



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

**Case Reference** : **MAN/00CJ/LSC/2013/0114**

**Properties** : **17, 23 and 70 Hunters Court,  
Gosforth, Newcastle upon Tyne  
NE3 1SP**

**Applicant** : **Hunters Court Maintenance  
Limited**

**Representative** : **Mr T Tyson (Counsel)  
Bond Dickinson LLP, Solicitors**

**Respondent** : **Mr PJ Donkin**

**Type of Application** : **Section 27A of the Landlord & Tenant  
Act 1985**

**Tribunal Members** : **Mr S Moorhouse LLB (Chairman)  
Mr IR Harris BSc FRICS  
Mrs S Aldred**

**Date and venue of  
Hearing** : **27 March 2014 - Manorview House,  
Kings View, Newcastle upon Tyne  
NE1 6PA**

**Date of Decision** : **10 April 2014**

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**DECISION**

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## **DECISION**

- I. The Tribunal determines that the service charges claimed by the Applicant from the Respondent relating to the service charge years 1 May 2010 - 30 April 2011, 1 May 2011 - 30 April 2012 and 1 May 2012 - 30 April 2013 and the estimated service charges claimed on account by the Applicant from the Respondent in relation to the service charge year 1 May 2013 - 30 April 2014 are reasonable and are payable by the Respondent.
- II. The Respondent's applications in relation to costs under section 20C of the Landlord and Tenant Act 1985 and under Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 are denied.

## **REASONS**

### **The Application**

1. The application ('the Application') is made under section 27A (and 19) of the Landlord and Tenant Act 1985 ('the Act') seeking a determination that service charges in relation to the service charge years 1 May 2011 - 30 April 2012 and 1 May 2012 - 30 April 2013 together with the estimated service charges demanded on account in relation to the service charge year 1 May 2013 - 30 April 2014 are reasonable and payable.
2. The Application relates to three properties ('the Properties'): two apartments numbered 17 and 23 Hunters Court, and one house numbered 70 Hunters Court, Gosforth Newcastle upon Tyne NE3 1SP. The Applicant is the freehold proprietor of the Properties and the Respondent is the leaseholder.
3. The Application makes reference to section 81 of the Housing Act 1996 which provides that a right of re-entry or forfeiture cannot be exercised against a tenant for failure to pay service charges unless a tribunal first determines that the service charges are payable by the tenant (or the other criteria set out in section 81(1) are met).

### **Inspection and Hearing**

4. The Tribunal conducted an inspection of the communal gardens at Hunters Court and some of the other communal areas on 27 March 2014. This was followed by the hearing. The hearing was attended on behalf of the Applicant by Counsel, Mr Tyson, by Mr Alex Tams from the managing agent Kingston Property Services and by Mr David Jewell and Miss Dorothy Keenlyside as residents and directors of the Applicant company. The Respondent attended the hearing and was unrepresented. All of these attendees were present at the inspection, together with a further resident and director, Ms Sally Nelson.

### **The Law**

5. The relevant law is to be found at sections 19 and 27A of the Act, and at section 20C. Section 19 of the Act states:

***Limitation of service charges: reasonableness***

*(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –*

- (a) only to the extent that they are reasonably incurred, and*
- (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;*

*and the amount payable shall be limited accordingly.*

*(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustments shall be made by repayment, reduction or subsequent charges or otherwise.*

6. Section 27A of the Act includes the following subsections:

***Liability to pay service charges: jurisdiction***

*(1) An application may be made to a 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 it is payable.*

*(2) Subsection (1) applies whether or not any payment has been made.*

7. Section 20C of the Act includes the following subsection:

***Limitation of service charges: cost of proceedings***

*(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a ..... tribunal.....are not to be regarded as relevant costs to be taken into account in determining the amount of service charge payable by the tenant or any other person or persons specified in the application.*

**The Issues**

8. The present case came before Newcastle upon Tyne County Court on 26 October 2012. District Judge Goudie set aside judgments in earlier claims, stayed the claim before the Court for the parties to have settlement discussions and ordered that in the event that settlement is not achieved the claim shall be transferred to the Tribunal. The parties confirmed to the

Tribunal that settlement had not been reached, that the amounts that were the subject of the Application had not been discharged and that the referral to the Tribunal had been triggered by the Applicant submitting a written application.

9. As a preliminary matter the Tribunal invited the Respondent to clarify which service charges were in dispute. The Respondent referred to 'take on charges' in relation to each of the Properties arising in May 2011 at the time Kingston Property Services were appointed as managing agents. The Respondent submits that these costs were carried forward from the previous service charge year and that in that previous year a dispute arose relating to the removal of a tree. The Respondent therefore disputes those earlier charges.
10. The Respondent acknowledges that the service charges arising in the years that are the subject of the Application are payable. Whilst the Respondent has not discharged these, he accepts that he is liable for them. The Respondent would like these to be charged by agreement to his mortgagees and added to his mortgage accounts.
11. It is common ground that the dispute relating to the removal of a tree relates to the service charge year 1 May 2010 - 30 April 2011. Both parties wish to resolve this dispute. On the application of the Applicant, and with the agreement of the Respondent, the Tribunal therefore agreed to amend the Application to encompass additionally the service charge year 1 May 2010 - 30 April 2011.
12. The Respondent additionally commented that various notices and papers had been sent by the Applicants to incorrect addresses and that it had been difficult for him to engage in the proceedings since he worked in Kabul, Afghanistan and his home was in Derry, Northern Ireland.
13. Accordingly the Tribunal identified three issues for consideration: (1) the dispute concerning tree removal; (2) notices and papers and (3) any applications to be made by the parties on the issue of costs.

## **Dispute - Tree Removal**

### *Submissions*

14. The Respondent claims that in or around April 2011 the Applicant's gardeners inappropriately removed a cherry tree from an area of land adjacent to 70 Hunters Court. He believes that this was initiated by the leaseholder of the adjoining property who had had an area of decking installed adjacent to her property. He believes that the motive for the tree removal was to improve the view from the area of decking, an area which should not have been permitted since it is not in keeping with the other garden areas. The Respondent claims that the area in which the tree was situated was within his demise and that he was not even consulted, although he acknowledges that the matter was discussed with the resident of 70 Hunters Court, his former wife. The Respondent submits that a lack

of documentation concerning the tree removal supports his contention that the motive was to improve the view from the adjoining property.

15. The Respondent additionally submits that he has some knowledge of cherry trees, that contrary to the Applicant's case the tree in question had not been diseased, that a letter from the gardener confirming the tree was diseased should not be given any weight by the Tribunal and that even if the tree had been diseased it was only 6 foot high and did not present a danger to anyone.
16. The Applicant acknowledges that the tree was removed and submits that it was diseased, producing a letter from the gardener to this effect. The Applicant confirms that it was the leaseholder of the unit adjoining 70 Hunters Court that suggested to gardeners that the tree be removed, but that that resident in question had some knowledge of trees and had pointed out other instances of trees being diseased on other occasions. The Applicant submits that the area of decking had been permitted because the area in which it was situated was shaded and did not sustain growth.
17. The Applicant identified by reference to lease plans and by reference to office copies of entries at HM Land Registry that the area of land in which the tree had been situated did not form part of the Respondent's demise and was therefore part of the communal garden managed by the Applicant and its agents.
18. It was common ground that the cost of removing the tree could not be quantified precisely since it formed part of the overall wages bill for the gardeners (who were paid a weekly rate), and did not represent a 'one off' cost. The Respondent submits that the tree should be replaced and has submitted a cost estimate in this respect.

### *Findings*

19. The Tribunal accepts that the removal of the cherry tree without prior consultation with the Respondent has caused frustration and appears to benefit the resident of the adjoining property. Nevertheless the issue before the Tribunal is whether the service charges are reasonable and payable.
20. The Tribunal finds that the dispute in relation to the removal of a cherry tree does not impact on the reasonableness or payability of service charges. The tree in question was situated within the communal garden and not within the land demised to the Respondent. The Applicant was entitled to remove the tree. It did not belong to the Respondent. The Applicant is not obliged to replace the tree.
21. Even if the Tribunal had found that the cost of removing the tree was unreasonably incurred, this cost divided amongst the leaseholders through the service charge would have been very small.
22. The Respondent has not established that he has suffered any financial loss nor that he would have any right of action against the Applicant which the

Tribunal might take into consideration by way of equitable set-off against the service charges due.

## **Notices and Information**

### *Submissions*

23. The Respondent submitted that he did not always receive documents from the Applicant. He did not have the hearing bundles with him. The Respondent claimed that documents sent to the addresses of the Properties were never passed on to him by his residents, that any correspondence sent to his address at 28 Beal Way, Newcastle upon Tyne NE3 3EY was not passed on to him by his daughter who resided there and that correspondence sent to his address in Kabul did not reach him.
24. The Respondent did acknowledge that correspondence and documents relating to the present proceedings had been sent to him by e-mail from the Applicant's solicitors and commented that he refused to look at these because the County Court Judge had stated that the issues should be resolved without the need for lawyers. The Respondent clarified that he had had access to hard copies of the hearing bundles on the day before the hearing but had chosen not to bring these with him. He submitted that he had not known until the Application had been summarised by the Tribunal that the proceedings related to all of the service charges due and not just to the dispute over the tree removal.
25. The Applicant submits that various notices, demands and documents had been sent to the Respondent at 28 Beal Court and to the Properties but that in the course of the County Court proceedings it had become apparent that the Respondent had not lived at 28 Beal Close for some time. The Court had therefore ordered that the Respondent's address for service should be his e-mail address peterdonkin@yahoo.co.uk. The Applicant had adhered to this, whilst also trying to send hard copies to his hotel address in Kabul.

### *Findings*

26. The Tribunal finds that there is no compelling evidence that any notice or other document served by the Applicant has been invalidly served. The Respondent acknowledges that it was his own choice to ignore e-mail correspondence from the Applicant's solicitors and not to bring with him the bundles of documents produced by the Applicant to assist the parties at the hearing.
27. The question of whether a party should be legally represented in the proceedings before the Tribunal is entirely at the discretion of the party. Whilst the proceedings are conducted in such a way as to enable parties to appear without the benefit of legal representation, the Applicant was entitled to appoint legal representatives.

## Determination

28. Accordingly the Tribunal determines that the service charges claimed by the Applicant from the Respondent in relation to the service charge years 1 May 2010 - 30 April 2011, 1 May 2011 - 30 April 2012 and 1 May 2012 - 30 April 2013 and the estimated service charges claimed on account by the Applicant from the Respondent in relation to the service charge year 1 May 2013 - 30 April 2014 are reasonable and are payable by the Respondent.

## Costs

29. The Applicant made no application for costs at the hearing.
30. The Respondent made an application under section 20C of the Act that the costs incurred by the Applicant in relation to the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of service charge payable by any of the leaseholders at Hunters Court.
31. The Respondent additionally made an application that costs incurred by him in relation to the proceedings be reimbursed by the Applicant. This application was made under Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the ground that the Applicant had acted unreasonably in bringing the proceedings.
32. In support of his applications the Respondent submits that he has had to dedicate a massive amount of time over 'a twig' and that the matter should never have gone this far. The Respondent submits that at the outset the Applicant should have stated that there was proof that the removal of the tree was justifiable as proper maintenance. He acknowledges that there are outstanding charges but submits that he cannot pay them.
33. The Respondent submits further that it is inappropriate for the Applicant to be legally represented and refers to the failed attempt to reach a settlement. The Respondent's own costs in the proceedings include his time and his travel costs (he had to travel from Derry for the hearing).
34. In relation to the section 20C application the Respondent additionally submits that none of the leaseholders should have to bear the Applicant's legal fees and that there should not have been any fees incurred in coming to the Tribunal.
35. In response to the Respondent's cost applications the Applicant comments that the Respondent does not even dispute that the charges arising in the service charge years that are the subject of the Application (prior to it being amended) are reasonable and payable. On the issue of the tree, the Applicant refers to a statement by Mr Jewell and an e-mail dated 19 January 2013 from Mr Jewell to the Respondent in which it is stated:

*'Since we now agree that there is no longer any dispute over the tree (which was in the garden when you arrived) I think we should make every*

*effort to sort out the problem before it costs you and us more court fees and wastes more court time.*

*It was the previous management who instigated these proceedings and the new committee has none of the previous members on it.*

*If we agree to pay our costs to date and **write off the court costs that were lodged against you** will you agree to pay the management fees to date and then set up a standing order so that you can pay a little each month out of your rental income. That way it doesn't come in a big payment each six months...'*

36. The Applicant points out that the e-mail correspondence then continues until the Respondent states: '*on reflection I think the lease dispute tribunal is the way ahead*' and lists his reasons for this.
37. The Applicant submits that it has done everything that it can to avoid the need for the present proceedings and that the Tribunal has been convened only at the Respondent's insistence that issues remain outstanding even though the amounts referred to in the Application (prior to its amendment) were not disputed. It is further submitted that the Respondent is the only leaseholder who is in arrear with his service charges, and continues to be in arrear notwithstanding that the amounts are reasonable and payable.
38. Having considered the parties' submissions the Tribunal denies both of the Respondent's applications on the issue of costs for the following reasons.
39. It is at the Respondent's insistence that the three year old issue concerning the cherry tree has been considered by the Tribunal. With the exception of this particular challenge, which has been found by the Tribunal to have no merit, the Respondent has not disputed that the sums outstanding are both reasonable and payable.
40. It appears that the Respondent would like the amounts in question to be recovered from his mortgagees as a consequence of his failure to pay. Whether or not the Applicant comes to any arrangement with the Respondent's mortgagees, the Applicant was entitled to bring the present proceedings against the Respondent in contemplation of future enforcement proceedings. The Applicant has not therefore acted unreasonably in bringing the proceedings, nor is there any reason to make an order under section 20C of the Act.