



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/12UD/LSC/2014/0091

Property : Flat 42C Norwich Road,
Wisbech,
Cambs. PE13 2AP

Applicant : Marjorie Blake

Respondents : Elyar Properties Ltd.
Moreland Estate Management

Date of Application : 24th August 2014

Type of Application : To determine reasonableness and payability of
service charges and administration fees

The Tribunal : Bruce Edgington (lawyer chair)
David Brown FRICS

DECISION

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1. The Tribunal determines that at the moment the applicant does not owe the Respondents any monies for service charges or administration charges for the 2 years ending 25th December 2014 to include any further payments on account.
2. For the avoidance of doubt, the Tribunal makes an order pursuant to Section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") preventing the Respondents or either of them from recovering any costs of representation before this Tribunal from the Applicants in any future service charge.
3. The Tribunal also orders the Respondent to refund the fee paid to the Tribunal by the Applicant of £90 on or before 14th November 2014.

Reasons

Introduction

4. This is an application by a long leaseholder for the Tribunal to determine whether service charges demands she has received from the second named Respondent on behalf of the first named Respondent are payable. She has made payments

by her to the 2nd named Respondent for £462.66 plus £250 ground rent passed through her account on the 11th July 2014.

12. The account states that the surplus for the building of payments received over and above expenditure was £1,382.79 for that year i.e. a payment should have been made to the Applicant in accordance with the terms of the lease.
13. The papers show that the 2nd named Respondent sent service charge demands to the Applicant on the 17th October 2013 and then 26th February, 26th March, 27th June and 19th August 2014 for amounts ranging from £816.88 to £1,529.54. They have also sent a document headed "*Statement of Budgeted Service Charge Expenditure Year End 25 December 2014*" which claims £1,266.67 from the Applicant as one third of the total cost.
14. Finally, to complete the picture, the 1st named Respondent issued proceedings in the county court on the 22nd January 2014 for recovery of £1,379.49 for service charges, ground rent and administration charges. The Applicant lodged a defence to those proceedings explaining that she has complied with the terms of her lease and says that such proceedings have 'presumably been dismissed'. She should check to make sure. If the claim has been dismissed, the court would have sent her an order to reflect this decision.
15. On the 5th September 2014, the Tribunal issued a directions order stating that the Respondents must file and serve a statement in response to the above allegations and statements made by the Applicant by 4.00 pm on the 3rd October 2014. They have failed to do so. It was also noted that the Applicant wanted an order made pursuant to section 20C of the 1985 Act preventing the Respondents from recovering their costs of representation in respect of these proceedings as part of any future service charge. The Respondents were ordered to address that application and have not done so.
16. Finally, the Tribunal said that it would be content to deal with this application on the basis of the papers and representations filed and would do so on or after 23rd October 2014. It was made clear that if any party requested an oral hearing, one would be arranged. No such request was received.

The Inspection

17. In view of the nature of the dispute and, in particular, that the reasonableness of none of the actual service charges claimed was being challenged, the Tribunal notified the parties that it did not intend inspecting the property but would consider any request for an inspection. Again, no such request was received.

The Law

18. Section 27A of the 1985 Act states, in effect, that this Tribunal has the jurisdiction to determine the reasonableness and payability of service charges claimed by a landlord from a leaseholder. The **Commonhold and Leasehold Reform Act 2002** gave similar jurisdiction in respect of administration charges.

19. The Tribunal also has the jurisdiction to make orders pursuant to section 20C of the 1985 Act as set out above and also to order one party to refund fees paid by another - in both cases if it is 'just and equitable' to do so.

Conclusions

20. It seems absolutely clear to this Tribunal that the Respondents have behaved appallingly. The Applicant has provided clear evidence that she has discharged all her financial liabilities under the terms of the lease. On the other hand, the Respondents have failed to obey orders of the Tribunal, failed to observe the terms of the lease, probably committed a criminal offence (on the evidence supplied by the Applicant only), demanded monies without foundation and have even issued unwarranted court proceedings.

21. The Applicant has also provided evidence that she now suffers from clinical depression and the Tribunal can only surmise that this experience is likely to have contributed to that situation.

Costs and fees

22. It is the Tribunal's view that it is just and equitable to make an order under Section 20C of the 1985 Act preventing the recovery of the Respondents' costs of representation before this Tribunal as part of any service charge demand and to order the Respondents jointly and severally to reimburse the Applicant for the fee of £90.00 she has had to pay to the Tribunal.

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Bruce Edgington
Regional Judge
23rd October 2014