



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

Case Reference : CHI/29UC/LSC/2020/0009

Property : 123A Wincheap, Canterbury, Kent CT1 3SE

Applicant : Matthew Ogilvie

Representative :

Respondent : Richard Dance

Representative :

Type of Application : Determination of liability to pay and reasonableness of service charges

Tribunal Member(s) : Judge D. R. Whitney

Date of Determination : 15th June 2020

DETERMINATION

Background

1. The Applicant is the leaseholder of the Property. The Respondent is the freeholder.
2. The Applicant seeks a determination of his liability to pay and the reasonableness of certain service charges and administration charges for the years 2017/2018, 2018/2019 and 2019/2020.
3. Directions were issued by the tribunal on 7th February 2020. The tribunal identified within those directions that the issues to be determined include:
 - Does the lease allow the Respondent to add a 10% charge to all costs?
 - Is the insurance in accordance with the lease and is the cost properly allocated?
 - Has the cost of a survey of the Building been reasonably incurred?
 - Is the administration charge levied by the landlord for giving notice of a sub tenancy due and payable and reasonable?
 - Is the landlord's management fee charged reasonable?
4. The directions provided for the matter to be dealt with on paper unless any party objected. No objection has been received. It would appear the parties have complied with the directions and a bundle has been received although not sequentially numbered. Having reviewed the bundle the tribunal determines that it is just and equitable to determine the matter upon the papers.
5. The bundle itself did not include a complete copy of the lease. Both parties referred to relevant parts of the lease and parts of the lease were exhibited.

DETERMINATION

6. The Application form has attached to it details of the charges which the Applicant seeks to challenge. The Applicant subsequently in accordance with the directions filed a signed statement with a statement of truth dated 22nd February 2020. This identified the issues as being:
 - 10% profit charge
 - Buildings insurance

- Survey and replacement of roof
 - Landlords charges for informing the landlord of a new tenant and new mortgage
 - Management fees
 - Legal fee for notice of intention
7. The Respondent filed his statement of case dealing with each issue and including a statement of truth dated 9th March 2020.
 8. A reply dated 20th March 2020 was filed by the Applicant.
 9. The parties both refer to an earlier tribunal decision under case reference numbers CHI/29US/LIS/2017/0048 & CHI/29UC/LLD/2017/0001 . The tribunal has considered the same and whilst this tribunal is not bound by such decision this tribunal agrees with and follows that tribunal in respect of its determination as to the interpretation of the lease.
 10. It is worth noting the earlier decision determined that the Building for the purposes of the lease included 123 and 123A Wincheap. 125 Wincheap is currently used and occupied as a fireworks shop and is immediately below the Applicants flat. Photographs of the Building and the firework shop are within the bundle. The Building and the firework shop belong to the Respondent although the firework shop is believed to be let to a separate commercial tenant.

10% Charge

11. The Respondent adds an additional 10% charge on to all sums claimed. The Respondent contends the lease allows him as freeholder to make a charge for managing the Building and he believes this is a reasonable sum. The Applicant denies that this is a reasonable charge and that in any event he cannot charge a fee for simply commissioning works.
12. The relevant clause is set out in the Applicant's statement. It says:

“In the management of the Building and the performance of the obligations of the Landlord hereunder to employ or retain the services of any employee agent chartered or certified accountant solicitor consultant contractor engineer or professional adviser that the Landlord may reasonably require and in he event that the landlord is qualified to perform such obligations to perform them in person and make a proper charge for so doing to include a reasonable profit element appropriate to the obligations so performed.”
13. The tribunal is satisfied that this allows for the Respondent to provide for services that he himself supplies in complying with his obligations as a freeholder under the terms of the lease. The

tribunal notes that as a separate item he claims a management fee which is separately challenged. The tribunal has had regard to the RICS Service Charge Residential Management Code 3rd Edition and in particular section 3.3 of the same. This suggests that calculating fees as a percentage of outgoings is not a fair and reasonable methodology.

14. This tribunal determines that it is unreasonable for a charge of 10% to be levied automatically by the Respondent upon all services undertaken. This is particularly true where the Respondent is also charging a management fee. The 10% fees claimed in the years challenged are not allowed.
15. The tribunal does accept it may be reasonable to charge a percentage of the costs of undertaking major works if the Respondent is acting as the contract supervisor, has the appropriate skills required and no separate surveyor has been instructed. Each and every such charge will be determined upon its own merits. It will depend what works have been undertaken and what role the Respondent has filled. It will be for the Respondent to demonstrate that the charge is reasonable.

Buildings Insurance

16. Following the earlier decision, the Respondent has endeavoured to comply with the insuring obligations under the lease. To that end he has affected a policy of insurance. The Respondent explains that he was unable to obtain insurance simply for the Building being 123 & 123A Wincheap. He has affected a policy covering the Building and 125 Wincheap and has divided the costs equally. As a result the Applicant pays one third of this cost. The Respondent relies upon a telephone conversation he had with the broker who advised him an equal apportionment was an appropriate and reasonable method of division between the three units covered by the policy.
17. The Respondent suggests that the Applicant always knew there was a fireworks shop immediately below his flat and he should have been on notice that this would likely lead to increased insurance costs. The Respondent appears to suggest it is in his interests to keep the costs down given he is the owner of 123 Wincheap and so he also is paying one third of the total cost. Further he disputes that the quotation provided by the Applicant amounts to a like for like quote.
18. The Applicant suggests that the insurance is not a reasonable cost and has not been arranged in accordance with the lease. He suggests that the insurance should just cover the Building and 125 Wincheap should not be included within the policy. He suggests that the cost is unreasonably high due to the inclusion of 125 Wincheap and its use as a firework shop. He suggests if the policy

is something the Respondent can recover the cost of the apportionment is not reasonable. The Applicant attaches an alternative quote.

19. Thee tribunal determines that the insurance premium claimed for each of the disputed years is reasonable.
20. The tribunal determines that the Respondent can arrange a block policy. The tribunal accepts given the unusual layout and high risk use of the commercial parts insurers may be unwilling to insure 123 & 123A Wincheap separately from 125 Wincheap. Taking out such a policy is not contrary to the terms of the lease in this tribunals determination. It is however incumbent upon the Respondent to allocate the costs appropriately and then divide the costs for 123 and 123A Wincheap equally. The tribunal is satisfied by the evidence adduced by the Respondent as to the telephone conversation he undertook and his record of the same that the advice he received was that each unit should pay an equal amount.
21. Turning to the amount of the premium the tribunal accepts that a flat above a fireworks shop may well have higher premiums than a flat over another lower risk commercial unit. This tribunal is not satisfied on balance that the quotation provided by the Applicant within the bundle is a like for like quote. On balance considering the increased risk factors and considering all the evidence within the bundle the tribunal is satisfied that the premiums claimed fall within the band of what is reasonable.

Survey and replacement roof

22. For the avoidance of doubt the tribunal makes no finding as to the roof works and whether or not the costs or works are reasonable. The works have not been undertaken and we do not have sufficient information to determine the same as part of this application.
23. The Applicant contends that the fee spent having a survey undertaken is unreasonable. The fee claimed is £900 of which the Applicant is required to pay £450. What appears to be part of the survey is exhibited by the Respondent.
24. The Applicant suggests he should not pay as in his opinion this was not required. If it was required the Respondent should follow its findings as to major works and the Applicant suggests he is not so doing as the survey recommended a thorough overhaul of the roof rather than replacement which is what has now been proposed by the Respondent. The Applicant suggests by ignoring the report it is otiose and so he should not pay for the same.
25. The Respondent suggests the survey was undertaken at the Applicants request. He suggests that the same was comprehensive

and did not just cover the roof which the Respondent suggests the Applicant had previously agreed should be replaced.

26. On balance the tribunal determines that the Applicant should pay his share of the cost which is reasonable. The tribunal accepts that it is reasonable for a surveyor to attend and carry out a complete survey of what works may or may not be required for the Building. This will assist the Respondent in planning and determining what is required to be undertaken. We are satisfied that the cost claimed is reasonable.
27. The tribunal highlights that ultimately it is for the Respondent to determine what works are carried out and when. In carrying out a roof replacement it will ultimately for the Respondent to explain and justify why he has pursued this route rather than an overhaul of the roof. This is however not a matter upon which this tribunal is adjudicating upon.

Landlords charges for informing the landlord of a new tenant and new mortgage

28. It appears the Respondent charges the Applicant a fee of £70 for registering each and every tenancy and any mortgage taken out on the Property. The Respondent says he has been advised that this is a reasonable fee. He exhibits at Appendix I a copy of the relevant page of the lease. This provides that a registration fee of not less than £20 is payable on each such occasion.
29. The Applicant suggests he has been advised to question such payments.
30. The tribunal does not have jurisdiction to adjudicate on such payments. They are plainly not service charge payments. Such payments are also not administration charges under the Commonhold and Leasehold Reform Act 2002. This was confirmed by the Upper Tribunal (Lands Chamber) in Proxima GR Properties Ltd v. McGhee [2014] UKUT 59(LC) which is a decision binding on this tribunal.

Management fees

31. The Respondent charges a management fee for the time he spends undertaking management tasks for the Building. He exhibits a list of time he has spent undertaking works. The Respondent states he has used an hourly rate of £40 per hour. He refers to having obtained quotes from other agents and finally indicates he has limited the fee charged to the Applicant to £300.
32. The Applicant states that he believes such a charge is unreasonable in amount and also refers to mistakes he believes have been made and the time he himself has spent.

33. The tribunal is satisfied that the Respondent can charge for undertaking the management. On balance the tribunal finds that the sums claimed are reasonable. The Respondent has produced a breakdown of his time costs and he has then discounted this. In this tribunal's opinion the fee is reasonable for a Building of this nature and given that major works were being considered. If less work was being undertaken and no major works a smaller fee would be warranted and so this determination cannot be said to be setting any form of precedent as to what amount is reasonable.

Legal fee for notice of intention

34. The Applicant accepts the Respondents explanation and the tribunal determines that such sum is reasonable and payable

Conclusion

35. The Applicant has also sought an order pursuant to Section 20C of the Landlord and Tenant Act 1985 and also paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
36. The tribunal has considered the matter carefully. The making of such orders are at the discretion of the tribunal. The tribunal notes that in the main it has approved the costs being charged by the Respondent freeholder. It is apparent that there remains distrust between the two parties.
37. On balance it is not appropriate for any order to be made. If any costs are claimed the parties are reminded all such costs must be reasonable.
38. Finally whilst the parties distrust is clear the tribunal would urge them both to find away to work together. This must be in the interests of both parties given they are to have a continuing relationship. Repeated visits to the tribunal seldom benefit any party in the longer term.

Judge D. R. Whitney

RIGHTS OF 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