



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

Case Reference : CHI/24UL/LIS/2014/0061

Property : 2 Sandford Court, Sandford Road, Aldershot,
Hampshire GU11 3AH

Applicant : Sandford Court (Aldershot) Management
Company Ltd

Representative : Mr Jonathan Ragg (Counsel)

Respondent : Mr Richard Fuller

Representative : Mr Colin Challenger (Counsel)

Type of Application : Landlord and Tenant Act 1985 – Section 27A(3)
Commonhold and leasehold Reform Act 2002
Schedule 11 Paragraph 5

Tribunal Members : Judge T A Clark
Mr P Turner Powell Surveyor

**Date and venue of
Hearing** : 12th February 2015

Date of Decision : 4TH March 2015

DECISION

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Decision

1. On 25th November 2013 the landlords issued a claim in the County Court for payment by the Respondent of outstanding service charges, administration fees and costs for the period 1.7.2008 to 24.3.2014. The County Court transferred the matter to this Tribunal for a determination as to the Respondents liability to pay service and administration charges and whether or not there was been a breach of the lease as alleged in the Defence.

2. The Tribunal has determined that the service charges as claimed are due and owing in the full amount claimed, being £5014.33 plus administration charges of £324, total £5338.33.
3. The Tribunal declines to make a determination as to breaches of the lease, having determined that it lacks jurisdiction except in circumstances where a set off is pleaded and damages in respect thereof. Although the Respondent has pleaded breaches of maintenance/repair there is no claim for a set off or damages and no evidence was adduced on quantum. This lack of jurisdiction was not disputed on behalf of either party.
4. The Tribunal does not have jurisdiction in relation to the claim in the Particulars of Claim for costs.

The Law

5. Landlord and Tenant Act 1985 – Section 27A(3) provides;
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 -
 - (i) the person by whom it is payable,
 - (ii) the person to whom it is payable,
 - (iii) the amount which is payable,
 - (iv) the date at or by which it is payable, and
 - (v) the manner in which it is payable
6. 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 -
 - (i) the person by whom it is payable,
 - (ii) the person to whom it is payable,
 - (iii) the amount which is payable,
 - (iv) the date at or by which it is payable, and
 - (v) the manner in which it is payable
7. The Commonhold and leasehold Reform Act 2002 Schedule 11 Paragraph 5 provides as follows;
“An application may be made to a leasehold valuation tribunal for a determination whether as administration charge is payable and, if it is, as to -
 - (i) the person by whom it is payable,
 - (ii) the person to whom it is payable,
 - (iii) the amount which is payable,
 - (iv) the date at or by which it is payable, and
 - (v) the manner in which it is payable

The Lease

8. The lease is dated 10th February 1984. Clause 5 provides;

“The Owner hereby covenants with the Lessor and the Management Company to contribute and pay such proportion of the total costs expenses outgoings and matters mentioned in the Fourth Schedule hereto as the rateable value of the Demised premises bears to the total rateable value of the flats comprised in the Estate.

(ii) the contribution under paragraph (i) of this clause for each calendar year shall be estimated by the Management Company or their managing agents (whose decision shall be final) as soon as practicable after the beginning of the year and the Lessee shall pay the estimated contribution by two equal instalments on the 25th March and the 29th September in that year

(iii) as soon as reasonably may be after the end of the year of 1985 and each succeeding year the actual amount of the said costs expenses outgoings and matters for the year shall be ascertained and the Lessee shall forthwith pay the balance due to the Management Company or be credited in the Management Company’s books with any amount overpaid”

9. Clause 6 provides;

“The Lessor .. covenants ... subject to the payments in Clause 5 hereof covenanted to be made by the Owner ... to pay the amount of the premium from time to time for insuring or to insure and keep insured the Building in the names of the Lessor and the Management Company “
and further

to maintain and repair and (as necessary) renew as follows :- “

These obligations are then set out in full in subparagraphs (2) to (11) inclusive.

10. Schedule 4 defines service charges as being;

“1. The expenses and costs incurred by the Management Company (or the Lessor if appropriate) in carrying out all the obligations contained in clause 6 of this Lease

2. All other expenses (if any) incurred by the Management Company (or the Lessor if appropriate) in and about the maintenance and proper and convenient management of the Estate or any part thereof ...

3. The fees and disbursements paid to any Managing Agents appointed by the Managing Agent ...

4. Any administrative and clerical expenses incurred by the Management Company in order to properly and efficiently carry out its obligations under this Lease”

Inspection

11. The Tribunal attended at the property at 10am for the inspection. Present were Mr Challenger, Counsel for the Respondent, Mr Fuller the Respondent and Mrs Kay Smith Solicitor for the Respondent.

12. The Tribunal noted that there are 3 detached blocks. The Respondents flat is on the first floor in the lower block closest to the entrance to the grounds of Sanford Court.

13. The upper block is a three storey brick built construction split into 6 flats. The middle block is two storey brick built containing 4 flats and the lower block is

also a three storey brick built construction containing 6 flats, including the flat the subject of this dispute which is on the first floor.

14. The grounds of the blocks had some litter lying around. The gardens were not well maintained but neither were they overgrown.
15. The blocks were each in a similar condition – the external areas appeared to be maintained. All guttering appeared intact and windows are UPVC .
16. Internally the blocks were in a poor decorative state. The internal areas also had cobwebs and the upper block and middle blocks did not have carpet on the stairs. The lower block did have a carpet although it was old, worn and grubby.

Proceedings

17. Proceedings were issued in the Northampton County Court.
18. A default judgment was entered on 13th January 2014 on the grounds that the Respondent had failed to respond to the claim form.
19. The Respondent made an application to set aside the judgment and the matter was transferred Guildford County Court.
20. The application to set aside judgment was heard on the 9th June 2014, judgment was set aside and directions given to progress the claim.
21. Following the filing of a Defence and a Reply on 20th October 2014 the court transferred the matter to the Tribunal for consideration of the Respondent liability to pay service charges, administration charges and other costs and whether there had been a breach of the terms of the lease.
22. Directions were given by the Tribunal on 7th November 2014 and the matter was listed for the inspection and hearing on 12th February 2015.
23. Further directions were given on 14th November 2014.
24. Both sets of directions stated that ;
“The Tribunal does not have jurisdiction to assess costs payable in connection with the court proceedings or to determine whether there has been a breach of the lease by the Applicant save insofar as this may affect the reasonableness and payability of service charges and administration charges”

Evidence

25. The Tribunal considered the contents of the bundle and in particular reviewed the budgets and the demands. The Tribunal pre read the pleadings, the statement of case of each of the parties, statement of Mr Brown and the outline argument submitted on behalf of the Respondent by his Counsel Mr Challenger.

26. Prior to hearing the evidence Mr Ragg provided a breakdown of amounts claimed with reference to the page numbers in the bundle. He also provided the budget figures and actual expenditure figure for each year and described the overlap for the year 2009 /2010 when the accounting period changed resulting in a 15 month accounting period. These were challenged on three grounds, i) non service of demands and accounting , ii) apportionment iii) and proof of monies spent and reasonableness.
27. The Tribunal decided to hear evidence on a point by point basis so that both parties would have an opportunity to respond to the others evidence on each issue in turn.
28. The Tribunal heard from Mr Gareth Brown who gave evidence for Andertons, being the Managing Agents appointed by the Claimants.

Service of documents:

29. Mr Brown firstly confirmed the contents of his statement within the bundle as being true and correct and that he had been the property manager for Sandford Court since May 2007.
30. Mr Brown then explained the method of automated payment request and service charge demand and that along with these documents was generated a copy of the tenants rights a copy of which was at page 155 of the bundle, that these were generated automatically and that there was no choice but to do this. A covering letter was also generated automatically.
31. Mr Brown confirmed that demands for payment had all been sent to the Respondents address as requested by the Respondent, being 1 Farnham Road Guildford Surrey, save the one demand found at page 138 of the bundle in respect of the June 2008 demand. No documents had ever been returned and no contact had ever been made by the Respondent chasing service charge demands. Demands were made half yearly and then an actual account was served at the end of each year based on actual figures.
32. Mr Challenger for the Respondent questioned Mr Brown about the accuracy of this and that no demands had been received based on budgets nor had the final accounts ever been provided for each year. Mr Brown maintained that the system automatically generated these documents and referred to each demand from June 2008 onwards commencing at page 138 of the bundle. Mr Brown conceded that the first demand had been sent to the property at Sandford Court but that thereafter all demands were sent to the address requested by Mr Fuller at 1 Farnham Road, Guildford.
33. The Tribunal then heard evidence from Mr Fuller who denied having ever received any demands. Initially he stated that he first received a demand in 2013 but when questioned by Mr Ragg a short while later stated that he had received only one demand and that had been in 2014. Mr Fuller explained that the address at Farnham Road was his business address, that he now no longer used those premises but that he still regularly picked up mail sent there and

used this address for communications in relation to letting properties. He told the Tribunal that his agents Bourkes Estate Agents acted on his behalf and dealt with everything, providing a full letting service. Mr Fuller told the Tribunal that up until 2008 service charges had been in the region of £300 per year . He confirmed that he had never contacted the Managing Agents nor had he made written or verbal complaints to the Agents about issues with the property.

34. Mr Fuller was questioned about this and confirmed that he had received the decision of the earlier Tribunal. He said that he thought his agents (Bourkes) was dealing with everything. He denied being in receipt of any of the demands and he was taken to each years demands in turn.

Rateable value/Appportionment of service charges:

35. The Tribunal then asked to hear evidence about rateable values of the property.
36. Mr Brown said that he had no details about rateable value or size of each of the flats within the 3 blocks. He stated that he had checked and that the Council tax was the same in respect of each flat.
37. Mr Fuller said that Flat 2 is a one bedroom flat and that he had been made aware from Mr Baulke (his agent – now deceased) that there are two and three bedroom flats.

Reasonableness of service charges and budget compared with actual expenditure:

38. Mr Brown told the Tribunal that it had been an increasing struggle to manage the building and that it had become impossible to do anything other than the bare essentials. He told the Tribunal that there was no reserve and that if an item of expenditure was more or less than that given in the budget a credit or debit was not raised but that the budget was an overall estimate of expenditure. Any surplus could be credited to the tenants account as a book keeping exercise but would not result in return of monies, but in any event there was no surplus in the case of this property. Any monies paid as a result of the Tribunals decision would be held to carry out necessary works.
39. Mr Brown was taken to clause 6 of the lease and he said that his understanding of Clause 6 was that the landlords obligations under the lease were “ ... subject to the payments in Clause 5 hereof covenanted to be made by the Owner ... “ ie that the landlords obligations under the lease were subject to payment by the tenants in order to put the Agents in funds .
40. Mr Brown was taken to various invoices and challenged about them by Mr Challenger. One such item was insurance premiums. Following the lunch break Mr Brown provided the missing insurance premium documents showing amounts paid in each year and the sums assured.
41. In relation to insurance premiums Mr Fuller provided an alternative estimate for insurance and queried the high level of premiums paid on the property overall and Mr Brown was invited to comment on this.

42. Mr Browns response to this was that the value of the property in the quotation provided appeared to be very low allowing a rebuild cost that amounted to £75,000 per unit. The valuation for 2013/2014 in the current insurance provided cover for £3,344,592 which Mr Brown considered to be far more realistic for the rebuild of 3 separate blocks. Further Mr Brown considered that Mr Fullers quotation did not take into account the claims record in relation to the property. A year on year comparison of figures was provided for insurance showing an increase in premiums year on year which the Tribunal has calculated as being between 8-9%
43. The “fixed Management fee” was challenged as not being fixed at all . The administration fees were also in issue. Mr Browns response to this was that the fee was fixed but that the amount changed each year and that administration charges were chargeable under the lease. His evidence was that any administration charges over and above the fixed fee were for items such as mail shots relating to rubbish or behaviour. Mr Challenger confirmed that the Respondent no longer challenged the administration fees charged.
44. Mr Brown was questioned about the difference between budget figures and actual figures, for example gardening in 2013/2014 budget figure was £2,280 but amount expended was £383. Mr Brown said that what had been spent was what was available and nothing more was in the pot to do so.
45. Mr Fuller gave evidence that the property was not well maintained, that the property required repainting and that general maintenance was lacking. Through Mr Challenger he queried a significant number of invoices and works done. In particular insurance premiums were stated to be too high and an alternative quotation was provided. Comparisons were made in relation to a number of items comparing budget with actual expenditure figures.
46. The Respondent argued that any difference/reduction in an item of expenditure when compared to the budget figure claimed could not be used on other items and that each separate item in the budget stood as a discreet item.
47. This was disputed by Mr Brown whose evidence was that a budget was simply that and that the overall figure in the budget figure in the budget could be used for all the items listed as required.
48. The Tribunal heard closing submissions on behalf of both parties.
49. Mr Challengers final submission was that the Applicants was in significant breach to the extent that this amounted to a fundamental breach of their obligations under the terms of the lease such that no service charges should be payable. He argued that this entitled the Tribunal to accept jurisdiction as to alleged breaches of the lease.

Determination

50. The Tribunal have determined that in relation to service of demands they prefer the evidence of Mr Brown to that of Mr Fuller. Mr Fuller accepted that

he had received the earlier decision of the Tribunal and also the judgment entered against him in the County Court. The Tribunal find that it is more likely than not that Mr Fuller received the demands said by Mr Brown to have been sent to him.

51. In relation to rateable value and arguments of apportionment the Tribunal noted that the earlier tribunal decision had accepted the apportionment between the 16 flats of 6.25% per flat. Doing the best that it could on the available evidence the Tribunal concluded that the apportionment used was not at odds with the provisions of the lease.
52. In relation to the reasonableness of the charges the Tribunal were satisfied, having heard extensive evidence that the amounts claimed are reasonable and payable to the Applicants. The evidence of the Applicants was challenged and the Tribunal accepted the evidence of Mr Brown. In particular the Tribunal accepted that the budget figures provided an overall budget and that each sum budgeted for was not specific as to each item and that the budget could be apportioned between items differently to that claimed in the budget if that was what was required in the proper management/maintenance of the property.
53. The Tribunal also concluded that the Respondent would not be entitled to a credit on those occasions where the budget exceeded actual expenditure because i) the lease only provided for a credit to the Managements Company's books, (that is a book keeping exercise) and ii) under clause 6 of the lease that the Lessors covenants are "subject to" the payments of the service charges based on budgeted figures each half year . No credit can be expected by Mr Fuller because the Tribunal accepts the evidence that any monies paid by him in accordance with this decision will be used to make up the deficit in the available budget in previous years due to non payment by him.
54. The Tribunal do not find that there is a fundamental breach by the Applicants and decline to consider breaches for the reasons set out in paragraph 3 of this decision.

Landlord and Tenant Act 1985 Section 20C application

55. There was an application made on behalf of the Respondent that if successful the Applicants costs should not be regarded as relevant costs to form part of the service charges to be payable by the tenants. The Tribunal decline to make such an order.

Appeal

56. 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.
57. 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

58. 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.
59. 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.

T A Clark
Judge