



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

Case Reference : CHI/00LC/LSC/2013/0107

Property : 6a Springfield Terrace,
Old Road, Chatham, Kent ME4 4BL

Applicants : Mr Richard Wozencroft and
Mrs Patricia Wozencroft
(tenants)

Representative : Ms K Fairley

Respondent : Mr David Clark (landlord)

Representative : Mrs J Williams, of Martin Tolhurst
Partnership LLP solicitors

Type of Application : Landlord and Tenant Act 1985 s.27A
(service charges) and Commonhold
and Leasehold Reform Act 2002 Sch
11 (administration charges)

Tribunal Members : Judge Mark Loveday
Mr Chris Harbridge FRICS

**Date and venue of
Hearing** : 23 January 2014, Chatham

Date of Decision : 10 February 2014

DECISION

Introduction

1. This is an application for a determination of liability to pay service charges under s.27A of the Landlord and Tenant Act 1985 (“LTA 1985”) and a related application for a determination in respect of liability to pay administration charges under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“CALRA 2002”). The matter relates to the lease of a flat in central Chatham.
2. The background can be stated relatively briefly. The Respondent is the freehold owner of a house at 6 Springfield Terrace, Old Road, Chatham, Kent ME4 6BL. By a lease dated 2 June 2010, the Respondent demised the flat to the Applicants for a term of 125 years from 1 January 2010. The following are the material provisions of the lease:
 3. By an application dated 18 September 2013, the Applicants sought a determination in respect of liability to pay service charges for the years 2010/11, 2011/12 and 2012/13. On the same date, the Applicants sought a determination of liability to pay three administration fees of £50 each demanded on 24 April 2013. Directions were given on 13 September 2013. The Respondent filed a letter dated 13 January 2014 explaining his position in respect of both applications and the Respondent replied by a letter dated 19 January 2014. It was agreed by both parties at the hearing that these were to be treated as Statements of Case in accordance with paragraphs 6 and 7 of the Directions.
 4. A hearing took place on 23 January 2014. The Applicants were represented by a solicitor acting in a personal capacity, Mrs K Fairley, while the Respondent was represented by Ms J Williams of Martin Tolhurst Patnership LLP. Both parties made oral submissions at the hearing. The Tribunal is grateful to both Mrs Fairley and Ms Williams for the succinct and helpful way in which their submissions were presented.

Inspection

5. The Tribunal inspected the premises before the hearing. They comprise a self-contained one-bedroomed floor flat, situated on the lower ground floor of a three storey terraced house, which was built in 1905. The property is one of a terrace of six similar houses, together with a seventh end-terrace house, which abuts the subject property, and which appears to have been built within the past few years. The property was subject to a scheme of conversion in about 2010, when a rear extension to the subject property was built.
6. The accommodation comprises a living room, kitchen, bedroom and bathroom/WC facilities. At the rear of the property is a small garden

with access to a communal area and, at the front, a small yard with a wooden staircase up to the front communal vehicular and pedestrian access to/from Old Road.

7. The property is of traditional construction with solid yellow stock brick walls beneath a pitched and gabled roof which has been re-clad in concrete tiles. There is a two storey front bay and the original windows have been replaced with uPVC double glazed units. The rear extension has cavity brick walls, which incorporates double glazed patio doors, beneath a mono-pitch concrete tiled roof. The property is centrally heated. The property appeared to be in reasonable condition, although we noted dampness which was mainly in the bedroom, but also in living room. The front wooden steps were insubstantial.
8. The development is in an established residential area, and located in what appeared to be a former quarry, characterised by sheer chalk cliffs close to the adjacent end of terrace property.

Statutory Provisions

9. The relevant provisions of LTA 1985 referred to in this decision are:

“19 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 adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

“21B Notice to accompany demands for service charges

21B(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.¹

(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”...

10. The relevant provisions of the Landlord and Tenant Act 1987 (“LTA 1987”) referred to in this decision are:

“47 Landlord’s name and address to be contained in demands for rent etc.

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

- (a) the name and address of the landlord, and
- (b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—

- (a) a tenant of any such premises is given such a demand, but
- (b) it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge (“the relevant amount”) 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.

...

(4) In this section “demand” means a demand for rent or other sums payable to the landlord under the terms of the tenancy.”

The lease terms

11. The 2010 lease was in modular form, with a number of schedules. It was not entirely easy to follow, even for the legal representatives of the parties, and it included at least one typographical error. The Tribunal will deal with the service charge obligations in their logical order, rather than in the order they appear in the Lease.

¹ *The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 (S.I. 2007/1257) prescribe the statement which is to be included.*

12. The Lessee's main obligations start at clause 2 of the Lease. By clause 2(a), the Lessee is obliged to observe and perform the obligations in the Fifth Schedule. In turn, the Fifth Schedule sets out two forms of service charge obligation:
- a. First, there is an obligation at paragraph 3 of the Fifth Schedule to pay a general "Service Charge", which is described as "the Due Proportion applied to the Annual Cost being reasonably and properly incurred by the Landlord in each accounting period (including a reserve for future expenditure)". The "Service Charge" is purportedly defined in paragraph S of the First Schedule, but this adds nothing to paragraph 3.
 - b. Paragraphs 4(b) to (f) of the Fifth Schedule set out the machinery for assessing the amount of the Service Charge and for payment the payment of any excess charge. The "Due Proportion" of the Service Charge is stated at paragraph K of the First Schedule to be one half of the Landlord's relevant costs incurred in respect of fulfilling its obligations under the Lease.
 - c. Secondly, there is an obligation at paragraph 4 of the Fifth Schedule to pay an "Advance Service Charge". Paragraph 4(a) requires this to be paid by quarterly instalments in advance on [1 January, 1 April, 1 July and 1 October each year]². The amount is specified as "a sum equivalent to the Advance Service Charge or (if greater) a sum estimated by the managing agents for or by the Landlord in their or its discretion as being fair and reasonable ..."
 - d. Paragraphs 4(b) and (c) require sums claimed by way of Advance Service Charges to be taken into account in assessing the "Service Charge" payable in each year. This is a common form of balancing exercise at year end.
13. The First Schedule to the Lease includes an important definition relating to para 4(a) of the Fifth Schedule. Paragraph D states that "the Advance Service Charge" means "initially the sum specified in Paragraph 9³ and thereafter such other sums and supplemental sums as are payable under paragraph 4 of the Fifth Schedule."
14. Para 10 of the Lease Particulars include two further important definitions:
- a. First, paragraph 10 deals with "The Initial Advance Service Charge", which is stated "to include Service Charge, Insurance and Reserve Fund". The sum given is £250.
 - b. Secondly, paragraph 12 states that the "Accounting Period" is 1 January to 31 December in each year, subject to variation in accordance with Paragraph C of the First Schedule. Paragraph C of the First Schedule simply refers back to this provision, but then goes on to state that the period may be "a period of not

² Described in the Lease as the "Service Charge Payment Dates", the dates being defined in Sch 1 to the Lease.

³ See para 23 below in relation to an error in this provision.

more than twelve months commencing and ending on ... such other date as the Landlord, may in their discretion from time to time determine and notify in writing to the Tenant”.

15. Finally, there is the question of the landlord’s relevant costs that may properly be included in the Service Charge. The Tribunal has already referred to paragraph 3 of the Fifth Schedule and paragraph K of the First Schedule. The Service Charge is defined as one half of “the Annual Cost being reasonably and properly incurred by the Landlord in each accounting period (including a reserve for future expenditure)”. The “Annual Cost” is in turn defined by paragraph E of the First Schedule as the “expenditure incurred by the Landlord in any Accounting period in carrying out the Service Charge Works...”. Paragraph U states that the “Service Charge Works” are the services specified in the Seventh Schedule. Paragraph 4 of the Seventh Schedule includes an obligation for the Lessor to “insure the Building the Property and the Common Parts against the Insured Risks...”. The Insured Risks are defined by paragraph O of the First Schedule as “loss or damage by fire and such other risks as are usually covered by a comprehensive insurance policy together with such other risks as the landlord shall in their absolute discretion require in such sum as shall, represent the full replacement cost of the Building...”

The demands for payment

16. The papers supplied to the Tribunal included demands for payment of service charges and administration charges dated 19 October 2012, 19 February 2013, 4 April 2013 and 24 April 2013. In their Statement of Case, the Applicants raised points about the form of the demands for payment of service charges. In particular, it was stated that the Respondent failed to include his name and address as required by s.47 of the Landlord and Tenant Act 1987 and that the demands for payment were not accompanied by any summary of rights and obligations under s.21B of the Landlord and Tenant Act 1985.

17. At the very outset of the hearing, Ms Williams quite fairly accepted that the above contentions were correct, and that by virtue of s.47(2) of the 1987 Act and s.21B(3) of the 1985 Act, none of the sums which are the subject of the two applications are payable. It follows that the applications must succeed.

18. On her part, Ms Fairley accepted that s.47(2) of the 1987 Act and s.21B(3) of the 1985 Act were in effect suspensory only, in that it would be open to the Respondent to issue service charge and administration charge demands for these sums in proper form at a future date (subject to any limitation arguments under LTA 1985 s.20B). Both parties therefore invited the Tribunal to give a determination of the sums payable in the event that further demands were made in proper form. The Tribunal has jurisdiction to do so under LTA 1985 s.20B(1) and CALRA 2002 Sch 11.

The initial payment of £250

19. It was common ground that the purchase of the Lease by the Applicants was completed on 2 June 2010. At the hearing, a copy of the completion statement that had been prepared by the Respondent's solicitors was produced to the Tribunal. This gave a sale price of £110,000, "extras" of £1,000 and an item described as "Initial Service Charge" of £250.00. It was also common ground that these sums were paid by the Applicants to the Respondent on completion of the Lease. The first invoice for payment in the papers was made by the Respondent on 19 October 2012. This included a claim for "Buildings Insurance" of £924.00 + VAT for the period 1 January 2010 to 31 December 2013 and service charges of £900 for the period from 1 January 2010 to 31 December 2013. The issue between the parties was precisely what period the payment of £250 covered.
20. Applicants' submissions. Ms Fairley referred to paras 3 and 4 of the Fifth Schedule to the Lease. She contended that the £250 was an Advance Service Charge payment under para 4(a), namely a quarterly payment on account of the Service Charge. The lease was for a term of 125 years from 1 January 2010, but it was not completed until 2 June 2010. The proper inference was that the payment made in June 2010 related to the Advance Service Charge due on 1 June 2010. The first service charge year ran from 1 June 2010 to 31 May 2011. Ms Fairley submitted that it would be incongruous for the Lessees to be liable for Advance Service Charges (or indeed any Service Charges) for the period prior to commencement of occupation and completion of the Lease. There was no reason to backdate this liability to 1 January 2010.
21. Respondent's submissions. Ms Williams stressed that the particulars specifically defined the service charge period as 1 January to 31 December in each year. Once that was understood, the liability for payment of £250 (or such Advance Service Charge properly estimated by the Lessor or its managing agent) commenced on 1 January each year. It may well be that the interim charges for 2010 should have been apportioned according to the Applicants' period of occupation, but that was not what was agreed. The lease was clear enough on the point, and it followed that the £250 had been paid for the Advance Service Charge due on 1 January 2010.
22. When questioned by the Tribunal, Ms Williams accepted that the issue might in any event be fairly academic. It was unlikely that the Respondent (who had converted the property) incurred much in the way of recoverable relevant costs during the period prior to completion. If the Applicants were liable to pay Advance Service Charges on 1 January 2010 and 1 March 2010, the £500 payable on those two quarter days would be accounted for when calculating the end of year Service Charge in paragraphs 4(b) and (c) of the Fifth Schedule. These sums would therefore reduce the Applicants' liability to pay balancing Service Charges in the 2010 Accounting Period and in future years.

23. The Tribunal's conclusion. On this point, the Tribunal accepts the arguments advanced by the Respondent, substantially for the reasons given by Ms Williams. The Lease is clear about the "Accounting Period", and there is no suggestion that the Respondent has ever notified the Applicants of any other accounting period "in writing" as required by paragraph C of the First Schedule. The Lease did not seek to apportion the Accounting period in the first year, even though the Lease completed part way through the year. Moreover, the Tribunal considers that further support is given by paragraph D of the First Schedule. Although this provision purports to refer back to paragraph 9 of the Particulars, it plainly intends to refer to the obligation to pay the "Initial Advance Service Charge" of £250 in paragraph 10. The Tribunal considers this can only refer to the sum paid by the Applicants on completion. Paragraph D of the First Schedule differentiates between the "Initial Advance Service" and later "Advance Service Charge" payments under paragraph 4 of the Fifth Schedule. However, there is no obvious reason why the landlord would not seek recovery of any sum incurred in the first six months of the Lease granted to the Applicants. The backdating of leases to a date earlier than the completion date is very common indeed. It was always open to the parties to have apportioned the service charge liability to the period of occupation – but that plainly did not occur. The Tribunal appreciates that it may appear unfair to the Applicants to have to bear a proportion of the Respondent's relevant costs before they started in occupation (albeit that it appears this might in effect be minimal), but that is the bargain they entered into. Any other conclusion would require a re-writing of the provisions of the Lease relating to the service charge Accounting Period.

Insurance

24. The demands for payment dated 19 October 2012, 19 February 2013, 4 April 2013, 24 April 2013 and 24 May 2013 each referred to claims for payment of "Buildings Insurance". These can be summarised as follows:

<i>Demand</i>	<i>Contribution</i>	<i>Period from</i>	<i>Period to</i>
19.10.12	£283pa + VAT	01.01.10	31.12.13
19.02.13	£283pa + VAT	01.01.10	31.12.13
04.04.13	£485	01.06.10	31.12.13
24.04.13	£141.75	02.06.10	01.06.11
24.04.13	£275.60	2011	2012
24.04.13	£283.51	2012	2013
24.05.13	£283pa	01.01.11	31.12.13

25. The Tribunal was also provided with three insurance schedules for Landlord Household Insurance issued by Rentguard Insurance (apparently a trading style of RGA Group Ltd), which can be summarised as follows:

<i>Issued</i>	<i>Premium</i>	<i>Risk address</i>	<i>Sum insured</i>	<i>Period from</i>	<i>Period to</i>
---------------	----------------	---------------------	--------------------	--------------------	------------------

28.05.10	£283.50	6A and 6B Springfield Terr	£200,000	28.05.10	27.05.11
26.05.11	£275.60	6 and 6b Springfield Terr	£208,000	28.05.11	27.05.12
12.06.12	£283.51	6 Springfield Terr	£218,400	28.05.12	27.05.13

26. It is immediately clear from the above that various different contributions have been sought from the Applicants towards the relevant costs of insuring the property. It is also clear that the demands for contributions towards insurance costs were made outside the service charge machinery of the Lease, in that they sought one-off contributions to the cost of insuring the Building, rather than through the end of year accounting exercise in paragraphs 4(a) and (b) of the Fifth Schedule to the Lease. It also appears that invoices incorrectly sought the whole insurance premium for the building rather than a one-half contribution. However, as explained above the Respondent has conceded that the demands are in any event not in proper form.
27. Applicants' submissions. The Applicants accepted (through Ms Fairley) that the Respondent had incurred the relevant costs of insurance as set out in the policy schedules. They also accepted that they were liable to contribute half these relevant costs by way of service charge under the terms of the Lease. The substance of her case was that not all the relevant costs of insurance had been reasonably incurred under LTA 1985 s.19(1). She sought a determination under LTA 1985 s.27A on this basis.
28. The first ground was that the Applicants had been forced to take out their own insurance policy for their flat because of the Respondent's poor history of paying out claims. Ms Fairley referred to policies of insurance with Churchill Insurance dated 28 May 2012 and 13 June 2013, for the periods from 1 July 2012 to 30 June 2013 and 1 July 2013 to 30 June 2014 respectively. Paragraph 4 of the Applicants' Statement of Case gave greater detail on this. The issue of damp in the flat had been outstanding since 2010. The Respondent had promised that the insurance company will pay out and that he would rectify the problem – but no work was ever undertaken. The council had served a report on the Respondent on 30 May 2013, instructing him to carry out work. Ms Fairley accepted that the Respondent had provided copies of the insurance policy schedules when requested.
29. The second ground was that the schedules for the policies taken out by the Respondent in 2010-11 and 2011-12 included cover for "Employers Liability". This was unnecessary and the Applicants should not have to pay for cover for the Respondent's staff. When pressed by the Tribunal, Ms Fairley suggested that a discount of £10 should be made from the relevant costs in each year, reducing the Applicants' contribution by £5 in 2010 and £5 in 2011.

30. Respondent's submissions. Ms Williams stated that the Respondent simply asked his insurance broker for "landlord's insurance" and the policies that had been issued were in the form of "Landlord's Household" insurance. Employer's Liability cover came as part of this as standard, and it was reasonable to include cover for any employee who might visit the property to carry out inspections or repairs.
31. As to the suggestion that sums should be discounted because of the poor history of paying out on claims, it was denied there had been a poor history. In any event, under the Lease, the Lessor had to insure. It was simply not open to the Lessee to insure itself and then refuse to contribute under the lease to the cost of insurance.
32. Ms Williams accepted that the sums claimed in the invoices were plainly wrong, and that the Tribunal's determination should be based on a contribution of 50% towards the sums stated in the policy schedules.
33. The Tribunal's conclusion. As to the first item, namely the inclusion of Employer's Liability cover in the insurance policy, the Tribunal notes that this amounts to a suggested discount in relevant costs of only £20, or £10 in 2010 and 2011. The Applicants' suggested discount is only 50% of this – or £10 over the two years. Nevertheless, the Tribunal does not find that the cost of providing Employer's Liability is not reasonably incurred. For the reasons given by Respondent, it is possible that he might employ staff to visit the premises, and in that situation Employer's Liability cover would be reasonable.
34. As to the second complaint, namely that there was a poor history of passing on claims to insurers, the Tribunal has not been presented with any proper evidence of this – such as emails or correspondence about the damp claim. In any event, had the Respondent failed to pursue claims under the Landlord's policy, that is not a reason to make it unreasonable to incur the cost of insurance. There is no suggestion that the cost of the premium is excessive, that the Respondent did not incur the cost of the premiums or that cover for the whole building could have been obtained at a much keener price. As was pointed out, the Landlord must provide cover, and has no other option. The Applicants' remedies for failure to make a claim do not include a right to insure himself. He has other remedies – for example under the Schedule to LTA 1985 para 7. The Applicants accepted that they had been provided with copies of the policies and could have notified the insurer directly.
35. It follows that the Tribunal finds that no discount should be made from the relevant costs of insurance on account of them being not reasonably incurred under LTA 1985 s.19(1). The Respondent's relevant costs of insurance reasonably incurred are £283.50 (2010) and £283.51 (2011 and 2012). The Applicants are of course liable to contribute half of these costs by way of service charge.

Administration charges

36. The demands for payment dated 24 April 2013 referred to claims for an "Admin Fee" of £50 as part of the contribution to Building Insurance.
37. Although Ms Fairley addressed the Tribunal on the point, Ms Williams conceded that there was no provision in the Lease which enabled the Respondent to recover the kind of "Admin fee" mentioned in the 2013 demand. It follows that those administration charges are not payable.

s.20C Limitation of Costs

38. Ms Fairley submitted that there was no provision in the Lease which enabled the Respondent to add its costs in connection with the Tribunal proceedings to the service charge. In any event, she submitted that a s.20C order should be made. Ms Williams indicated that the Respondent would not seek to add any costs incurred by the Respondent to his relevant costs. The Tribunal notes the concession and it is therefore unnecessary to make any order under s.20C.

Conclusions

39. The Tribunal has already commented on the fact that the "modular" form of lease used in this case was not entirely easy to follow (even for lawyers). This unnecessary complexity may well have been a contributing factor to the mistakes made by the parties in this case.
40. The Tribunal records the concession that the demands for payment of service charges and administration charges dated 19 October 2012, 19 February 2013, 4 April 2013 and 24 April 2013 are invalid and that those charges are not recoverable under LTA 1985 s.21B, LTA 1987 s.47 and CALRA 2002 Sch 11.
41. The Tribunal finds that the Advance Interim Charge of £250 paid on completion of the Lease on 2 June 2010 was in respect of the Advance Service Charge due on 1 January 2010. It further finds that at all material times the Accounting Period under the Lease was a 12 month period starting on 1 January and ending on 31 December in each year.
42. It follows that the Tribunal finds that no discount should be made from the relevant costs of insurance on account of them being not reasonably incurred under LTA 1985 s.19(1). The Respondent's relevant costs of insurance reasonably incurred are £283.50 (2010), £275.60 (2011) and £283.51 (2012). It is common ground that the Applicants are liable to contribute half of these costs by way of service charge, namely £141.75 (2010), £137.80 (2011) and £141.75 (2012).
43. The Tribunal records the concession by the Respondent that the administration fees of £50 set out in the demands for payment dated 24 April 2013 are in any event not recoverable under the terms of the Lease.
44. The Tribunal records the concession by the Respondent in respect of his costs in connection with proceedings before the Tribunal. The concession

was that no part of those costs is recoverable under the provisions of the Lease. In the premises, it is not necessary to make an order under LTA 1985 s.20C.

Judge Mark Loveday
10 February 2014

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.