



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

Case Reference : CHI/00LC/LSC/2014/0066

Property : 4 Hever House, Cypress Court,
Frindsbury, Rochester, Kent, ME2 4QB

Applicant : Ms Paula Sullivan

Representative : N/A

Respondent : Kesblade Limited
Cypress Court Residents' Association

Representative : N/A

Type of Application : S27A Landlord & Tenant Act 1985

Tribunal Members : Judge S Lal

**Date and venue of
Hearing** : 3rd December 2014, Judge's home

Date of Decision : 12th December 2014

DECISION

Application

1. On 26th June 2014 the Applicant applied for a Determination under section 27A of the Landlord & Tenant Act 1985 (as amended) (“the Act”) as to her liability to pay service charges in relation to the Property.
2. Directions were issued on the 31st July 2014. The Directions made it clear that the Application is to be dealt with on the paper track on the basis of written representations without a formal Hearing. Neither party has objected to this procedure. In accordance with the Directions, Kesblade Limited have sent to the Applicant and the Tribunal a Reply to the application together with all supporting documents and explanations. The Applicant has sent to the Respondents and the Tribunal a reply to that of Kesblade Limited. Cypress Court Residents’ Association has made no submissions.

The Applicants’ Case

3. The Property is held by the Applicant under a long lease dated 13th January 1964 and made between (1) Presnail Estates Limited and (2) Arthur Ernest King (the “Lease”). Under clause 4(b) to the Lease, the Applicant is obliged to “contribute and within two months of being requested in writing by the Lessor or its Agents so to do to pay one equal one twelfth part of the costs expenses outgoings and matters mentioned in the fourth schedule hereto”. The fourth schedule sets out the items that are included in the service charge. Clauses 5 (d) and (e) of the Lease sets out the Lessor’s maintenance and repairing obligations, subject to receiving the contribution referred to in clause 4.
4. The Applicant claims that invoices submitted by Cypress Court Residents’ Association for the years 2006-2014 constitute service charge payments for those years but is disputing liability to pay such amounts as she claims she was not sent invoices by either of the Respondents until such time as she sought to sell the Property. The Applicant claims that she only paid these outstanding amounts to enable the sale of the Property to go ahead, fearing that the Respondent’s would veto the sale if she did not do so.
5. The Applicant is now seeking reimbursement of the amounts paid to Cypress Court Residents’ Association other than those amounts incurred within 18 months of her being aware of such costs, the Applicant seeking to rely on section 20B(1) of the Landlord and Tenant Act 1985.

The Respondents’ Case

6. Cypress Court Residents’ Association has not submitted any case. Mr PR Davis, a director of Kesblade Limited, has explained the company’s relationship with Cypress Court Residents’ Association as requested by

the Tribunal. Mr Davis has stated that the company is the freeholder of the Property and Cypress Court represents the interests of the leaseholders although is not a management company. Mr Davis denies that Cypress Court is an agent of Kesblade Limited.

7. Mr Davis alleges that the disputed amounts do not constitute relevant costs for the purposes of section 18 of the Landlord and Tenant Act 1985 payable under the Lease and therefore section 20B and section 27 of the Landlord and Tenant Act 1985 are not relevant. Mr Davis considers that the disputed amounts are voluntary payments due to the residents association and that the matter is one to be resolved between Cypress Court and the Applicant.
8. Mr Davis further states that Kesblade Limited has no knowledge of the facts surrounding the delivery of the invoices although suggests that the fault lies with the Applicant rather than Cypress Court.

The Law

9. The statutory provisions primarily relevant to applications of this nature are to be found in sections 18, 19, 20 and 27A of the Landlord and Tenant Act 1985. The Tribunal has of course had regard in making its decision to the whole of the relevant sections as they are set out in the Act, but here sets out what it intends shall be a sufficient extract from each to assist the parties in reading this decision. Section 18 provides that the expression "service charge" for these purposes 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 relevant costs."

"Relevant costs" are the cost or estimated costs incurred or to be incurred by the landlord or on behalf of the landlord or superior landlord in connection with the matters for which the service charge is payable and the expression "costs" includes overheads.

10. Section 19 provides that :

- a. "Relevant costs shall be taken into account in determining the amount of a service charge payable for a period:
- b. only to the extent that they are reasonably incurred, and
- c. where they are incurred on the provision of services or the carrying out of works only if the services or works are of reasonable standard

and the amount payable shall be limited accordingly.”

11. Section 20B(1) provides that:

“If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.”

12. Subsections (1) and (2) of section 27A of the Act provide that :

“(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 to whom it is payable
- b. the person by 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.

The Tribunal's Decision

13. The Tribunal on the basis of the evidence before it and the written submissions has determined the following.

14. The Tribunal does not accept the Respondent's argument that the amounts in dispute do not constitute relevant costs within the meaning of section 18 of the Landlord and Tenant Act 1985. Mr Davis has described the history behind the invoicing of lessees for minor works to the grounds and communal parts of the Property. Initially Kesblade Limited employed contractors to do this work but after a number of complaints from the Residents Association, it was agreed that the Residents Association would find and employ their own contractors. Thus this element of the Landlord's obligations was handed over to Cypress Court Residents' Association. It is therefore the Tribunal's view that invoices in dispute constitute part of the relevant costs incurred “by or on behalf of the landlord” under section 18(2) of the Act.

15. The Tribunal also finds that the Applicant did not receive the disputed invoices until 29th April 2014 when the same were delivered to her

solicitors, Apex Law. There is no evidence to persuade the Tribunal that the Applicant received any of the disputed invoices at an earlier date or received any notice at an earlier time that these costs had been incurred. It is therefore the Tribunal's clear view, applying section 20B(1) of the Act, that in respect of the disputed invoices, the Applicant should only have been obliged to pay amounts incurred 18 months prior to 29th April 2014.

16. The Tribunal therefore finds in favour of the Applicant and requires Cypress Court Residents' Association to reimburse the Applicant in respect of any amounts she has paid for costs incurred prior to October 2012.
17. The Tribunal makes no further order.
18. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
19. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
20. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

Judge S. Lal

Date 12th December 2014.