



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

Case Reference : **BIR/37UE/LIS/2016/0026**

Property : **4 Kenilworth Court, Porchester Road,
Mapperley, Nottingham NG3 6GP**

Applicant : **Salvus Environmental Services Ltd**

**Applicant's
Representative** : **Peter Glossop - Director**

Respondent : **Ground Rent Trading Ltd**

Type of Application : **An application under Section 27A of the
Landlord and Tenant Act 1985 for a
determination of liability to pay and
reasonableness of service charge.**

Tribunal Member : **V Ward BSc (Hons) FRICS (Chairman)**

Date of Decision : **24 October 2016**

DECISION

Introduction

1. This is the Tribunal's decision in respect of an application made in respect of 4 Kenilworth Court, Porchester Road, Mapperley, Nottingham NG3 6GP ("the Property") by the leaseholder, Salvus Environmental Services Ltd ("the Applicant") on 30 June 2016. The Applicant was represented by Mr Peter Glossop, a Director of the company.
2. The Respondent, Ground Rent Trading Ltd, is the landlord of Kenilworth Court. The Respondent's managing agent is Moreland Estate Management.
3. The application is under sections 19 and 27A of the Landlord and Tenant Act 1985 and requires the Tribunal to determine as to whether specific service charges demanded by the Respondent in 2015 are payable and the amounts which are reasonably payable.
4. The Applicant requested that the Tribunal determine the following questions:
 - a) Whether the charges are fair and reasonable?
 - b) Whether the charges should be refunded to the Applicant?
 - c) Whether the works claimed were undertaken?
 - d) Whether the landlord and/or their agent have provided the level of substantiation required?
 - e) Whether additional "arrears letter charges" and the settlement payment fee should have been levied when attempts were made to resolve the matter on numerous occasions only for the landlord's agents to ignore all correspondence?
 - f) Whether the Applicant should be awarded the Tribunal's fees for bringing this application in addition to their claim?
5. Under this application, which is under sections 19 and 27A of the Landlord and Tenant Act 1985 and relates to service charges, the Tribunal will not be able to deal with e) above which would require a separate application under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for a determination as to whether an administration charge is payable and, if so, the amount payable.

Conduct of the Case

6. On 5 July 2016, Directions were issued by the Procedural Judge which required the Respondent to prepare a statement of case by 26 July 2016. These Directions indicated that the Applicant challenged service charges of £550.00 and administration charges of £15.00.
7. On 12 July 2016, revised Directions were issued by the Procedural Judge which indicated that the Applicant challenged service charges of £550.00 and administration charges of £65.00. The timetable however remained unaltered and required the Respondent to prepare a statement of case by 26 July 2016.
8. The Respondent did not provide their statement of case by 26 July 2016 and accordingly on 29 July 2016, the Tribunal wrote to the Respondent advising that the statement of case must be received by 3 August 2016. The Respondent was warned that:

"Please note that the Directions are formal orders and must be complied with and failure to comply can have serious consequences. In the event of non-compliance the defaulting party could be barred from taking any further part in proceedings."

The timetable for the Applicant's response was adjusted accordingly.

9. As the statement of case was still not received by 3 August 2016, further Directions were issued by the Procedural Judge on 4 August 2016 which stated:

"The Respondent has failed to comply with my amended Directions dated 12 July 2016."

Unless the Respondent complies with paragraph 1 of those Directions by no later than 16 August 2016 the Respondent shall be barred from taking further part in these proceedings. Under those circumstances, under Rule 9(8) the Tribunal need not consider any response or other submission made by the Respondent and may summarily determine any or all issues against the Respondent."

10. At a hearing on 17 August 2016, following continued non-compliance, the Tribunal issued an Order that the Respondent was barred from taking any further part in these proceedings under Rule 9(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
11. Following the Order above, the Tribunal issued revised Directions on 23 August 2016 which stated as follows:

The Respondent has been barred from taking further part in these proceedings.

The Tribunal will not consider any response or other submission made by the Respondent.

The Tribunal will summarily determine all issues against the Respondent under Rule 9(8).

1. No later than 9th September 2016 the Applicant shall prepare a Submission exhibiting all relevant documents to enable the Tribunal to summarily determine this application.

2. The Tribunal shall determine this matter without a hearing.

3. List for summary determination after 9th September before a Valuer Chair sitting alone.

The Applicant's Submissions

12. The Applicant's submissions were received in accordance with the Directions of 23 August 2016.
13. The statement of case provided by the Applicant set out the background to this matter. With reference to the service charge issue, the Applicant stated that on 12 October 2015, Moreland Estate Management, the managing agent, sent a demand for payment in the sum of £553.55 which included an amount of £550.00 for "service charges on account" for the period 1 January 2015 to 31 December 2015.
14. On 20 October 2015, Moreland wrote again to the Applicant with a statement of account requesting payment of the amounts above and also an additional amount of £12.50 as an administration charge.
15. On 22 October 2015, the Applicant wrote to the managing agent stating that it would settle the ground rent charge and assignment fee as a matter of urgency but that the service charge was rejected as no works had been undertaken on the property whatsoever. The Applicant requested that the managing agent provide substantiation of the service charge. This letter received no response from the managing agent.
16. On 29 October 2015 the Applicant received a letter from the managing agent's legal representative, Moerans Solicitors, requesting a payment of £766.05 for

arrears of ground rent, service charges and administration charges of £200.00. The letter also stated that the Applicant was currently in breach of his lease. On 2 November 2015 the Applicant wrote in reply to Moerans, stating that the ground rent and reassignment fee had been paid and set out why the service charge and administration charges had been rejected which was due to the fact that no works had been undertaken and that the managing agent had failed to provide any substantiation. The Applicant also rejected the notion that they were in breach of their lease. The Applicant did not receive any response from Moerans.

17. On 25 November 2015, the managing agent issued a demand for payment to the Applicant for £550.00 service charge and a £12.00 arrears letter charge. In reply on 26 November 2015, the Applicant wrote to the managing agents stating that they had responded to Moerans Solicitors, were still awaiting a reply and that no payments would be made until a constructive response had been received from either them or their solicitors. The Applicant did not receive a response from either party.
18. On 30 December 2015, the managing agent issued another demand for payment to the Applicant in the sum of £550.00 for service charge and 2 charges each of £12.50 for arrears letters. In reply on 5 January 2016, the Applicant wrote to the managing agents stating that although correspondence had been sent to both the managing agents and their solicitors, no response had been received from either and until one was received, no payments would be made.
19. On 8 February 2016, the Applicant received a letter from the managing agent's solicitor requesting a payment of £787.50 for arrears of ground rent and service charges plus administration charges of £200.00. This letter also stated that the Applicant was in breach of his lease. The Applicant responded on 16 February 2016, stating that all ground rent charges were up to date and that the service and administration charges had been rejected for the reasons previously stated to them. The Applicant also again rejected the claim that they were in breach of their lease. The solicitors did not respond to this letter.
20. On 22 February 2016, the managing agents issued a further demand for payment. This included £550.00 for service charges, 3 arrears letter charges each of £12.50 and the next ground rent charge of £2.50 which was not due until the following month.
21. On 25 February 2016, in order to resolve the matter, Mr Glossop, made a phone call to the managing agents. He spoke to Mr Mark Muster of Moreland Estate Management and explained the situation to him. Mr Muster asked Mr Glossop to forward all the information to him via an email and said he would sort the matter out. Mr Glossop sent an email on the same day – 25 February 2016 –

outlining the situation. He also referred to certain items of previous correspondence in order that Mr Muster could fully understand the situation. Despite Mr Muster's verbal assurance that he would attend to the matter, no reply was ever received by the Applicant from him.

22. On 11 April 2016, the managing agent issued a statement of account to the Applicant. This recorded £550.00 service charges, administration charges of £37.50 and a ground rent charge of £2.50. In reply, the Applicant sent an email to Mr Muster of the managing agents again reiterating that no payment for service charges or arrears letters charges would be made. No reply was received.
23. On 11 May 2016 the Applicant's director, Mr Glossop, sent an email again to Mr Muster informing him that he intended to apply to the First-tier Tribunal for adjudication. Mr Muster did not again reply.
24. On 19 May 2016 the managing agent issued yet a further demand for payment which again included £550.00 for service charges but now included 4 arrears letter charges each of £12.50. In reply on 24 May 2016 the Applicant's director, Mr Glossop, sent an email to the managing agents rejecting the charges.
25. On 14 June 2016 the managing agents sent a letter to the Applicant containing a brief list of works supposedly carried out on the property in 2015.

The letter from Moreland Estate Management stated that the works carried out included the following but were not limited to:

Minor external works

Supply and fit fence on top of wall

Removing ivy and greenery cut back bushes

Break out steps that have perished and recast in new concrete and make good

Ease gate, secure handrail, remove rubbish

26. On 29 June 2016, the managing agent issued a further demand for payment.
27. On 30 June 2016, the Applicant wrote to the managing agents in response to their letter of 14 June 2016. The Applicant disputed the list of works undertaken and again rejected the service charge. However at that time the Applicant was in process of selling the property, and informed the managing agent that to facilitate a smooth sale they were prepared to settle the account in full but would be pursuing a full refund. The amount of £600 was duly paid by the Applicant on 30 June to facilitate the sale. The Applicant sold the property on 28 July 2016.

28. The Applicant, in his statement of case, concluded that they were seeking a refund of £600 paid to the managing agent comprising of £550 service charges and £50 in arrears letter charges. In addition the Applicant sought the award of £90 to cover the Tribunal fees incurred to date. The Applicant sought the refund and award for the following reasons:

a) The Applicant contends that no maintenance works of any description were undertaken on the property in 2015. Despite the managing agents' claims that works had been undertaken, the items specifically highlighted in their letter of 14 June 2016 remain unattended at the time the Applicant last inspected the property prior to its sale on 28 July 2016.

b) The Respondent has not proved their entitlement to service charges. Although required in clause 4 of the "Service Charges – Summary of Tenant's Rights and Obligations" issued with the managing agent's demands, the managing agents have ignored all requests to supply a written summary of the costs which made up the service charge or provided substantiation of the works they claimed to have undertaken.

c) The Applicant stated that the Respondent had in any case failed to consult the Applicant on any works which will cost an individual leaseholder over £250.

d) The Applicant had been proactive in trying to settle this matter amicably and has responded to all of the managing agent's correspondence whilst the managing agent had failed to respond to any of the Applicant's correspondence. The Applicant considers that the managing agent's charges for arrears letters are unjust.

The Respondent's Submissions

29. No submissions were made by the Respondent, his managing agents or his solicitors in respect of the directions issued by the Tribunal and ultimately as will noted above, they were barred from the proceedings.

30. The only indication before the Tribunal that any works at all were carried out was the Respondent's letter to the Applicant dated 14 June 2016.

The Law

31. The Landlord and Tenant Act 1985 provides:

Section 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 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 of subsequent charges or otherwise.*

Section 27A Liability to pay service charges: jurisdiction

1) *An application may be made to a leasehold valuation tribunal [now the First-tier Tribunal Property Chamber (Residential Property)] 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 a leasehold valuation tribunal [First-tier 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 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.*

4) *No Applications 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 as having agreed or admitted any matter by reason only of having made a payment.*

The Tribunal's Determination

32. The Respondent failed to take the opportunity of providing evidence to confirm that the service charges levied on the Applicant were justified. In view of the lack of evidence provided by the Respondent, the Tribunal determines that the service charges demanded by the Respondent in the sum of £550.00 are not due and payable and accordingly must be refunded to the Applicant within 28 days of this decision being issued.
33. The Applicant made painstaking efforts in order to settle this matter without the necessity of a referral to the Tribunal. Once the application to the Tribunal had been made, the Respondent ignored the formal Directions and despite being warned, was ultimately barred from taking part in the proceedings.
34. Under Rule 13 (1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal may make an order in respect of costs only:
- (b) *If a person has acted unreasonably in bringing, defending or conducting proceedings in –*
 - (ii) *a residential property case.*
35. The Respondent has without doubt acted unreasonably in this matter and according the Tribunal orders that the Respondent refunds the Applicant's application fees in the sum of £90.00 within 28 days of this decision being issued.

Appeal

36. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Vernon Ward
Chairman