



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

**Case Reference** : CAM/12UE/LSC/2014/0086

**Property** : Flat 3, Old Mill Office, Fishers Yard, Market Square,  
St Neots, Cambridgeshire PE19 2AG

**Claimant** : Oak House Homecare Ltd

**Defendant** : Mr Denis McFaul

**Application** : Application, pursuant to s27 of the Landlord & Tenant  
Act 1985, to determine the payability and  
reasonableness of service charges and administration  
charges.

**Tribunal Members** : Judge Reeder  
Mr Roland Thomas MRICS (valuer member)  
Mr Peter Tunley (lay member)

**Date of hearing** : 11 November 2014 (The Abbotsley Golf Hotel & Country  
Club The Abbotsley Course, Eynesbury, Hardwick, St.  
Neots, Cambs., PE19 6XN)

**Date of Decision** : 11 November 2014

**Date Written** : 19 December 2014

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**DECISION**

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## **DECISION**

### **The claim for £1916.89 comprising service charges demanded**

1. The claim for £1916.89 comprises unpaid service charges of £181.94 outstanding in July 2010 together with invoices, each in the sum of £346.99, presented in January and July 2011, January 2012, July 2012, and January 2013 respectively.
2. In respect of those service charges the Tribunal determines that it was reasonable to carry out the relevant works, that the works were carried out to a reasonable standard, and that the resulting costs provide value for money and are reasonable.
3. It follows that those service charges are reasonable and payable in the sums demanded.

### **The administration charge & court costs**

4. The £95 claimed relates to the cost of issuing the proceedings in the county court. The £40 administration charge claimed relates to the cost of preparing the documentation required to issue the county court claim. It follows that neither are within the jurisdiction of this Tribunal and must be dealt with by the county court.

### **The costs of the Tribunal proceedings**

5. As the matter comes before the Tribunal as the transfer from the county court of "the part of the claim that relates to disputed service charges" the costs of the tribunal proceedings should be considered by the county court as part of the overall costs of the litigation. It follows that this Tribunal makes no order in relation to those costs.

### **The county court proceedings**

6. This Tribunal has now determined that part of the claim which relates to disputed service charges. The remaining issues before the county court fall to be determined by that court. The parties should make any further applications to that court. They should provide a copy of this Decision to that court for the purposes of enforcement.

## REASONS

### The application, parties, premises & disputed service charges

7. This matter comes before the Tribunal pursuant to an order made in county court proceedings (No. 3YQ70173) by Deputy District Judge Wilson sitting in the county court at Peterborough on 7 May 2014. That order provides that "the part of the claim that relates to disputed service charges be referred to the first-tier tribunal". The Tribunal did not receive that referral until 28 July 2014.
8. The claimant issued that county court money claim on 26 September 2013. It comprises a claim for £1916.89 unpaid service charges as at 31 July 2013, together with a £40 administration charge and the court fee of £95. For reasons which are not relevant to the Tribunal's decision judgement was entered in default of a defence being filed but subsequently set aside following an application made by the defendant on 3 January 2014.
9. On 20 August 2014 Tribunal Regional Judge Edgington issued a directions order. This order directed the defendant to file and serve a statement of case confirming the scope and detail of the disputed service charges by 3 September 2014. This order directed the claimant to file and serve a statement in response setting out its justification in law for the disputed service and administration charges by 19 September 2014. All documents to be relied upon were directed to be exchanged by 26 September 2014. Any witness statements to be relied upon were directed to be served by 26 September 2014.
10. The defendant has not provided any documents or witness statements. The claimant has prepared and provided to the Tribunal a 35 page hearing bundle. The defendant summarises his challenge to the service and administration charges at page 30. The claimant sets out its response at page 31.
11. The claimant, Oakhouse Homecare Ltd, is the freehold owner and manager of Old Mill Office, Fishers Yard. That building comprises four residential properties and one commercial property. The commercial property on the ground floor was previously in use as the claimant company's office. It is now let on a commercial tenancy. Mr and Mrs Scoyles are the directors of the claimant company. As the name of that company might suggest, it is engaged in the business of providing residential care homes. We are

informed that neither the company nor Mr & Mrs Skoyles have any previous experience of residential property management.

12. The defendant is the leasehold owner of one the residential properties, flat 3. He acquired his interest in late 1994/early 1995.

### **The inspection by the Tribunal**

13. The Tribunal has made an external visual inspection of the relevant premises. Old Mill Office is an attractive 3 storey brick built building which has been converted to provide a ground floor commercial unit fronting onto Fishers Yard together with 4 residential maisonette properties, situated to the side of and above the commercial unit,
14. The Tribunal has negotiated the communal external staircase which provides access up the side of the ground floor commercial unit to a terrace which leads to first floor rear entrances to 1-4 Old Mill Office.
15. We have inspected the external elevations, communal external staircase, first floor terraces and first and second floor rear elevations of 1-4 Old Mill Office. We have been accompanied and assisted by Mr & Mrs Skoyles on behalf of the claimant, and by the defendant Mr McFaul.

### **The hearing before the Tribunal**

16. Mr & Mrs Skoyles have attended in their capacity as directors of the claimant company. Mr Skoyles has presented the claimant's arguments with laudable clarity. He has told us that the company is engaged in the provision of residential care homes. The ground floor commercial unit was previously used as their office. They are not experienced in residential property management. They acquired the freehold from Messrs Campbell Melhuish & Buchanan Ltd. They took over management of the building from Cambridge Property Management Ltd ('CPM') in May 2005. It is apparent from Mr Skoyles evidence before us and from documentation in the hearing bundle that court proceedings were required to obtain copy leases, management documents and the accrued funds in the reserve fund from the previous managing agent.

17. The defendant, Mr McFaul, has attended in person and pursued his arguments with vigour.
18. The Tribunal has been provided with a somewhat limited 35 page hearing bundle which has been considered with care.
19. As explained to the parties during the hearing the Tribunal's jurisdiction is dictated by statute and for that reason the components of the claim in the county court in relation to which the Tribunal has jurisdiction comprise the sum of £1916.89 being unpaid service charges as at 31 July 2013, together with the £40 administration charge for preparing the documentation required to issue the county court claim. The remainder of the dispute including Mr McFaul's counterclaim in respect of a lost sale opportunity is outside of the jurisdiction of the Tribunal and will need to be determined in the county court proceedings.
20. Mr Skoyles produces an account summary at page 32 of the bundle and by reference to this confirms that the £1916.89 claimed in respect of unpaid service charges comprises £181.94 outstanding in July 2010 together with invoices, each in the sum of £346.99, presented in January and July 2011, January 2012, July 2012, and January 2013 respectively.
21. Mr Skoyles has addressed us to confirm and explain the service charge demands and service charge accounts, together with the contractor invoices and similar documents provided in the hearing bundle (pages 2-14 relating to works, and 20-26 relating to insurance) which evidence each of the relevant costs incurred which are included in those service charge demands. Mr McFaul complains that he has not seen these documents before. Having been involved in the scrutiny of these costs during the hearing he very fairly and sensibly takes no issue in relation to his liability to pay, and the reasonableness of, those costs save for one item : the cost of repair and redecorations to the decking in 2009 (page 5 in the bundle).
22. Mr McFaul complains that the procedure of presenting half year service charge demands for fixed sums does not equate to the actual costs of any relevant works done, nor to the estimated costs of any proposed works. He argues that there has been no adequate planning for cyclical maintenance, and this has caused the decking on the external roof terrace to decay to the point that it has recently required replacement. He

states that no certified accounts have been provided until May 2014 and so prior to that he was not able to satisfy himself that the service charges demanded were not more than the costs actually incurred for work carried out, and unable to confirm the balance of monies held in the service charge account and the interest accruing on that balance.

### **The lease**

23. The Tribunal is provided with a copy lease which the parties confirm is the relevant lease for the premises. Mr Scoyles has confirmed his belief that the residential leases are all in similar terms. The Tribunal has considered this lease with some care during the hearing.
24. The parties were invited to and have addressed the Tribunal on the covenants relevant to the dispute. It is fair to say that neither party appears to fully understand how the lease is intended to operate in relation to repairs and renewals, costs and service charges. For that reason the Tribunal sets out below those parts of the lease which are directly relevant to the dispute between the parties.
25. Clause 4(3) provides that the claimant shall use its best endeavours to ensure that the management company provides the clause 5 services including securing insurance and keeping in good and substantial repair and decoration the exterior woodwork, fascia, barge boards, and timber cladding on a 3 year cycle, including the replacement of terrace coverings every 10 years.
26. Clause 2(4) and the Fourth Schedule provide that the defendant is liable to pay the total service charge costs reasonably and properly expended by the claimant to meet its obligations under the lease together with the amount of such reserves (if any) as may be reasonably required in relation to the claimant's liability for maintenance and repairs in any future accounting period.
27. Clause 2(4) and paragraph 1(1)(e) of the Fourth Schedule provide that the claimant may re-charge as a service charge all costs and expenses reasonably incurred in the management of the building including the reasonable fees of any managing agent and of any accountant employed to prepare an audited statement of the total service cost to each lessee.

28. Paragraph 8 of the Fourth Schedule provides that all reserves (if any) created shall be deposited with a trust corporation to the credit of a trustee account in the name of the claimant managing agent which shall hold the same in trust for the lessees and the interest earned shall be applied in each year in reduction of the total service charge.
29. Paragraph 9 of the Fourth Schedule states the appropriate percentage apportionment between the lessees for the different relevant costs.
30. Clause 2(4) and the Fourth Schedule provide that the annual accounting period runs from 1 February in one year to 31 January in the following year.
31. Clause 2(4) and the Fourth Schedule provide that the defendant is liable to pay an interim service charge on 1 July and 1 January in each accounting year in such sum as the managing agent shall specify in its discretion as a fair and reasonable payment.
32. Clause 2(4) and the Fourth Schedule provides that in respect of any accounting period, where the interim service charge paid exceeds the service charge as certified then the surplus shall be carried over and credited to defendant's service charge account when computing the service charge in succeeding accounting periods.
33. Clause 2(4) and the Fourth Schedule provides that in respect of any accounting period, where the service charge exceeds the interim service charge together with any carried forward surplus from previous years then the defendant shall pay the excess to the claimant within 28 days after service of the auditors certificate stating the interim service charge paid, service charge due and deficiency due.
34. Clause 2(4) and the Fourth Schedule provides that as soon as reasonably practicable after the end of each accounting period the claimant or its managing agent shall serve upon the defendant a signed auditor's certificate stating the total service cost for that accounting period, the amount of the interim charge paid in respect of that period together with any carried forward from the previous accounting period, and the amount of the final service charge for that period together with any excess or deficiency of the final service charge over the interim charge.
35. Clause 2(4) and the Fourth Schedule provides that as soon as reasonably practicable after the end of each accounting period the claimant or its managing agent shall serve,

with the signed auditor's certificate, schedules showing actual relevant costs incurred and the amounts and aggregate amounts of any reserves created.

### **The law**

36. The *Landlord & Tenant Act 1985* as amended by the *Commonhold & Leasehold Reform Act 2002* sets out the Tribunal's jurisdiction to determine liability to pay service charges. *Section 27A(1)* of 1985 Act provides as follows -

*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 is payable.*

37. *Section 18* sets out the meanings of 'service charge' and 'relevant costs'.

38. *Section 19* sets out that jurisdiction to limit service charges to those relevant costs which are reasonably incurred and to those which arise from works and services of a reasonable standard.

39. *Section 20C* sets out the jurisdiction, where the tribunal considers that it is just and equitable to do so, to grant an order providing that all or any of the costs incurred by the landlord in connection with proceedings before this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessee or any other person or persons specified in the application.

40. *Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002* sets out the Tribunal's jurisdiction to determine the payability and reasonableness of administration charges. *Section 5(1) of Part 1 to Schedule 11* provides -



*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.*

41. Section 1 provides a definition of 'administration charge'. Sections 2 & 3 provide that a variable administration charge is payable only to the extent that the charge specified in lease is reasonable, that the formula specified for determining the charge is reasonable, and that amount of the charge is reasonable.

### **Discussion & determinations**

42. The claim for £1916.89 in respect of unpaid service charges comprises £181.94 outstanding in July 2010 together with invoices, each in the sum of £346.99, presented in January and July 2011, January and July 2012, and January 2013 respectively. This is confirmed by an account summary at page 32 of the bundle. Each of the service charge invoices is said to be for an "interim charge" and demands a fixed sum of £346.99 for 6 months, equating to £693.98 for each service charge year.

43. Mr Scoyles states that the £40 administration charge relates to his time spent to prepare the documentation required in order to issue the county court claim. He has charged 4 hours at £10 per hour for this.

44. Mr McFaul's statement of case provided for these proceedings refers to his previous "letter of defence to the county court". We have read that document. Both raise a number of matters in a narrative form. Those documents may be distilled into distinct and succinct issues for consideration by the Tribunal. Mr McFaul has helpfully addressed us during the hearing on each of these issues. They may be summarised as follows -

- (i) The half year service charge demands are each for fixed sums of £346.99 and do not equate to the actual costs of any relevant works done, nor to the estimated

costs of any proposed works.

- (ii) There has been no adequate planning for cyclical maintenance, and this has caused the decking on the external roof terrace to decay to the point that it requires replacement.
- (iii) Despite requests for the same no certified accounts having been provided until in or about May 2014. Mr McFaul sought accounts so as to satisfy himself that the service charges demanded were not more than the costs actually incurred for work carried out, and so that he could see the balance of monies held in the service charge account and the interest accruing on that sum.

45. In his written statement of case and his helpful oral presentation to the Tribunal Mr Skoyles for the claimant company responds as follows-

- (i) The claimant took over management from Messrs Cambridge Property Management in Summer 2005.
- (ii) The building was in a reasonable state at that time with no urgent, cyclical or major works required. The only landlord service required, and so cost to be recovered as a service charge, was for insurance.
- (iii) Legal proceedings against the agent were concluded in Summer 2005 and they provided only "a cheque for the balance of the sinking fund, copies of the leases for the four properties and some random correspondence".
- (iv) The balance in the sinking fund paid over in 2005 was £3,656.58. The entirety of this was allocated to the reserve fund established by the claimant.
- (v) The system of half yearly fixed sum demand was the prevailing arrangement for all four residential lessees in Old Mill Offices arranged by and inherited from the previous managing agents.
- (vi) The fixed sum demands into the reserve fund were intended to accrue in order meet the annual cost of insurance and the cost of any responsive repairs which arose, with the remainder accruing toward the cost of external re-

decorations every 2-3 years and the renewing of the decking every 10 years.

(vii) The reserve fund currently holds £1,500

(viii) The property has been insured each year

(ix) The woodwork has been redecorated twice.

(x) The decking has been maintained and repaired on three occasions. A patch and repair approach was taken as there was insufficient funds in the service charge account to pay for replacement.

(xi) The decking is to be replaced and the claimant will provide an interest free loan to fund this.

(xii) Sundry minor repair items have been carried out when required.

(xiii) In or about 2005 Mr Skoyles agreed with all of the residential lessees that spreadsheets would be adopted as an alternative to audited accounts in order to save money.

(xiv) Invoices are available to support every work item carried out and recovered as a service charge.

46. Mr Mc Faul states that he agreed to pay £100 pcm whilst continuing to dispute the service charges sought for the reasons set out above. The payment record produced to us appears to confirm that such payments were indeed made until in or about February 2012. Mr McFaul states that he ceased payment at that time because his queries were not adequately answered by Mr Skoyles.

### **The costs incurred and service charges demanded**

47. The claimant's contention that the service charges demanded equate with and do not exceed the actual costs incurred is borne out by the documentary evidence before the tribunal.

48. The contractor invoices and similar documents provided in the hearing bundle (pages 2-14 relating to works, and 20-26 relating to insurance) evidence each of the relevant costs incurred which the claimant has sought to recover by the service charge.
49. Mr McFaul complains that he has not seen them before. Having been involved in the careful scrutiny of these costs during the hearing he very fairly and sensibly takes no issue in relation to his liability to pay, and the reasonableness of, those costs save for one item : the cost of repair and redecorations to the decking in 2009 (page 5 in the bundle). He argues that it was not reasonably required given that it was in a good state in 2005, that the labour cost is unreasonably high, and that the work was not carried out to a reasonable standard.
50. Mr Skoyles disputes these points. He tells us that he inspected the work when it was completed and that he was content that it was completed to a reasonable standard.
51. The Tribunal does not accept Mr McFaul's arguments. The timing of the works was in line with the clause 4(3) maintenance cycle in the lease. The labour cost of £300 for 2 men over 2 working days is reasonable and reflects the fact that the claimant's own care home maintenance men were used. The materials costs are itemised on the merchant invoices on pages 6-8 of the bundle and are both reasonable and indicate the extent of the job which appears to approximate 110 sq m of decking. We accept Mr Skoyle's evidence that the work was completed to a reasonable standard. He attended to inspect for this purpose, whereas Mr Mc Faul states that he attended to check his tenanted flat every 2-3 months and is recounting complaints made by his then tenant.
52. Accordingly, the Tribunal determines that it was reasonable to carry out the relevant works re-charged as service charges, that the works were carried out to a reasonable standard, and that the resulting costs provide value for money and are reasonable.

### **The procedure for demanding service charges**

53. We have been provided with two types of demands for service charge payment sent by the claimant to the defendant, one type prior to the county court hearing in May 2014 and a second type after that hearing. Each type has a slightly different format to the other. Neither complies with the legal requirement to provide to the lessee a summary of his rights and obligations in relation to a demand for payment.

54. Mr Skoyles made plain that he has no knowledge of such requirements.
55. As explained during the hearing this is a requirement of Section 21B of the Landlord & Tenant Act 1985 and the form and content of the written summary which must be provided is set out in the 'Service Charges (Summary of Rights & Obligations, and Transitional Provisions)(England)Regulations 2007 (statutory instrument 2007 No. 1257).
56. Failure to comply with this requirement entitles a lessee to withhold the service charge demanded.
57. The intention of the written summary required is to notify a lessee that he has the right to apply to this Tribunal to determine liability for, and the reasonableness of, the service charge demanded. Mr McFaul has now had the benefit of that process during this application.
58. During the hearing Mr Skoyles has assured the Tribunal that he will obtain a copy of the written summary of rights and obligations and provide it to Mr McFaul, and will include the same with all subsequent service charge demands.
59. In such circumstances the Tribunal takes the view that Mr McFaul may no longer withhold the service charges demanded once he has received that summary.

### **The reserve fund**

60. Clause 2(4) of, and the Fourth Schedule to, the lease provide that Mr McFaul is liable to pay as a service charge "the amount of such reserves (if any) as may be reasonably required in relation to the claimant's liability for maintenance and repairs in any future accounting period". In order to be reasonable this should be based on an informed forecast as to the likely cost of the maintenance and repairs programmed for future years. A good example is the decking which the lease intends should be renewed every 10 years.
61. Paragraph 8 of the Fourth Schedule to the lease provides that all reserves (if any) created shall be deposited with a trust corporation to the credit of a trustee account in

the name of the claimant managing agent which shall hold the same in trust for the lessees and the interest earned shall be applied in each year in reduction of the total service charge.

62. This clause reflects legal requirements that when collecting service charges into the reserve fund in this way the claimant acts as trustee and holds the leaseholders' money collected for the purpose of future expenditure to their benefit. Section 42 of the Landlord & Tenant Act 1987 requires that those monies must be held in a reserve fund accounts, and be held in a trust.

63. Again, Mr Skoyles made plain that he has no knowledge of such requirements. During the hearing the Tribunal has taken the opportunity to explain to him in simple terms the legal requirement for him to establish a service charge account and reserve fund correctly and understand his obligations as a trustee of the same.

#### **Interim service charges, final service charges & annual accounts**

64. The intended arrangement for interim service charge demands, final service charge balances and annual accounts is clearly set out in the lease. The relevant lease provisions are set out earlier in the Decision.

65. Clause 2(4) and the Fourth Schedule provide the annual accounting period to be 1 February to 31 January, that the defendant is liable to pay an interim service charge on 1 July and 1 January in each accounting year in such sum as the managing agent shall specify in its discretion as a fair and reasonable payment, that as soon as reasonably practicable after the end of each accounting period the claimant or its managing agent shall serve upon the defendant a signed auditor's certificate stating the total service cost for that accounting period, and specifying what is required in the event of a shortfall or surplus between the interim and final service charge.

66. The present arrangement of 6 monthly "interim charge" demands in a fixed sum of £346.99 does not comply with the lease provisions. Final balancing demands or credit advices are required.

67. We are told that the requirement for accounts has now been complied with. The 2014 account prepared by Messrs Tacconi Green & Co is included in the hearing bundle. Mr

Skoyles assures us that copies of the earlier years' accounts will be provided to Mr McFaul.

68. Those accounts should comply with the requirements of the lease which are clearly specified in clause 2(4) and the Fourth Schedule of that lease.

### **Future management of the building**

69. It is apparent to the Tribunal that the claimant (being in reality Mr & Mrs Skoyles) has no experience of residential property management and has merely continued the prevailing simple arrangement 'inherited' from the previous managing agent.

70. As Mr McFaul and other residential lessees are withholding service charge payments this arrangement does not appear to work effectively.

71. If the claimant intends to continue to manage the building itself then a proper understanding of the lease and of the law relating to residential property management must be acquired. During the hearing reference was made to the practical guidance available in the '*RICS UK Residential Property Standards - 5th Edition (August 2014)*', otherwise known as the 'blue book'.

72. The parties are now aware that clause 2(4) of, and paragraph 1(1)(e) of the Fourth Schedule to, the lease provide that the claimant may re-charge as a service charge all costs and expenses reasonably incurred in the management of the building including the reasonable fees of any managing agent. Such an appointment should remedy the management shortcoming to date but will of course mean increased costs and so increased service charges.

### **The administration charge & court costs**

73. The £95 claimed relates to the cost of issuing the proceedings in the county court. The £40 administration charge claimed relates to the cost of preparing the documentation required to issue the county court claim. It follows that neither are within the jurisdiction of this Tribunal and must be dealt with by the county court.

## **The costs of the Tribunal proceedings**

74. The Tribunal is mindful that it may only determine those matters within its prescribed jurisdiction and only does so as a result of the matter being transferred from the county court as extant proceedings and for that purpose. Further, the Tribunal's determinations in relation to the service charges are only a part of the dispute between the parties as set out in the documents they have filed in the county court proceedings. In the circumstances the Tribunal determines that the parties' respective costs of engaging in these tribunal proceedings should be left to be considered as part of the overall costs of the county proceedings by the district judge in the county court. It follows that this Tribunal makes no order in relation to those costs.

**Stephen Reeder**  
**Judge of the First Tier Tribunal**  
**Property Chamber**