

9756



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

Case Reference : **LON/00AK/LSC/2013/0698**

Property : **2 Woodridge Close, Enfield
Middlesex, EN2 8HJ**

Applicant : **Grey Property Management
Limited (Lease appointed
Management Comapany)**

Representative : **Ms Clare Cullen of Counsel**

Respondent : **Mr T. Izzet (Leaseholder)**

Representative : **No appearance**

Type of Application : **Section 27A Landlord and Tenant
Act 1985 and Schedule 11 CLARA
2002– Service charges (Court
transfer) , and Section 20C**

Tribunal Members : **Mr L. W. G. Robson LLB (Hons)
Mr M. A. Mathews FRICS
Mr J. E. Francis QPM**

**Date and venue of
Hearing** : **13th February 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **21st February 2014**

DECISION

Decisions of the Tribunal

- (1) The Tribunal ordered that the Respondent pay the Applicant the sum of £1,089.70 (i.e £1,239.70 less £150 in ground rent) in respect of estimated service charges demanded on 1st April 2012.
- (2) The Tribunal further ordered the Respondent to pay the Applicant the sum of £234 in respect of administration fees charged under the Lease, and claimed in the Court claim.
- (3) The Tribunal made an order for reimbursement by the Respondent of the fees totalling £235 paid by the Applicant to the Tribunal, under Regulation 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
- (4) The Tribunal made no order limiting the landlord's costs under Section 20C of the Landlord and Tenant Act 1985.
- (5) The Tribunal makes the other determinations as set out under the various headings in this decision.
- (6) This case shall now be referred back to the Edmonton County Court to decide upon costs in the County Court action and any other outstanding matters not within the Tribunal's jurisdiction.

The application

1. The Applicant seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 as to the reasonableness of demands made in respect of estimated service charges falling due on 1st April 2012 payable pursuant to the terms of a lease (the Lease) dated 31st January 1989.
2. This case was referred to the Tribunal by an order of District Judge Silverman dated 23rd November 2012 at the Edmonton County Court in case no. 2YL69660. Under cover of a letter dated 7th October 2013 the court sent the file to the Tribunal.
3. The Tribunal gave Directions 31st October 2013 supplemented by Directions on 8th January and 24th January 2014. The effect of the Directions given on 24th January was to debar the Respondent from adducing oral or documentary evidence at the hearing of the referred matter. This sanction was imposed at the request of the Applicant's solicitor on 16th December 2013, drawing attention to the Respondent's failure to comply with Directions given on 31st October 2013. Despite being given a further opportunity by the Tribunal on 8th January 2014 to serve a statement of case, the Respondent failed to do so without any explanation.

4. The Applicant made a formal statement of case with relevant documents annexed, supplemented with a skeleton argument with oral evidence and submissions made at the hearing. The Respondent did not comply with Directions at all and did not attend the hearing. The Tribunal therefore relied upon the statement he made in his Defence to the Court in or about 3rd September 2012.
5. Extracts from the relevant legislation are attached as Appendix 1 below.

Hearing

6. Ms Cullen represented the Applicant, with Mr D. Hockley, (a director of the Applicant of MCS, the managing agents), Mr Hockley gave oral evidence supplementing his witness statement.
7. At the start of the hearing the Tribunal confirmed that it would question Mr Hockley, in so far as it was able, following the matters raised in the Defence, being gardening, cleaning, and management charges (including the administration charges). The Tribunal noted that in the absence of more detailed complaints by the Respondent, the Applicant's evidence on the points raised was necessarily of a relatively general nature, as was its own examination of Mr Hockley. It is not for the Applicant or the Tribunal to anticipate what matters the Respondent might have raised, but only to deal with those matters actually raised.

Applicant's Case

8. Ms Cullen submitted that the charges claimed were reasonable and recoverable under the Lease. She called Mr Hockley to be examined on his witness statements.
9. On the issue of gardening, Mr Hockley confirmed that the company of one of the directors of the Applicant had provided professional gardening services relating to this property for the last three years. The Applicant is a resident controlled management company. The common grounds were very extensive, including the parking areas, areas laid to grass, shrubberies, and more than 30 mature trees along some of the boundaries. Many of the trees were subject to Tree Preservation Orders. Tree work was charged separately. There was a written contract, renewable annually. MCS considered that the work done was within the specification and to the standards it used at other properties within its portfolio. It had a system of supervision in place. MCS's own site manager visited on a bimonthly basis to check on work done. The site manager had made no adverse reports on the gardening prior to or after being notified of the Respondent's complaint in the Defence. The contract was last tendered three years ago. Three tenders had been sought. The tender accepted was the middle quotation. The gardening costs over the period from 2011 showed only small annual increases. He considered that the work being done was satisfactory and the cost was reasonable.
10. Relating to cleaning, there was a written contract. He described the extent of the common parts. The internal common parts of the property were on

three floors, which were carpeted, with brick faced internal walls and textured ceilings. They were visually in good condition. The carpets had last been changed in 2009. The cleaning was done weekly, to include hoovering, dusting, delimiting, removing junk mail, checking smoke alarms, and replacing internal light bulbs. The cleaners also cleaned the bin stores and the windows of the whole block. They had been in place for the last 4 years. No other complaints had been received. The Applicant considered that the work was done satisfactorily and at reasonable cost.

11. The management fee was charged on a fixed fee basis. It worked out to a figure of £150 per unit plus VAT, to include the usual budgeting, demanding and collection of service charges and rents. The charge included attendance at 3 meetings of the Directors of the Applicant, and the AGM of the Applicant. Secretarial work for the Applicant was charged separately. Emergency work was ordered by telephone, and there was also a website for leaseholders to contact MCS. This block had a relatively high number of leaseholder residents. Arrears were quite low. Most residents paid regularly. MCS did not operate an out of hours service. This was handled by directors of the Applicant. The administration charges added to the claim related to specific chasing letters (in the bundle), and the preparation of a litigation bundle for use in either Court or Tribunal litigation. The 6th Schedule gave power for the charges to be made.

Respondent's Case

12. The Respondent did not appear. Briefly stated, his case in the Defence was that the sum claimed by the Applicant was extortionate, that the property was not maintained to an acceptable standard, the gardener was incompetent, the cleaning had deteriorated and the building looked shabby. The biggest single expense was the management fee which went straight into the Applicant's pocket and the building was suffering because of this.

Decision

13. The Tribunal considered all the submissions and evidence carefully. The problem with the Respondent's challenge was that there was insufficient particularisation of the points of objection, and a total lack of engagement with the case. His case was essentially a number of assertions with no supporting evidence. The Tribunal considered that what it had heard and seen substantially supported the Applicant's submissions. The Applicant had not formally referred to Schedule 11 in the court application, but this appeared to have no effect on the substance of the application. The Applicant had satisfied the Tribunal on the balance of probabilities that it was entitled to charge the sums demanded as noted in the decision summary above (less the item for ground rent which Ms Cullen had drawn attention to in the service charge breakdown – this is a matter for the Court).

Costs

14. The Respondent had made a Section 20C application to limit the landlord's costs of the Application being added to the service charge. As the Respondent had made no submissions in breach of Directions, and not appeared, the Tribunal did not ask Ms Cullen to plead the point further.
15. Ms Cullen applied for an order for the Respondent to reimburse the Applicant's costs of the application to the Tribunal totalling £235. It appeared to the Tribunal that the Respondent had made no serious attempt to substantiate his case, putting the Applicant to considerable trouble and expense. The Tribunal decided to exercise its discretion under Regulation 13(2) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 to order reimbursements of the fees as asked.

Chairman: L. W. G. Robson LLB (Hons)
Tribunal Judge

Signed: Lancelot Robson
Dated: 21st February 2014

Appendix 1

Landlord & 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.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

Regulations 13(1) - (3)

- 13.-(1) The Tribunal may make an order in respect of costs only-
- (a) under Section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
 - (b) if a person has acted unreasonably in bringing, defending, or conducting proceedings in-
 - (i) an agricultural land and drainage case,
 - (ii) a residential property case, or
 - (iii) a leasehold case; or

(c) in a land registration case.

- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (3) The Tribunal may make an order under this rule on application or on its own initiative.
- (4) – (9)...
