



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

**Case Reference** : CAM/42UD/LSC/2014/010 6

**Property** : 29 Ashmere Grove, Ipswich IP4 2RE

**Claimant** : Lakeside Developments Ltd

**Defendants** : Janine Dunn & Michelle Dunn

**Application** : Determination of the liability to pay and reasonableness of service charges & administration charges pursuant to s27 of the Landlord & Tenant Act 1985.

**Tribunal Members** : Judge Reeder  
Mr Roland Thomas MRICS (valuer member)  
Mr John E Francis (lay member)

**Date of hearing** : 2 March 2015 (Ipswich County Court)

**Date of Decision** : 2 March 2015

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**DECISION**

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**DECISION**

**The service charges determined as reasonable and payable**

**Year ended March 2010**

1. The service charges which are reasonable and payable are determined as follows -

Window cleaning - determined at nil  
Buildings insurance - not challenged  
Electricity - not challenged

58. The defendants state that the management of Ashmere Grove is poor. Common areas are described as dirty. The closer to the fire door is said to be broken and is propped open by the residents causing a security and health & safety risk. The defendants claim that they have not received service charge demands, or service charge accounts. They claim that their attempts to liaise with the claimant's agent over service charge issues meets with no reasonable response.
59. The claimant acknowledges that there are no unusual aspects to the management of these blocks. On inspection the blocks appear to be relatively simple and utilitarian with only basic services to provide and basic management required. This is reflected in the actual service charge items as particularised in the demands. On inspection the state of the block and its immediate grounds is basic but serviceable, save that the fire door requires attention as identified by the defendants.
60. The defendants claim that they have not received service charge demands, or service charge accounts for any of the accounting years 2010 to 2013. They claim that their attempts to liaise with the claimant's agent over service charge issues meets with no reasonable response. The claimant's respond that such administration is largely automated in their office and that the defendant's have clearly received such information given some of the issues they have raised in email correspondence at various points in time.
61. The claimant's points are supported by numerous documents in the hearing bundle. The defendants' claim of non-receipt is not accepted by the tribunal.
62. The Tribunal accepts that a methodology of adopting a per unit charge is appropriate for the number of flats and type of blocks under management and is in accordance with the RICS guidance. Having regard to all of the evidence and information before it relating to the management of Ashmere Grove in conjunction with the Postmill Close blocks the tribunal determines that the reasonable management charge which is payable per flat is £160 + VAT for 2010, £165 + VAT for 2011, £170+VAT for 2012 and £175 + VAT for 2013.

#### **Recovering the costs of the proceedings before the tribunal**

63. The tribunal has determined the reasonable service charges due and owing by the defendants as this was the issue transferred to it by District Judge Hodges sitting in the county court at Chelmsford. It is apparent from the defence and counterclaim that there are or may be other issues which the parties want the county court to decide and which do not fall within the

53. These are the 'estate' window charges which fall to be apportioned between the flats in Ashmere Grove and Postmill Close.

#### **Gardening for 2010 & 2011**

54. The 'estate' charges claimed and to be apportioned between the flats in Ashmere Grove and Postmill Close are £1918 for 2010, £1920 for 2011, £1920 for 2012 and £1920 for 2013. The 2010 and 2011 charges are challenged. The tribunal has inspected the extent and nature of the grounds which are maintained. The claimant has explained what is done when and by whom, and how it periodically ensures that it is achieving value for money. The tribunal determines that the charges of £1918 for 2010 and £1920 for 2011 are reasonable and payable. As a result the defendants have not continued their challenge to the 2012 and 2013 charges in the same sum as for 2011.

#### **Electricity for 2012 & 2013**

55. The 'estate' charges claimed and to be apportioned between the flats in Ashmere Grove and Postmill Close are £186.06 for 2010, £115.27 for 2011, £373.69 for 2012 and £624.65 for 2013. The 2010 and 2011 charges are not challenged. The 2012 and 2013 charges are challenged on the ground that they are materially more than 2010 and 2011. The claimant states that the increase in the latter two years reflects the correction of earlier estimated charges by the provider when meter readings were taken. This has been evidenced by details of the bills from the provider which were obtained by the claimant's representative during the hearing. It is clear to the tribunal that the charges are based precisely on the actual bills from the electricity supplier. The tribunal determines that the charges of £373.69 for 2012 and £624.65 for 2013 are reasonable and payable.

#### **Management charges**

56. The 'estate' management charges claimed are £5960.50 for 2010, £6783 for 2011, £7056 for 2012 and £7224 for 2013.

57. The claimant states that they calculate the management charge by aiming for approximately £250 per unit across the immediate estate managed which comprises a total of 40 flats in Ashmere Grove and the adjacent two Postmill Close blocks.

47. Unsurprisingly, given that the defendants had not raised this issues as a challenge prior the hearing, not all of the relevant documentation is included in the hearing bundle provided to us. However, it does contain a body of related documentation including contractor quotation information provided to lessees during a section 20 consultation process, correspondence which refers to a JCT works contract signed on 2 September 2010, and a formal stage payment certificate dated October 2011 which refers to a contract dated September 2010.
48. The date and specification of the contracted works is consistent with the state and condition of the external parts observed by the tribunal during out inspection.
49. Having regard to the evidence and information before it the tribunal is satisfied that the external repairs and redecorations works were carried out, and that the resulting costs are reasonable and payable in the sum claimed.

#### **Window cleaning for 2010 & 2011**

50. The service charge account for 2010 includes £450 for window cleaning of both Ashmere Grove and Postmill Close. It is accepted by the claimant that until October 2010 the contractor, in error, failed to clean Ashmere Grove and cleaned the Postmill Close blocks only. It is therefore accepted that nothing is payable.
51. £450 is demanded for 2011. The defendants question how often the windows are cleaned. As the defendants only visit the block every 6 months or so they are unable to present any positive challenge of any weight. The claimants state that the contractor cleans them fortnightly between April and October and monthly between October and Easter. During the hearing the defendants have conceded that this is a reasonable charge for that service. On the information before the tribunal this is a sensible concession. However, the claimant accepts that the contractor did not start to clean Ashmere Grove windows until October 2010. Therefore the correct pro rata charge which is reasonable and payable for 2011 (ie. October 2010 to March 2011) is £225.
52. £450 is demanded for 2012 and 2013 respectively. For the reasons set out in relation to 2011 the defendants do not dispute that this is a reasonable charge. On the information before the tribunal this is a sensible concession. Therefore £450 is determined to be reasonable and payable.

41. At the outset of the hearing the defendants have challenged the charges in respect of window cleaning, electricity usage, repairs & maintenance, gardening, accountancy, management, the fire risk assessment (2010), the asbestos re-inspection (2010), health & safety assessments (2011 and 2012) and management charges.
42. During the hearing the claimants have addressed the challenged charges and, as a result, the defendant have withdrawn their challenges in relation to electricity for 2010 and 2011, repairs & maintenance other than 2011, accountancy fees, the 2010 fire risk assessment, the 2010 asbestos inspection, the 2011 professional fees, the 2011 refuse collection, the 2011 health & safety assessment, the gardening charges for 2012 and 2013, the 2012 health & safety assessment, and the 2013 H&S repairs & maintenance charge.
43. As a result the charges which have been challenged and which the tribunal has determined are repairs & maintenance in 2011, window cleaning for 2010 and 2011, gardening for 2010 and 2011, electricity for 2012 and 2013, and the management fees for all years.

#### **Discussion & determinations**

##### **Repairs & maintenance charge of £1,216.13 in 2011 account**

44. It is apparent from the documents in the hearing bundle that cyclical repairs and redecorations were intended to be carried out to the external parts of Ashmere Grove and the adjacent Postmill Close blocks between September and November 2010.
45. The defendants now challenge this item on the basis that no works were carried out or that such works as were carried out are not as described and charged for. They have produced no evidence to substantiate this challenge. This issue was not mentioned at the inspection despite the defendants being asked to direct our attention to any condition, repair and decoration points which are relevant to any issues which they propose to raise at the hearing. This issue does not appear to be raised in the defence & counterclaim filed with the county court.
46. Ms Griffith from the managing agent states that the works were carried following a section 20 consultation exercise, that the works are as described in scheme documents and that the resulting costs are as re-charged.

33. It follows that insofar as Ms Janine Dunn has stated in correspondence that "[the claimant] is still continuing to make fraudulent claims and claims for amounts that were legally declared as not due [by the tribunal]" this is incorrect.
34. Insofar as Ms Janine Dunn has stated in correspondence that "[the claimant] has been warned on a number of occasions by both the court and the LVT to cease abusing the legal route" in fact no such warnings were given by the tribunal in 2010 in case CAM/22UJ/2010/0079.
35. The allegation that the claimant "is engaged in fraudulent misrepresentation to the.....tribunal" or acts in a way which is an abuse of the tribunal's process is entirely unfounded.
36. This tribunal has admonished the defendants for making these incorrect assertions about the findings made by the previous tribunal in 2010 which might mislead the judge considering this present claim in the county court.

**The service charge items within the claim**

37. At the tribunal's invitation Mr Green has helpfully revisited the sum claimed in the county court proceedings and stripped out the ground rent and other fees and charges, which remain to be agreed or determined by the county court in due course, so as to identify the service charges for determination by this Tribunal.
38. The total sum claimed in the county court is £6,369.07 (see paragraph 9 of the particulars of claim). This comprises the charges set out in the service charge demand dated 3 July 2013 (pages 197-199 of the hearing bundle). The claimant has agreed that the four ground rent items on page 197 are stripped out, that the first two items on page 198 are included with the remaining 9 fee items stripped out, and that the interest and unallocated cash items on page 199 are stripped out leaving only the two balancing service charges. The result is that the service charges to be considered and determined by this Tribunal total £4216.42.
39. The relevant accounting years are 2010, 2011, 2012 and 2013. Those accounting years run to 25 March.
40. At the outset of the hearing the defendants have confirmed that the building insurance is not challenged.

27. It is therefore for the claimant's benefit as much as the defendants' benefit that we will consider and determine the issues now raised by the defendants. The resulting decision may then form the basis for the case to be restored to the county court so that the unpaid service charges can be recovered without further delay.

**The defendants' argument that the service charges demanded have already been determined not to be payable by the previous tribunal decision made in September 2010 such that the present claim is an abuse of process**

28. The defence and counterclaim filed in the county court states "the sums [in these proceedings] duplicated the matters already discussed and ruled by the LVT in September 2010 with a decision of not due following Trust's failing to follow s20 process".

29. In correspondence with the claimant and/or its solicitor Ms Janine Dunn has stated that "[the claimant] is still continuing to make fraudulent claims and claims for amounts that were legally declared as not due", that "[the claimant] has been warned on a number of occasions by both the court and the LVT to cease abusing the legal route".

30. On 7 September 2010 the tribunal (including the same judge and valuer member as on the present tribunal) determined the service charges payable for the accounting years 2006-2009 in case CAM/22UJ/2010/0079. A detailed reasoned decision was provided to the parties in writing. It is clear that decision relates to the service charges for the accounting years 2006-2009 only. It is clear that there was no determination that the defendants were not liable to pay service charges because of a failure by the landlord to comply with the statutory consultation requirements of section 20 of the Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002. This consultation issue related to asbestos works carried out in 2006. Neither party provided sufficient documentary or oral evidence to enable the tribunal to determine the issue. It did not do so. The parties should remind themselves of the discussion set out in paragraphs 13-16 of that 2010 decision.

31. The present claim (3XV05781) clearly relates to service charges demanded from March 2010.

32. It follows that insofar as it states that "the sums [in these proceedings] duplicated the matters already discussed and ruled by the LVT in September 2010 with a decision of not due following Trust's failing to follow s20 process" the defence and counterclaim filed in the county court in the present claim is incorrect.

the tribunal may refuse to hear all or part of their case and may order them to pay wasted fees and costs.

23. By a letter dated 15.01.15 the claimant's solicitor requested that sanctions be considered for the defendants' failure to comply with the directions order. Mr Green for the claimant renews that argument now. In the circumstances it has some force.
24. It is only now that the defendants state which service charges are disputed and why. The directions order was sent to them in December 2012. The hearing bundle was served on them on 12 February. They have had over 2 weeks since service of the bundle to attempt some compliance with the directions or make some attempt to explain which service charges are challenged and why. They accept that they have made no such attempt. They accept that they received the hearing bundle on 12 February. They claim not to have received the directions order and correspondence from the court. Similarly, they claim not to have received the service charge demands and related correspondence from the claimant. The postal address used for them by the landlord, by the landlord's solicitors and by the tribunal has been checked with them and is correct. The content of the email exchanges between them and the landlord's agent makes their assertions most unlikely. The tribunal does not accept their assertions. We proceed on the basis that the directions order and correspondence from the court was received by them. We proceed on the basis that the service charge demands and related 'landlord correspondence' were received by them. They accept that they received the hearing bundle 2 weeks prior to this hearing. The tribunal is satisfied that the defendants offer no reasonable excuse for their failure to comply with the directions order.
25. As the defendants have failed to file any evidence even now, there is no evidence to exclude by way of sanction. The defendants have at least finally identified their points of challenge orally at the outset of the hearing. The tribunal has carefully considered whether we should entertain these points of challenge at all at this late stage. With some hesitation we have decided that we should do so.
26. It is apparent from the defendants' conduct of the county court claim which gives rise to this hearing, and their conduct of the previous county court claim (0QT 05722) which gave rise to the previous tribunal decision (CAM/22UJ/LSC/2010/0079) dated 7 September 2010 that they will seek to delay, obfuscate or prevaricate when service charges are demanded. This causes delay, inconvenience and cost to the claimant.



## **The law**

18. The Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 sets out the Tribunal's jurisdiction to determine liability to pay service charges. Section 27A(1) of 1985 Act provides as follows -

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 is payable.

19. Section 18 sets out the meanings of 'service charge' and 'relevant costs'.

20. Section 19(1)(a) of the 1985 Act provides that "relevant costs shall be taken into account in determining the amount of a service charge payable for a period only to the extent that they are reasonably incurred".

21. Section 19(1)(b) of the 1985 Act provides that "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".

## **Discussion & determinations**

### **The defendants' failure to comply with the Directions Order**

22. The directions order made by the tribunal on 09.12.14 is clear. It expressly requires the defendants to serve a statement of case which identifies the service charges in dispute and the grounds for any such dispute, together with what a reasonable charge would be. It also expressly requires them to serve copies of any documents relied upon to support their arguments. They have not served or filed any statement of case. They have not served or filed any supporting documents. The directions order states in clear terms that in such circumstances

solicitors.

- (d) The claimant refuses or fails to provide any proper statement of account and of payments received since 2006.
- (e) The claimant's conduct in pursuing legal proceedings and incurring legal costs is abusive.

14. In oral exchanges with the defendants the tribunal have endeavoured to clarify these issues and distill them down to those which are within its jurisdiction.

#### **The inspection by the Tribunal**

15. The tribunal has made a visual inspection of the internal common parts, external elevations and immediate grounds of the block in which the property is located in the company of the defendants Ms Janine Dunn and Ms Michelle Dunn. No-one has attended on behalf of the claimant landlord. Mesdames Dunn do not live in the property which is tenanted. No party has requested that we inspect the premises itself and we have not done so. As the defendants have failed to provide any clear written statement identifying the services and the basis for such challenge before the hearing day the tribunal has endeavoured to inspect anything which may be relevant to the service charge items for the accounting years referred to.

#### **The hearing before the Tribunal**

16. The claimant landlord has been ably represented by Mr Green of counsel assisted by Ms Antoinette Griffith property manager for Messrs Trust Property Management who are managing agents for the claimant landlord. Ms Janine Dunn and Ms Michelle Dunn have combined efforts to advance their arguments orally. A detailed witness statement has been filed by Ms. Griffith. No evidence has been filed by or for the defendants. We have been provided with a hearing bundle with in excess of 350 pages of documentation, including the service charge accounts for each of the relevant years.

#### **The lease**

17. The tribunal is provided with a copy lease which the parties confirm is the relevant lease for the premises. The tribunal has considered this lease carefully. The parties have been given the opportunity to address the tribunal on the lease provision which may be relevant to the dispute. The relevant terms and effect of the lease are not disputed by the parties.

9. Due to administrative delays in the county court the case was not received by the tribunal until November 2014. A directions order was made by the tribunal on 9 December 2014. This has largely been complied with by the claimant landlord. It has not been complied with by the defendants.
10. The directions order made by the tribunal on 09.12.14 expressly requires the defendants to serve a statement of case which identifies the service charges in dispute and the grounds for any such dispute, together with what a reasonable charge would be. It also expressly requires them to serve copies of any documents relied upon to support their arguments. They have not served or filed any statement of case. They have not served or filed any supporting documents. The directions order states in clear terms that in such circumstances the tribunal may refuse to hear all or part of their case and may order them to pay wasted fees and costs.
11. By a letter dated 15.01.15 the claimant's solicitor requested that sanctions be considered for the defendant's failure to comply with the directions order. Mr Green for the claimant renews that request now. It is only now that the defendants state which service charges are disputed and why. The hearing bundle was provided to them on 12 February. They have had over 2 weeks since service of the bundle to attempt some compliance with the directions or make some attempt to explain which service charges are challenged and why. They have made no such attempt before the hearing today.
12. The particulars of claim dated 25.09.13 filed in the county court state that the ground rent and service charges due and owing as at 25.09.13 total £6,369.07. Particulars are said to be found in a statement of account at Annex 3. That annex is not included in the bundle. For the reasons explained during the hearing the ground rent is outside of the jurisdiction of this Tribunal. We consider the service charges only.
13. The undated defence & counterclaim filed in the county court provides a lengthy narrative which raises a number of issues. Some are difficult to clearly identify but the list appears to include the following -
  - (a) District Judge Silverman dismissed the claimant's claim for service charges on 27 October 2011
  - (b) The sums claimed duplicate those which the LVT ruled were not due in September 2010 due to a failure to comply with the statutory consultation requirements
  - (c) The claimant is engaged in fraudulent misrepresentation to the court, tribunal and their own

Repairs & maintenance - not challenged  
Gardening - not challenged  
Health & safety assessment - none claimed  
Management fees - determined at £175 + VAT per flat  
Accountancy fees - not challenged  
H&S repairs & maintenance - not challenged

5. The claimant should re-draw the demands and the money claim in the county court to reflect this decision.

#### **The costs of the proceedings before this tribunal**

6. The issue of whether any party should pay the other party's costs of and occasioned by these tribunal proceedings is best considered within the context of the overall proceedings before the county court and by that court. The tribunal would have declined to make an order pursuant to section 20C of the Landlord & Tenant Act 1985 to preclude the claimant re-charging its costs of the tribunal proceedings as a service charge. However, the county court has concurrent jurisdiction to consider section 20C orders and so that matter too is left to that court to decide as part of its overall consideration of costs.

#### **Transfer back to the county court**

7. The case will now be transferred back to the county court sitting at Chelmsford. The parties should provide a copy of this decision to that court. Any future application other than an application for permission to appeal this Decision, should be made to that court.

### **REASONS**

#### **The application, parties, premises & disputed service charges**

8. This matter comes before the tribunal pursuant to an order made on 18 December 2013 by District Judge Hodges sitting in the county court at Chelmsford (in claim 3XV05781) which provides that the "claim be transferred to the first tier tribunal (property chamber) to determine whether the rent service charges and fees are payable, similar claims having been referred previously CAM/2245/LSC/2010/0079 and Chelmsford County Court case 1QT45368 the later of which is still outstanding".

Repairs & maintenance - not challenged  
Gardening - determined at £1898.50 as claimed  
Management fees - determined at £160 + VAT per flat  
Surveyors fees - none claimed  
Accountancy fees - not challenged  
H&S fire risk assessment - not challenged  
Asbestos re-inspection - not challenged

**Year ended March 2011**

2. The service charges which are reasonable and payable are determined as follows -

Window cleaning - determined at £225  
Buildings insurance - not challenged  
Electricity - not challenged  
Repairs & maintenance - not challenged  
Gardening - determined at £1920 as claimed  
Management fees - determined at £165 + VAT per flat  
Accountancy fees - not challenged  
Professional fees - not challenged  
Refuse collection - not challenged  
Health & safety assessment - not challenged  
H&S fire risk assessment - none claimed  
Asbestos re-inspection - none claimed

**Year ended March 2012**

3. The service charges which are reasonable and payable are determined as follows -

Window cleaning - not challenged  
Buildings insurance - not challenged  
Electricity - determined at £373.69 as claimed  
Repairs & maintenance - not challenged  
Gardening - not challenged  
Management fees - determined at £170 + VAT per flat  
Accountancy fees - not challenged  
Professional fees - none claimed  
Refuse collection - none claimed  
Health & safety assessment - not challenged

**Year ended March 2013**

4. The service charges which are reasonable and payable are determined as follows -

Window cleaning - not challenged  
Buildings insurance - not challenged  
Electricity - determined at £624.69 as claimed

jurisdiction of this tribunal. Enforcement of unpaid service charges is a matter for the county court in any event. Whether any party should pay the other party's costs of and occasioned by these tribunal proceedings is best considered within the context of the overall proceedings before the county court and by that court.

64. It should be apparent from this decision that the defendants did not comply with the procedural directions of the tribunal. They have been admonished for making incorrect assertions about the findings made by the previous tribunal in 2010 which might mislead the judge considering this present claim in the county court. Their substantive grounds for challenging the service charges demanded have been largely rejected. In the circumstances the tribunal would have declined to make an order pursuant to section 20C of the Landlord & Tenant Act 1985 to preclude the claimant re-charging its costs of the tribunal proceedings as a service charge. However, the county court has concurrent jurisdiction to consider section 20C orders and so the matter is left to that court to decide as part of its overall consideration of costs.

**Transfer back to the county court sitting at Chelmsford**

65. Accordingly, the case will now be transferred back to the county court sitting at Chelmsford. Any future application other than an application for permission to appeal this Decision, should be made to that court.

**Stephen Reeder**  
**Judge of the First Tier Tribunal**

**March 2015**