



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

Case Reference : CHI/29UG/LSC/2013/0102

Property : Flats A & B
95 Parrock Street
Gravesend
Kent
DA12 1EX

Applicant : J S Gill

Representative : In Person

Respondent : Miss R J Egbe

Representative : In Person

Type of Application : Liability to pay and reasonableness of service charges S.27A Landlord & Tenant Act 1985

Tribunal Members : Mr B H R Simms FRICS (Chairman)

Hearing : Determination on the basis of written representations only and without an oral hearing (Rule 31 of the Tribunal Procedure) First-tier Tribunal (Property Chamber) Rules 2013

Date of Decision : 24 March 2014

DECISION

DECISION

- 1 The insurance charges and service charges demanded in respect of the years ended September 2010, September 2011 and September 2012 are not payable.

REASONS

BACKGROUND

- 2 By an application dated 27 August 2013 the Applicant referred to the Tribunal the service charge for the years ended 29 September 2010, 2011 and 2012. The various charges for each flat were set out in the application as follows:-

Year end 29 September 2010

Flat A	Insurance £97.43	Maintenance £251.36
Flat B	Insurance £97.43	Maintenance £251.36

Year end 29 September 2011

Flat A	Insurance £88.34	Maintenance £188.40
Flat B	Insurance £88.34	Maintenance £188.40

Year end 29 September 2012

Flat A	Insurance £90.48	Maintenance £173.40
Flat B	Insurance £90.48	Maintenance £173.40

- 3 In each case the Applicant asked whether the variable service charge is payable.
- 4 The Tribunal issued Directions for the conduct of the case dated 4 September 2013 and following the failure of the Respondent to comply with these Directions, Further Directions were issued on 8 November 2013.
- 5 The Applicant provided a statement in accordance with the Directions dated 27 November 2013 consisting of a Statement of Fact accompanied by various documents.
- 6 The Respondent made no statement or response in respect of any of the Directions and the Tribunal proceeded to determine the matter on the basis of the documents supplied to it.

THE LAW

- 7 The Tribunal's jurisdiction derives from the Landlord & Tenant Act 1985 ("the 1985 Act") as amended.
- 8 S.18 defines the meaning of a service charge as being "*an amount payable by a tenant ... in addition to the rent – (a) which is payable directly or indirectly, for services, repairs, maintenance, 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*".

- 9 S.19 limits the relevant costs to be taken into account in determining the amount of service charge only to the extent that they are reasonably incurred and only if the services or works are of a reasonable standard.
- 10 S.20C provides that the Tribunal may make an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before it 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. The order may be made if the Tribunal considers it just and equitable in the circumstances to do so
- 11 S.21B provides that a demand for payment of a service charge must be accompanied by the Summary of the Rights and Obligations of Tenants of dwellings in relation to service charges. The tenant may withhold payment of a service charge which has been demanded from him if this requirement is not complied with in relation to the demand.
- 12 S.27A provides that a First-tier Tribunal may determine whether a service charge is payable and if it is, the Tribunal may also determine the person by whom it is payable, the person to whom it is payable, the amount which is payable, the date at or by which it is payable and the manner in which it is payable. These determinations can (with certain exceptions) be made for current or previous years and also for service charges payable in the future. In this case the Tribunal is limited to construing the words of the lease and interpreting what is meant by them.
- 13 S.47 of the Landlord & Tenant Act 1987 ("the 1987 Act") requires that where any written demand is given to a tenant the demand must contain the name and address of the Landlord and if that address is not in England and Wales an address in England and Wales at which Notices may be served. S.48 of the 1987 Act also contains a specific requirement for the provision of an address in England and Wales on which Notices may be served. In either case then any part of the amount demanded which consists of a service charge shall be treated as not being due from the tenant at any time before that information is furnished by the Landlord to the tenant.

INSPECTION

- 14 A Determination was made without an inspection of the property as the Tribunal determined that an inspection would not add to its understanding of the case.

LEASE

- 15 Accompanying the application the Applicant provided the Tribunal with a photocopy of a lease of Flat A dated 11 September 1998 and a lease of Flat B dated 2 March 1990.
- 16 In so far as the terms affect this Determination the leases are in a similar form.

- 17 The building contains four flats with Flat A being located on the ground floor of the building and Flat B on the first floor. The other two flats are on the lower ground floor and second floor and do not form part of this Determination.
- 18 In addition to the ground rent each flat is required to pay as a further additional rent a proportion of the cost in the Landlord maintaining the insurance of the building. This additional rent is to be paid within fourteen days after the date of the expenditure by the lessor or on the next rent day. The rent day is defined as the first day of February in every year.
- 19 Clause 4(d) of the leases requires each lessee to contribute one quarter of the expenses of managing the property and maintaining, cleaning, repairing, redecorating, renewing and keeping tidy and in good order the items mentioned in the Fourth Schedule. There is a specific reference that this description includes the cost of maintaining any fire alarms and any architects and surveyors and legal fees reasonably incurred. These payments have to be made within fourteen days after the expenditure by the Landlord.
- 20 The Fourth Schedule is quite brief and the items to be included in the maintenance obligations are:-
1. *The roof, roof-timbers, chimney stacks, gutters, rainwater pipes and foundations and external walls of the building and the boundary walls and fences of the property.*
 2. *The water and waste pipes and sewers, drains, electric cables and wires and other appurtenances in or under or upon the property and enjoyed or used by the Lessee in common with the owners and lessees of the other flats.*
- 21 There is no express requirement for any of the amounts of insurance and service charge to be formally demanded although this would be of assistance to the tenant.

DOCUMENTATION

- 22 The Tribunal was provided with various copies of documents headed invoice/statement, the most recent being dated 25 February 2013 issued by Central Services Property Management. There is no delivery address on the document and the Landlord is stated to be Mr J Singh. There is also a document covering the period to 25 November 2013 in respect of insurance accruals. It is unclear whether this document accompanied the demand. There is no Schedule of Tenants Rights and Obligations.
- 23 The Tribunal has also been provided with some insurance documents showing the amounts paid in premiums although the dates of payments are not entirely clear.

- 24 In support of the maintenance charge expenditure the Tribunal is presented with three invoices issued by Central Services Ltd to Mr J Singh of 95 Parrock Street. The first is dated 2 November 2010 in respect of repairs and maintenance for the period September 2009 to September 2010. It covers the painting and decoration of all communal areas, the cleaning of communal areas, garden maintenance of communal areas and window cleaning. The total is £1,055.44. It would appear that Central Services Ltd is not registered for VAT and no VAT is charged on the invoice. The second invoice is dated 3 November 2011 and is similarly addressed to Mr Singh and covers repairs and maintenance for the period September 2010 to September 2011. In this case the work is described as cleaning of all communal areas, garden maintenance of all communal areas and window cleaning in the sum of £753.60 and a separate item for Trafalgar Fire Prevention Ltd of £75 making a total of £828.60. A third invoice is dated 2 November 2012 and covers repairs and maintenance for the period September 2011 to September 2012, cleaning of all communal areas, replaced slates and clean guttering, garden maintenance of all communal areas and window cleaning in the total sum of £693.60.
- 25 In addition the Tribunal has received copies of various electricity invoices, the purpose of which is unclear.

CONSIDERATION

- 26 Having perused the documentation and the statement issued by Mr Gill the Tribunal is not satisfied that any insurance costs or service charges are payable, recoverable, or reasonable. No evidence has been provided in support of the figures quoted in the application.
- 27 The first problem is that the Tribunal has seen demands in the form of the running invoice and statement which contains the wrong name of the Landlord as Mr J Singh rather than Mr J Gill. No evidence of ownership has been produced but Mr Gill in his application asserts that he is the freeholder. This error is contrary to S.47 of the Landlord & Tenant Act 1987 which requires the Landlord to provide, with any demand for payment, his name and an address of which Notices can be served on him. If such information is not provided then any part of the amount demanded which consists of a service charge shall be treated as not being due.
- 28 Secondly, S.21B, Landlord & Tenant Act 1985 requires any demand for the payment of a service charge to be accompanied by a Summary of Tenants Rights and Obligations in relation to service charges. This Summary has been specified by statute and the Tribunal had no evidence that any such Summary has been served. A tenant may withhold payment of a service charge which has been demanded from him if this requirement has not been complied with.
- 29 Thirdly, the insurance arrangements in the lease have not been complied with. The Landlord's managing agent has chosen to set up a complicated accruals accounting procedure which, from an accounting point of view might be considered appropriate, but is contrary to the express provisions of the lease. A

demand for insurance may be made within fourteen days of the date the Landlord pays the premium or, alternatively on the first day of February in each year and not at any other time. The demand for insurance in any other form is therefore not payable.

- 30 Similarly, any demand for reimbursement of costs expended by the Landlord as part of the service charge can only be recovered within fourteen days after the expenditure by the lessor. Central Services Property Management on behalf of the Landlord has chosen to issue service charge demands for the whole year at various dates unrelated to the date of the expenditure. These demands are not expressly in accordance with the terms of the lease and therefore cannot be payable.
- 31 If the Tribunal is found to be incorrect in respect of the payability of the amounts demanded or those matters capable of rectification are rectified then there are further problems with regard to the specific amounts payable. The amount of the insurance premium payable by each flat is to be a reasonable apportionment of the total premium for the building. On the basis that the service charge share is one quarter for each flat then in the absence of any other evidence it would seem that one quarter of the insurance premium would be a reasonable amount. The demand however is not at one quarter of the insurance premium it is at some other figure calculated using accountancy accruals and payments in advance adjustments.
- 32 Secondly, there is provision within the lease at 4(d) for the maintenance and keeping tidy only those items mentioned in the Fourth Schedule. In the Fourth Schedule there is no mention of the garden communal areas or windows so it would follow that any maintenance and cleaning of these areas would be outside the service charge and therefore not recoverable.
- 33 It might be argued that Clause 2 of the Fourth Schedule allows for communal areas and windows to be included in the general maintenance requirement by virtue of the use of the word "appurtenances". This argument has not been put forward by the Applicant but the Tribunal considered it in order to give guidance. In the Tribunal's view the use of this word does not bring into the service charge provision those matters such as the communal areas or communal gardens or windows as matters such as these must be expressly stated in the same way that other parts of the property are expressly mentioned.
- 34 Thirdly, those matters in respect of maintenance and repair of the guttering maybe recoverable but the Tribunal is unable to identify this specific cost from the information provided.

Dated 24 March 2014

Brandon H R Simms FRICS
Chairman

PERMISSION TO APPEAL

- 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.