



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

Case Reference : **CAM/26UL/LSC/2014/0098**

Property : **5, Eddington Crescent, Welwyn
Garden City, Hertfordshire AL7
4SX**

Applicant : **Scholars Walk (Welwyn Garden
City) Management Company
Limited**

Representative : **Mr J Wragg – Counsel
Mr r Wheeldon PDCLegal
Mr C Alexander and Mr L Cane
both of RMG managing agent**

Respondent : **Mr J A P Davern and Mrs S Davern**

Representative : **none**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal Members : **Tribunal Judge Dutton
Miss M Krisko BSc (Est Man)
FRICS**

**Date and venue of
Hearing** : **9th February 2015 at the Ramada
Hotel, Hatfield**

Date of Decision : **28th March 2015**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £1,190.91 is payable by the Respondents in respect of the service charges for the years 2013 and 2014 as set out in the Particulars of Claim in proceedings in the County Court at Watford under claim number A85YJ970.
- (2) The Tribunal determines that the sum of £315 is payable in respect of administration charges as set out in this Decision.
- (3) The tribunal determines that the Respondents shall jointly and severally pay the Applicant £1,505.91 within 28 days of this Decision.
- (4) Since the tribunal has no jurisdiction over county court costs and fees this matter should now be referred back to the County Court at Watford under the above claim number.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Respondents in respect of the service charge years 2013 and 2014
2. Proceedings were originally issued in the County Court at Northampton under claim no. A85YJ970. The claim was transferred to the County Court at Watford and then in turn transferred to this Tribunal, by order of District Judge Wood dated 15th September 2014.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Mr Wragg of Counsel and by Mr Cane from the managing agents RMG. Mr Alexander and Mr Wheeldon attended. Neither of the Respondents attended.

The background

5. The property, which is the subject of this application, is a first floor flat in a three storey, modern, purpose built block of 9 flats on an estate of some 320 units of accommodation. It appears that there are some 23 blocks of flats housing some 167 units, the remainder are freehold houses which share estate expenses. Scholars Walk, the Applicant is a

property owners' management company, which employs RMG as its managing agents who attend to the flats and to the estate, although part is still vested with the original developers. The Applicant company is run by four directors, who are themselves property owners, elected by the remaining property owners. RMG has been involved in the development since its inception and meets on a quarterly basis with the Applicant

6. We inspected the block which houses the subject property and viewed the common parts and the exterior, in the presence of Mr Cane and Mr Alexander, before the hearing. The Respondents were not present. The common parts were in reasonable order and clean, we noted the cleaning attendance sheet which indicated the block had last been cleaned on 5th February 2015. The car parking area was well maintained as was the limited garden area and the bin store.
7. The Respondents holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The Respondents are the original tenants and it seems that they rent out the flat, although there was no indication at the time of our inspection that it was occupied.

The issues

8. The Respondents had filed a short defence in the Court proceedings which read as follows "*The management company did not carry out the work to the standard required and have left communal arrears uncleaned at times*". This was the full extent of the Respondents' complaints and no further documentation was filed by them. This is notwithstanding several reminders to do so and threats of debaring for non-compliance. Unfortunately it appears that Mr Davern had been unwell and an adjournment from a hearing scheduled in January to 9th February 2015 had been granted to recognise his difficulties. However, despite the extra time given to comply with the directions neither he, nor his wife had participated in the proceedings after the scant defence was filed in May last year.
9. At the start of the hearing Mr Wragg told us that we were being asked to determine that the service charges, totalling £1,190.91 and administration charges, totalling £315, were the extent of sums claimed at present and that the question of costs would be dealt with separately and was not a matter for us.
10. He gave us a brief history of the claim which started with a demand made in December 2012, culminating in proceedings being commenced in March 2014. The Applicant, by RMG, had filed substantial papers including a statement of case and a witness statement of Mr Cane, the manager who oversaw the development, and who attended the hearing.

11. We were asked to make a debarring order under the provisions of rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules).
12. Having heard evidence and submissions from the Applicant's representatives and considered all of the documents provided, we have made the following determinations.

The tribunal's decision

13. The tribunal determines that the amount payable in respect of service charges is £1,190.91.

Reasons for the tribunal's decision

14. The only complaint of any particularity was that relating to cleaning. We were provided with inspection reports covering the years in question, saw the present attendance sheet at the block, viewed the common parts and had before us a copy of minutes of a residents meeting held on 4th November 2014 at which those in attendance raised no concerns relating to the standard of services and it is recorded that they "agreed that these were carried out to a good standard". Admittedly these relate to late 2014 onwards but the Respondents produced no evidence to show that in 2013 and 2104 the services was sub-standard. The 2013 accounts show cleaning costing out at something just over £2 per flat per week, which seems perfectly reasonable for the extent of cleaning required.

Administration charges

15. The lease at clause 12 of the Third Schedule (Covenants by the Buyer) states that the Respondents covenant "*To pay all expenses (including solicitors costs and surveyors fees) incurred by the Company or the Management Company in the recovery of arrears of Maintenance Charge....*" Further, under the heading Sundry fees at Part II of the Sixth Schedule there are provisions for the recovery of "fees charges and expenses" in connection with the carrying out of the Applicant's obligations.
16. We were told by Mr Cane that there was a fee of £21 for writing a letter chasing for the payment of outstanding service charges. A fee of £21 was levied for conducting a search of the Register of Title to ensure that the recalcitrant lessee was still the owner of the flat and to check their address. A further fee of £48 was charged for instructing a debt collection agency and writing additional chasing letters. The managing agents also charged a fee of £33 for accepting the service charge payments by standing order, which covered the additional administration. Finally there was a fee of £192, levied by PDC the debt

collection firm for correspondence attempting to settle the matter without the need for court action. This totalled £315. No complaint about this charge was made by the Respondents.

The tribunal's decision

17. The tribunal determines that the amount payable in respect of these administration charges is £315.

Reasons for the tribunal's decision

18. The lease allows the recovery of charges for pursuing leaseholders who do not pay their service charges. If there is a valid reason for not paying then it may be argued that these charges are not recoverable. In this case no such reason or reasons have been advanced. The demand for payment was first made in December 2012. The Applicant, through its managing agents, has attempted to engage with the Respondents and wrote a fulsome letter in October 2014 addressing the limited complaint raised in the Court action, but to no avail. Whilst one has sympathies with Mr Davern, he and his wife have had ample time to clearly set out their complaints but have wholly failed to do so. This has resulted in the Applicant being forced to bring proceedings to recover the outstanding sums and following the transfer to this Tribunal, attend before us to prove its case, which it has done. In those circumstances we find that the administration charges, in essence attempts to settle the dispute and avoid proceedings, are properly recoverable from the Respondents, who it should be noted, raised no complaint about same.
19. We have considered the application to debar Mr and Mrs Davern from participating in these proceedings. This seems to us to be otiose. They have not participated and have ignored directions issued by the Tribunal and subsequently amended to afford them more time. The decision has been made and their only way forward would be to seek permission to appeal.
20. We have recorded that we are not required to consider the costs of these proceedings. It seems to us right to record that we were somewhat surprised at the number of people who attended on behalf of the Applicant. It is, of course, a matter for them, but no doubt any claim for costs, however made, will need to substantiate the attendance by so many people and the costs incurred. The Respondents will have an opportunity of reviewing any costs claimed against them, if they so wish.

The next steps

21. The tribunal has no jurisdiction over county court costs. This matter should now be returned to the County Court at Watford.

Name: Tribunal Judge
Andrew Dutton

Date: 28th March 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (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 provisions 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 adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a leasehold valuation 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.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “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.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “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.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to a leasehold valuation 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.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).