

10391



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

Case Reference : **CAM/34UE/LSC/2014/0055**

Property : **10 Kings Walk, Kettering,
Northants NN16 8JF**

Applicant : **Powell & Co Property (Brighton)
Ltd**

Representative : **Mr S Powell director**

Respondent : **Mr Sayed Masoud Hosseini**

Representative : **In person**

Type of Application : **Liability to pay service charges
s27A Landlord and Tenant Act 1985
(the Act)**

Tribunal Members : **Tribunal Judge Dutton
Mrs S Redmond BSc Econ MRICS**

**Date of Determination
and decision** : **27th October 2014**

DECISION

DECISION

The Tribunal determines that the Respondent shall pay to the Applicant the sum of £1,269.70 within 28 days. The Tribunal declines to make an order for the sum of £60 being the two late payment charges.

The Tribunal considers that the Respondent has acted in a manner which is unreasonable within the meaning of rule 13 (1)(b) (ii) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. The costs are to be summarily assessed and are payable only for the period 1st August 2014 onwards and not in respect of any costs incurred by the Applicant prior to that date. Full details are to be provided as set out at paragraph 14 below.

The remaining issues being the costs totalling £480 and court fees are remitted back to the County Court at Leicester in claims numbered 3QZ59856 and 3QT89649.

Enforcement of this decision will be through the County Court system and the parties will need to apply to the Court for this purpose and for the referral of any outstanding issues.

BACKGROUND

1. On 14th February 2014 the County Court at Leicester in claim number 3QZ59856 transferred the action between the Applicant and the Respondents to this Tribunal for "*hearing and determination with the claim between the same parties under reference 3QT89649*". The Order Also set aside a default judgment and ordered that the defence filed by Mr Hosseini should stand as his defence.
2. Directions were issued on 17th June 2014 and were eventually complied with. The matter came before us for determination on 17th October 2014.
3. Prior to the determination we received a bundle containing the Court papers, a copy of the lease, correspondence with the Tribunal, statements of case for both parties with supporting papers, accounts and earlier Tribunal decisions in respect of other properties at Kings Walk and Regent Gate
4. The Court claims that have been remitted to us relate to two demands for on account payments in the sums of £600 and £1,420. This apparently relates to the service charge year 25th March 2013 to 24th March 2014. According to the Applicant's original statement of case the first sum of £660 is made up of a balancing sum of £450, together with a late payment fee of £30, a fee for preparing the summons of £120 and a court fee of £60. The costs and fees associated with the Court action are not a matter for us and will be referred back in due course. The second sum of £1,420 is made up of a further interim payment on account of £960, a late payment fee of £30, a fee for issuing the summons of £360 and the court fee of £70. The details are at paragraphs 5 and 8 of this statement. In fact we are told that the sum the Applicant seeks is £1269.70 based on a decision by our colleagues in case reference CAM/34UE/LSC/2014/0008, 9, 33 and 34. There it

was found that a reasonable on account payment for this year would be £1,860 and the Applicant asks us to apply that figure in this case, subject to deductions of £543.89 being a payment on account and £46.41, a credit, giving the sum due of £1,269.70. The actual accounts for this period show that each property's share is £2,061.31.

5. Neither party had requested a hearing and an inspection was not considered necessary.
6. In the original statement of case Mr Powell told us that the lease allows the recovery of an interim service charge. In standing by the previous decision he concluded that the Respondent should have settled the case and avoided costs being incurred. He asked that the Respondent should pay costs for his "unreasonable behaviour". No details of the costs are set out.
7. Mr Hosseini responded on 9th September 2014, somewhat late although within the final time frame allowed by a letter from the Tribunal dated 5th September. We noted all that was said. He told us that he had purchased the flat 10 Kings Walk, Kettering (the Flat) at auction in April 2012. There had been some confusion as to what was initially claimed and for what period. However, according to the calculation history this related to the period in part prior to his purchase. Mr Hosseini appears to accept that the sums of £1,537 (before any reduction by the Tribunal) and the first demand for an interim payment of £960 are correct. There is a list of payments made, which are agreed by the Applicant. The statement raises a number of issues which do not relate to the matters which have been transferred to us by the Court. What is however clear is that there has been more than one set of proceedings between the parties, which includes an action for forfeiture which appears to have been struck out by the Court. Of course, issues relating to ground rent do not form part of our jurisdiction.
8. Mr Powell filed a response referring to the submissions of Mr Hosseini. We noted all that was said. It is not wholly clear what element of interest is being sought in the sums claimed as this is not specifically referred to in the statements made other than at point 5 of the response, which also includes reference to costs under the provision of the Law of Property Act 1925, which does not seem relevant to the matters before us.

THE LEASE

9. We were provided with a copy of the lease of the Flat. This is in modern form. Clause 3(17) includes an obligation on the part of the tenant to make payments on account in respect of service charges and in the following clause a right for the Landlord to claim interest on late payments. The Landlord's covenants are set out at clause 4 and the service charge provisions contained in the Third Schedule which confirms the payment of an "interim charge" as provided for therein.

FINDINGS

10. We are charged, on transfer from a Court to deal with those matters which were before the Court. If a party wishes to raise other issues an additional application should be made. No additional application has been made in this case. Accordingly the only issues before us are the two interim payments being demanded. The claim includes a late payment fee, costs of preparing the court papers and the court fees. The latter two are matters for the Court to determine. The lease does appear to allow the recovery of the costs of "*proper legal and other costs and expenses incurred by the Landlord in the running and management of the Building and the enforcement or attempted enforcement of the covenants conditions etc.*" (clause 4(k))
11. The lease allows the recovery of an interim payment every six months. Our colleagues found that a total interim demand of £1,860 was reasonable (see above). The Applicant asks for that, subject to deductions, notwithstanding that the actual costs for this year are greater. These actual costs are not the subject of any challenge before us.
12. In these circumstances we cannot see what complaint Mr Hosseini has to making these two payments. Whilst we are not bound by the decision of another Tribunal a review of that decision gives us no reason to depart from the findings they made. Mr Hosseini does not challenge the quantum of the sums demanded. We therefore find that Mr Hosseini should pay to the Applicant the sum of £1,269.70. The Claimant has sought two late payment fees of £30. No details as to how this sum has been reached are provided, nor what element of the lease is relied upon for what would appear not to be a service charge, but at best an administration charge. In those circumstances we decline to make an order in respect of these items. As to the costs of issuing the proceedings and the court fee they are a matter for the Court and may be subject to review under the provisions of s27A of the Landlord and Tenant Act 1985.
13. Mr Powell asked that Mr Hosseini should pay the costs of these proceedings as a result of his "unreasonable behaviour". We take that to be a claim under rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. No details of any costs are provided. There have been findings by our colleagues that impact on the amount claimed and were issued in June 2014. We do not consider that Mr Hosseini has acted unreasonably in defending these proceedings up to the offer to settle made by Mr Powell in his letter dated 29th July 2014. Thereafter it seems to us that he should have paid the sums now being demanded up to £1,269.70 and agreed to the referral back to the Court of other issues, or better still reached a compromise on the remaining issues.
14. We have no idea what costs are being sought. However, we do not consider that any costs incurred before 1st August 2014 are recoverable by reference to the Applicant's letter of 29th July. The Applicant has seven days from the date of the receipt of this decision to notify the Tribunal, and Mr Hosseini, of the costs that are sought, with a full break down setting out the work done, with dates, by whom, the time

spent and hourly rate claimed. Any disbursements must be vouched. Mr Hosseini shall respond to the claim for costs setting out what sum, if any, he agrees within 7 days of the Applicant's notification of the costs claimed. The reasons for any disagreement should be set out. The Tribunal will determine what costs may be payable, if claimed, on the papers delivered under this paragraph within 42 days of the date of this decision.

Andrew Dutton

Tribunal Judge Dutton

27th October 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 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.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate 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 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.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.

- (3) The jurisdiction conferred on the appropriate 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.
- (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).