



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

Case Reference : LON/00AU/LSC/2016/0413

Property : Flat 6, 90 Banner Street, EC1Y 8JU

Applicant : 90 Banner Street RTM Co Ltd

Representative : Mr Gibson, instructed by Brady Solicitors

Respondent : Mr Stephen Victor Fairburn

Representative : C J Jones Solicitors LLP, not present at hearing

Type of Application : Liability to pay Service and Administration Charges and S.20 Landlord and Tenant Act 1985

Tribunal Judge : Mr M Martyński

Date of hearing : 7 June 2017

DECISION

DECISION SUMMARY

1. Service Charges are payable in the sum of £2829.64.
2. The legal costs claimed by way of Administration Charges in the sum of £1332.00 are not payable.
3. An order is made pursuant to section 20C Landlord and Tenant Act 1985 in respect of 50% of the Applicant's costs.
4. The claim for interest and any claim for costs in the County Court proceedings are referred to that court.

Background

5. The Applicant Company has the Right to Manage the building at 90 Banner Street. The Respondent is the owner of the long leasehold interest in Flat 6 in that building. Prior to March 2014, the Respondent co-owned Flat 6 with his son.
6. The proceedings before me originate in a claim made in the County Court. In that claim, the Applicant claimed against the Respondent and the Respondent's son the following sums:
 - (a) £4,246.52 Service Charges
 - (b) £1,322.00 legal costs
 - (c) Interest pursuant to the County Courts Act
 - (d) Costs
7. The proceedings against the Respondent's son were discontinued leaving the Respondent as the only defendant.
8. By order dated 27 October 2016, the proceedings were transferred to this tribunal.

The Respondent's case

9. The Respondent's case, as set out in his defence filed in the County Court and as per his Statements of Case and witness statements made for these proceedings is as follows:-
 - (a) The Service Charges were unreasonable in amount
 - (b) The Respondent had paid in respect of some charges and those payments were not accounted for
 - (c) The proportion of Service Charges attributed to the Respondent are incorrect – they were not properly adjusted under the terms of the lease and he was never given any notice of any such purported adjustment
 - (d) The legal costs claimed by way of Administration Charges are not payable as they have not been demanded

THE HEARING AND DECISIONS

10. The Respondent did not attend the final hearing on 7 June 2017, nor was he represented at the hearing. He did not give any notification that he would not attend the hearing.

The Service Charge proportion

11. Under the terms of the Respondent's lease, the proportion of the total Service Charge expenditure that he is liable to contribute is 9.68%. Paragraph 2 of the Sixth Schedule to the lease then provides as follows:-

If due to any necessary or equitable re-planning of the layout of the Development it is reasonable to do so the Lessor shall re-calculate on an equitable basis the percentage appropriate to all properties on the Development and to notify the Lessees accordingly and in such case as from the date specified in the notice the new proportion notified to the Lessee in respect of the Demised Premises shall be substituted for those set out in paragraph 1 above and the new percentages notified to the other Lessees in respect of the Properties shall be substituted for those set out in the Sixth Schedule of their leases

12. It was the Applicant's case that, some years back, it was discovered that the Service Charge proportions across all the leases in the building did not equate to 100%. There was a shortfall of 2.41%. Flat 4 is of a similar size to the Respondent's flat and the specified proportion for that flat was 11.96%. Accordingly, the Respondent's proportion was adjusted to 12.09%.
13. I find that the Respondent's proportion was not increased in accordance with the lease and that the increased proportion is therefore not payable by him for the following reasons:-
 - (a) The lease only allows an adjustment to the percentage of Service Charge payable by a leaseholder upon 'a re-planning of the layout'. There was no such re-planning in this case. Parliament specifically enacted the Landlord and Tenant Act 1987 to deal with lease variations in cases where Service Charge contributions did not add up to 100%. That Act would have been known to the draftsman of the Respondent's lease when it was drafted in or about 2005. Clearly therefore the draftsman was thinking of a different scenario when talking about a 're-planning'.
 - (b) Even if the adjustment of the percentage of Service Charge payable by the Respondent could be achieved under this part of the lease, the Applicant was unable to provide any proof that the required notice was given to the Respondent – that notice must be a condition precedent to the obligation to pay.
14. The only response to the Respondent's assertion that this adjustment was not done in accordance with the lease and that he was not given notice, is in a letter from the Applicant's solicitors dated 4 May 2017 in which it is said:-

We are informed that this new percentage rate was first applied as far back as when Stonedales were the appointed managing agent. Therefore, at the very least this

percentage proportion has been in place for 3 years. It is therefore our client's position that your client is now estopped from challenging this percentage.

No further argument was presented as to the details of how this alleged estoppel might operate.

15. In the absence of any further detailed argument from the Applicant, I am unable to find that the Respondent is estopped as alleged. I note in any event that; (a) there is no evidence of the Respondent accepting the percentage alteration, and; (b) the evidence in fact suggests the contrary, that the Respondent has disputed it for some time.
16. The effect of this decision is set out in the table below.

Period	Sum claimed in County Court	Sum payable on percentage of 9.68%
1 st Quarter 2014	£873.36	£699.26
2 nd Quarter 2014	£873.36	£699.26
3 rd Quarter 2014	£873.36	£699.26
4 th Quarter 2014	£873.36	£699.26
1 st Quarter 2015	£907.36	£726.49
2 nd Quarter 2015	£907.36	£726.49
3 rd Quarter 2015	£907.36	£726.49
4 th Quarter 2015	£907.36	£726.49
Totals	£7122.88	£5703.00

The Service Charges paid

17. According to the Respondent, he paid the sum of £516.09 to the former managing agents on 16 January 2014 and was not in arrears when the flat was transferred from the joint names of himself and his son into his sole name in March 2014.
18. During the hearing I was taken to an account from the old managing agents. This account showed two debits each of £516.09. These were for the last quarter of 2013 and the first quarter of 2014. There is then an adjustment to remove the debit for the first quarter of 2014 as the new managing agents took over in 2014. There is a credit on this account in the sum of £516.09 which represents a payment made by the Respondent on 16 January 2014. That credit is used to set off the debit for the last quarter of 2013 leaving a nil balance for the start of 2014.
19. I was then shown the account of the current managing agents showing the debits for 2014 and 2015 as per the table above. I was taken to the demands for each of these debits.
20. The evidence that I have seen therefore suggests that the Respondent paid all Service Charges due to the end of 2013, his payment of £516.09 made in January 2014 was properly set against his debt for that amount for the last quarter of 2013.

21. It is agreed between the parties that following the January 2014 payment the Respondent made further payments of; £873.36 on 2 June 2014 and £2,000.00 on 27 March 2015.
22. Therefore, on the evidence that I have seen, as against a liability (adjusted as per the table above) of £5703.00, the Respondent has paid £2,873.36 which leaves a balance of £2829.64 payable for the Service Charge period January 2014 to December 2015.

Service Charges – reasonableness

23. The Respondent, beyond asserting that the Service Charges had increased unreasonably, made no case as to what charges were unreasonable or why. Accordingly I have no grounds on which to conclude that the Service Charges (as adjusted in the table above) are not reasonable and payable.

Legal costs - £1,322.00

24. These costs are claimed in the body of the Particulars of Claim filed in the County Court as follows:-

The Defendant has a contractual liability to pay all costs charges and expenses incurred by the Claimant in this claim, in accordance with the terms of the lease. To date, the contractual costs claimed £1,322.00.

25. These costs are Administration Costs as defined in the Commonhold and Leasehold Reform Act 2002, Schedule 11. I am told that they have not been formally demanded with a statement of rights and obligations. Accordingly they are not payable.

Section 20C Landlord & Tenant Act 1985

26. The Respondent made a separate application to this tribunal under the above legislation.
27. Both sides have had some success in the proceedings before the tribunal, the Applicant has been successful in pursuing approximately half the amount claimed in the County Court. Accordingly I make an order that that 50% of the costs incurred, or to be incurred, by the Applicant in connection with the proceedings in 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 Respondent.

Interest and County Court costs

28. The claim for statutory interest and County Court costs is referred to the County Court.

Name: Mark Martynski,
Tribunal Judge Date: 7 June 2017