

11304



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

Case Reference : **CHI/00LC/LIS/2016/0017**

Property : **17 Archbishops Crescent,
Gillingham, Kent, ME7 2WL**

Applicant : **Sovereign Quarter (Gillingham)
Management Co. Ltd.**

Representative : **PDC Legal, Solicitors**

Respondent : **Ms Victoria Bichard**

Representative : **In person**

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

Tribunal Members : **Judge I Mohabir**

Date of determination : **23 August 2016**

Date of Decision : **24 August 2016**

DECISION

Introduction

1. The Respondent is the long leaseholder of the premises known as 17 Archbishops Crescent, Gillingham, Kent, ME7 2WL (“the property”) pursuant to a lease made between (1) Persimmon Homes Ltd (2) the Respondent and (3) the Applicant, as the management company, dated 30 May 2008 for a term of 125 years from 1 January 2007 (“the lease”).
2. The property forms part of a large new development that was completed in phases by Persimmon Homes Ltd and Charles Church Development. Apparently, the final phase was not handed over to the Applicant until 2015.
3. The Applicant commenced proceedings in the County Court to recover service and administration charge arrears from the Respondent for the years ended 31 December 2010 to 31 December 2014.
4. The relevant demands issued on behalf of the Applicant can be found from page 61 onwards in the hearing bundle. The actual outstanding arrears claimed by the Applicant can be summarised as follows:

Service Charges

Y/E: 31 December 2010	£97.85
Y/E: 31 December 2012	£234.31
Y/E: 31 December 2013	£197.14 (amenity)
Y/E: 31 December 2014	£196.64 (amenity)

Reserve Fund Contributions

Y/E: 31 December 2011	£0.86
Y/E: 31 December 2012	£1.23 (plus balancing charge of £26.60)
Y/E: 31 December 2013	£8.63 (amenity)
Y/E: 31 December 2014	£9.12 (amenity)

Administration Charges (all 2011)

Management fee (arrears collection)	£96
Instruction fee	£108
Debt Collection fee	£168

Each of these is dealt with in turn below.

5. The Defence filed by the Respondent in the County Court contended that the Applicant had not served any demands on the Respondent and that she had sold the lease of the flat on 25 July 2014 and, therefore, had no liability for the costs claimed by the Applicant.
6. By an order dated 2 March 2015, the proceedings were transferred to the Tribunal for a determination of the Respondent's liability to pay and/or the reasonableness of the service and administration charges in issue.
7. The Tribunal's determination is made under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") and Schedule 11, paragraph 1 of the Commonhold and Leasehold Reform Act 2002 (as amended) below.

Relevant Lease Terms

8. The relevant lease terms can be summarised as follows.
9. Clause 4.1 of the lease obliges the Applicant to carry out the repairs and provide the services set out in the Fifth Schedule. Essentially these relate to the internal and external common parts of the blocks of flats and the estate generally, defined as being the "managed areas".
10. By way of background, it seems that the Respondent together with other participating leaseholders acquired the Right to Manage the block of flats in which the property is located during 2011. Thereafter, the Right to Manage company was obliged to carry out the repairing and maintaining obligations created by the Fifth Schedule in relation to the block

previously carried out by the Applicant. However, the obligation to repair and maintain the other parts of the estate remains for which the lessees remained contractually liable. Subsequently, these are described as the “amenity” costs being claimed by the Applicant.

11. The Respondent does not dispute her contractual liability to pay the service and administration charges in issue. It is, therefore, not necessary to set out in any detail the contractual provisions in the lease that give rise to that liability. It is sufficient to note that each service charge year ends on 31 December and the Applicant is obliged to prepare a service charge estimate in advance of each year calculated in accordance with the Fourth Schedule, being a fair and reasonable amount for both service charges and the reserve fund.
12. By clauses 3.2 and 3.3, the Respondent covenanted to pay the service charge estimate (including the reserve fund contribution) to the Applicant on or before 1 January of each year together with a balancing charge for any excess expenditure for the preceding year.
13. By paragraph 1.2 of the third Schedule, the Respondent covenanted to pay to the Applicant on an indemnity basis all costs and expenses incurred by it to recover any service charge arrears or any other monies payable by her under the terms of the lease.

Relevant Legislation

14. This is set out in the Appendix annexed hereto.

Decision

15. Pursuant to the Tribunal’s Directions, the application was determined solely on the basis of the respective statements of case and documentary evidence filed by the parties. There was no oral hearing and none was requested.

16. At some length, the Tribunal carefully perused the extensive hearing bundles filed by the Applicant's solicitors.
17. In short, the Applicant's case was that it had carried out its management obligations as required by the Fifth Schedule of the lease and despite serving the Respondent with the appropriate demands for payment her service charges remained unpaid and it was obliged to commence the debt recovery proceedings in the County Court.
18. Unfortunately, despite the Tribunal issuing amended Directions, the statement of case filed by the Respondent failed to advance clear or coherent reasons for disputing the costs in issue in this case. She appeared to have abandoned the points taken in her County court Defence.
19. The Respondent expressed her general dissatisfaction with the developers for the 12 month period preceding May 2009 in relation to unspecified "property and service matter". She disputed 3 invoices on the basis that no services were provided for the costs set out in the invoices. These invoices do not appear to relate to any of the demands or invoice numbers on behalf of the Applicant for the costs claimed in these proceedings. The Respondent also makes a general assertion that the Applicant holds a reserve fund of approximately £2,000.
20. The only particularity to be found in the Respondent's statement of case are in the exhibits marked "UMB1" and "UMB2" annexed to it. Taken at its highest, this does no more than make a series of assertions that various costs are disputed but fails to state why either she does not consider that she is liable to pay the costs and/or considers them to be unreasonable. Alternatively, the Respondent puts the Applicant to proof in relation to the costs.

Service Charges

21. For the reasons set out above, the Tribunal concluded that there was no arguable defence to the service charge costs claimed by the Applicant. In part, the costs challenged by the Respondent fall outside the scope of this application and appears to concern the developer and not the Applicant.
22. Having carefully considered the evidence in this case, the Tribunal makes the following findings:
- (a) that the Respondent is contractually liable to pay the block and estate service charges for the years ended 31 December 2010 and 2012 and, thereafter, for the years ended 31 December 2013 and 2014 in relation to the managed or amenity areas under clause 3.2 of the lease and that the Applicant has validly issued demands in relation to these years.
 - (b) that the year end certified accounts¹ and supporting invoices are *prima facie* evidence that the costs were incurred by the Applicant.
 - (c) that the actual service charge costs for the years ended 2010, 2012, 2013 and 2014 are reasonable and payable by the Respondent.

Reserve Fund Contributions

23. The relevance of the Respondent's assertion that the Applicant is holding a reserve fund of approximately £2,000 is not understood by the Tribunal. The Respondent advanced no case whatsoever on this issue. Accordingly, the Tribunal made the following findings:

¹ see pages 177 onwards in the bundle

- (a) that the Respondent is contractually liable to pay the block and estate reserve fund contributions for the years ended 31 December 2011 and 2012 and, thereafter, for the years ended 31 December 2013 and 2014 in relation to the managed or amenity areas under paragraph 2 of the Fourth Schedule to the lease and that the Applicant has validly issued demands in relation to these years.

- (b) that the service charge contributions for the years ended 2011, 2012, 2013 and 2014 are reasonable and payable by the Respondent.

- (c) for the avoidance of doubt, the Tribunal accepts the evidence of the Applicant set out in its supplemental statement of case dated 5 July 2016 that all reserve fund contributions it held on behalf of the lessees of the block in which the property is located was refunded to them in 2011, when they acquired the Right to Manage.

Administration Charges (2011)

- 24. These are the costs incurred by the Applicant by having to instruct a debt collection agency, Property Debt Collection Ltd, to attempt to obtain payment of the service charge arrears in issue. It seems that work was undertaken by the company from 21 March 2011 until 23 July 2014.

- 25. The Respondent simply asserts that the costs are not reasonable because she attempted to resolve the dispute with the Applicant and the managing agent and made offers of payment.

- 26. Unlike section 19 of the Act, Schedule 11, paragraph 1 of the Commonhold and Leasehold Reform Act 2002 does not define how the

statutory test of reasonableness is satisfied. However, in the Tribunal's judgement, by analogy, the same considerations must apply when the reasonableness of administration charges fall to be determined.

27. In the light of the Tribunal's finding above in relation to the service charge arrears, it made the following findings in relation to the administration charges claimed:

- (a) that the Respondent is contractually liable to pay these charges under paragraph 1.2 of the Third Schedule of the lease on an indemnity basis.
- (b) that all of the administration charges claimed by the Applicant set out above are reasonably incurred and reasonable in amount save for the "instruction fee" of £108. The Tribunal considered this to be a duplication of costs, especially when an additional management fees and debt collection fees of £96 and £168 respectively are claimed.

Section 20C & Fees

28. At paragraph 9 of the Particulars of Claim, the Applicant has claimed contractual costs against the Respondent in the County Court proceedings. The Tribunal has no jurisdiction in these proceedings to make any determination in relation to the County Court costs. In the event that they are pursued by the Applicant they will be subject to a determination in the County Court.

29. The Tribunal does, however, have jurisdiction to deal with the Applicant's costs in these proceedings. The Tribunal's jurisdiction arises under section 20C of the Act. The Tribunal is required to consider the Applicant's entitlement to recover all or part of any such costs through

the service charge account generally if it considers it just and equitable to do so. It is not an order for party and party costs. In addition, the Tribunal is not required to determine the quantum of those costs. If and when such costs are applied to the service charge account, a lessee can make a separate application under section 27A of the Act for the reasonableness of the costs to be determined.

30. It follows from the Tribunal's findings above in relation to the service and administration charges in issue, it did not consider it equitable or just to make an order depriving the Applicant of the entitlement to recover the costs it had incurred in these proceedings. The Applicant had wholly succeeded and, therefore, the Tribunal's view was that costs should "follow the event". Accordingly, the Tribunal made no order under section 20C of the Act.
31. For the same reasons, the Tribunal makes an order under Regulation 9 below that the Respondent reimburse the Applicant the fees of £10 it has paid to have this application heard by 23 September 2016.
32. The Applicant has made a separate application under Rule 13 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 for a party and party award of costs against the Respondent. The Applicant submitted that the Respondent has acted unreasonably by failing to comply with the Tribunal's directions and has generally failed to co-operate in these proceedings.
33. The Tribunal does not grant the application for the following reasons. The Tribunal was satisfied, on balance, that any failure on the part of the Respondent to comply with directions was as a result of her being a lay person acting in person who did not necessarily understand how to conduct the litigation. It was not because she had deliberately acted in an unreasonable manner. Indeed, this appears to be the reason why it

was necessary for the Tribunal to issue the amended Directions order dated 13 May 2016 and it indicated as much at paragraph 10 of the order.

34. This case is now remitted back to the County Court for any outstanding matters in those proceedings to be dealt with.

Judge I Mohabir

24 August 2016

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.

Section 20C

- (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 court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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).