



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

Case Reference : **MAN/00BY/LSC/2015/0077**

Property : **31 Bispham House
Lace Street
Liverpool
L3 2BP**

Applicant : **Bispham House Management
Company Limited**

Representative : **J B Leitch, Solicitors**

Respondent : **Ms Karen Jones**

Representative : **N/A**

Type of Application : **Landlord and Tenant Act 1985 – s27A
Commonhold and Leasehold Reform
Act 2002 – Schedule 11, paragraph 5**

Tribunal Members : **Judge J Holbrook
Judge S Duffy**

**Date and venue of
Hearing** : **Determined without a hearing**

Date of Decision : **12 February 2016**

DECISION

DECISION

- A. The service charges for the years ending 31 March 2012, 2013 and 2014 are reasonably incurred and are payable by the Respondent to the Applicant in the amounts set out in the service charge accounts and demands.**
- B. The administration charge of £180 (inclusive of VAT) is reasonable in amount and payable by the Respondent to the Applicant if, as a matter of fact (to be determined by the County Court), there had been the non-payment of service charges in respect of which the administration charge was imposed.**

REASONS

Background

1. By order of District Judge Pugh sitting in the County Court at Norwich on 17 June 2015, the Tribunal is required to make a determination as to whether any service charge or other charges, expenses or costs are payable by the Respondent to the Applicant pursuant to a lease of Apartment 31 Bispham House, Lace Street, Liverpool L3 2BP (the Property). The periods in respect of which a determination is required are the service charge years which ended on 31 March in 2012, 2013 and 2014.
2. The Applicant in these proceedings is Bispham House Management Company Limited. The Respondent is Ms Karen Jones, who holds a long leasehold interest in the Property under a lease dated 31 March 2010 (the Lease) made between Fresh Start Living (No. 5) Limited (1), Alan Pierce (2) and the Applicant (3). The Applicant is the management company for the residential development which includes the Property and is a party to the Lease for this reason.
3. The Respondent also holds a separate long leasehold interest in a second apartment at Bispham House (Apartment 32). On 9 June 2015 District Judge Pugh had ordered that the Tribunal make a determination in relation to identical issues between the parties hereto concerning Apartment 32. The Tribunal duly did so in a reasoned decision dated 27 October 2015 (issued under the Tribunal's case reference MAN/00BY/LSC/2015/0065).
4. On 5 November 2015 the Applicant's solicitors wrote to the Tribunal to say that, in their view, the issues in the current proceedings are the same as those determined by the Tribunal in the Apartment 32 decision, and that the factual matrix of the two cases is also materially identical. The parties were subsequently notified that, having sought and obtained the Respondent's comments on this, a Judge had formed the provisional conclusion that the Applicant's solicitors are correct in this regard, and that it was therefore likely that the Tribunal would

make the same determination in these proceedings as it had previously made in relation to Apartment 32. The parties were also notified that, unless any objection was received from either party, the Tribunal proposed to make a determination on the basis of the written representations received from the parties to date without issuing further directions or holding an oral hearing. No such objection was received and the Tribunal accordingly convened in the absence of the parties on the date of this decision to consider the matter.

5. The Tribunal did not inspect the Property.

Law

6. Section 27A(1) of the Landlord and Tenant Act 1985 provides:

An application may be made to the appropriate 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.*

7. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

8. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It 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.*

9. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

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.

10. “Relevant costs” are defined for these purposes by section 18(2) of the 1985 Act as:

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.

11. An “administration charge” is defined in paragraph 1(1) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 as:

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.*

12. Paragraph 1(3) of Schedule 11 to the 2002 Act provides that a “variable administration charge” is an administration charge payable by a tenant which is neither specified in his lease nor calculated in accordance with a formula specified in his lease and, by virtue of paragraph 2, a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

13. Paragraph 5(1) provides that:

An application may 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.*

Determination

14. We have considered the documents comprised within the file supplied to the Tribunal in this matter by the County Court. These include the original claim, defence and reply thereto together with a copy of the Lease. We have also considered the Apartment 32 decision, the Applicant’s solicitors’ letter dated 5 November 2015 (referred to above)

and the Respondent's comments thereon in an email to the Tribunal dated 17 November 2015.

15. It is apparent that the only difference between the current proceedings (concerning Apartment 31) and the previous proceedings (concerning Apartment 32) is in the amount of the service charges for which judgment is sought in the County Court. The Applicant explains this difference as being a facet of the fact that the Respondent has paid differing amounts by way of service charge contributions for Apartments 31 and 32 respectively. However, it says that her underlying liabilities are identical in respect of each apartment.
16. Indeed it is also apparent that a central issue of discord between the parties is that of how much the Respondent has actually paid in discharge of her service charge liabilities. Ultimately, this is a question which the County Court must determine. It is not a question that falls within the Tribunal's jurisdiction: that jurisdiction is limited to determining the amount of any service charges which are *payable* (as distinct from the amount *paid*). In other words, disregarding any amounts which may have been paid towards discharging the service charge liability in respect of the Property, we must determine what that liability is in the first place.
17. The Tribunal faced the same task when it made the Apartment 32 decision. It concluded that the expenditure shown in the service charge accounts had been reasonably incurred and that the amounts which had been demanded from the Respondent were duly payable. It noted that the Respondent challenged the underlying service charge expenditure in only three respects: 1) the reasonableness of a £1,000 "levy" added to the service charge in 2013; 2) whether there had been compliance with the statutory consultation requirements in relation to certain works; and 3) whether the amounts claimed in respect of management fees were reasonable. Having considered these challenges, the Tribunal concluded that there was no merit in any of them.
18. We note that the Respondent has raised the same issues as grounds of resistance to the Applicant's claim in the current proceedings. However, she has not put forward any arguments which were not considered by the Tribunal previously, and we can see no reason to depart from the conclusions reached previously.
19. The previous Tribunal also considered the Respondent's challenge to the administration charge demanded in respect of the alleged non-payment of service charges. We agree with the previous Tribunal's conclusion that, assuming that there had indeed been non-payment of service charge in relation to the Property, the administration charge is payable to the Applicant and is reasonable in amount.