



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

Case Reference : **MAN/00EY/LSC/2014/0018**

Property : **19 Haddon Court, 312-316 Queen's Promenade, Blackpool, FY2 9BB**

Applicant : **Haddon Flats (Norbreck) Limited**

Respondent : **Mrs Jean Marian Tucker**

Type of Application : **Application for a determination of liability to pay and reasonableness of service charges**

Tribunal Members : **P J Mulvenna LLB DMA (chairman)
J Rostron MRICS**

Date and venue of Hearing : **9 June 2014 on the papers**

Date of Decision : **9 June 2014**

DECISION

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DETERMINATION AND REASONS

DECISION

That the service charges levied by the Applicant as at 1 October 2006, for the periods from 1 March to 1 October 2007, 1 March to 1 October 2008, 1 March to 1 October 2009, as at 1 March 2010 and 31 March 2011 and, in relation to legal fees and costs, for the years 2013 and 2014 are not reasonable and, consequently, are not payable by the Respondent.

INTRODUCTION

1. Haddon Flats (Norbreck) Limited ('the Applicant') lodged a claim in the County Court seeking the payment from Mrs Jean Marian Tucker ('the Respondent') of specified charges for services as at 1 October 2006, for the periods from 1 March to 1 October 2007, 1 March to 1 October 2008, 1 March to 1 October 2009, as at 1 March 2010 and 31 March 2011 and, in relation to legal fees and costs, for the years 2013 and 2014 in respect of Flat 19 Haddon Court, 312-316 Queens Promenade, Blackpool, FY1 9BB ('the Property').
2. On 3 February 2014, at Kettering County Court, an Order was made by District Judge Elsey for the matters to be referred to the Tribunal. The Applicant duly made an application to the Tribunal on 6 March 2014.
3. The Applicant, which is the management company established to manage the development within which the Property is situated, has responsibility for providing services and has an entitlement to recover the cost of such provision by way of service charges. The Applicant engaged Homestead Consultancy Services Limited ('Homestead') in or around February 2011 to act as managing agents. Homestead has conducted the proceedings before the Tribunal on behalf of the Applicant.
4. The Respondent has a leasehold interest in the Property for a term of 999 years from 1 July 1996 granted by a Lease made on 6 March 1970 between (1) Frank Robinson and (2) Lucian Walter Dias ('the Lease').
5. The Property is a self-contained, ground floor flat in one of four purpose-built blocks, the particular block having 24 flats, constructed in or around 1968.

DIRECTIONS & PROCEEDINGS

6. Directions were issued by Judge J W Holbrook, sitting as a procedural chairman, on 18 March 2014. The parties have complied with the Directions sufficiently to enable the Tribunal to determine the matters before them.

7. Neither the Applicant nor the Respondent requested a hearing and the Tribunal proceeded by considering the matter on 9 June 2014 by reference to the papers placed before them. The Tribunal determined that, having regard to the nature of the matters to be determined, there was no need to inspect the Property.

THE LAW

8. The material statutory provisions in this case are as follows.

- (i) The Landlord and Tenant Act 1985

Section 27A (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to... (c) the amount which is payable’.

Section 27A (3) provides that an application may also be made ‘if costs were incurred.’

Section 19(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 adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 21(1) provides that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. Pursuant to Section 21(2) the Secretary of State has made The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 which prescribe the matters which must be included in the summary. Section 21(3) provides that a tenant may withhold payment of there is non-compliance and Section 21(4) renders ineffective any provision in a lease with regard to non-payment or late payment where a tenant withholds payment under these provisions.

Sections 22 and 23 make provision for the inspection by a tenant of accounts and documents.

- (ii) The Commonhold and Leasehold Reform Act, Schedule 11, Paragraph 5 provides for applications to be made to the appropriate 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.

THE LEASE

9. The Tribunal had before it a copy of the Lease which has been read and interpreted as a whole. In reaching its conclusions and findings, the Tribunal has had particular regard to the following matters or provisions contained in the Lease, none of which were the subject of dispute or argument by or on behalf of the parties:
- a. the Landlord's covenants in Clause 4 and the Seventh Schedule;
 - b. the Lessee's covenants in Clauses 2 and 3 and the Sixth Schedule.

THE EVIDENCE, SUBMISSIONS & THE TRIBUNAL'S CONCLUSIONS & REASONS

10. The Applicant has asked for a determination of the reasonableness of the service charges as at 1 October 2006, for the periods from 1 March to 1 October 2007, 1 March to 1 October 2008, 1 March to 1 October 2009, as at 1 March 2010 and 31 March 2011 and, in relation to legal fees and costs, for the years 2013 and 2014. The Tribunal had before them the service charge demands for the periods in question which complied with The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007.
11. The Tribunal has considered the issues on the whole of the written evidence and submissions now before them and, applying their own expertise and experience, has reached the following conclusions on the issues before them.
12. The Tribunal has dealt with the questions of legal fees and costs in 2013 and 2014 in paragraphs 22, 24 and 25 below.
13. The service charges demanded by the Applicant for the other periods in question were as follows:

	£
1 October 2006	300.00
1 March to 1 October 2007	600.00
1 March to 1 October 2008	600.00
1 March to 1 October 2009	600.00
1 October 2010	300.00

14. The Respondent has challenged the charges on a number of bases, including some which were included in the Applicant's Defence to the proceedings before the County Court. The Tribunal observes that whilst the reference from the County Court is in general terms, the application to the Tribunal limits the matters for determination to the reasonableness and payability of the service charges for the periods in question. The Tribunal has taken account of the decision in *Birmingham City Council -v- Keddie & Hill [2012] UKUT 323 (LC)* in which it was held that a tribunal had no jurisdiction to determine issues

not raised by the application. The Tribunal has, accordingly, limited its consideration to the reasonableness and payability of the service charges for the periods specified, although other aspects have been taken into account insofar as they might impact on the assessment of reasonableness and payability. In particular, the Tribunal has not considered the Respondent's counterclaim, request for the appointment of a new manager or submissions in relation to periods other than those mentioned in the application.

15. The Respondent has challenged the reasonableness of the service charges on the following bases:
 - (a) The Applicant has consistently failed to provide information in relation to the charges made for the periods from 2006 to 2010 from which reasonableness might be assessed;
 - (b) The Respondent averred, 'There was a lack of maintenance (re-pointing) on the fabric of the building over the substantial period from 2006 to date. The building external brickwork walls have deteriorated to the point where the Rockwall cavity wall insulation has become soaking wet and has caused damp to the bedroom wall of the Respondent's flat causing the wallpaper to bubble and peel off. It is not fit to sleep in. Homestead have refused to have a professional survey carried out and to fix the problem because they say there are insufficient funds from service charges to carry it out.'
16. The Tribunal has had regard to *Yorkbrook Investments Limited -v- Batten (1986) 18 HLR 25* in which it was held that there is no presumption for or against the reasonableness of standard or of costs as regards service charges. If a defence to a claim for maintenance costs is that the standard or the costs of the service are unreasonable, the tenant will need to specify the item complained of and the general nature – but not the evidence – of his case; once the tenant gives evidence establishing a prima facie case, it will be for the landlord to meet those allegations. The Tribunal is satisfied that the Respondent in the present proceedings has established a prima facie case.
17. The Applicant has not addressed any of the issues raised by the Respondent and has not produced any evidence that the services in question have been commissioned or that payments have been made, save in respect of three receipted invoices for work undertaken in 2009/10 at 20, 21 and 24 Haddon Court which cannot be assessed in isolation from other relevant evidence. In this connection, the Tribunal observe that the Respondent has been denied her right under Sections 22 and 23 of the Landlord and Tenant Act 1985 to inspect accounts and other documents. The Applicant's inability to provide the relevant accounts and other documentation to the Tribunal suggests that it was unable, rather than unwilling, to produce the material. Moreover, the Respondent has not produced any detailed outturn accounts or supporting documentation for the periods under consideration from which the actual expenditure can be assessed.
18. The Tribunal observed that the disputed service charges relate to the period before Homestead took over responsibility for management of

the Property in or around 2011. The Tribunal has not been told of the reasons for the previous managing agent's replacement by Homestead, but it is evident that the Respondent and Homestead have unsuccessfully tried to obtain the missing material from the previous managers and it is not, therefore, within the Respondent's control.

19. The Tribunal recognises that that these circumstances disadvantage the Applicant quite considerably, but can see no sustainable reason to assist by proceeding by way of making assumptions or drawing inferences which are not evidence-based. In *Schilling & Others -v- Canary Riverside Development PTD Limited (LRX/26/2005 LRX/31/2005 LRX/47/2005)*, it was held that the burden of proof was upon an applicant, although His Honour Judge Michael Rich QC went on to say that

'In civil cases, where the standard of proof is only the balance of probabilities, the burden matters only where either there is no evidence or, in the very unusual circumstance that, having heard all the evidence, the tribunal is unable to make up its mind.'

20. Having regard to the absence of any evidence at all that the services were actually commissioned and paid for or as to any breakdown of the costs involved, either by way of reference to particular services or unit costs, coupled with the Respondent's unchallenged statement that there was neglect in the maintenance of the building within which the Property is situated, the Applicant has not discharged the burden of proof. The Tribunal have concluded that the services charges demanded by the Applicant for the periods in question were not reasonable.
21. It is reasonably likely that some services were provided in the periods in question, but there is no evidence as to the nature, extent or costs of such services. The Tribunal has not, therefore, made any decision as to what might have been reasonable charges for such periods.
22. In relation to the legal costs incurred in 2014, it is unlikely, in view of the Tribunal's findings, that the Applicant would have succeeded in the proceedings before the County Court. The Tribunal does not find that it would be reasonable for the costs incurred by the Applicant to be recovered from the Respondent.
23. The Tribunal would emphasise that this decision is not intended to cast doubt on the current ability of the Applicant to provide services through Homestead who were appointed after the period of the dispute. Similarly, the Tribunal would not criticise Homestead for not undertaking a survey and consequential remedial works in the absence of funding. That is a matter to be addressed by the Applicant following any required consultation with the lessees.

COSTS

24. The Tribunal has power to award costs and/or reimburse fees under Rule 13 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 which provides, insofar as it is material to the present case:

- (1) The Tribunal may make an order in respect of costs only –
- ... (b) If a person has acted unreasonably in bringing, defending or conducting proceedings in –
 - ... (ii) A residential property case...
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or any part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (3) The Tribunal may make an order under this rule on an application or on its own initiative.'

25. Both parties have made an application for the award of costs. The Tribunal has considered the whole of the evidence and has determined that there was no circumstance or particular in which either of the parties had acted unreasonably. This is particularly so because the evidential difficulties faced by the Applicant (and, consequently, by Homestead) lie in the failings of the original managing agents. The Tribunal concluded that it would not be appropriate or proportionate to award costs to either party or to make an order for the reimbursement of any fees.
26. The Respondent requested that an order be made under section 20C of the Landlord and Tenant Act 1985 that the costs incurred, or to be incurred, by the Applicant in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants. For the reasons mentioned in the preceding paragraph, the Tribunal has no evidence that the Applicant has acted unreasonably in any respect. It would not be reasonable or proportionate to make an order.