



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

Case reference : **CHI/29UN/LSC/2020/0088**

Property : **3 Harold Mews, 39 Harold Road,
Cliftonville, Kent, CT9 2HS**

Applicant : **Blue Property Investment UK
Limited**
legal@bluepropertymanagementuk.com

Representative : Mr Phillips

Respondent : **Susan Dansey**
flat3@bflymeadow.co.uk

Representative : Mr Dansey

Type of application : **Transferred Proceedings from
County Court in relation to unpaid
service charges**

Tribunal member(s) : **Judge D R Whitney
Mr D Barnden FRICS
Mrs J Herrington**

Date of hearing : **19th May 2021**

Date of determination : **29th June 2021**

DETERMINATION

Background

1. The Applicant issued proceedings in the County Court seeking recovery of various sums said to be due and owing from the Respondent. These proceedings were defended and were in part transferred to this Tribunal by Order of Deputy District Judge Ashley on 18th August 2020. By Order of District Judge Batey dated 5th January 2021 the remainder of the proceedings were transferred.
2. Directions were issued on 3rd February 2021 and further directions on 4th March 2021. A bundle has been produced by the Applicant and references in [] are to pages within that bundle.
3. The hearing was attended by Mr Mark Phillips for the Applicant, together with Mr Jason Popperwell who gave evidence on behalf of the Applicant. Mr Steve Dansey attended as representative of his wife, the Respondent who was also in attendance.

Hearing

4. The hearing took place as a remote hearing by CVP. All parties were content to take part using the technology and all participants confirmed at the conclusion of the hearing that the Tribunal had afforded them every opportunity to make any statements they wished to make.
5. Mr Dansey on behalf of his wife asked if the Tribunal was happy for his wife to stand up from time to time and to move around due to her health needs and the Tribunal confirmed it was very happy for her to do so. The Tribunal reminded all parties that if at any point a break was required they should ask for the same and the Tribunal would accommodate the same.
6. This represents a summary only of the matters discussed and evidence given at the Tribunal.
7. Prior to the hearing an Application had been received from the Respondent who was concerned certain documents were not included within the bundle. He had produced a bundle although he did not accept that the majority of the documents to which Mr Dansey referred were in the bundle prepared by the Applicant. Mr Phillips confirmed he had no objection to this bundle.
8. All the Tribunal members had read the additional bundle and it was agreed it would be admitted and the Tribunal would take account of the same.
9. Mr Phillips confirmed it was accepted that all ground rent had been paid. He also confirmed that the brought forward balance from when the Applicant had acquired the freehold had been written off.

10. Mr Phillips explained that his organisation had moved to a new accounting software system which meant certain of the statements did not properly show the amount being claimed under the claim form which claimed an amount of £2017.89 and the court fee. Mr Phillips suggested the statement of account at [159] properly recorded matters.
11. The Tribunal agreed the matters to be determined by the Tribunal were:
 - Were the demands valid?
 - Bin hire charges
 - Fire alarm costs
 - Legal fees for advice
12. Mr Phillips explained the Applicant purchased the freehold in 2017. He candidly admitted that when set up on their system it was on the basis that it was what he called a typical service charge arrangement on the basis of estimated service charges being demanded with then a balancing payment. He did not accept that the interpretation suggested by the Respondent as to the lease [20-44] was correct.
13. Mr Phillips suggests that whilst he agrees the demands when issued were invalid he can correct this by serving correct demands although he has not done so yet. He relied upon the case of Price v Matthey & Ors (St Annes) RTM Company Ltd & Anor [2021] UKUT 7 (LC).
14. Mr Phillips explained the accounts were prepared and issued after the County Court claim was issued [50 & 51].
15. Mr Phillips called Mr Popperwell who relied upon a witness statement [205 and 206]. He confirmed the contents of his statement were true.
16. Mr Popperwell explained when he first visited the site he had very limited information provided by the previous owner of the freehold. He noted that on site were two Euro bins. Typically these are rented and so he included an estimate within his budget he prepared for the building. It came to light they were not rented subsequently and so this charge should have been removed.
17. On his inspection the fire alarm was not working and he did not have a Fire Risk Assessment. He approached Chubb to replace the existing system so that the fire safety was up to standard. At [230] was an email he received from Chubb. He explained he had inspected with Mr O'Shea of Thanet Borough Council and works were done in September 2019. In his opinion the previous system fitted was not up to the required standards. It was more cost effective to fit a new system than repair the existing.
18. Mr Dansey cross examined Mr Popperwell.

19. He explained the deficiencies he believed existed with the previous system. He explained he was not aware and had seen no documents showing the fire officer had approved the previous system. He felt it was unlikely it would have been signed off and he had not been provided with any Fire Risk Assessments on the purchase.
20. Mr Dansey took Mr Popperwell to certain photographs [96]. Mr Popperwell explained these showed the landlords supply and that this had been upgraded. He explained the photograph at [234] was of the old fire panel. This had been replaced but there was not a photograph within the bundle.
21. Mr Popperwell accepted it appeared that bin hire was included within the actual accounts which had been certified [50]. He agreed it should not be.
22. Mr Phillips explained he would need to check re the bin hire. He explained he had not included within the bundle all the individual invoices as the costs as such was not in issue. He explained he believed the amounts included within the statement set out what was owed by the Respondent. He could re-serve the demands if required but at this stage had not done so. He confirmed that from 2020 everything is now being done correctly. The statement at [47] shows what is due and owing including for 2021.
23. Mr Phillips contends that all costs incurred are recoverable as all recovery work undertaken is with a view potentially to forfeiture and so the costs may be recovered. He accepts the Tribunal may determine what sums are reasonable as administration charges. Mr Phillips explained that they had not instructed external solicitors to ensure that the costs were kept to a minimum.
24. Mr Phillips explained the court fee [46] related to earlier proceedings which were withdrawn and he conceded this amount should not be charged. The legal advice was for taking advice from a barrister, Mr Beaumont. As for issuing proceedings and charges he confirmed that they are not registered with the SRA. The costs are administration costs including a charge of £50 for credit control letters sent.
25. At this point the Tribunal adjourned to provide the parties with a break.
26. Upon resumption Mr Phillips explained the invoice put down as “bin hire” was in fact for the Council attending and dealing with certain rotten floorboards being something Thanet had deemed to be emergency works.
27. Mr Dansey stated if this was legitimate, he would pay and accepted that floorboards had been removed and taken up. He was happy for Mr Phillips to send to the Tribunal these documents and for us to view which Mr Phillips did.

28. Mr Dansey explained that his wife had always paid certain sums to be helpful and reasonable. In his view his wife did not owe any money and proceedings should not have been issued.
29. In respect of the fire alarm a new alarm had been fitted previously following an improvement notice having been served. In his opinion relying upon his professional knowledge having been involved with Transport for London and Underground stations not all of the works undertaken were required. In particular he did not believe heat sensors were required as each of the flats had intumescent strips on the doors.
30. He believed that the Applicant should have tried to obtain certification of the existing system rather than replacing the same.
31. Turning to works to the basement in his opinion these should all be charged to the basement leaseholder.
32. Mr Phillips and Mr Popperwell cross examined Mr Dansey.
33. Mr Dansey explained that the basement had supposedly been sold on a separate lease prior to the Applicant acquiring the freehold.
34. Upon questioning by the Tribunal Mr Popperwell explained that the basement was an empty void. 8 flats and the basement all contribute towards the service charges.
35. Mr Dansey was adamant you did not need sensors within the flat. He explained in 2016 an entirely new system was fitted and this should be adequate.
36. On questioning by the Tribunal he confirmed he was an elected member of the British Computer Society and had worked in infrastructure for 3 years including TFL stations preparing LED light analysis, design, drafting and red line drawings of fire systems for 6 years. His specialism was in infrastructure.
37. In respect of County Court costs Mr Phillips explained to Judge Whitney he was only seeking the court fee of £105. He had offered small claims mediation and tried to work with Mr Dansey to resolve the dispute.
38. Mr Dansey stated he had tried to work with the Applicant but there were many inconsistencies and felt Court was the only way to resolve the dispute.

Determination

39. The Tribunal thanks both parties for the helpful way they presented their case and the concessions made. The Tribunal urges the parties to ensure in the future that they communicate to avoid need for any further proceedings.

40. Mr Phillips had conceded that the demands included within the bundle did not comply with the lease terms. He seemed to suggest relying on the Price v. Matthey case that notwithstanding this demands could be valid. We are not assisted by this case.
41. In this instant case the demands issued are not just for incorrect amounts but have been calculated on an entirely incorrect basis that does not follow the terms of the lease. This point is conceded by the Applicant.
42. It is noteworthy that the actual service charge accounts were not prepared and issued until after this claim was issued in the County Court. We have considered the case referred to above but we are satisfied that on the facts of this case the demands issued are wholly invalid having been produced on a basis not in line with the lease terms and not just as to the amount claimed. The basis of issue was fundamentally wrong being based on an estimate of the costs to be incurred. It follows the County Court proceedings therefore fail.
43. It must also follow that all administration charges added to the account are not payable or reasonable. Whilst we accept it may be possible for charges to be levied if there is not compliance with the lease terms in this case the Respondent has paid what she is required to do so and so none of these costs are due and payable.
44. It is right however that we turn to the reasonableness of the accounts and the sums in dispute.
45. We determine the sum of £425 said to be Bin Hire is not recoverable. It is accepted by the Applicants that there is no bin hire. We are told this relates to “take up and remove rotten floor boards”. This information was provided during the hearing and an email of a line item within the internal accounting system for the Applicant was forwarded. We note that the accounts include this as a certified amount but in our determination this sum is not recoverable on the basis that no proper explanation was provided or copy of the invoice for the same.
46. We have considered the legal fees and we are not satisfied that these are legitimate service charge costs and we determine that the amounts claimed in the two service charge years are not recoverable. Mr Phillips conceded the sum of £115 and the conference with counsel appears to have been general advice for the benefit of the Applicant and its managing agent and not specific advice on the evidence presented at the hearing.
47. This leaves the fire safety works. We have considered all the evidence given. We accept that the Applicant had no Fire Risk Assessment and it is clear that they had no evidence that the fire alarm system fitted by

their predecessor was suitable. We also take account of the fact that this was fitted in 2016 and since that date standards and requirements have significantly changed. We accept the evidence given by Mr Popperwell of what he found and the enquiries he made with Chubb. We accept that this was a reasonable approach for a managing agent to adopt who should err on the side of caution.

48. We accept Mr Dansey has considerable experience of dealing with systems in stations. This is however very different from residential buildings and he does not appear to have any direct experience or qualifications relevant to this.

49. On balance we prefer the Applicants case. We have looked at the costs of the system and the like but we are satisfied that the approach taken by the Applicant was reasonable and such costs as when demanded in accordance with the lease will be properly payable.

County Court Costs

50. Judge Whitney alone has considered the question of the County Court costs. Given the claim has failed and must be dismissed the Judge declines to make any order as to costs. A copy of the County Court Order made by Judge Whitney is attached.

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