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

Case Reference : LON/00AD/LSC/2014/0490

Property : Flat A, 18 Abbey Crescent, DA17
5AY

Applicant : Ground Rents (Regis) Limited

Respondents : Mr James Kevin Doherty & Ms
Kelly Down

Representatives : Mr Green (Solicitor's agent for the
Applicant)
Mr Gingell (Occupant and partner
of Ms Down)

Type of Application : Service and Administration
Charges (Court referral)

Tribunal : Mr M Martynski (Tribunal Judge)
Mr S Mason FRICS FCI Arb
Mr A Ring

**Date and venue of
Hearing** : 8 December 2014,
10 Alfred Place, London WC1E 7LR

Date of Decision : 15 December 2014

DECISION

DECISION SUMMARY

1. As to the sums claimed in the County Court:-
 - (a) In respect of the sum of £649.33 claimed for Service and Administration charges, only the sum of £333.33 is payable by the Leaseholders
 - (b) The legal costs claimed of £844.40, are not payable as Administration Charges by the Leaseholders
 - (c) The further continuing legal costs which were said to be £5,359.00 as at the date of the hearing before the tribunal, are not payable by the Leaseholders

In summary, as to all sums claimed in the County Court (except for interest which is a matter for the County Court) only the sum of £333.33 (in respect of Management Fees and Repairs provision) is payable by the Leaseholders

2. We do not order the Leaseholders to pay any tribunal fees.
3. An order is made that none of the costs incurred by the Applicant in connection with the proceedings before this tribunal are to be demanded from or are payable by the Leaseholders by way of Service Charges.

BACKGROUND

The Proceedings

4. On 24 April 2014 a claim was issued by the Applicant in the Dartford County Court against the Leaseholder Respondents claiming the sum of £1497.57¹ (and continuing legal costs). Ms Down filed a defence to the claim.
5. The proceedings were transferred to this Tribunal by order of D.J. Glover dated 5 September 2014 which is in the following terms:-

The question of the service charges sued for (and that of any other heads of claim within its jurisdiction) is referred to the First-Tier Tribunal Residential Property for determination

¹ This sum includes the court fee of £70.00 and the Solicitor's fixed costs of £80.00 set out in the Claim Form which, according to the Particulars of Claim, are both claimed as an Administration Charge under the lease – see the discussion on this later in this decision

The Building

6. The subject property is a maisonette contained within a purpose built detached building. The remainder of the building consists of two flats at the rear, one at ground level and one at first floor level.
7. There are no common parts to the building. Each unit is accessed directly by its own front door. The front door to the upper flat is at ground floor level.

The lease

8. The Leaseholders' lease is dated 22 December 1994 and is for a term of 99 years from 22 December 1994.
9. The lease provides for a Service Charge to be payable by the Leaseholders and reserves those payments as rent².
10. The ground rent is payable in four quarterly instalments due on 25 March, 24 June, 29 September and 25 December; the landlord may demand a contribution on account of the Service Charge³ and those payments on account are to be made on the same quarter days as the rent payment.
11. The Service Charge is payable by the Leaseholders in respect of;

All costs and expenses reasonably incurred by the Lessor for the purpose of complying or in connection with the fulfilment of its obligations under sub-clauses (1) to (5) of Clause 5 of this lease⁴
12. Clause 5 of the lease contains the landlord's standard obligations to repair, maintain and insure the building.

The Applicant

13. We were told that the correct Applicant in these proceedings and Claimant in the County Court should be Regisport Limited. We were told that an application had been made to the County Court to substitute Regisport for the current Claimant, Ground Rents (Regis) Limited. As at the date of the hearing before the tribunal, the Claimant/Applicant remained as Ground Rents (Regis) Limited.

General

14. We were told that one of the Leaseholder Respondents, Mr Doherty, who is a former partner of Ms Down has not lived in the building for some time. He has taken no part in these proceedings.

² Clause 2

³ Paragraph 5 of the Fifth Schedule

⁴ Fourth Schedule

15. Ms Down was not able to attend the hearing. Her current partner, Mr Gingell, who lives at the building with her, attended the hearing and was able to help the tribunal in considering the case.
16. According to Mr Gingell, until relatively recently, all the occupiers in the building (who had all lived there for some considerable time) effectively managed the Building themselves, organising and carrying out maintenance and improvements between themselves. He said that for many years the leaseholders in the Building had only been asked to pay ground rent and buildings insurance premiums. Mr Gingell was not aware of there having been any external management of the building in the past.

The County Court claim

17. The County Court Claim breaks down as follows:
 - (a) A claim for £649.33 for Service and Administration Charges
 - (b) A claim for legal costs incurred as at the date of the claim and payable under the terms of the lease in the sum of £844.40 '*and continuing to accrue*'⁵.
 - (c) A claim for interest⁶
 - (d) A claim for up to date legal costs said to be payable under the terms of the lease. That claim was set out in the Applicant's Statement of Case⁷ dated 3 November 2014 sent to this tribunal and the costs were said to be £5,359.00.
18. The claim of £649.33 further breaks down as follows:-
 - (a) Quarterly demands on account of Service Charges for March, June, September and December 2013 of £112.50 per demand. These demands are based on a total estimated budget for the building for the year totalling £1350.00 and made up of the following heads of expenditure:-

i.	Accountancy	£150.00
ii.	Fire Risk Assessment	£200.00
iii.	Management Fees	£600.00
iv.	Repairs	£400.00

The Leaseholder's share of this is $1/3^{\text{rd}} = £450.00$ which equates to four instalments of £112.50.
 - (b) An administration fee of £114.00
 - (c) A figure on the Leaseholders' Service Charge account of £85.33 described on the account as;

Balance forward
INV #3 Due 01/02/2013

⁵ See paragraph 10 of the Particulars of Claim and paragraph (iii) of the summary of the claim at the end of the Particulars of Claim

⁶ From the wording of the Particulars of Claim at paragraph 11, this appears to be pursuant to section 69 County Courts Act 1984 and therefore outside of the jurisdiction of this tribunal

⁷ Paragraph 16

The Defence

19. The relevant parts of Ms Down's defence filed in the County Court read as follows;

I have lived at 18a Abbey Crescent for approx nine years. The property is a house at the front and two flats at the back we all have our own separate entrances (no communal areas). There is gravel at the front and gravel at the side and rear which we have all purchased. We have all bought matching double glazing windows and doors. We will keep our entrances clean and weed free. In nine years I have never seen any tradespeople at our property. I feel all this demanding of money with no explanation is terrible. I am a new mother on maternity leave and feel that my home is not mine any more because of all this worry. I can't understand paying £150 for audit and accountancy but £200 for health and safety\ asbestos management what health and safety management, and as far as I am concerned there is no asbestos in the building.

Managing agents fees, what exactly are they managing and why does it needs managing now for £600 when it's never needed managing before.

Repairs and maintenance, they have never repaired anything and as far as I am concerned anything that needs repairing will be covered by the building insurance which each flat/house pays nearly £400 each, over £1000 in all.

I already paid £100 per year ground rent and nearly £400 a year building insurance and now I am being bombarded with letters from Ground Rents (Regis) Ltd trying to bully and threaten me into paying the money for a service that they clearly did not carry out.

.....

Pier management are our agents.

Now this new space company are asking for all these admin charges- Charges for what?

.....

Everything they are asking/Demanding seems unreasonable and unjustified

The sums claimed – evidence and our decisions

Accountancy

20. The Applicant was proposing to have the accounts for the building independently audited at a total cost of £150.00.
21. Evidence was given on behalf of the Applicant by Mr Michael Marsh, an Operations Director employed by Ground Rents (Regis) Limited operating as Haus Management, the managing agents for the building. Mr Marsh told us that Ground Rents and/or Regisport had all their accounts for their various properties audited as a matter of course. However, Mr Marsh said that the landlords were open to objections

from leaseholders⁸. Mr Marsh was unable to say, and there was no documentation to show, whether the leaseholders in the subject building were given the chance to object to the use of independent auditors. Mr Marsh was able to confirm that the basic management fee charged includes putting the accounts together, they are then handed over to the auditors to check.

22. In this building, there were just four items of charge to go into the Service Charge account (insurance being demanded separately by the freeholder). In the circumstances, it seems to us unreasonable for those very simple accounts to be sent to auditors and for the auditors to be paid a fee. The accounts can be perfectly well done by the managing agents as part of their basic service and within their standard annual flat fee for managing the building.
23. We should add that we have had regard to the RICS Code of Management⁹ on the question of accounting which states as follows:-

You should arrange for service charge accounts to be audited annually and for copies to be made available to all those contributing to them where the lease requires this. Otherwise, you should consider the benefits and costs of an audit with regard to the tenants and the property concerned¹⁰

Clearly therefore, the Code anticipates that there are going to be circumstances in which annual auditing of Service Charge accounts will not be appropriate.

24. Accordingly we consider that the Leaseholders' share (£50.00) of the claim on account for this anticipated head of expenditure is not payable by them.

Fire Risk Assessment

25. A sum of £200.00 had been budgeted and demanded on account for a Fire Risk Assessment. Generally, in our experience, such an Assessment is only carried out where there are common parts within a building. There are no common parts in this building. Certainly the relevant legislation¹¹ and the guidance¹² given in pursuance of that legislation does not require such an assessment in a building with no common parts.
26. Mr Marsh had not been to the building and did not have the management file for the building with him. He asserted that a visit had been made to the building this year by someone in his firm but was

⁸ Presumably only where there were four or less dwellings in a building – otherwise auditing would be required by law

⁹ Service Charge Residential Management Code, 2nd Edition - RICS

¹⁰ Paragraph 10.4

¹¹ Regulatory Reform (Fire Safety) Order 2005/1541

¹² Local Government Group Report – Fire Safety in Purpose Built Blocks of Flats – July 2011

unable to confirm when that visit took place or that it did actually occur (for example by reference to a note in a file or other record of a visit). Mr Marsh was unable to give any reason why a fire safety assessment would be needed and went so far as to say to us that a fire risk assessment is possibly not advisable for a property with no common parts.

27. We are bound to conclude therefore that a provision for a Fire Risk Assessment is not reasonable. Accordingly we consider that the Respondent Leaseholders' share (£66.66) of the claim on account for this anticipated head of expenditure is not payable by them.

Management fees

28. We consider that terms of the Fourth Schedule are sufficiently wide to allow the employment of and charging for managing agents (by way of the Service Charge).
29. In this case, regard has to be had to the fact that the freeholder is obliged to maintain and repair the building under the terms of lease. Given this obligation, it is not unreasonable for the freeholder to employ managing agents.
30. We have considered what Ms Down had to say in her defence and of course we heard from Mr Gingell during the hearing that in the past the occupiers of the building had taken care of matters of maintenance and improvement themselves without any assistance of managing agents or any call upon the freeholder.
31. We accept that the current occupiers have managed the fabric of the building and their day-to-day lives in the building perfectly well. However, we cannot prevent the freeholder of the building from managing the building in respect of the matters for which it is liable under the lease. Given the freeholder's obligations under the lease, it could not be said that it is unreasonable for the building to be managed. Who knows, the occupants of the building might change and new occupants may not be so capable of or willing to maintain the building.
32. The next question is whether the amount of the management fee is reasonable. The fee is set at £200 per unit; that is inclusive of VAT. This fee is towards the lower end of the scale of management fees in London. We accept that, so far as the Leaseholders are concerned, the management company appear to do very little for the money. Mr Marsh, beyond telling us that he was sure that visits were made to the building by his company, was not able to give any further information about the management carried out.
33. Whatever pro-active management there currently is, the managing agents have to maintain an office and a file for the building and must have the necessary resources to deal with issues (urgent and routine) arising at the building.

34. We doubt very much whether another agent would be willing to take on the management of this building for less than £600 per annum including VAT.
35. Accordingly for the reasons given above, we find that the management fee (of which the Respondent Leaseholders are liable to pay £200) is reasonable and payable.

Repairs provision

36. The repairs provision of £400 for the entire building is very small by any reckoning. In the hearing Mr Gingell conceded that such a provision appeared to be sensible. Under the terms of the lease, if at the end of the year a leaseholder has paid on account more than has actually been spent on Service Charges, then the excess amount is credited back to the leaseholder at the end of the year.
37. We do not accept that repairs will necessarily be covered by insurance as alleged by Ms Down in her defence. It has to be remembered that under the terms of the lease, repairs includes maintenance. Maintenance will almost certainly not be covered by insurance.
38. We find that therefore the sum of £400 (Leaseholders' share £133.33) is reasonable and payable.

Administration Charge - £114.00

39. This charge was described in the Applicant's Statement of Case as being:-

A standard fee which has been added on to the Respondent's Account due to they having failed to make payment of the service charges.

40. We were not able to consider the substantive issues that would have arisen in respect of this charge because the Applicant was unable to show us a copy of a demand for the charge. Further, there was no evidence as to exactly what the charge was for.
41. An Administration Charge only becomes payable after it has been demanded. In addition, an Administration Charge is only payable when the landlord serves written information in the prescribed form which sets out a leaseholder's rights and obligations¹³ in relation to that charge. Given that there was no evidence as to the service of a demand, it follows that there was no evidence as to the provision, in respect of this demand, of the prescribed rights and obligations in information.
42. The Administration Fee of £114 is therefore not payable by the Leaseholders.

¹³ Paragraph 4, Schedule 11, Commonhold and Leasehold Reform Act 2002

Balancing charge of £85.33

43. No evidence was put forward for this sum other than the Leaseholders' service charge account (referred to earlier in this decision) and a demand which contained the following description:-

Service Charge – 01/02/2013-24/03/13

44. Mr Marsh said in the hearing that it appeared that the charge was an apportioned charge for management fees from when the new management company took over. This cannot be right. An apportioned management fee would only amount to £33.33¹⁴ for the period shown in the statement.
45. There was no other explanation for the charge and nothing in the documents that had been put before us by the Applicant to explain it.
46. It is up to the Applicant to provide basic proof of the items in respect of which it is making a claim. It has failed to do this and accordingly we can only find that the charge is not payable.

Legal fees as claimed in the original County Court claim

47. The legal fees are claimed as Administration Charges. The definition of an Administration Charge and variable Administration Charge¹⁵ is:-

“administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

“variable administration charge” means an administration charge payable by a tenant which is neither—

- (a) specified in his lease, nor
- (b) calculated in accordance with a formula specified in his lease.

48. The claim for costs in the Particulars of Claim is framed as follows:-

The defendant has a contractual liability to pay all costs charges and expenses incurred by the claimant in this claim, in accordance with

¹⁴ Fee of £200 per flat apportioned for two months - £200 / 12 = 16.66 x 2 = 33.33

¹⁵ Paragraph 1, Schedule 11, Commonhold and Leasehold Reform Act 2002

the terms of the lease (as set out above)¹⁶. To date, the legal costs total £844.40. The contractual liability of the defendant to pay all costs charges and expenses is a continuing obligation. As such, legal fees continue to accrue.

49. The claim for costs therefore is quite clearly made as a claim pursuant to the terms of the lease and those costs are therefore clearly a variable Administration Charge. As with the Administration Charge of £114 dealt with above, we were not able to consider the substantive issues that would have arisen on this charge because there was no copy of a demand for those legal costs or any information that may have led us to believe that such a demand had been made. Accordingly, the charges for legal costs pursuant to the lease are not payable.
50. We should point out that had there been a valid demand for these charges, we would then have gone on to consider whether such charges could be claimed under the terms of the lease. Whilst it is not necessary for us to make a decision on that, the question is far from straight-forward and we have doubts that the costs in this case can be claimed under the terms of the forfeiture clause or any other clause in the lease.

Updated legal fees as claimed in the proceedings before the tribunal

51. The same reasoning applies to the further costs of £5,359.00 claimed in the Applicant's Statement of Case in the following way:-

The Respondent has a contractual liability to pay all costs charges and expenses incurred by the Applicant in this claim, in accordance with the terms of the Lease (as set out above). To date, the legal costs total £5,359.00. The contractual liability of the Respondent to pay all costs charges and expenses is a continuing obligation. As such, legal fees continue to accrue.¹⁷

52. Again these charges are not payable because there is no evidence that they have been lawfully demanded. Accordingly, the question whether the lease allows such charges and the question of the reasonableness and proportionality of the costs claimed do not fall to be considered.

Costs and fees

Fees

53. The Applicant requested that we make an order that the Leaseholders pay to the Applicant the sum of £245.00, that being the amount that the Applicant has paid in the way of tribunal fees.

¹⁶ The relevant lease clause quoted in the Particulars of Claim was the forfeiture clause (which is in a standard form) at clause 3(14) of the lease

¹⁷ Paragraph 16 of the Statement of Case

54. We are not willing to make such an order. In these proceedings, the Applicant was claiming just over £6,000 in Service Charges and Administration Charges. We have found just a fraction of that to be payable. On any view therefore the Leaseholders are the clear winners of this dispute and it would be wholly unjust to order them to pay fees.
55. Further, it seems to us that Ms Down made her position very clear in the defence that she filed in the County Court. Had her concerns been addressed and discussed at that time, the matter may well have been amicably settled without the need for the tribunal to be involved.
56. And further still, the Applicant pursued these proceedings in this tribunal without any evidence to either support or explain the majority of items claimed.

Costs

57. It does not appear to us that there is any provision in the lease that would allow the Applicant to place the costs of the proceedings before the tribunal on the Service Charge.
58. Nonetheless, for the reasons given above as to Fees, we make an order that none of the costs incurred, or to be incurred, by the Applicant in connection with the proceedings before this tribunal are to be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Leaseholder Respondents.

**Mark Martynski,
Tribunal Judge**