



471

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

Case Reference : CAM/22UG/LSC/2014/0097

Property : 41 Wellesley Road, Colchester, Essex CO3 3HE

Applicant : Mr Mark Griffin-Sherwood

Respondent : Moreland Estate Management

Application : Application to determine the reasonableness of service charges pursuant to s27 of the Landlord & Tenant Act 1985, and to determine the reasonableness of the 'RTM handover charge' pursuant to section 88 of the Commonhold & Leasehold Reform Act 2002

Tribunal Members : Judge Reeder
Mr Gerard Smith MRICS FAAV (valuer member)
Ms Cheryl St Clair MBE BA (lay member)

Date of application : 12th September 2014

Directions issued : 16th September 2014

Date of inspection : 25 November 2014

Date of hearing : 25 November 2014 (Holiday Inn Express, Colchester)

Date of Decision : 25 November 2014

Date Written : 1 December 2014

DECISION

DECISION

Handover fee

1. The Tribunal determines, pursuant to section 88 of the Commonhold & Leashold Reform Act 2002, that the RTM handover fee of £500 + VAT is not a reasonable charge on the evidence and information before it. A sum of £50 + VAT is reasonable and payable.

Audit & accountancy fee

2. The audit & accountancy fee of £225 is not challenged. It is reasonable and payable.

Buildings insurance

3. The Tribunal determines that the service charge of £959.83 in respect of the cost of buildings insurance is reasonable and payable.

Cleaning & gardening

4. The Tribunal determines that the service charge of £249.99 in respect of cleaning and gardening costs is reasonable and payable.

Drain clearance

5. The Tribunal determines that the service charge of £95 in respect of drain clearance work is reasonable and payable.

General repairs & maintenance

6. The Tribunal determines that the service charge of £475 in respect of general repairs and maintenance is not reasonable and is not payable. No service charge is payable in respect of the same.

Window cleaning

7. The Tribunal determines that the service charge of £60 in respect of window cleaning is not reasonable and is not payable. No service charge is payable in respect of the same.

Management fee

8. The Tribunal determines that the management fee of £440 is not reasonable, and further determines that a sum of £100 is reasonable and is payable.

Accrued expenditure

9. The figure of £825 notified by the respondent as 'accrued expenditure' appears to comprise service and administration charges. In such circumstances the respondent should re-calculate that sum having regard to the Tribunal's determinations relating to the component service and administration charges.

Service charge refund

10. The service charge refund of £302.94 relates to the monthly instalment payment made by the applicant in April 2014, being the RTM transfer month which transfer was completed on 14 April. In such circumstances the respondent should re-calculate that sum having regard to the Tribunal's determinations relating to the component service and administration charges.

Transfer balance from the service charge fund

11. The transfer balance of £3018.53 in the service charge fund remitted to the RTM by MEM on 25 July should be re-calculated by MEM having regard to the Tribunal's determinations relating to the component service and administration charges.

Costs of the proceedings before the Tribunal

12. The Tribunal has considered the lease of flat 2 and determines that it provides no basis for the respondent to seek to recover any costs of and occasioned by these proceedings. In any event, given its wholesale failure to engage with these proceedings, it cannot properly be said that any costs have been incurred.
13. The Tribunal makes an order, pursuant to Rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, requiring the respondent to reimburse the applicant for the £125 application fee and £190 hearing fee he has paid.

REASONS

The application, parties & property

14. No. 41 Wellesley Road, Colchester, Essex CO3 3HE is a 4 storey house converted to provide 4 self contained flats within the building and which are numbered 1-4 respectively. The applicant is the leasehold owner of flat 2.
15. The landlord and owner of the building is Chancery Lane Investments Ltd ('CLI'). The building was managed by Moreland Estate Management ('MEM') until 14 April 2014 when the right to manage was acquired by 41 Wellesley Road RTM Company Ltd ('WRRTM') following an application brought pursuant to Part 2 of the Commonhold & Leasehold Reform Act 2002. As a result, WRRTM have appointed Messrs Block Managers Ltd as managing agent for the building.
16. Mr Laurence Freilich is the managing director of MEM, and also of CLI. The Hendon office of MEM is at 5 Sentinel Square, Hendon, London NW4 2EL. This is also the registered office of CLI. This address has been used by the applicant and by the Tribunal to send the documents generated by the proceedings before the Tribunal.
17. This application is brought by Mr Mark Griffin-Sherwood. He is the leasehold owner of flat 2. He is a director of WRRTM. He has told the Tribunal that he

pursues the application on behalf of all the lessees of flats in 41 Wellesley Road. However, there is no evidence or information before the Tribunal to confirm the instructions and/or consent of those other lessees to that effect. The Tribunal therefore treats that as an application by Mr Griffin-Sherwood on his own account as leasehold owner of Flat 2. Given that the service and administration charge liability of the lessees of the four flats in the building is 1/4 respectively the determinations made by the Tribunal should be of assistance to all.

18. The application was received by the tribunal on 12 September 2014. That application challenges a number of the service and administration charges arising during the 2014 accounting year which, due to the RTM transfer, runs from 1 January to 14 April 2014. Annual accounts for that period prepared for MEM by LB Ladenheim ACA CPA are before the Tribunal.
19. Regional Judge Edgington issued a directions order on 16 September 2014. The applicant has complied with those directions. The respondent was directed to file and serve a statement of case by 17 October, all documents relied upon by 24 October, and any witness statements by 24 October. It has not complied with those directions.

The inspection

20. The Tribunal has inspected the external parts of the building together with the retained communal internal parts. We have also inspected the reasonably sized (approx 80ft x 18ft) rear garden and viewed the small front garden. We have been accompanied by the applicant who has kindly arranged access to the rear through the ground floor communal areas. No representative of either MEM or CLI has attended the inspection.

The hearing

21. Mr Griffin-Sherwood has attended and represented himself. No representative of either MEM or CLI has attended the hearing. The applicant has provided an indexed 69 page hearing bundle which includes a useful Scott Schedule style document which summarises the basis for challenge for each of the service

charges challenged. No evidence or information has been provided by or for MEM or CLI.

22. The applicant is clear that MEM and Mr Freilich are well aware of these proceedings. The Sentinel Square address used by the applicant and by the Tribunal to send the documents generated by the proceedings before the Tribunal is both the local (Hendon) office of MEM and the registered office of CLI. Mr Freilich is the managing director of MEM, and also of CLI. In the circumstances the Tribunal is satisfied that reasonable steps have been taken to bring the proceedings to the notice of MEM, CLI and Mr Freilich. The Tribunal has had regard to Rules 3 and 6 of The Tribunal Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013 and has determined that it is appropriate to proceed with the hearing notwithstanding the respondent's failure to attend and failure to provide any evidence or information in response to the Directions order. In those circumstances the Tribunal has been particularly careful to comprehensively scrutinise the challenges pursued by the applicant.

The lease

23. The Tribunal is provided with a copy of the lease for flat 2. Covenant 2(2)(a) imposes a 1/4 contribution in respect of the costs of insurance (2(2)(a)(i)), maintenance, repair, renewal and cleaning of the building (2(2)(a)(iii)), garden maintenance (2(2)(a)(v)), and the managing agents fees (2(2)(a)(viii)). Covenant 2(2)(b) provides for a payment on account due on 1 January and 1 July, and each being 50% of the previous year's actual service charge. Covenant 2(2)(b) provides for a certified actual annual actual charge by 31 December, together with a balancing charge or credit to the service charge fund.
24. The applicant confirms that he does not challenge liability to pay in respect of the service charges challenged, but does challenge the reasonableness of the same.

The law

25. The *Landlord & Tenant Act 1985* as amended by the *Commonhold & Leasehold Reform Act 2002* sets out the Tribunal's jurisdiction to determine liability to pay service charges. *Section 27A(1)* of 1985 Act provides as follows -

An application may be made to a leasehold valuation 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 is payable.*

26. *Section 18* sets out the meanings of 'service charge' and 'relevant costs'.

27. *Section 19* sets out that jurisdiction to limit service charges to those relevant costs which are reasonably incurred and to those which arise from works and services of a reasonable standard.

28. *Section 20C* sets out the jurisdiction, where the tribunal considers that it is just and equitable to do so, to grant an order providing that all or any of the costs incurred by the landlord in connection with proceedings before this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessee or any other person or persons specified in the application.

29. *Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002* sets out the Tribunal's jurisdiction to determine the payability and reasonableness of administration charges. *Section 5(1) of Part 1 to Schedule 11* provides -

An application may be made to a leasehold valuation tribunal for a determination whether an administration 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.*

30. *Section 1* provides a definition of 'administration charge'. *Sections 2 & 3* provide that a variable administration charge is payable only to the extent that the charge specified in lease is reasonable, that the formula specified for determining the charge is reasonable, and that amount of the charge is reasonable.
31. *Section 88(1)(a),(b) of the Commonhold & Leasehold Reform Act 2002* provides that a RTM company is liable for reasonable costs incurred by a person who is a landlord under a lease of the whole or any part of any premises, or a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises, in consequence of a claim notice given by the company in relation to the premises.
32. *Section 88(2) of the 2002 Act* provides that any costs incurred by such a person in respect of professional services rendered to him by another are to be regarded as reasonable only if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.
33. *Section 88(4) of the 2002 Act* provides that any question arising in relation to the amount of any costs payable by a RTM company shall, in default of agreement, be determined by a leasehold valuation tribunal.

Discussion & determinations

Handover fee

34. The applicant contends that it paid the fee demanded of £500 + VAT in contemplation of the respondent complying with its duty to provide reasonable handover information to the RTM pursuant to section 93 of the 2002 Act, but that the respondent has failed to do so. This is borne out by the email correspondence between the RTM and its management agent and Mr Freilich which is included in the bundle between pages 40-49. This culminated in a letter dated 25 June 2014 (pages 50-51 of the bundle) which raises issues about

the accounts and the accrued service charges in the fund. That letter received no response. In an email dated 23 September Mr Freilich stated in terms "I will sending a full handover pack in the post in the coming days". The applicant is sure that this was never received. Earlier emails from Mr Freilich illustrate a rather unhelpful approach to providing the required information. Some information has been provided. Some costs will have been incurred by this process. However, the evidence and information before the Tribunal suggests that £500 + VAT is not a reasonable costs for the professional services involved in that process. The Tribunal, doing the best in can in the circumstances and on the information and evidence before it, determines pursuant to section 88 of the Commonhold & Leasehold Reform Act 2002 that the RTM handover fee of £500 + VAT is not a reasonable charge and that a charge of £50 + VAT is reasonable and payable.

Audit & accountancy fee

35. The audit & accountancy fee of £225 is not challenged. It is reasonable and payable.

Buildings insurance

36. The applicant challenges the charge of £959.83 on the basis that the RTM had by letter dated 13 March (page 59-61 of the bundle) requested details of the existing buildings insurance cover arranged by MEM prior to the RTM transfer but received no response. He states that, as a result, the RTM obtained its own buildings insurance cover from the RTM transfer in April 2014. He is unable to confirm who the insurer is, nor the scope of the cover, nor the cost of the same. The Tribunal is mindful that the 2014 service charge account includes this charge as an actual cost incurred in the sum claimed. It is not known whether it was an annual policy but that might reasonably be assumed. It is not known whether it had any redemption provision, nor redemption value/discount and so the Tribunal is not minded to presume that it did. The Tribunal takes the view that the respondent's failure to confirm the insurance position is in reality a management failure and best considered under the issue of managing agents fees. In the circumstances the Tribunal determines that the charge of £959.83 is reasonable and payable.

Cleaning & gardening

37. The applicant contends that this was done by an employee of MEM and believes that they did not attend after 17 March 2014 (being the date of the last entry on MEM log posted in the communal hallway a copy of which is at page 66 of the bundle). It is accepted that this charge covers the cleaning of the internal common parts of the 4 storey house seen on inspection together with the small front and more generous rear garden also viewed on inspection. It is apparent from the service charge accounts (bundle page 55) that the previous full year charge was £999.96. The applicant confirms that previous years had produced a similar full year charge. He accepts that the £249.99 charge for 2014 equates to approximately a quarter annual charge. Having regard to the evidence and information before it the Tribunal determines that the service charge of £249.99 in respect of cleaning and gardening costs is reasonable and payable.

Drain clearance

38. This relates to the drain to the rear of the property at lower ground floor level outside of the basement flat. The applicant argues that drain clearance was or should have been carried out by the MEM cleaning/gardening operative without levying any additional charge particular to this task. It is apparent from the MEM log (page 66 of the bundle) that something was done to that drain on or about 17 March. He confirms that the basement flat was not occupied that that time. The applicant states that he believes it was rodded and confirms that there has been repeated blockages of that drain. On the evidence and information before the Tribunal it is likely that the MEM operative attended to find that drain blocked and flooding directly outside of the rear door to the vacant basement flat. It is clear that something was done to remedy that. It is likely that it was rodded. Such work cannot realistically be described as falling within the separately charged cleaning and gardening duties. The 2014 service charge account includes a charge of £95 for such a job. This is not an unreasonable sum. Accordingly, the Tribunal determines that the service charge of £95 in respect of drain clearance work is reasonable and payable.

General repairs & maintenance

39. This charge of £475 in the 2014 service charge account appears to relate to a responsive repair or repairs. The applicant is adamant, having checked with the occupiers of the 4 flats, that the only repair carried out during 2014 was a very minor patch repair in March 2014 when two very small holes to the ground floor hallway ceiling were caused by a tenant moving out. This correlates with an entry in the MEM log (page 66 of the bundle) and can be seen in photographs before the Tribunal (page 67 of the bundle). Despite ample opportunity to provide evidence of what this charge relates to the respondent has not done so. In the circumstances the Tribunal finds that the charge does indeed relate to this work to the ground floor hallway ceiling. That work is clearly minor to the point of being minimal. It comprises providing a very small amount of filler to two very small areas without any more extensive report or any allied redecoration. It does not merit any charge beyond the cleaning charge already levied in respect of the MEM operative's periodic visits. Accordingly, the Tribunal determines that the service charge of £475 in respect of general repairs and maintenance is not reasonable and is not payable. In the circumstances and given the paucity of evidence to support any charge no service charge is payable in respect of the same.

Window cleaning

40. The applicant contends that no window cleaning was carried out by or for MEM during 2014. He confirms that a contractor attended once in June 2014 unaware that MEM no longer managed the building but did not carry out any work. The communal locks had been changed and so he could not have gained access to the rear. Occupiers would have noticed someone washing their front windows and did not. It is apparent on any account that MEM did not manage the property beyond 14 April 2014 and so any wasted cost of attendance in June 2014 is due to their failure to notify their window cleaning operative/contractor. In the circumstances the Tribunal determines that the service charge of £60 in respect of window cleaning is not reasonable and is not payable. No service charge is payable in respect of the same.

Management fee

41. The applicant argues that the charge of £440 is unreasonable. He states that, after MEM became aware of the RTM application in late 2013 they "disengaged" from any real management of the building and only did the very basics required. It is apparent from the 2014 service charge account that the charge is half of the 2013 full year charge of £880 and he argues that MEM only managed for 3.5 months (1 January to 14 April 2014). He further argues that, as WRRTM have been able to engage Block Managers Ltd for £600 pa (£150 per unit) this is evidence of a local going rate applicable to this building.
42. The Tribunal agrees that the charge is unreasonable in the circumstances. It must therefore do the best it can to determine a reasonable charge as there was clearly some management undertaken until the RTM transfer. The RICS Service Charge Residential Management Code provides as good practice that management fees be calculated as a fixed charge per unit. This is a 4 storey house in Colchester converted to provide 4 residential units. It is a relatively simple building in terms of management with no lifts nor extensive services beyond a fire alarm system in the internal common areas. The management market tends to take a broad approach to arriving at a local going rate for management.
43. Having regard to the evidence and information before it and applying its own knowledge of local market rates the Tribunal determines that a charge of in the region of £700 pa (£175 per unit) would be a reasonable charge for this building.
44. The building was only under management by MEM for 103 days in 2014 (1 January to 14 April) and so an annual charge of £700 (ie, £1.92 per day) will produce a management charge of £197.53 for 2014.
45. However, the Tribunal is mindful of the applicant's evidence that in 2014 MEM "disengaged" from any real management of the building and only did the very basics required as they were aware the RTM application was proceeding to completion in April 2014. This does appear to be borne out by the evidence and information before the Tribunal. The failure to provide information confirming

the buildings insurance cover, which any lessee is entitled to regardless of whether a RTM application is extant or not, is one example of management failings. Another is the failure to provide any window cleaning in 2014. Perhaps the most serious is the failure of MEM or CLI to properly respond to the electrical supply and fire safety issues/hazards notified to it by Colchester Borough Council in its letter dated 24 January 2014 (pages 68-69 of the bundle). The council received no reply. Nothing was done to rectify the hazards identified. It was left to WRRTM to carry out the required works after they acquired the right to manage in April 2014.

46. The Tribunal determines that the management fee of £440 is not reasonable, and further determines that, having regard to the information and evidence before it, a sum of £100 is reasonable and is payable.

Accrued expenditure

47. The figure of £825 notified by the respondent as 'accrued expenditure' appears to comprise service and administration charges. In such circumstances the respondent should re-calculate that sum having regard to the Tribunal's determinations relating to the component service and administration charges.

Service charge refund

48. The service charge refund of £302.94 relates to the monthly instalment payment made by the applicant in April 2014, being the RTM transfer month which transfer was completed on 14 April. In such circumstances the respondent should re-calculate that sum having regard to the Tribunal's determinations relating to the component service and administration charges.

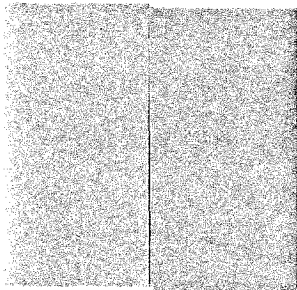
Transfer balance from the service charge fund

49. The transfer balance of £3018.53 in the service charge fund remitted to the RTM by MEM on 25 July should be re-calculated by MEM having regard to the Tribunal's determinations relating to the component service and administration charges.

The costs of the proceedings before the Tribunal

50. The applicant pursues an application pursuant to s20C of the Landlord & Tenant Act 1985 for an order that the respondent's costs of and occasioned by this application before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the applicants in this or any future service charge accounting year. The Tribunal has considered the lease of flat 2 and determines that it provides no basis for the respondent to seek to recover such costs. In the event it did, then having regard to the issues raised on the application, the determinations made herein and the circumstances and history outlined at the hearing the Tribunal would have found it to be just and equitable to grant an order pursuant to section 20C of the Landlord & Tenant Act 1985 such that the respondent's costs of and occasioned by this application before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the applicants in this or any future service charge accounting year. In any event, given its wholesale failure to engage with these proceedings, it cannot properly be said that any costs have been incurred.
51. The applicant further applies for the £125 application fee and £190 hearing fee he has paid. Rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 provides that the Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor. Given the respondent's wholesale failure to comply with the Regional Judge's Directions Order dated 16 September 2014 or otherwise engage with the applicant on the issues in dispute either prior to or within the proceedings it is self evident that the applicant was forced to issue this application and pursue it to a final hearing. Having regard to this procedural history and to the determinations made on the issues raised on the application the Tribunal determines that it is just and equitable to make an order requiring the respondent to reimburse the applicant the £125 application fee and £190 hearing fee.
52. The applicant further applies for his costs and expenses incurred in pursuing these proceedings. He states they are approximately £250 comprising

approximately £150 disbursements in preparing the bundles etc and approximately £100 for his own time spent preparing the case. He has no time recording analysis nor receipts for disbursements. The Tribunal can make such an order pursuant to section 1 of the Litigants in Person (Costs & Expenses Act) 1975. However, whilst the charges challenged in respect of repairs & maintenance, window cleaning and management fees have been established, those relating to buildings insurance, cleaning & gardening, and drain clearance have been determined to be reasonable and payable in the sums claimed by the respondent. In the circumstances the Tribunal do not consider it just and equitable to award him costs and expenses which are in any event not sufficiently detailed.



Stephen Reeder
Judge of the First Tier Tribunal
Property Chamber