



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

Case Reference : **CHI/29UM/LIS/2020/0032
PAPER REMOTE**

Property : **301B High Street, Sheerness, ME12
1UT**

Applicant : **Influential Consultants Ltd**

Representative : **Mr J F Thompson**

Respondent : **Catherine Willens**

Representative : **In person**

Type of Application : **S27A Landlord and Tenant Act
1985,**

Tribunal Members : **Judge F J Silverman MA LLM**

**Date and venue of
Hearing** : **Paper determination**

Date of Decision : **18 December 2020**

DECISION

SUMMARY OF DECISION

The Tribunal determines that:

- 1. The service charges demanded by the Applicant in respect of service charge year 2019 amounting to £7,813.41 and estimated for the service charge year 2020 amounting to £7,734.23 are reasonable and are due and payable in full by the Respondent with interest at 12% as calculated under the terms of the lease.**
- 2. The Applicant's application for costs is refused.**

REASONS

- 1 The Applicant is the landlord of the property known as 301B High Street, Sheerness, ME12 1UT (the property) and is responsible for the repairing covenants under a lease of the property dated 23 February 1990 made between D O'Grady (1) and M and V Freeley (2). Under the terms of that lease the Applicant is entitled to recover its costs of maintenance and insurance from the Respondent tenant in the proportion specified in her lease and subsequently agreed between the parties. The Respondent is the tenant and long leaseholder of the property.
- 2 The application was made on 21 June 2020 and Directions were issued by the Tribunal on 23 July and 16 September 2020.
- 3 The property is the top floor flat in a converted Victorian end of terrace house comprising a total of three flats together with front and rear gardens. Current Covid19 restrictions prevented the Tribunal from inspecting the property but it had the benefit of clear photographs supplied by the Applicant and a street view of the property from Google.
- 4 In compliance with Covid19 restrictions the parties had agreed to a paper determination of this application.
- 5 The Applicant's application, made under s27A of the Landlord and Tenant Act 1985, relates to disputed service charge demands for the service charge year 2019 and the estimated charge for 2020. Clause 2 of the lease permits the Applicant landlord to recover the service charge from the Respondent, to demand payments in advance and to charge interest on late payments (Clauses 3.2 and 7.3).
- 6 In her response to the application (page 61 et seq) the Respondent says she does not challenge the actual items or amounts on the service charge schedule. Her additional response (unsigned, pages 156- 163) makes various comments and assertions about the Applicant and the service charges but does not at any point challenge their validity. No

attempt has been made to produce any evidence to suggest that the charges are unreasonable or wrongly attributed. On page 164, the Respondent explicitly states that she has not produced copies of the documents on which she relies but relies on the Applicant's own documents. The Respondent's assumption that the insurance policy covers the tenant's possessions is an erroneous reading of the document and the assertion that the tenants of the other flats in the building have joined in the application is factually incorrect. Her assumption appears to be that it is the Applicant's obligation to prove that the service charges are reasonable and that she has no obligation to offer any evidence to the contrary. The Tribunal does not accept the Respondent's interpretation of the application of the law.

- 14 The Tribunal therefore finds that all the items charged to the Respondent by way of service charge and insurance premium were all validly charged to the service charge accounts and were reasonable in amount. This means that the Tribunal finds that the service charge amounts as shown on the certified accounts for the service charge year ending 2019 (£7,813.41) and the estimated advance charge for 2020 (£7,734.23) are both payable in full by the Respondent with interest as appropriate.
- 15 The Applicant's application also asked the Tribunal to award costs. Clause 3.1.3 of the lease contains the single reference to costs in that document and it applies only to costs relating to prospective forfeiture proceedings under ss146 and 147 Law of Property Act 1925. No evidence has been supplied by the Applicant that any correspondence with the Respondent has mentioned or refers to forfeiture proceedings. This lease clause cannot therefore assist and the Tribunal is unable to award costs to the Applicant.

The Law

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (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 or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate 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 it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate 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 would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application 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 to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with

proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application (preferably by email to rpsouthern@justice.gov.uk) 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.