirely clear, it did reveal that sums had been set aside as a reserve.
10. £350 had been demanded per annum until July 2013 when that rose to £500 and then in May 2015 it was increased to £650. Mr Lockwood accepted that he had not notified Mrs Sweeney of any of these increases.
11. Since about August 2009, annual service charges demands were sent to Mrs Sweeney by Mr Lockwood. Mrs Sweeney paid each of the demands save for the last one. That failure to pay has resulted in these proceedings. Mrs Sweeney said that she was prompted to decline payment and bring this application because the costs were rising and Mr Lockwood had not provided details of expenditure. She said that she had paid under the mistaken assumption that she had to pay. Not having been given the notice of tenants' rights and obligations, she was unaware that she could withhold payment.
12. Each of the demands included a sum for the reserve and an administration fee and notified Mrs Sweeney of the amount standing to her credit in the reserve account. Mr Lockwood candidly stated that he

was unaware of section 21B of the 1985 Act and had not served demands accompanied by a statement of tenants' rights and obligations.

13. In about July 2012, works commenced on the exterior woodwork to the Property. This included the extensive cladding that surrounds the front upper parts of the building containing the Property. By comparing the deduction in sums in the reserve between the years 2012 and 2013, it is clear that £1,606.80 was deducted for those works from Mrs Sweeney. That has been supported by a breakdown provided by Mr Lockwood for this hearing, which shows that the total costs charged to the service charge was £3,213.60 (Mrs Sweeney pays 50% of the total), of which:
 - a. £1,331 was labour cost;
 - b. £665.50 was Mr Lockwood's uplift for finding that labour;
 - c. £214 was for paint and materials;
 - d. The remainder appeared to be various costs for Mr Lockwood's time.
14. Whilst the parties differed on the extent of the prior notice given about these works, it was clear that Mr Lockwood, being entirely ignorant of the requirements of section 20 of the 1985 Act, had not carried out the statutory prescribed consultation.
15. Throughout Mr Lockwood has charged an administration fee. This is a fee for his time spent in dealing with the Property. This started at 10% of total costs and then in 2015 rose to 15%. He accepts that he did not discuss or notify Mrs Sweeney of this increase.
16. An additional sum had been incurred by Mr Lockwood in the redecoration of the internal hallway. That did not appear on any of the demands.
17. In addition to the matters set out above, the demands all contained sums for buildings insurance and the electricity for the lighting of common

parts. There was also a miscellaneous charge in 2013 for £197 relating to a water leak from a neighbouring property.

Relevant Statutory extracts

18. This application is made pursuant to section 27A of the Landlord and Tenant Act 1985. That provides the Tribunal with jurisdiction to determine the payability of service charges. That is distinct, and separate, from the question as to whether or not sums have actually been paid.

“27A Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable ...

(2) Subsection (1) applies whether or not any payment has been made.”

19. Section 21B of the Act stipulates information that must accompany any demand for service charges in order for those sums to become payable.

“21B Notice to accompany demands for service charges

(1) 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.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.”

20. Finally, section 20 of the Act provides that where the cost of works exceeds £250 per tenant per service charge year, the landlord can only recover sums in excess of £250 from a tenant if they have either followed

the prescribed statutory consultation or received dispensation from those requirements from the Tribunal.

Issues for determination

21. Mrs Sweeney challenged each years service charge on a number of grounds:
 - a. That none complied with s21B and therefore nothing was payable;
 - b. That no statutory consultation had been carried out with respect of the major external works;
 - c. That the lease did not provide for either a reserve fund or an administration charge;
 - d. That the electricity and insurance charges were unsupported by evidence.
22. Mr Lockwood was unaware of the requirements of section 21B of the Act. Despite Mrs Sweeney have raised an objection on this basis in her pre-application correspondence and maintaining that objection to date, Mr Lockwood had not read the section of the Act nor attempted to understand its impact. Given the wholesale failure to comply with section 21B, the Tribunal determines that none of the sums set out in the demands are payable. Further, Mrs Sweeney paid under the mistaken assumption that she had to. An assumption encouraged by the failure to adhere to the requirements of s21B. On both basis, the Tribunal considers that she is entitled to be credited with the sums paid.
23. Accordingly, until Mr Lockwood serves demands that comply with that section of the Act, Mrs Sweeney's account is substantially in credit.
24. Whilst that is sufficient to determine this application, for the benefit of the parties the Tribunal makes the following additional points in relation to the other issues.

25. Again, Mr Lockwood has completely failed to adhere to the statutory consultation procedure with the result that even if he had served a proper demand, he would not have been entitled to recover more than £250 from Mrs Sweeney in respect of the exterior works. The Tribunal also has serious misgivings about the way in which he has arrived at the sum that he had sought to deduct; particularly given that the labour and materials amounted to half the actual sum charged, the remainder being sums added on by Mr Lockwood for his own time and input.
26. Mr Lockwood accepted that the Lease did not provide for a reserve fund but relied on the arrangement with Messrs Costa and Armstrong which had been followed by Mrs Sweeney. In the course of these proceedings, on 17th October 2015, Mr Lockwood wrote bringing that arrangement to an end. Therefore whatever the status prior to that point, the Tribunal's view is that he has brought that to an end and any sums held by him under that arrangement should be credited to Mrs Sweeney.
27. Mr Lockwood in his written submissions relied on clause 5.2 as justifying his administration charge. However, he conceded during the hearing that that clause did not provide the justification for that charge. On considering the clauses set out above the Tribunal's view is that the landlord is only entitled to pass on relevant costs that it has incurred in carrying out its obligations under the lease. The landlord cannot charge for its own time as that is not a cost incurred.

Conclusion (and s20C and reimbursement of fees)

28. The failure to comply with s21B means that none of the sums demanded are payable for the purposes of s27A and therefore Mr Lockwood should credit Mrs Sweeney's account with the sums paid. Further, he is not entitled to recover the sums claimed in 2015 demand. He can seek to remedy that situation by serving demands which are compliant with s21B, however, as indicated at the hearing, even if he does so:
 - a. He should provide the relevant invoice for the electricity and insurance costs as Mrs Sweeney challenged those items;

- b. In the absence of an application to dispense with the statutory consultation requirements, he will not be able to recover more than £250 in respect of the external decoration;
 - c. He will not be able to recover sums by way of reserve fund or administration charge.
 - d. Any sums paid by Mrs Sweeney that he holds in advance of payment out, must be held in a separate trust account, which should be available for inspection.
29. At the hearing Mr Lockwood stated that he would not seek to recover any costs of these proceedings through the service charge and so the Tribunal makes an order under section 20C of the Act prohibiting the same.
30. Mrs Sweeney sought reimbursement of her application and hearing fee on the basis that she had tried to avoid these proceedings and had written to Mr Lockwood first, but he had responded aggressively. Mr Lockwood considered that he had simply been trying to take the fair course of action and to keep costs down by proceeding informally. He said that he was unaware of the legislation governing residential service charges and did not want to be a landlord. The Tribunal considers that Mrs Sweeney did do her best to avoid these proceedings, but that Mr Lockwood ignored her complaints and decided to ignore the legal issues that she put to him. In those circumstances the Tribunal considers that these proceedings are entirely due to Mr Lockwood's unwarranted conduct and accordingly makes an award of reimbursement of the hearing and application fees in the sum of £440 to be paid within 14 days of the date of this decision.



Judge D Dovar

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.