



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/00KG/LSC/2013/0052

Property : 57 Garner Court,
Tilbury,
Essex RM18 7BG

Applicant : Freehold Managers (Nominees) Ltd.

Respondent : Marcia Angela Morris-Jackson

Date of transfer from Basildon County Court : 28th March 2013 (23rd April for receipt of copy lease)

Type of Application : To determine reasonableness and
payability of service charges and
administration charges

The Tribunal : Bruce Edgington (lawyer chair)
Stephen Moll FRICS
David Cox

Date and venue of hearing : 20th August 2013, Park Inn Thurrock,
High Road, North Stifford, Grays RM16 5UE
Essex SS2 6EU

DECISION

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1. In respect of the amount claimed by the Applicant from the Respondent in the Basildon County Court under case no. 2QT52124, the decision of the Tribunal is as follows:-

	£	<u>decision</u>
Service charges on a/c	488.34	payable
08/02/2012 late payment fee	48	payable
14/03/2012 late payment fee	48	payable
12/04/2012 Land Registry fee	4	payable
12/04/2012 solicitor Referral fee	96	payable
JB Leitchs legal costs	420	payable
Court fee	70	no jurisdiction
Solicitors costs for the claim	80	no jurisdiction
Interest	24.33	matter for the court
Ground rent	200	no jurisdiction

Admin for ground rent

72 payable
1,550.67

However, the Respondent, in her evidence, said that her mortgage provider had been persuaded to pay the managing agents about £1,900 which she said included the amount claimed in the court proceedings. Before any enforcement measures are taken, the court will need to be satisfied about this.

2. This matter is now transferred back to the Basildon County Court under case no. 2QT52124 to enable either party to apply for any further order dealing with those matters which are not within the jurisdiction of this Tribunal or any other matter not covered by this decision including enforcement, if appropriate.

Reasons

Introduction

3. In 2012 a county court claim form was issued by the Applicant claiming £956.34 in service charges and £420.00 in administration fees from the Respondent plus interest and court fees and costs. The Respondent filed a defence on 2nd July 2012. By an Order made on the 21st December 2012 by District Judge Humphries, the court proceedings were stayed pending a decision of the Leasehold Valuation Tribunal. There then seems to have been a hiatus because no-one quite knew who was supposed to deal with what. An e-mail from the Applicant's solicitors to the court elicited a response from Judge Humphries that the file should be referred to the Tribunal. This Tribunal has inferred that questions as to whether the service charges and administration fees claimed were payable and/or reasonable were transferred. These are the only matters in the court proceedings which are within this Tribunal's jurisdiction.

4. The 'defence' reads as follows:-

"Freehold Management has not been managing the property to residence satisfaction, therefore as residence we have formed a residence committee and sort the right to manage the property ourselves. This has now been approved, and we are now waiting for the 90 days period of approval from other residence. This information has been passed on to freehold management company.

During the period of getting approval, we have been informed by the residence committee to withhold payment from Freehold. Hence the reason for non-payment.

I have agreed to part admission because I didn't know where else to put this information

If the court need further proof, please let me know and I will forward same to you"(sic)

5. This does not amount to a defence at all and the members of the Tribunal were

surprised that it had been accepted as such by the Court. The part admission made by the Respondent was for the sum of £566.00 although she does not say what part of the claim this relates to. The Applicant filed a reply which basically said that as the defence did not say why the Respondent was defending the claim, it was difficult to respond to the defence.

6. After transfer to the Leasehold Valuation Tribunal, directions were made that the Applicant file a statement justifying the claim and the Respondent file a statement saying exactly what she was contesting and why. The Applicant did file such a statement but the Respondent did not. The Respondent then said that she had not received the directions order and the first hearing on the 18th June 2013 was adjourned by consent. The Respondent was ordered to file her statement by 5th July 2013. She did not do so.
7. On 1st July 2013, the Leasehold Valuation Tribunal was subsumed into the new First-tier Tribunal, Property Chamber, which has all the jurisdiction and powers of the Leasehold Valuation Tribunal.
8. In the bundle provided by the Applicant for the hearing, at page 49, there is a budget for the year ending 31st December 2012 which envisages expenditure of £69,500. There is also the figure for the 2011 budget which totals £71,810. Applying the appropriate percentage of 1.4053% reveals a figure of £976.68 for the year. Half this figure is £488.34. Thus, the service charge element of the claim is clearly for 6 months service charges in advance based on the budget figure.

The Inspection

9. The members of the Tribunal inspected the estate in the presence of representatives from the managing agents namely Clare Baig (property manager) and Greg Campbell (regional director, London). The Tribunal knocked on the door of flat 57 and the Respondent answered. She asked the members to look at the state of the grounds, the insecure 'security' entrance to her part of the building and a cupboard containing electricity equipment which was outside her flat and where the locking mechanism appeared to be broken.
10. The development was built about 10-12 years ago and consists of a terrace of blocks of 8 flats each over 4 storeys and a separate smaller terrace of 2 blocks of 6 flats each over 3 storeys which includes the subject flat. There appear to be some 68 flats in the development. The members of the Tribunal walked around the grounds which consisted of a large car park, some grass areas with beds of shrubs and areas for rubbish bins. The common areas inside the building containing the subject flat were seen where the stair case goes to the upper floors. The stairs were carpeted and reasonably clean despite some engrained dirty marks but the walls were marked and in need of decoration.
11. The development is close to the centre of Tilbury which is a small town adjacent to docks. Many of the shops in the high street had metal shutters covering the doors and windows. Both the town and the development had the look of being neglected and unkempt.

12. Large parts of the grass at the rear did not need mowing because the grass had been put onto what appeared to be earth over hard core or pebbles which were showing through and mostly devoid of anything that could really be described as grass. The Tribunal noted that some sections of guttering to both blocks were supporting the growth of vegetation.

The Lease

13. The Tribunal was shown a copy of what seems to be the original lease. It is dated 28th February 2005 and is for a term of 99 years from the 1st January 2004 with an increasing ground rent. It incorrectly describes the subject flat as being on the first floor whereas it is on the ground floor. The plan attached appears to be correct.
14. There are the usual covenants on the part of the landlord to maintain the common parts and structure of the property and to insure it and the Respondent is liable to pay 1.4053% of the total estate charges. As no issue is raised in the defence about the payability of any item of service charge or administration fee, these reasons will not repeat the relevant provisions in the lease.
15. Clause 7(b) provides a contractual basis for the landlord to claim interest from the lessee at 4% above Barclays Bank base rate or 10% per annum whichever is the higher. However, as the Applicant appears to have claimed interest in the court proceedings pursuant to Section 69 of the County Courts Act 1984, the Tribunal will leave the question of interest to the court.
16. The Fourth Schedule sets out what can be claimed as a service charge and it is confirmed that an amount can be claimed on the 1st January and the 1st July of each year as an estimate of the likely service charge for that year. Paragraph 13 allows the Applicant to claim "*all proper and reasonable costs charges and expenses (including legal costs and fees payable to a surveyor) which may be incurred...in or in contemplation of any ...court or arbitral proceedings against the Tenant*" to enforce the covenants.

The Law

17. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.
18. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.
19. Section 27A(4) of the 1985 Act states, in effect, that this Tribunal has no jurisdiction to determine a service charge which has been "*agreed or admitted by the tenant*".

20. Paragraph 1 of Schedule 11 (“the Schedule”) of the **Commonhold and Leasehold Reform Act 2002** (“the 2002 Act”) defines an administration charge as being:-

“an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable...for or in connection with the grant of approvals under his lease, or applications for such approvals...or in connection with a breach (or alleged breach) of a covenant or condition in his lease.”

21. Paragraph 2 of the Schedule, which applies to amounts payable after 30th September 2003, then says:-

“a variable administration charge is payable only to the extent that the amount of the charge is reasonable”

22. Paragraph 5 of the Schedule provides that an application may be made to this Tribunal for a determination as to whether an administration charge is payable which includes, by definition, a determination as to whether it is reasonable.

The Hearing

23. The hearing was attended by those who attended the inspection together with the Respondent’s son. The Respondent was asked why she had not complied with directions and filed a statement. It will be recalled that there had already been an adjournment to enable her to comply with the directions. Her response was that she works 6 days a week and sometimes does not get home until 8.00 pm. She apologized but said that she simply had not had enough time.

24. The Tribunal invited her to make her case but warned her that as neither the Tribunal nor the Applicant had any real idea what she was going to say, it may not carry much weight as the Respondent would not be able to provide any rebuttal evidence.

25. She then listed a number of complaints including the fact that the property had not been decorated for a long time; the grounds were unkempt; her security door was not working and she had complained about this a long time ago; the problem with the electricity meter box where someone had apparently broken into it and put £50 credit in and demanded repayment; the waste bin areas were normally much worse than they appeared on inspection and she then started to recount a number of occasions when her relatives’ cars had been clamped without good reason. She could not see how the claim was made up and she could not answer when the Tribunal asked why she had admitted the sum of £566 with her ‘defence’. She could not even say how that figure was made up.

26. The Tribunal chair pointed her to the 2012 budget on page 48 in the bundle and explained how the £488.34 was made up i.e. half the sum required on account for the whole of that year. She had clearly not understood that. She then went on to say that her mortgage provider had made payment to the managing agents despite her asking them not to.

27. When asked for their comments, Glen Campbell, on behalf of the Applicant, said

that the problem with this estate is that there is a very high level of non-payment of service charges which makes cash flow an extreme problem with the consequent problems for management.

Conclusions

28. The Respondent makes no criticism of the amount of the service charges or administration charges. She has admitted over a third of the claim without any explanation about which third it is. She could not really provide any satisfactory explanation as to why she had not put her case into written form. Whilst the members of the Tribunal obviously sympathise with someone who works as hard as she does, the fact is that many people do. However, people in these circumstances do have to find time to deal with important matters such as this.
29. The problem which the Respondent has is that the service charge element of the claim is simply a request for the payment in advance of future service charges. Whatever may have been defective in the management of the site in the past, the amounts required on account would appear to be reasonable for an estate of this size. The administration charges are a little high but the Respondent accepted that she had simply refused to pay as a matter of principle. People who refuse to pay service charges when they have a lease which enables the landlord to recover all fees and expenses which arise as a result of such refusal to pay can only expect to have to pay such amounts, particularly when they do not challenge the level of fees being claimed.
30. If the Respondent is correct when she says that she refused to pay on the advice of a residents' committee, then the advice she was given appears, on the face of it, to have been wrong. If she does have a defence and counterclaim, it can only really relate to service charges incurred where she may be able to challenge the reasonableness of those charges. Challenging payments on account will never have the same effect as they are only estimates of future charges. As the Tribunal chair said during the hearing, she should really take legal advice about this.
31. In the circumstances, and bearing in mind recent high profile Upper Tribunal cases which have reminded Tribunals that they work in an adversarial system, and should not seek to make points which have not been made by the paying party, the Tribunal confirms that those parts of the claim which are within its jurisdiction are payable and the individual amounts have not been challenged.

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Bruce Edgington
Regional Judge
26th August 2013