



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

**Case Reference** : CAM/34UE/LSC/2014/0041

**Property** : Basement and Flats A, B and C, 169 Mill Road, Kettering, Northamptonshire NN16 0RQ

**Applicant** : Ground Rents (Regis) Limited

**Representative** : Mr J Higgins of Countrywide Estate Management (managing agents)

**Respondent** : Mr G K C Summers

**Representative** : In person

**Type of Application** : Determination of service charges pursuant to Section 27A of the Landlord and Tenant Act 1985

**Tribunal Members** : Tribunal Judge Dutton  
Mr R Brown FRICS  
Mr P A Tunley

**Date and venue of Hearing** : Holiday Inn Express, Kettering, Northamptonshire on 21<sup>st</sup> July 2014

**Date of Decision** : 20th August 2014

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**DECISION**

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## DECISION

**The Tribunal makes the determinations as set out in the findings section of this document and as set out below in summary.**

**The Tribunal makes an order pursuant to Section 20C of the Landlord and Tenant Act 1985 (the Act) that the costs of the proceedings shall not be recoverable as a service charge for the reasons set out below.**

**To assist the Court we confirm that the case number is 3QZ52691 which as per the Order of 2nd April 2014 consolidates other cases. The summary of our findings are:**

- 1. The reserve fund of £500 for the year ending April 2014 is allowed.**
- 2. The management charges as claimed of £972 are allowed.**
- 3. The accountancy fee as claimed of £144 is allowed.**
- 4. We disallow the claim by Regis of £60 for the reasons stated below and also disallow the administration charges likewise for the reasons stated above.**

**We calculate, therefore, that the total sum payable by Mr Summers in respect of the four flats is £1,616 which should be paid within the next 28 days.**

**The remaining matters relating to interest and court costs are to be referred back to the County Court for a determination by them if the Applicant considers it appropriate given our findings.**

## **BACKGROUND**

- 1. This matter came before us for hearing on 21<sup>st</sup> July 2014 as a result of a transfer to us by the Kettering County Court by an order dated 2<sup>nd</sup> April 2014. There were four cases commenced by Ground Rent (Regis) Limited, the Applicant, against Mr Summers. The case numbers are as set out on the order of 2<sup>nd</sup> April 2014. We were asked by the Court to deal with all four cases as we understand they were identical save that they related to each of the flats in the building.**
- 2. Prior to the commencement of the Hearing we were provided with a bundle of documents which set out the Applicant's statement of case and supporting papers and the Respondent's statement of case likewise with supporting papers. In addition, there was a witness statement by Mr Higgins, which had certain exhibits attached to it. Mr Higgins represented the Applicant at the Hearing, Mr Summers acted in person. We will refer to those documents in the bundle which were of assistance to us as relevant during the recording of the evidence.**
- 3. Prior to the Hearing we inspected 169 Mill Road, Kettering, Northamptonshire NN16 0RQ (the Property) The Property is a two storey building in linear style housing four flats at the corner of Barnwell Street and Mill Road. The basement flat, which is something of a misnomer as it is a flat on the ground floor with basement area, and also at street level Flat A which had its own entrance to the side and a small courtyard garden. Flats B and C on the first floor shared a common entrance and under the terms of their lease were required to maintain this stairway.**

4. The property was in reasonable external decorative order but we noted that a section of downpipe was missing as was an area of guttering. There was some damaged rendering and what appeared to be a damaged air vent. To the side of the property was an access way over neighbouring land which had previously been in the ownership of Mr Summers.
5. At the time of inspection Mr Higgins pointed out that the Applicant, or rather Countrywide, had paid for some flash banding over a meter cupboard and installed a new drain cover in the courtyard area. These were thought to be more important, apparently, than the replacement of the downpipe and the guttering.

### **HEARING**

6. At the Hearing Mr Higgins represented the Applicant and Mr Summers acted in person. We were told that although the proceedings commenced in the County Court in November of 2013 related to a request for an interim payment on account for the year ending April 2014, final accounts had been prepared. Accordingly with the agreement of both parties it was accepted that we would consider the actual figures incurred the year ending April 2014 instead of the estimated cost of £750.
7. We were told by Mr Higgins that the following items of expenditure were being sought from Mr Summers. We should point out that Mr Summers is the leaseholder of the four flats within the building. It appears that he was the original developer. The original Landlord was a company which he controlled called Inspiring Developments Limited. This company had then granted four leases of the flats to him all commencing on 12<sup>th</sup> July 2007. The only lease within the bundle was that relating to Flat B but we were told that the terms of the leases were the same. As Mr Summers is the sole leaseholder reference to the service charge funds in this decision represents the total sum being claimed of which each flat pays 25%.
8. With that in mind, the service charges which Mr Higgins said were actually incurred and were being sought from Mr Summers were as follows:-
  - A contribution of £1,000 towards the reserve fund.
  - A payment of £60 for professional fees which appeared to relate to the fees charged by Regis, the Applicant, for approving the budget.
  - The management charges for the year of £972 inclusive of VAT.
  - The accountancy fee of £144 for the year. We were told that the accounts had been prepared in-house by Countrywide and that the actual charge was substantially less than the sum in the budget which was £252.
  - The upshot of this was, Mr Higgins said, that the budgeted figure of £750 had now reduced to £544 and that technically, therefore, Mr Summers would be getting a credit of £206 against each flat, but of course he had not paid anything towards these service charges.

9. We then heard from both Mr Higgins and Mr Summers in respect of the items in dispute. Dealing firstly with the management fee. Mr Summers told us that Countrywide were instructed in May 2013, a fact with which Mr Higgins agreed, and that prior to that the management had been undertaken by Pier Management who we understand were a company closely involved with the Applicants. Mr Summers told us that in the time that Pier Management had dealt with the property they had charged the sum of £95.94 per flat but he had never had any accounts and that the only sums he had paid were the management fee, the insurance and ground rent.
10. Mr Higgins told us that he had taken on the management of Mill Road in May of 2013 and that since that time had inspected the Property no less than six times. He was aware that works were required but they could not be undertaken as there were no monies on account. He was, however, able to persuade the directors of Countrywide that some monies should be put forward to cover the costs of flash banding over the meter cupboard and to repair the drain cover, those considered to be the most urgent. These, however, had been works undertaken in May of 2014 and did not fall within the service charge year that we were required to consider. Mr Higgins' view was that the management charge was reasonable based on the visits, the collection of money and repairs. The figures were agreed with the Applicant in a contract of management, a copy of which was not available to us.
11. As to the reserve fund, Mr Higgins thought that £1,000 was a reasonable amount and that he had estimated this on a basis of experience. He thought that there may have to be some works to the roof, the rendering and the 'shared drive', although it became clear that that 'shared drive' was not the responsibility of the landlord. Nonetheless, he was of the view that there would be external decorations to do and that they would probably cost about £2,000 and should be undertaken in the next two to three years. Mr Summers' view was that there should be no reserve fund as it was unnecessary, the building having been renovated in 2007/08. He said that it was indicative of the state of the building that there was only around £500 to be incurred for repair costs in the eight years since it had been renovated.
12. On the question of the accountancy charge, as we indicated above this was now being dealt with in-house by a qualified accountancy team and was less than the budget figure. Mr Summers was not happy with the figure but had no comparable to offer.
13. Finally, we heard from Mr Higgins on the Regis fee. This seemed to be a charge made by Regis for approving the budget but Mr Higgins did not know any more about it. He accepted that he had prepared the budget and merely obtained an approval from Regis and it appeared to be a fee of £60 for such approval.
14. In summation on the service charge issues, Mr Summers repeated that he did not think it was necessary to have a reserve fund and that if £1,000 had been paid over the next five years, the amount saved of £5,000 would be more than was required. As to management charges he thought that the figures previously charged by Pier of something over £90 were more reasonable and the Property did not require such inspections as Mr Higgins appeared to indicate would be

undertaken. In addition, he did not think that a health and safety survey was required but this had not been carried out and was not part of the service charge demanded of him. On that point, however, Mr Higgins said that a health and safety survey should be done but that he thought given the property and his visits it would only need to be carried out every five years or so.

15. The two other matters that were subject to the proceedings were administration charges raised by Countrywide for correspondence with Mr Summers for the recovery of the interim service charges. Notwithstanding that Mr Summers is the sole leaseholder of the four flats in the Property, it appears that Countrywide wrote separately to him in respect of each flat. On 19<sup>th</sup> August they wrote saying that he appeared to be in debt to the sum of £750 per flat and that if they had to write again they would levy an administration charge of £120 plus VAT. It is said that there was no contact from Mr Summers and that accordingly on 9<sup>th</sup> September the letter which generated a charge of £120 was sent on four occasions relating to each of the flats to Mr Summers at his Kettering home address. Subsequently it was said there was no response to that and that on 1<sup>st</sup> October Mr Summers was written to by J B Leitch LLP, a letter before action, requiring payment of the sum of £1,299. This letter sought to recover the service charges, the two administration charges of £144 and £198 multiplied by four as well as a further £207 for legal costs. It was the letter of instructions to J B Leitch which gave rise to a second administration charge of £198. On 7<sup>th</sup> November 2011 proceedings were commenced in the Kettering County Court.
16. Mr Summers paints a different picture. He says that on receipt of the letter from Countrywide on 19<sup>th</sup> August he wrote on 24<sup>th</sup> August asking them to explain how their charges were calculated and raising the view that his own contractors could carry out the work. He wrote again on 16<sup>th</sup> September sending a copy of his letter of 24<sup>th</sup> August 2013 but again had no response. Subsequently following the letter from J B Leitch, he wrote to that firm on 2<sup>nd</sup> October sending copies of the letters he had sent previously to Countrywide and asking for quantification of the sums used. He had no response from those solicitors. Instead, as we have indicated above, proceedings were commenced on 7<sup>th</sup> November 2013.
17. At the Hearing Mr Higgins could only say that he had checked with Countrywide in Hull, which is the accounts department, who had not noted any of the correspondence on the computer. It seems that when letters come in they are scanned and it would therefore appear on the file for anybody who had access to the computer system to read them. The fact that they were not there in Countrywide's view meant that they were not sent. Mr Summers told us that he had written the letters himself, had put them in the post himself covered by first class post. Mr Higgins was not able to explain why J B Leitch had not replied to Mr Summers's letters. It is also interesting to note that in Mr Higgins' witness statement, which is dated 27<sup>th</sup> June 2014, after Mr Summers had produced his statement with the correspondence, at no point does he say that the Hull office of Countrywide denied ever receiving the correspondence. The only reference to the letters being sent for which the administration charges arise, is paragraph 7 of Mr Higgins' statement and somewhat surprisingly given the assertions he made at the Hearing, no mention is made that Countrywide denied ever having received letters that were exhibited to Mr Summers' statement of case.

18. At the conclusion of the Hearing Mr Higgins told us that he had not been instructed to recover the costs of the Hearing today and its preparation and that he would consent to an order being made under Section 20C of the Act.

### THE LAW

19. The law applicable to this matter is set out in the schedule annexed.

### FINDINGS

20. We will deal with the various items in order and the first is the question of the reserve fund. In principle we believe this is a good idea. However, Mr Higgins was unable to produce any maintenance plan and was relying solely upon his experience previously as a builder but 13 years as a property manager, which is not to be ignored. It would seem, however, that as the property was renovated in 2007 there should not be any major structural works and indeed the works to the rendering and the repair of the gutters and downpipe were set out in documents in the bundle before us which gave a total cost of under £500. Not something, therefore, that would need to be dealt with by way of reserve fund payments in any event. However, it does seem to us inevitably that there will be some decorating works to be undertaken and although we think £1,000 per annum is too much, a figure of £500 is perfectly reasonable and we would allow that in respect of the reserve fund payment for the year ending 2014 and would suggest that should be the figure for the next two to three years which should build up sufficient funds for the external decoration to be undertaken. Day to day repairs can be dealt with as and when necessary.
21. Turning to the question of management, it was not disputed that Mr Higgins had attended on a bi-monthly basis and there is no doubt that there is the necessity of preparing demands, budgets and dealing with other day to day running expenses. The fees charged previously by Pier Management are not to be relied upon. That company is closely tied in with Regis and it would appear from what Mr Summers said that there was little hands-on management. Countrywide are a large company dealing with estate management and it seems to us that a charge of just over £200 plus VAT per flat is not unreasonable. It is appreciated that there are only four flats at the property but if Mr Higgins is going to inspect as often as he does which avoids the need for annual health and safety inspections, the total charge which was £972 is not in our finding unreasonable. Mr Summers was not able to put forward any comparable.
22. As to accounting, we do not consider the figure of £144 is unreasonable for preparing the accounts in respect of the four flats. This year there has been limited information to impart but nonetheless the accounts need to be certified in accordance with the lease and the fact that Countrywide have been able to undertake the works at not much more than 50% of the budgeted figure is clearly of credit to them. We therefore allow the sum of £144. Finally we turn to the fee claimed by Regis of £60 for approving the budget. We can see no element in the lease which allows the landlord to make this charge. It in effect seems to us to be a profit. The managing agent prepares the budget figure and we cannot see, therefore, why Regis needs to charge £60 to approve it and we therefore disallow it in full.

23. We turn then to the two administration charges of £144 and £198 per flat. Firstly, we cannot understand why Countrywide could not write one letter to Mr Summers, he being the common leaseholder in respect of the four flats. Even if we were minded to allow the administration it seems to us unreasonable that it should be dealt with on the basis that four identical letters are sent to the same person at the same address on the same day. This would apply both to the first letter and to the subsequent one threatening referral to the solicitors.
24. However, there is a conflict of evidence. Mr Higgins cannot speak as to what has actually happened only what he has been told and that is that the letters sent by Mr Summers did not appear on Countrywide's computer system. We can only speculate as to why this might be the case. We accept Mr Summers' evidence that he wrote the letters and that he posted them. It is right to say that they do not contain the specific property reference number which might have resulted in some difficulties in Countrywide actually logging them onto the system. Be that as it may, we accept on the evidence before us that the letters in August and September were sent by Mr Summers to Countrywide. That being the case, it seems to us that the chasing letters that gave rise to the administration charges should not have been sent. We find comfort also in this view in the response by J B Leitch LLP to Mr Summers' letter of 2<sup>nd</sup> October in which he sent copies of the earlier correspondence and asked for information. There is no evidence that that letter was not received by J B Leitch LLP yet they did not respond to it and instead without any further referral to Mr Summers commenced proceedings in November. Further, although Mr Higgins raised the scenario of non-receipt by Countrywide he did not say this in his witness statement, which is silent on the subject. In those circumstances we find that it is unreasonable for the administration charges to be claimed from Mr Summers and we disallow them in full.
25. In summary, therefore, we allow the following sums:-  
The reserve fund of £500 for the year ending April 2014.  
The management charges as claimed of £972.  
The accountancy fee as claimed of £144.  
We disallow the claim by Regis of £60 for the reasons stated above and also disallow the administration charges likewise for the reasons stated above.  
We calculate, therefore, that the total sum payable by Mr Summers in respect of the four flats is £1,616 which should be paid within the next 28 days.
26. Mr Summers must take note of his obligations to make payments on account. We hope that having received this decision Countrywide might consider reviewing the interim demand for the year 2015, to reduce the contribution to the reserve fund but it seems reasonable that there should be a payment of £500 on account, at least, in respect of repairs. Costs of that magnitude have been or will be incurred if the works are undertaken as per the documentation before us, in particular an email from Mr Webb of 15<sup>th</sup> May 2014.
27. Matters relating to costs and interest are to be referred back to the County Court for a determination if it is felt appropriate to do so.

Judge: Andrew Dutton

A A Dutton

Date: 20th August 2014

## **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.

## **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.

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- (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).