

11613



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : **CAM/00KF/LSC/2016/0035**

Property : **First floor flat 24 Old Southend Road,
Southend-on-Sea,
Essex SS1 2HA**

**Applicant
Represented by** : **Westleigh Properties Ltd.
Heidi Slassor from Gateway Property
Management Ltd.**

Respondent : **Shahid Amin
Self representing**

**Date of Transfer from
the county court** : **5th May 2016**

Type of Application : **To determine reasonableness and
payability of service charges and
administration charges**

The Tribunal : **Bruce Edgington (lawyer chair)
Evelyn Flint DMS FRICS IRRV
Lorraine Hart**

**Date and Place of
Hearing** : **30th September 2016 at The Court House,
80 Victoria Avenue, Southend-on-Sea,
SS2 6EU**

DECISION

© Crown Copyright

1. In respect of the amount claimed by the Applicant from the Respondent in the sum of £7,245.57, the Tribunal finds that £1,739.28 of that sum is reasonable and payable by the Respondent in respect of the claim for service charges and administration charges. The balance of the claim i.e. £50 in respect of ground rent has been paid since the proceedings commenced.
2. All other matters relating to statutory interest, court fees and costs incurred in the county court are transferred back to the county court sitting at Edmonton under claim no. C17YJ677.

Reasons

Introduction

3. This is a claim brought in the county court by the Applicant freeholder of the building in which the property is situated against the Respondent, who is the current long leaseholder. The claim form does not set out the date from which the claim starts but in further papers supplied to the Tribunal it seems that on the 1st January 2011, there was a 'nil' balance on the service charge account. That date has therefore been used as the starting point.
4. The 'defence' filed by the Respondent in the county court proceedings is a blanket denial of any monies due save for £50 ground rent which is said to have been paid. The wording of the defence is unfortunate. Sections which give a 'flavour' of what is stated say:-

“Paragraph 3 is denied save that it is admitted only £50 ground rent was outstanding which has been paid. Service charges and section 20 charges are not true

I have paid £3,286.13 previously as service charges; Westleigh properties and their agents have never done any work in the last eight years.

The services that have been claimed to have been carried out are all fabricated

Westleigh properties ltd and their agent just want to make money by creating unnecessary job through service charges and through section 20 work”

5. The Respondent then comments on proposals to decorate, maintain and repair the outside, structure and entrance hall etc. of the building in which the flat is situated. He says that the proposed cost of £3,534 is wrong and the correct cost would be £950. The case was then transferred to this Tribunal by Order of District Judge Lethem dated 5th May 2016. The Order does not say what is expected of the Tribunal but it assumes that its task is to assess the reasonableness and payability of the service charges and administration charges claimed.
6. In its statement to the Tribunal, the Applicant agrees that the ground rent has been paid and gives a new total amount owing in service charges and administration charges of, in effect, £7,195.57. The past payment of £3,286.13 is acknowledged but is said to have already been taken into account.
7. The Applicant filed a statement of case in reply to the defence, as ordered, but the Respondent did not file a statement of case setting out, “*in respect of each claim for service charges and/or administration charges, whether they are being challenged. If so, exactly why and what would the Respondent consider to be a reasonable amount?*” as he was ordered to do. He simply filed 2 witness statements of evidence. One was from the Respondent himself who repeats his

allegations and then adds another allegation, namely that the insurance charges are too high. He produces an alternative insurance quotation from a company called Kounnis Insuforce Ltd. dated 12th February 2016 in the sum of £396.94. This contrasts with the Applicant's insurance with AXA for the same period in the sum of £935.10.

8. The other statement is from Ion Cosmin Frumusanu who says that he is a 'professional builder'. He says that the condition of the building 'is fine' but if he was asked to do the work suggested by the Applicant, he would charge 'a third of the price they have offered'. The total requested from the 2 leaseholders is £7,068 which means that this witness claims he could do the work for £2,356, not the £950 alleged by the Respondent.
9. Understandably, the Applicant has then filed a further statement from its insurance broker which points out that the quotation produced by the Respondent does not given any detail about the cover. The Applicant has also filed a lengthy witness statement from Heidi Slassor with a number of further documents dealing with matters generally.

The Inspection

10. The members of the Tribunal inspected the outside of 24 Old Southend Road from the ground in the presence of the Respondent and Heidi Slassor and 2 colleagues from the managing agents. The ground floor tenant kindly allowed the Tribunal members access to the rear garden.
11. The property itself is the first floor flat in a converted terraced house built in the early part of the 20th century in brick and it now has an interlocking concrete tiled pitched roof. Old Southend Road is within easy walking distance of Southend town centre, the sea front and Southend Central train station which is used by commuters into central London.
12. As far as the exterior and common parts works are concerned, it seems that the leaseholders have undertaken decoration work. It was noted that all the window frames are wooden apart from 2 small uPVC windows to the rear. Many of them are in poor condition and the Respondent said at the hearing that the leaseholders would be replacing them. At the rear there is a small recess built out on the first floor containing windows and a door leading to the wooden staircase leading from the first floor into the garden. Without the door, it could almost be said to be an oriel window.

The Lease

13. The Tribunal has seen what purports to be a copy of the counterpart lease which is dated 15th July 1982 and is for a term of 99 years from the 19th January 1982 with an increasing ground rent. It is a traditionally drafted lease which unfortunately does not contain many of the provisions which are assumed by the Applicant or its managing agent to be there. By way of example:-

(a) The Applicant claims interest on outstanding service charges. There is no

provision for this. The only contractual interest which can be claimed is on unpaid ground rent and insurance premiums at the rate of 4% per annum above Lloyds Bank base lending rate.

- (b) The Applicant claims service charges on account of expenditure. The lease makes no provision for this. Clause 4 of the Third Schedule, which deals with service charge expenditure sets out the 'sweeping up' provisions and refers specifically to expenditure 'incurred' i.e. past tense.
 - (c) The section 20 consultation is in respect of all outside paintwork whereas under clause 3(7) it is the leaseholder who covenants "*to paint all woodwork and ironwork and other external parts of the premises hereby demised where usually painted twice over with good and appropriate paint in a workmanlike manner in every third year...*". The landlord is only obliged to maintain and decorate the main structure, pipe work and the entrance pathway and hall.
 - (d) The Applicant has claimed 'arrears' payments and unspecified legal costs. The relevant clause in the Third Schedule only refers to "*all other expenses (if any) reasonably incurred by the Landlord in and about the maintenance and proper and convenient management and running of the Building...*". This could be said to include reasonable administration charges but it certainly does not include legal fees. The Upper Tribunal has said many times that for legal charges to be recoverable, the wording has to be very specific.
14. It is true to say that clause 2(1)(d) does provide for the Landlord to recover costs, including solicitors' fees incurred "*for the purpose of or incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925...*". This is the notice to be served as a pre-requisite to forfeiture proceedings. However, there has been no suggestion in this case that forfeiture has even been considered by the Applicant who has not said that it seeks to rely on that clause.

The Law

15. Section 18 of the **Landlord and Tenant Act 1985** ("the 1985 Act") defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.
16. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction under section 27A of the 1985 Act to make a determination as to whether such a charge is payable. Under the **Commonhold and Leasehold Reform Act 2002**, the Tribunal is given similar jurisdiction to deal with administration charges.
17. In **Schilling v Canary Riverside Development PTD Ltd** LRX/26/2005; LRX/31/2005 & LRX/47/2005 His Honour Judge Rich QC had to consider upon whom lay the burden of proof. At paragraph 15 he stated :

"If the landlord is seeking a declaration that a service charge is

payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook⁴ case make clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard.”

The Hearing

18. The hearing was attended by those who attended the inspection plus a witness from the Applicant's insurers. The Tribunal chair, after introductions, pointed out the problems in this case i.e. the problems with the lease so far as the Applicant is concerned and the problem with the challenge to the insurance premium as this did not form part of the defence.
19. Ms. Slassor then said that so far as the decoration work is concerned, she had noted the work undertaken by the leaseholders and in view of the problems with the lease, she would withdraw that part of the claim. She also said that she would not seek to reinstate any claim in the proceedings when they went back to the court for any alleged breach of contract arising out of any alleged failure on the part of the Leaseholders to comply with their covenants to decorate.
20. This was a helpful step as it avoids the Tribunal having to go through the specification and tender. There are a number of questions the members of the Tribunal would have wanted to raise.
21. The parties gave such representations as they felt appropriate. Mr. Amin was told that the Tribunal would not be able to deal with the insurance problem as the defence did not mention this and the Tribunal was limited to determining only those matters set out in the court 'pleadings'.

Discussion

22. The Applicant claims service charges and none of these items are specifically disputed save for the payment requested on account of the exterior and common parts decoration and maintenance. The assertion is that the Applicant has not done any managing and the inference from this is that the Respondent is saying, in effect, that the Applicant is not entitled to any service charges. There is also the further allegation now made in respect of an excessive insurance premium.
23. It should be said that the Tribunal can only determine those matters set out in the pleadings before the court. As has been said, the defence does not mention any challenge to insurance premiums, despite the fact that the alternative quote for insurance was given on the same date as the defence. Furthermore, the premium for 2016 is not in the claim anyway. All the Tribunal will say is that whilst the existing premium does look a little high, the alternative quote from the Respondent does not set out exactly what it is intended to cover. It is for the

leaseholder to establish that the existing premium is not competitive, taking into account the cover offered, the claims record for the building, the building costs and value etc. He has simply not done that for 2016 and has provided nothing in respect of previous years.

24. As far as the claim for service charges is concerned, the Applicant has provided, at page 45 in the bundle, a long list of claims, payments and 'contra' entries. It has also produced the service charge accounts for the years ending 31st December 2012, 2013 and 2014, but not 2011 which is also included in the claim. From the service charge accounts, it can be seen that there has in fact been little activity. However, that is not to say that no service charges are payable. Any landlord has considerable responsibilities to make sure that the law is complied with and the building is kept in order. The lease allows for a managing agent to be appointed and such agent has to provide a service.
25. All the Tribunal will say is that the management fees are, in its view, excessive at £240 per flat plus VAT in 2012 and 2013 and then £247.50 in 2014. It is also noted that extra amounts are claimed for 'accountancy', 'bank charges', 'postage' and 'legal expenses'. The managing agents are Gateway Property Management Ltd. Save for 'legal expenses' where there is no evidence at all of any expenditure, these extra charges are just invoices from that company to the landlord for those amounts. The only additional item is £180 for clearing the gutters to the front of the building in 2012, but even that is just an invoice from Gateway Facilities Management Ltd. The legal expenses are described on the statement of account as being 'in house', whatever that may mean.
26. The latest Service Charge Residential Management Code published by the Royal Institution of Chartered Surveyors is approved by Statutory Instrument no 518 of 2016. There have been previous approved codes. Ms. Slassor said that Gateway complied with the code. The code makes it clear that an annual fixed fee charged per property is the approved method of claiming management fees. Such annual fee includes preparing and submitting service charge accounts, managing funds, preparing budgets, arranging health and safety and fire precaution inspections, visiting the property and dealing with minor repairs to the building. Thus it is not open to the managing agents operating under this code to start charging extra for accountancy etc. Furthermore, there is no indication of how the bank charges or postage are calculated, even if they were claimable.
27. In her representations to the Tribunal, Ms. Slassor said that the additional sums claimed were charged separately merely to provide 'transparency'. As the basic management fees are well above that which the Tribunal considered to be reasonable, the additional fees could be said to be merely adding insult to injury.
28. It is unfortunate that the lease does not say that it is the landlord's responsibility to decorate the exterior of the building. However that is the case. It may be that an application should be made to vary the lease so that adequate provision can be made for this and for payments on account. Thus, although the section 20 process was no doubt undertaken with the best of intentions, it covers work which

is for the leaseholders to undertake. In any event, if payments on account are not allowed under the terms of the lease, the demands for those amounts are not payable. It is therefore perhaps just as well that this part of the claim was withdrawn.

Conclusions

29. Taking the evidence into account, the Tribunal determines that the statement of account prepared by the Applicant's agents must be re-drawn. Bearing in mind the little management there seems to have been, the Tribunal, using its considerable knowledge and experience, determines that £150 plus VAT per flat per annum for 2012 and 2013 plus £155 plus VAT for 2014 is at the very top end of the range of reasonableness.
30. When asked what the managing agents had done, Ms. Slassor referred to 2 visits to the property per year and the clearing of the gutters. However, in the 3 years for which management fees are claimed, there do not appear to have been any arranging of health and safety and fire precaution inspections or dealing with minor repairs to the building. There has been the one item of maintenance and the service charge 'accounts' are as basic as they could be.
31. In view of the errors made by the agents over the section 20 process and the claims of on account of service charges, the items for arrears fees i.e. administration charges are discounted. Legal fees are not claimable and have also been discounted. The interest figures are clearly based on the outstanding service charges which are not payable contractually. The Tribunal has not been given any calculations for interest attracted by the delay in payment of ground rent and insurance premiums.
32. Thus, with the change in management fees and the removal of the other items, the correct figures, in date order, are determined as follows. As there are no accounts for 2011, but there are reconciliation figures, the Tribunal has adopted the figures in the account as a 'broad brush' approach because the individual figures could not be checked:-

<u>Date</u>	<u>Item</u>	<u>Amount(£)</u>
31.10.10	reconciliation (credit)	(274.08)
01.01.11	half yearly on a/c	498.93
22.06.11	credit for insurance	(112.57)
01.07.11	half yearly on a/c	498.93
20.07.11	payment	(200.00)
22.07.11	reconciliation (credit)	(313.98)
31.12.11	reconciliation (credit)	(249.95)
31.12.12	clearing gutters	90.00
31.12.12	insurance	406.00
31.12.12	management fee	180.00
31.12.13	insurance	417.50
31.12.13	management fee	180.00
31.12.14	insurance	432.50

31.12.14	management fee	<u>186.00</u>
		1,739.28

.....
Bruce Edgington
Regional Judge
4th October 2016

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.