

11698



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

Case Reference : CAM/12UE/LSC/2016/0027

Property Neots, : Flat 3, Old Mill Office, Fishers Yard, Market Square, St
Cambridgeshire PE19 2AG

Claimant : Oak House Homecare Ltd

Defendant : Mr Denis McFaul

Application : Application, pursuant to s27 of the Landlord &
Tenant Act 1985, to determine the payability and
reasonableness of service charges and administration
charges.

Tribunal Members : Judge Reeder
Mr Roland Thomas MRICS (valuer member)
Mr David S Reeve MVO MBE (lay member)

Date of hearing : 7 July 2016 (Cambridge County Court)

Date of Decision : 7 July 2016

Date Written : 22 August 2016

DECISION

The claim for service charges

1. The service charge demands which combine to make up the sum of £1,177.98 claimed in the county court proceedings comprise the following -
 - Invoice FY063 dated 30.09.13 (for the period 01.08.13-31.0.14) - £346.99 due
 - Invoice FY067 dated 23.01.14 (for the period 01.02.14-31.07.14) - £346.99 due
 - Invoice FY071 dated 01.08.14 (for the period 01.08.14-31.01.15) - £484 due
2. This tribunal determines that those service charges are reasonable and payable in the sums claimed.

The claim for interest, other charges and court costs

3. The additional claims in the county court proceedings in respect of interest of £291.31, a £40 fee for "admin/prepare documents", and court costs of £140 fall to be determined by that court in those proceedings. This tribunal does not consider them further.

The costs of the tribunal proceedings

4. The claimant has incurred a hearing fee of £190 as result of this hearing. This tribunal makes no order in respect of costs of these tribunal proceedings on the basis that those costs . should be left to be considered as part of the overall costs of the county proceedings by the district judge in the county court.

The county court proceedings

5. This Tribunal has now determined that part of the claim which relates to disputed service charges. The remaining issues before the county court fall to be determined by that court. The parties should make any further applications to that court. They should provide a copy of this decision to that court for the purposes of enforcement.

REASONS

The application, parties, premises & disputed service charges

6. This matter comes before the Tribunal pursuant to an order made in county court proceedings (No. B41YM837) by Deputy District Judge Waring sitting in the county court at Peterborough on 27 January 2016. That order provides that "the part of this claim that relates to disputed service charges from August 2013 to 31 January 2015 as detailed in the claim form dated 15 July 2015 be referred to the first-tier tribunal property chamber to determine the payability reasonableness of those charges".
7. The claimant issued that county court money claim in July 2015. It comprises a claim for alleged service charge arrears of £1177.98, together with interest of £291.31, a £40 fee for "admin/prepare documents", and court costs of £140.
8. On 27 January 2016 Regional Judge Edgington issued a directions order. That order directed the claimant to file and serve a statement in response to the defence filed in the county court setting out its justification for the disputed service and administration charges by 13 May 2016. That order directed the defendant to file and serve a statement confirming the scope and detail of the challenge to the service charges and what would be a reasonable amount by 27 May 2016. All documents to be relied upon were directed to be exchanged by 3 June 2016. Any witness statements to be relied upon were directed to be served by 3 June 2016. Despite this order the parties have failed to file any such statements and merely rely upon the statements already filed in the county court proceedings. These are included in a 77 page hearing bundle provided to the tribunal. This bundle includes the relevant lease, service charge demands and correspondence, a schedule setting out the service charge items, the service charge account for the defendant, the insurance schedule for the property, works invoices in respect of decking and fences, works invoices in respect of external decorations, and an invoice from Messrs Tacconi Green & Co in respect of the preparation of annual accounts.
9. These same parties have appeared before the tribunal in November 2014 in respect of a county court claim (No. 3YQ70173) transferred to the tribunal by Deputy District Judge Wilson on 7 May 2014 for a determination of the payability and reasonableness of the alleged service charge arrears claimed in respect of Flat 3 Old Mill Office at that time. The tribunal issued its decision on 19 December 2014. That decision determined the

service charges payable up-to and including the demand served in January 2013. As a result, and as explained to the parties during the hearing, this tribunal does not consider those service charges previously determined but concentrates on "the disputed service charges from August 2013 to 31 January 2015" as directed by the county court.

10. The claimant, Oakhouse Homecare Ltd, is the freehold owner and manager of Old Mill Office, Fishers Yard. That building comprises four residential properties and one commercial property. The commercial property on the ground floor was previously in use as the claimant company's office. It is now let on a commercial tenancy. Mr and Mrs Scoyles are the directors of the claimant company. As the name of that company might suggest, it is engaged in the business of providing residential care homes. Mr & Mrs Skoyles informed the tribunal in November 2014 that they had no previous experience of residential property management. Correspondence in the hearing bundle before this tribunal confirms that they have appointed Messrs Francis Butson & Associates as managing agents for the Old Mill Office building with effect from on or around 3 March 2015.
11. The defendant, Mr Denis McFaul, is the leasehold owner of one the residential properties, flat 3. He acquired his interest in late 1994/early 1995.

The inspection by the Tribunal

12. The Tribunal has made an external visual inspection of the relevant premises. Old Mill Office is an attractive 3 storey brick built building which has been converted to provide a ground floor commercial unit fronting onto Fishers Yard together with 4 residential maisonette properties, situated to the side of and above the commercial unit,
13. The Tribunal has negotiated the communal external staircase which provides access up the side of the ground floor commercial unit to a terrace which leads to first floor rear entrances to 1-4 Old Mill Office. This terrace is laid to wooden decking and the individual properties each have their own area of terrace with boundaries provided by wooden fencing.
14. We have inspected the external elevations, communal external staircase, first floor terraces and first and second floor rear elevations of 1-4 Old Mill Office. We have been

accompanied and assisted by Mr & Mrs Skoyles on behalf of the claimant, and by the defendant Mr McFaul.

The hearing & the parties respective arguments

15. Mr & Mrs Scoyles have attended in their capacity as directors of the claimant company. They have confirmed and explained the service charge demands and correspondence, the schedule setting out the service charge items, the service charge account for the defendant, the insurance schedule for the property, and the various invoices included to support the service charge claimed. At the relevant times Mrs Scoyles was herself responsible for sending out the service charge invoices, the information prescribed by the 2007 'Summary of Rights & Obligations' Regulations and the lessees individual accounts. She has stated that she was responsible maintaining the lessees accounts and has explained Mr McFaul's account to the tribunal. She has stated to the tribunal that she herself ensured that Mr Mc Faul was sent all of the relevant documents. Mr and Mrs McFaul state that audited accounts have been completed and have been provided to Mr McFaul. Mr & Mrs McFaul state that a service charge account has been established with the Royal Bank of Scotland which acts as a discrete lessee reserve account for the Old Mill Office building and shows clearly the service charge funds received, held and used for any purpose.
16. The service charge demands which combine to make up the sum of £1,177.98 claimed in the county court proceedings comprise the following -
- Invoice FY063 dated 30.09.13 (for the period 01.08.13-31.0.14) - £346.99 due
 - Invoice FY067 dated 23.01.14 (for the period 01.02.14-31.07.14) - £346.99 due
 - Invoice FY071 dated 01.08.14 (for the period 01.08.14-31.01.15) - £484 due
17. Mr Mc Faul accepts that the insurance costs recharged are reasonable and, in fact, mounts no reasoned challenge to the actual sums demanded as service charge. His complaints are that there is no effective managed maintenance programme for Old Mill Office building, and that there is no management visibility in that he does not receive adequate information to satisfy himself that the sums claimed are reasonable and payable. He made similar complains before the tribunal in November 2014.

The lease

18. The Tribunal is provided with a copy lease which the parties confirm is the relevant lease for the premises. Mr Scoyles has confirmed his belief that the residential leases are all in similar terms. The Tribunal has considered this lease with care.
19. Clause 4(3) provides that the claimant shall use its best endeavours to ensure that the management company provides the clause 5 services including securing insurance and keeping in good and substantial repair and decoration the exterior woodwork, fascia, barge boards, and timber cladding on a 3 year cycle, including the replacement of terrace coverings every 10 years.
20. Clause 2(4) and the Fourth Schedule provide that the defendant is liable to pay the total service charge costs reasonably and properly expended by the claimant to meet its obligations under the lease together with the amount of such reserves (if any) as may be reasonably required in relation to the claimant's liability for maintenance and repairs in any future accounting period.
21. Clause 2(4) and paragraph 1(1)(e) of the Fourth Schedule provide that the claimant may re-charge as a service charge all costs and expenses reasonably incurred in the management of the building including the reasonable fees of any managing agent and of any accountant employed to prepare an audited statement of the total service cost to each lessee.
22. Paragraph 8 of the Fourth Schedule provides that all reserves (if any) created shall be deposited with a trust corporation to the credit of a trustee account in the name of the claimant managing agent which shall hold the same in trust for the lessees and the interest earned shall be applied in each year in reduction of the total service charge.
23. Paragraph 9 of the Fourth Schedule states the appropriate percentage apportionment between the lessees for the different relevant costs.
24. Clause 2(4) and the Fourth Schedule provide that the annual accounting period runs from 1 February in one year to 31 January in the following year.

25. Clause 2(4) and the Fourth Schedule provide that the defendant is liable to pay an interim service charge on 1 July and 1 January in each accounting year in such sum as the managing agent shall specify in its discretion as a fair and reasonable payment.
26. Clause 2(4) and the Fourth Schedule provides that in respect of any accounting period, where the interim service charge paid exceeds the service charge as certified then the surplus shall be carried over and credited to defendant's service charge account when computing the service charge in succeeding accounting periods.
27. Clause 2(4) and the Fourth Schedule provides that in respect of any accounting period, where the service charge exceeds the interim service charge together with any carried forward surplus from previous years then the defendant shall pay the excess to the claimant within 28 days after service of the auditors certificate stating the interim service charge paid, service charge due and deficiency due.
28. Clause 2(4) and the Fourth Schedule provides that as soon as reasonably practicable after the end of each accounting period the claimant or its managing agent shall serve upon the defendant a signed auditor's certificate stating the total service cost for that accounting period, the amount of the interim charge paid in respect of that period together with any carried forward from the previous accounting period, and the amount of the final service charge for that period together with any excess or deficiency of the final service charge over the interim charge.
29. Clause 2(4) and the Fourth Schedule provides that as soon as reasonably practicable after the end of each accounting period the claimant or its managing agent shall serve, with the signed auditor's certificate, schedules showing actual relevant costs incurred and the amounts and aggregate amounts of any reserves created.

The law

30. The Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 sets out the Tribunal's jurisdiction to determine liability to pay service charges. Section 27A(1) of 1985 Act provides as follows -

An application may be made to a leasehold valuation tribunal 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 is payable.

31. Section 18 sets out the meanings of 'service charge' and 'relevant costs'.

32. Section 19 sets out that jurisdiction to limit service charges to those relevant costs which are reasonably incurred and to those which arise from works and services of a reasonable standard.

33. Section 20C sets out the jurisdiction, where the tribunal considers that it is just and equitable to do so, to grant an order providing that all or any of the costs incurred by the landlord in connection with proceedings before this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessee or any other person or persons specified in the application.

34. Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002 sets out the Tribunal's jurisdiction to determine the payability and reasonableness of administration charges. Section 5(1) of Part 1 to Schedule 11 provides -

An application may be made to a leasehold valuation tribunal for a determination whether an administration 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.

35. Section 1 provides a definition of 'administration charge'. Sections 2 & 3 provide that a variable administration charge is payable only to the extent that the charge specified in

lease is reasonable, that the formula specified for determining the charge is reasonable, and that amount of the charge is reasonable.

Discussion & determinations

36. The sums demanded as service charge in these invoices have been carefully analysed by the tribunal. The service charges demanded by these invoices are interim service charges intended to accrue sufficient funds to pay for block insurance and managed maintenance in accordance with the timetables for the same specified in the lease. This is expressly permitted under the lease. The insurance cost is estimated having regard to the previous year's actual charge, and apportioned at 17%. The re-decoration cost is based on the previous actual costs in 2011 and 2014 spread over the 3 year cycle prescribed by the lease, and apportioned at 26%. The decking replacement cost is based on the actual previous cost and an estimate of £4,000 spread over the 10 year cycle prescribed by the lease, and apportioned at 31%. The administration fee of £400 p/a is based on a charge of £10 per hour to discharge all of the administration tasks required to manage the service charge issues arising at Old Mill Office as evidenced in the documents in the hearing bundle, and apportioned at 25%.
37. The apportionment and resulting individual sums due has been analysed. The 30.09.13 and 23.01.14 invoices for £346.99 are based on the overall sum being simply split equally between the 5 properties in the Old Mill Office building. For reasons explained in the previous tribunal decision this does not correctly follow the express lease provisions on apportionment, although the mistake is to Mr McFaul's financial benefit. The 01.08.14 invoice now correctly applies the express apportionment provision and results in the demand for £484.
38. The tribunal has carefully considered the documentary evidence and information provided in the hearing bundle together with the oral evidence from Mr & Mrs Scoyles and Mr McFaul. Mr & Mrs Scoyles do appear to have used their best endeavours to address the management failings identified by the previous tribunal in November 2014. Having regard to the evidence and information before it this tribunal accepts that all of the statutory requirements and lease provisions relating to the calculation of and proper demand for service charges have been complied with. It is to be hoped that Mr McFaul's continuing complaints and reluctance to pay the service charge demands will not

continue now that Messrs Francis Butson & Associates are acting as managing agents for the Old Mill Office building with effect from March 2015.

39. The service charge demands which combine to make up the sum of £1,177.98 claimed in the county court proceedings comprise the following -

- Invoice FY063 dated 30.09.13 (for the period 01.08.13-31.0.14) - £346.99 due
- Invoice FY067 dated 23.01.14 (for the period 01.02.14-31.07.14) - £346.99 due
- Invoice FY071 dated 01.08.14 (for the period 01.08.14-31.01.15) - £484 due

40. This tribunal determines that those service charges are reasonable and payable.

The claim for interest, other charges and court costs

41. The additional claims in the county court proceedings in respect of interest of £291.31, a £40 fee for "admin/prepare documents", and court costs of £140 fall to be determined by that court in those proceedings. This tribunal does not consider them further.

The costs of the Tribunal proceedings

42. The claimant has incurred a hearing fee of £190 as result of this hearing. The hearing results directly from the county court transfer order made by Deputy District Judge Waring on 27 January 2016. The Tribunal is mindful that it may only determine those matters within its prescribed jurisdiction and only does so as a result of the matter being transferred from the county court as extant proceedings and for that purpose. Further, the Tribunal's determinations in relation to the service charges appear to be only a part of the dispute between the parties as set out in the documents they have filed in the county court proceedings. In the circumstances this tribunal makes no order in respect of costs of these tribunal proceedings on the basis that those costs should be left to be considered as part of the overall costs of the county proceedings by the district judge in the county court.

Stephen Reeder
Judge of the First Tier Tribunal, Property Chamber

22 August 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.