

8869



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

**Case Reference** : **MAN/OOCB/LSC/2013/0071**

**Property** : **Flat 1, Rowson Court, Pickering Road,  
Wallasey. CH45 9LU**

**Applicant/Claimant** : **Rowson Court Limited**

**Representative** : **Mr C. Winstanley**

**Respondent/Defendant:** **Mr L. A Wray and Mrs C. L. Minshull**

**Representative** : **None**

**Type of Application** : **Landlord and Tenant Act 1985 section  
27(A)(1)**

**Tribunal Members** : **Mr G. C. Freeman  
Mr I James MRICS**

**Date and venue of  
Hearing** : **1<sup>st</sup> October 2013  
Family and Civil Court, Vernon  
Street, Liverpool L2 2BX**

**Date of Decision** : **1st October 2013**

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**DECISION**

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**At the date of issue of proceedings in the County Court, the service charge claimed of £400.40 was not payable by the Respondent/Defendant.**

**The Applicant/Claimant is to pay the Respondent/Defendant's expenses of £57.20**

### **Preliminary**

1. The Applicant/Claimant has issued proceedings in the Birkenhead County Court against the Respondent/Defendant for unpaid service charge in respect of the Property. The claim number is 2YN23650. The amount claimed is £440.40 plus court fees of £50.00. The amount claimed represents service charge due from 1 July 2012 to 30 June 2013.
2. The Respondent entered a Defence on 13 March 2013. On 3 April 2013 District Judge Dawson sitting at the Birkenhead County Court ordered that the issue of what service charges are payable by the Defendant is transferred to the Leasehold Valuation Tribunal pursuant to [section 31C of the Landlord and Tenant Act 1985 and the Civil Procedure Rules 56PD.52]. (now replaced by section 174 and Schedule 12 of the Commonhold and Leasehold Reform Act 2002 and CPR PD 56 Para 15).

### **The Lease**

3. The Respondent is the registered proprietor of the leasehold interest in the Property, under title number CH52084. A copy of the Lease dated 5<sup>th</sup> September 1969 accompanied the court file. The Lease is made between David Farrell Properties (Liscard) Limited of the one part and Florence Gwendolen Sausby of the other part.
4. The Fourth Schedule of the Lease imposes an obligation on the owner of the flat to pay an interim Charge and a Service Charge as provided by that Schedule.
5. The reversion to the Lease is vested in the Applicant/Claimant.

### **Inspection**

6. The Tribunal inspected the common parts of the development of which the Property forms part on the morning of the hearing. It consists of a ground floor flat in a purpose built block in a residential suburb of the Wirral. There are two blocks of seven flats in each block. Four flats have two bedrooms. The remaining ten flats have a single bedroom. Window frames and entrance doors are of upvc. There is undercroft garage parking allowing each flat owner to have non allocated parking space, some of which is external.

7. The Tribunal noted that the steel lintels above the window frames were showing signs of rust causing spalling of the brickwork above. Damage from tree roots was evident to the easterly external elevation.

### **The Law**

8. The relevant law is set out in the attached appendix.

### **The Tribunal's Findings**

9. The Tribunal noted the admission by Mr Winstanley that the relevant notice required by the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (England) Regulations 2007 did not accompany the demand for payment of the service charge sought by the Applicant/Claimant.
10. The Tribunal concluded that, as a result, no service charge is payable by the Respondent/Defendant.

### **Costs**

11. The Respondent/Defendant applied for costs to be paid for by the Applicant/Claimant. Mr Wray stated that he had incurred costs for legal advice of approximately £4000 in connection with this claim and a previous County Court Claim. He produced no invoices for these costs. He did produce receipts for copying and land registry fees in the sum of £57.20. The Tribunal orders that the Applicant/Claimant reimburses this sum to the Respondent/Defendant.

## **APPENDIX**

### **The Law**

#### **Service Charges**

Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

- (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 provides that

- (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 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.

Section 27A provides that

- (1) an application may be made to a First-Tier Tribunal (Property Chamber) 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 date at or by which it is payable, and
  - (d) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) ....
- (4) No application under subsection (1)...may be made in respect of a matter which –
  - (a) has been agreed by the tenant.....
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

No guidance is given in the 1985 Act as to the meaning of the words "reasonably incurred". Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.

In *Veena v S A Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

Where a tenant disputes items, he need only put forward sufficient evidence to show that the question of reasonableness is arguable. Then it is for the landlord to meet the tenant's case with evidence of its own. The Tribunal then decides on the basis of the evidence put before it.

### **Notices to Accompany Demands for Service Charges**

Section 153 of the Commonhold and Leasehold Reform Act 2002 inserted an additional section 21B into the 1985 Act as follows:-

#### ***“21 B Notice to accompany demands for service charges***

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.*
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.*
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.*
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period of which he so withholds it.*
- (5) Regulations under subsection (2) may make different provision for different purposes.*
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament”.*

The Regulations referred to in section 21B (6) are contained in the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (England) Regulations 2007 (S.1.2007 No 1257) which came into force on 1 October 2007. These provide that a summary of rights and obligations must accompany a demand for service charges. Among other requirements, it is a requirement that a tenant must be informed of his right to apply to a First-Tier Tribunal (Property Chamber) for a determination of reasonableness and payment of service charges.

## **Costs**

The Tribunal has power to order the payment of costs by one party to the other by virtue of Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 where that party has acted unreasonably in bringing conducting or defending the proceedings, or under section 29(4) of The Tribunals Courts and Enforcement Act 2007.

Where the proceedings are started before the 1<sup>st</sup> July 2013 but continue after that date, an order for costs may only be made if, and to the extent that an order could be made prior to that date.