



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/22UG/LSC/2015/0073

Property : 19 St. James Place,
De Grey Road,
Colchester,
Essex CO4 5TZ

Applicant : Red Rock Property Management

Respondent : Stuart Robert & Emma Seline Jones

**Date of transfer from
the county court at
Colchester** : 21st August 2015

Type of Application : To determine reasonableness and
payability of service charges and
administration charges

The Tribunal : Bruce Edgington (lawyer chair)
David Brown FRICS

DECISION

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1. In respect of the amount claimed from the Respondent for service charges in the sum of £1,254.00, this amount is agreed by the Respondents.
2. The claim for £359.71 for ground rent is not within the Tribunal's jurisdiction but seems to be admitted by the Respondents which means that the total admitted sum is £1,613.71 subject to whether this sum has been paid and accepted on account of the claim (paragraph 2 of the Applicant's reply to the defence says that the £1,613.71 was accepted by the Applicant on account of the total claim in a telephone conversation on the 20th June 2015).
3. In respect of the amount claimed from the Respondent for 'management fees' in the sum of £815.96, the amount which the Tribunal considers to be payable is £200.00
4. This case is now transferred back to the county court sitting at Colchester under claim number B6QZ82PO so that any matters not dealt with in this decision such as costs and enforcement can be dealt with.

Reasons

Introduction

5. On the 18th June 2015, the Applicant issued a claim in the county court to recover service charges (£1,254.00), ground rent (£359.71) and what are described as management fees (£815.96) making a total of £2,429.67 plus the court fee.
6. The Applicant is not in fact a separate legal entity but is the trading name for Red Rock Estate & Property Management Ltd. which, in turn, claims to be issuing the claim "*for and on behalf of Cuckoo Point MCL*" which seems to be a reference to Cuckoo Point Property Management Company Ltd. which is the management company responsible for maintaining the building in which the property is situated. As the person in charge of these proceedings describes herself as being a solicitor and 'Head of Legal Services', she would do well to describe things properly. Fortunately, they do not appear to be an issue in this case.
7. The only defence filed in the county court proceedings and seen by the Tribunal, is from the first named Respondent who says that the property was bought 3 years ago for his mother-in-law to enable her to live nearer. There appears to have been a mix up in communications and a change in the mother-in-law's benefits which led to a failure to keep up the regular payments being made to the Applicant for service charges etc. It then says that the county court proceedings were issued without prior warning.
8. The defence goes on to say that Mr. Jones is "*more than happy to pay the arrears of 1613.71 in full. I dispute that it is not acceptable to charge £815.96 in fees to recover a debt of £1,613.71 when all the company have done by their own admissions is send out 3 letters by first class post and put in court papers. I am more than happy to pay £150:00 which is £50:00 a letter and then pay £50:00 for the time to complete the court papers and the court fee and will pay this immediately in full with the £1613.71..*" (sic).
9. For some reason which is difficult to understand, the Applicant did not accept this sensible way of ending the court proceedings and the case was transferred to this Tribunal. The Tribunal issued a directions order on the 18th September 2015 timetabling the case to a conclusion. It said that the Tribunal was content to deal with the case on a consideration of the papers only on or after the 11th November 2015 but offered the option of an oral hearing if either part wanted one. Neither the Applicant nor the Respondents requested an oral hearing.
10. The Applicant did supply a bundle of documents for the Tribunal as ordered. However, despite the order being very specific about the documents to be included in the bundle, there were many pages of quite unnecessary court documents which were completely irrelevant. A most important document was the Applicant's response to the defence. The order said that this document must set out "*its justification in principle and in law for the disputed service charge demands made i.e. those over and above the £1,613.71 admitted*".
11. The document filed and included in the bundle was a short 1 page document which does not seek to justify the claim for £815.96 at all. There is no description of the charges, how they were made up or how much time was involved. There were copy letters attached and, as Mr. Jones indicates in his defence, it seems to amount to charges for 3 letters and preparing the claim to the county court.

12. Finally, by way of introduction, it should be noted that the Respondents did write a letter to the Tribunal on the 4th November 2015 (dated 4th October) after the bundle was received making further representations to the effect that the documents in the bundle were confusing and did not seek to justify the claim for £815.96 in any way. The Tribunal would not ordinarily consider such late submissions but they have been read and considered because they add little to case apart from, perhaps, stating the obvious.

The Inspection

13. As the basic claim for service charges relating to the building itself was not disputed, no pre-hearing inspection of the property was considered by the Tribunal to be necessary and none was requested by the parties.

The Lease

14. The lease is dated 27th March 2009 and is for a term of 125 years commencing on the 1st July 2008. It is in modern tri-partite form with a landlord, a tenant and a management company. The Applicant represents the management company. A copy of the lease was in the bundle provided for the Tribunal.
15. There are the usual covenants on the part of the management company to maintain the common parts and structure of the property and to insure it. Schedule 4 of the lease enables the management company to recover its costs of enforcement if service charges are not paid subject, of course, to this Tribunal being able to assess their reasonableness.

The Law

16. Section 18 of the **Landlord and Tenant Act 1985** ("1985 Act") defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.
17. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.
18. Paragraph 1 of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the Schedule") defines an administration charge as being:-

"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable... in connection with a breach (or alleged breach) of a covenant or condition in his lease."

19. Paragraph 2 of the Schedule, which applies to amounts payable after 30th September 2003, then says:-

"a variable administration charge is payable only to the extent that the amount of the charge is reasonable"

Conclusions

20. There is only one issue in this case i.e. is the claim for £815.96 for management fees reasonable? The Applicant has been ordered to justify the claim and has failed to do so. Its attitude seems to be 'we have claimed this amount, therefore it is reasonable'.

21. In Mr. Jones' defence filed with the county court, he puts forward what the Tribunal considers to be a sensible and reasonable solution to this dispute by agreeing the claims for service charges and ground rent; by explaining that he cannot see how the management fees are calculated; by making sensible suggestions for such fees and, finally and perhaps most telling, offering to pay the court fee without question. The suggested amounts for 3 letters and time spent on issuing court proceedings are more than generous. In the absence of any explanation from the Applicant as to how the charges are calculated, the Tribunal adopts the Respondents' figures.

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Bruce Edgington
Regional Judge
12th November 2015

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.