



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

Case Reference : **LON/00BB/LSC/2020/0019**

Property : **204 Chandos Road, London E15 1TB**

Applicant : **Foxtone Estates Limited**

Representative : **Cassandra Zanelli**

Respondents : **Abdul Martin Khan**

Representative : **In person**

Type of Application : **Reasonableness and payability of service charge.**

Tribunal Members : **Jim Shepherd**
: **Kevin Ridgeway FRICS**

Date of Decision : **14 October 2020**

DECISION

The sum of £955.50 is due.

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was A:BTMM COURT. A face-to-face

hearing was not held because it was not practicable and no-one requested the same.

The case

1. The case was transferred from the County Court for determination on 18th December 2019 and heard by the Tribunal on 28th September 2020. This followed a claim for unpaid service charges made by the Applicant against the Respondent. The unpaid service charges relate to two years: Year ended June 2018 and Year ended June 2019. The sums alleged to be due are £1135.11 for 2017/18 and £1080.39 for 2018/19. The latter sum was admitted by the Respondent in the County Court therefore the disputed sum is £1135.11. Following the hearing further submissions were invited as to payments made by the Respondent. It was not disputed that an additional £1000 was paid on 27th July 2020, £130 on 18th August 2020 and £130 on 18th September 2020. The Respondent also said he had paid a further £919.26. The Applicant wants to reserve its right to forfeit and therefore has not allocated these payments to the Respondent's account. This is a matter for them. As far as the Tribunal is concerned these sums have been paid and will be taken into account in this decision.

Background

2. The Applicant is the current proprietor of the freehold interest of 204 Chandos Road, London E151TB ("The premises"). The Respondent owns the leasehold interest of the premises pursuant to a lease agreement dated 11th December 2007. There are 8 lessees in the block.

3. The lease agreement imposes the following obligations on the Respondent:
- “to contribute and pay to the Lessor or his agent or as he may direct during the said term a sum (hereinafter call “the Maintenance Charge”) being a fair proportion properly and reasonably determined by the Lessor having regard to the internal floor area of the Flat and the internal floor areas of the flats in the remainder of the Block of the costs expenses and outgoings incurred by the Lessor in respect of the matters referred to in the Fourth Schedule hereto”. (Clause 2 (iii))*
4. The Fourth Schedule of the lease sets out the Applicant’s expenses and outgoings, together with other heads of expenditure in respect of which the Respondent is required to pay a proportionate part by way of payment of service charge. Such costs include:
- 12.1 Maintaining, repairing, redecorating and renewing, amending, cleaning, repointing, painting, graining, varnishing, whitening or colouring the Block and the Reserved Property, together with all parts and appurtenances, apparatus and other things belonging thereto (paragraph 1)*
- 12.2 Ensuring the Block and landlord’s fixtures and fitting (paragraph 2).*
- 12.3 Cleaning, decorating, lighting, painting, repairing and re-carpeting (when necessary) the passages, landings, staircases and the common entrance of the Block, and the cost of providing, hiring and maintaining an automatic entry telephone at the front door (paragraph 3)*
- 12.4 The cost of effecting public liability insurance (paragraph 4).*

12.5 Managing agents fees together with any legal costs incurred by the Applicant in connection with the general management of the Block (paragraph 5).

12.6 Managing agents, auditors, accountants and any other persons properly appointed for the purpose of the preparation and completion of the service charge accounts (paragraph 6).

12.7 All other expenses and costs properly incurred by the Applicant in performing the Applicant's covenants in relation to insurance and the Reserved Property (paragraph 7).

5. In addition the Applicant is entitled to collect and maintain a Reserve Fund as it may reasonably estimate to be necessary in order to meet future costs, expenses and outgoings (the cost of which should be spread over several years) (clause 2(iii)(b)).

Landlord and Tenant Act 1985

6. Section 19 of the Act limits service charges recoverable to the extent that they are reasonably incurred and the services and works are of a reasonable standard.
7. Under s27A of the Act an application may be made to a 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.

The Respondent's challenges

8. The Respondent challenged the service charges on several bases which can be summarised as follows:
 - a) He wanted to pay by instalments.
 - b) The reserve fund should be used to pay for works
 - c) There was a conflict of interest between Applicant and their agent
 - d) He had not received final accounts
 - e) He didn't understand the £435.30 s20 contribution.

9. He expanded on these challenges at the hearing. The Tribunal were not impressed by any of the challenges. Taking the same numerical sequence:
 - a) Correspondence showed the Applicant had invited payment by instalments and in any event this is not a matter for the Tribunal.

 - b) It is a matter for the landlord as to how the reserve fund is utilised.
 - c) There is no conflict of interest. The agents are independent from the landlord.
 - d) Evidence confirmed that these had been sent.
 - e) This was outside the two financial years we were considering.

Payments made by the Respondent

10. As indicated above the Applicant accepts the Respondent has paid a further £1260. There is a dispute however as to whether he paid £919.26. The evidence shows that this was in fact a debit to his account and not a payment. The Respondent appears to suggest in his written submissions that this is an invalid debit which is plainly different from arguing that he made a payment of this amount. Moreover the debit made in 2016 has not been formally challenged and did not form part of the period in issue in this case.

11. In summary the Tribunal finds that all of the sums claimed by the Applicant were reasonable and payable . These sums are £2215.50. The Tribunal notes that £1080.39 has been admitted by the Respondent and £1260 has been paid leaving an outstanding sum of £955.50.

Section 20C

12. There is no basis for exercising our discretion in relation to s.20C in this case. The Respondent's challenges were misconceived. He should have sought legal advice at an early stage. Had he done so he would have been told to pay the sums due.

Judge Shepherd

14th October 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have. 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. 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.

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. 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. If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).