



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

Case Reference : CHI/00LC/LSC/2013/0123
CHI/00LC/LAC/2013/0020

Property : 79b High Street, Rochester, Kent,
ME1 1LX

Applicant : Mart Developments Limited

Representative : Ms Slack, Director

Respondent : Mr E Chapman

Representative : No attendance

Type of Application : s27A 1985 Act, Sched 11 2002 Act

Tribunal Members : Judge D Dovar
C Harbridge

**Date and venue of
Hearing** : 30th January 2014, Chatham, Kent

Date of Decision : 11th February 2014

DECISION

1. These are two related application in respect of service and administration charges.
2. The Applicant seeks a determination on the payability of service charges for the years ending 2010 to 2013 and for estimated service charges for the year ending 2014. There is also an application for a determination of administration charges in the sum of £1,263.90 which, save for £120 legal fees, are said to be for interest due.
3. By a directions order dated 6th November 2013, the Respondent was given until 4th December 2013 to provide a written statement setting out any points in dispute. The Respondent has not provided any such documentation either by 4th December 2013 or to date.
4. Although the Respondent has not resided at the Property for a number of years, in May 2012, in response to demands being sent to Mann & Countrywide, who the Applicant had been informed were acting as his agents, he sent a cheque for £400 to the Applicant with the promise that the rest would come. The Applicant informed us that the applications and the previous demands had been sent both to Mann & Countrywide as well as to the Property.

The Property

5. The Property was one of three flats in a period building above a restaurant. It is timber framed and clad with both brick and timber elevations beneath a pitched tiled roof.

Service Charges, s27A

6. The Applicant sought a determination of the service charges payable for the years ending 2009 to 2013 on the basis of expenses actually incurred and for the estimated charges for the year ending 2014.
7. The Applicant informed the Tribunal that each September each tenant would be sent the breakdown of actual expenditure and a demand (if appropriate) for any shortfall as well as the estimated expenditure for the

forthcoming year with a demand for half yearly payments based on that expenditure, to be paid in March and September. The Tribunal was informed that each demand was accompanied by a summary of tenants' rights and obligations.

8. As the Respondent had not played any part in these proceedings, there was no specific challenge to the sums claimed. However, on reviewing the lease the Tribunal was concerned that it made no provision for either a reserve fund or for management charges. The Tribunal raised these concerns with the Applicant who was unable to point out any provision in the lease which allowed for these sums. Accordingly, the Tribunal disallows the sums that have been claimed for these items; both being £600 per annum.
9. The Tribunal considers that the remainder of the incurred expenditure is due and payable and makes a determination to that effect. The Respondent pays a third of the total service charge. Therefore the following service charges are payable:
 - a. Year end September 2010: £362.58. The Respondent's share being £120.86, plus insurance of £226.38 totals £347.24;
 - b. Year end September 2011: £370. The Respondent's share being £123.33, plus insurance of £172.38 totals £295.71;
 - c. Year end September 2012: £385. The Respondent's share being £128.33, plus insurance of £167.63 totals £295.96;
 - d. Year end September 2013: £536. The Respondent's share being £178.67, plus insurance of £217.63, totals £396.30.
10. In respect of the estimated sums for the year ending 2014, the largest item was £10,000 for 'external' work which the Applicant clarified was for redecoration and maintenance of the external parts of the building. As this was for more than £250 per tenant, the Tribunal were concerned that the Applicant had failed to carry out the statutory consultation procedures as required by s20 Landlord and Tenant Act 1985. This

concern was raised with the Applicant who was unaware of these provisions and when taken through the legislation, accepted that no notice of intention had been served. Although it appears that the Applicant had consulted the other two flat owners in the building, the Tribunal did not consider that the consultation procedures had been adhered to and therefore does not allow this sum to be recovered under the estimated expenditure.

11. Therefore in relation to the estimated expenditure, the Tribunal allows all the items, save for externals, management fees and reserves. The total being £640. The Respondent's share being £213.33.

Administration Charges, Sched 11

12. There were two items which the Applicant sought to recover as administration charge under the lease.
13. The first was interest. The lease provides for interest to be recovered at a rate of 16% in default of payment. Whilst the Tribunal was a little concerned that this was too high, there was no challenge and the lease expressly provided for this rate. The Respondent had failed to pay the sums due with respect of service charges as set out above and therefore interest is payable. The Applicant had produced figures for the Tribunal which charged interest from 14 days from the date of demand when the lease provided for 21 days. Subsequent to the hearing, the Applicant provided further interest calculations on the basis that the sums fell due after 21 days. However, in light of the determination that not all sums claimed were payable, the interest has to be reduced. Further, the Tribunal does not consider that interest is payable on a compound basis. Taking the figures determined above, the dates that insurance became payable as advised by the Applicant, an interest rate of 16% per annum running from 21 days of demand, the Tribunal considers that the following amounts are payable as at 1st February 2014:

- a. For year end 2010 (total £120.86 plus insurance £226.38):

- i. £60 from April 2010 (3 years 10m): £36.80
 - ii. £60 from October 2010 (3 years 4m): £32
 - iii. £226.38 from December 2009 (4 years 3m): £153.93
 - b. For year end 2011 (total £123.33 plus insurance £172.38):
 - i. £61.50 from April 2011 (2 years 10m): £27.88
 - ii. £61.50 from October 2011 (2 years 4m): £22.96
 - iii. £176.38 from December 2010 (3 years 3m): £91.71
 - c. For year end 2012 (total £128.33 plus insurance £167.63):
 - i. £64 from April 2012 (1 year 10m): £18.77
 - ii. £64 from October 2012 (1 year 4m): £13.65
 - iii. £167.63 from December 2011 (2 years 3m): £60.35
 - d. For year end 2013 (total £178.67 plus insurance £217.63):
 - i. £89 from April 2013 (10m): £11.87
 - ii. £89 from October 2013 (4m): £4.75
 - iii. £217.63 from December 2012 (1 year 3m): £43.53
- 14. From this needs to be deducted interest to account for the fact that £400 was paid in May 2013. Accordingly £48 is deducted.
- 15. The total interest payable is therefore £470.20.
- 16. The second charge was £120 for legal costs. The Applicant stated that this sum was in respect of solicitor's costs for looking at the papers and providing some calculations for interest. The Applicant was not able to point out how these sums were recoverable under the terms of the lease and in any event the Tribunal did not consider that this sum was reasonable having regard to the fact that the interest calculations were

on the wrong basis and the solicitor seems to have failed to advise as to the reserve fund and management fees. Accordingly the Tribunal determines that this sum is not payable.

Conclusion

17. The Tribunal therefore determines that the total service charges payable are £1,553.54 (£400 of which has already been paid) and the total administration charge payable is £471.44.
18. Finally, the Applicant sought the reimbursement of the application fee and hearing fee on the basis that had the Respondent engaged, they would probably had been able to come to some arrangement and avoid the need for an application. The Tribunal considered that the Respondent's failure to engage had caused this application and therefore makes an order that the Respondent do reimburse the Applicant the sum of £440 by 4pm on 25th February 2014.



Judge D Dovar

Chairman

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 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.