



Case Reference : **CHI/21UD/LAC/2013/0019**

Property : **Flat 7, Furze Croft, Gresham Way, St Leonards, East Sussex TN38 0UF**

Applicant : **Ms Julie Minter**

Representative : **In person**

Respondent : **Furze Property Management Ltd**

Representative : **Mr Catterall (director)**

Type of Application : **Administration charges, Schedule 11 of the Commonhold and Leasehold Reform Act 2002**

Tribunal Members : **Judge A Johns
Mr R A Wilkey FRICS (surveyor member)
Mr P A Gammon MBE BA (lay member)**

Date and venue of Hearing : **7 February 2014, Bexhill Town Hall**

Date of Decision : **27 February 2014**

DECISION

Introduction

1. The applicant, Ms Minter, as the lessee of Flat 7, Furze Croft, Gresham Way, St Leonards, East Sussex TN38 0UF, seeks a decision of the Tribunal on the payability of charges made by her landlord, the respondent, Furze Property Management Ltd (“Furze”). She does so under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 which gives the Tribunal jurisdiction in respect of administration charges.

2. Furze does not dispute that the charges complained of are administration charges. They are sought by Furze as amounts payable “in connection with a breach (or alleged breach) of a covenant or condition in [the tenant’s] lease” (para.1(1)(d) of Schedule 11). They total £3124.18 and come under four headings:

2.1 Legal expenses of £1727.20

2.2 Building repairs of £824.36

2.3 Charges for use of the laundry room in the sum of £93.07.

2.4 Administration and miscellaneous costs of £479.55.

3. Ms Minter says that those charges are not payable, either on the basis that they are not within the terms of her lease or because they are unreasonable.

Lease and statutory provisions

4. Ms Minter’s lease of Flat 7 is dated 15 July 1993 and includes the following covenant of a sort often found in leases and which is the covenant principally relied on by Furze:

“To pay to the lessor all costs charges and expenses including solicitors’ counsel’s and surveyors’ costs and fees at any time during the said term reasonably incurred by the lessor in or in contemplation of any proceedings in respect of this lease under section 146 and 147 of the Law of Property Act 1925 or any re-enactment or modification thereof including in particular all such costs charges and expenses of and incidental to the preparation and service of a notice under the said sections and of and incidental to the inspection of the demised premises and the drawing up of schedules of dilapidations such costs charges and expenses as aforesaid to be payable

notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court” (clause 3(9)).

5. Sections 146 and 147 of the 1925 Act referred to in that covenant are concerned with the forfeiture of leases.

6. It is also important to note that (a) the rights granted with the flat include the right to use the utility room for the purposes of laundering and drying clothes (Second Schedule, para.9), and (b) the lessee is liable for a share of common expenditure by way of service charge including the cost to the landlord of providing services to the utility room (Sixth Schedule, para.4).

7. Furze also relied at the hearing on one of the regulations contained in the Fourth Schedule, namely “To pay the cost of making good any damage at any time done by the tenant or any person claiming through the tenant or his or their servants agents licensees or visitors to any part of the building or to the passages landings stairs or entrance halls thereof or to the personal property of the tenant or occupier of any other apartment in the building by the carrying in or removal of furniture or other goods to or from the demised premises or otherwise howsoever” (para.22). The lease includes a covenant by the lessee to observe and perform the regulations (clause 4(5)).

8. As well as giving the Tribunal jurisdiction to determine the payability of administration charges, Schedule 11 of the 2002 Act also provides that a variable administration charge, the definition of which includes the charges in this case, is payable only to the extent that the amount is reasonable (para.2 of Schedule 11).

Procedure

9. Directions were given at a case management hearing on 21 November 2013. Statements of case were submitted by both sides in accordance with those directions; Ms Minter’s statement in response to Furze’s case being dated 13 December 2013 and Furze making a written reply on 6 January 2014.

Inspection

10. The Tribunal inspected the building immediately prior to the hearing. The inspection was attended by Ms Minter, accompanied by her husband Mr Copland, as well as by Mr Catterall of Furze together with another director, Mr Jenner.

11. Furze Croft is a substantial Victorian building which has been converted into 8 self-contained flats. It is an imposing and attractive detached property with brick elevations under a multi-pitch tiled roof with various dormers and several substantial brick chimney stacks. The grounds which surround the building are attractive and appear to be well maintained. Electrically operated gates at the entrance open to a pebble drive which, together with a concrete area at the rear, provide on-site car parking for the occupiers of the flats.

12. The Tribunal's attention was drawn by the parties to particular features of the building relevant to the dispute:

12.1 The pebble drive.

12.2 Dustbins at the rear. Although there are eight flats, there are only six bins for household rubbish and four for re-cycling material.

12.3 The utility room, off the common ground floor entrance hall, in which each flat owner is allowed to keep a washing machine and drier.

12.4 The ceiling in the living room of flat 6, being Mr Catterall's flat. He pointed out three hairline cracks to the ceiling and stated that, from time to time, plaster had fallen to the floor of the room. It was plain that the room has not been decorated for many years.

12.5 The floor coverings in the hall and living room of Flat 7 which lies immediately above Mr Catterall's flat. The Tribunal noted and was able to make a limited inspection of the thick insulation that had been placed beneath the fitted carpets in these rooms.

12.6 The push light switches in the upper common stairway and landing.

Hearing

13. The hearing followed the inspection. Mr Catterall represented Furze. Ms Minter represented herself. Mr Copland and Mr Jenner were also present.

14. Mr Catterall began by requesting that documents included in the application bundle prepared by Ms Minter be removed. These included witness statements which apparently were not seen by Furze until the bundle was provided on or about 27 January 2014. The Tribunal indicated that they would not be removed but that the

Tribunal would have regard to their lateness in deciding what, if any weight, could be placed on their contents. In the event, the Tribunal has not relied on them in arriving at its decision.

15. Both sides addressed the Tribunal on each of the items charged by Furze as listed in Furze's statement on page 27 of the bundle.

16. It is convenient to set out Furze's justification of each charge and the Tribunal's decision on each item in turn.

Discussion of the charges

(a) Legal expenses totalling £1727.20

17. The first item is solicitors' costs of £1132.20. It was supported by an invoice dated 16 July 2013 from Funnell & Perring, solicitors in Hastings. The invoice recorded that it was for work done between 2 April 2013 and 16 July 2013 and related to "problems that you are having with lessees ... of Flat 7". Mr Catterall relied on clause 3(9) of the lease (set out at para.4 above). Ms Minter said that these costs were not recoverable under that clause. The Tribunal agrees. The Tribunal pointed out to Mr Catterall that clause 3(9) was concerned with costs incurred in contemplation of forfeiture. Mr Catterall did not suggest that there was or had been any intention to forfeit. On the contrary, he told the Tribunal that "we are not talking about forfeiture here". That was reflected in the fact that since April 2013, when this legal work began, Furze had not sought a determination of breach of covenant under s.168 of the 2002 Act or taken any other steps in connection with forfeiture. In those circumstances, the Tribunal concludes that the costs claimed were not incurred in contemplation of proceedings under s.146 of the 1925 Act and so are not payable by Ms Minter under clause 3(9).

18. The second item is solicitors' costs of £120. This was supported by an invoice dated 24 July 2013 from Keene Marsland, solicitors in Tunbridge Wells. Mr Catterall again relied on clause 3(9) of the lease. But it emerged that the work done by Keene Marsland was the giving of a second opinion on the questions on which Funnell & Perring had advised. It must follow, and the Tribunal determines, that these costs were likewise not incurred in contemplation of proceedings under s.146 of the 1925 Act and so are not payable by Ms Minter.

19. The third item is in the sum of £475. As explained by Mr Catterall at the hearing, this charge represents 19 hours of his time at £25 an hour dealing with disputes with Ms Minter since May 2008. Quite apart from the point that, again and for the reasons given above, any such costs incurred would not come within clause 3(9), it became clear that no such cost has in fact been incurred. Mr Catterall told the Tribunal that he is paid nothing by Furze. As he put it in his closing remarks, "I come for free". The Tribunal is therefore satisfied that this charge is not payable by Ms Minter.

b) Building repairs totalling £824.36

20. The fourth item was the cost of two replacement light switches, being £39.96, plus a charge of £50 for Mr Catterall's time. Mr Catterall said this charge was sought under the regulation set out at para.7 above, the light switches having been damaged by Ms Minter's subtenants when moving their furniture in. Ms Minter's case was that there was insufficient evidence of this damage; Mr Catterall not having retained the damaged switches or provided photographs of them. Having heard both sides, the Tribunal finds that the light switches were damaged by the incoming subtenants. The absence of the damaged switches or photographic evidence does not point to there being no such damage. Such evidence is hardly to be expected for such a small job. And, having inspected the building, the Tribunal is of the view that damage to the light switches when moving furniture is inherently likely. The stairway and landing are narrow and the switches stand proud from the wall. The Tribunal determines that the sum of £39.96 is payable. But the charge of £50 for Mr Catterall's time is not. As already noted, no cost is incurred by Furze for his time.

21. The fifth item was a charge of £150 principally for levelling the pebble drive. Mr Catterall said the sum represented three man days of work in raking the pebble drive so as to remove ruts. He complained that the ruts were entirely the fault of Ms Minter's subtenants. It was apparent to the Tribunal on inspection that the pebble drive would be easily rutted when used and would need regular raking. The Tribunal does not accept that the need to rake could be referable to the use of the occupiers of one only of the eight flats. This was not a charge properly made for damage by Ms Minter's tenants. It should have been a cost shared through service charge. This was an example, in the Tribunal's view, of Mr Catterall exaggerating the impact of Ms

Minter's subtenants in an attempt to charge Ms Minter for costs which should have been shared between the flat owners at the very least.

22. 'At the very least' because the next, and a significant item, represented an attempt by Mr Catterall to charge Ms Minter for the cost of works to his own flat. This sixth item was a charge of £582 for the repairing of cracks in and redecoration of the ceiling to Flat 6. It was supported by a contractor's estimate which included the opinion that existing cracking had been made worse by impacts on the floor of Flat 7 above. On being questioned by the Tribunal, Mr Catterall candidly accepted that the cost of repair and redecoration had not been affected by any worsening of the cracks. He would have had to pay £582 to get his ceiling repaired and redecorated in any event. Further, the Tribunal formed the view that Mr Catterall was exaggerating his complaints of the use of Flat 7. The hairline cracking observed by the Tribunal did not correspond with Mr Catterall's description of plaster coming down. And it was plain that thicker than usual insulation had been installed by Ms Minter in a neighbourly attempt to reduce the inevitable transmission of some noise and vibration from Flat 7 to Mr Catterall's flat below. The Tribunal could not be satisfied that any part of the cracking was caused by the occupants of Flat 7. The Tribunal concludes that this charge is not payable by Ms Minter.

(c) Laundry room charges totalling £93.07

23. The seventh item was a charge of £93.07 for the use of water and electricity in the utility room. The justification put forward by Mr Catterall for this charge was that Ms Minter's subtenants had used the laundry room more than the occupiers of other flats. The short answer to this charge is that the lease does not provide for it. The cost of providing services to the utility room is to be shared as part of service charge; that being the effect of the provisions noted at paragraph 6 above. This item is not therefore payable. It is also a further example of Mr Catterall seeking, inappropriately, to lay shared costs at the door of Ms Minter.

(d) Administration and miscellaneous costs totalling £479.55

24. The bulk of this eighth item, being administration and miscellaneous costs totalling £479.55, was made up of charges for Mr Catterall's time. For the reasons already given, the Tribunal concludes that no such costs were incurred by Furze and

that any such costs are not in any event recoverable under the clause relied on, namely clause 3(9), as there was never any intention to forfeit the lease.

25. This item also included the cost of a train fare for Mr Catterall to visit the solicitors and some postage. Again, the Tribunal is satisfied that these costs are not recoverable under clause 3(9) as there was never any intention to forfeit the lease.

26. Finally, a charge was made under this head for taking Ms Minter's dustbin from the rear of the building to the front each week for collection. The Tribunal did not understand how there could be any sensible basis for this charge which was said to be a result of some breach by Ms Minter. The flats did not even each have a particular bin. There were simply six communal bins for the eight flats in the building as apparent to the Tribunal on inspection.

Reasonableness

27. Whilst Ms Minter also challenged the charges as unreasonable, a question of reasonableness is obviously fact sensitive. It would be a wholly artificial exercise to attempt to assess the reasonableness of the charges on the assumption that the conclusions of the Tribunal set out above are wrong in some respect. That the Tribunal does not do so is no indication that the charges were reasonable.

Costs and fees

28. Ms Minter applied by her application form for Furze to pay her costs of the application. At the hearing she explained that she was seeking reimbursement of her fees paid to the Tribunal totalling £315 and payment of costs of advice in the sum of £550.

29. Mr Catterall did not question the figures but said that Furze should not be ordered to pay them.

30. As to the fees of £315, the Tribunal has a discretion under rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to order the reimbursement of fees. That discretion should be exercised in Ms Minter's favour in this case. She has been entirely successful save for a sum of £39.96. Furze should pay her fees.

31. As to the costs of £550, the Tribunal may only order payment of costs where a person has acted unreasonably in bringing, defending or conducting proceedings – see rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. This is a case where, in the view of the Tribunal, there has been unreasonable conduct by Furze. Furze sought to defend charges that were plainly unjustifiable, were the result of exaggeration, and represented an unfair singling out of Ms Minter by Mr Catterall, acting through Furze, because she was his upstairs neighbour. That included an attempt to get Ms Minter to pay the cost of redecorating Mr Catterall's living room. The Tribunal is fortified in its conclusion by a further issue raised in the course of the hearing. In response to Ms Minter's subletting of her flat, Furze has sought to impose a prohibition on any subletting to tenants under the age of 50. This was indicative of Furze's general approach of imposing charges and requirements to the detriment of Ms Minter which find no basis in the lease. The lease does not even require the consent of Furze to subletting of the flat.

32. The amount of costs not being questioned, the Tribunal summarily assesses them in the sum asked, namely £550.

Summary of decision

33. The Tribunal determines for the reasons set out above that the administration charges totalling £3124.18 are not payable by Ms Minter save for the sum of £39.96 in respect of broken light switches.

34. The Tribunal orders that Furze pay to Ms Minter her fees of £315 and her costs summarily assessed in the sum of £550.

Appeal

35. 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.

36. 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.

37. 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.

38. 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.

Judge A Johns (Chairman)

Dated 27 February 2014