



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

Case Reference: CHI/OOML/LIS/2015/0043

Property: G12, Marine Gate, Marine Drive, Brighton,
BN2 5TQ

Applicant: Marine Gate Holdings Limited

Respondents: William Henry Jacobs and Edward Alfred
Cosker

Representative: Mr Peter Barrett

Type of Application: Section 27A of the Landlord and Tenant Act
1985
(Liability to pay service charges)
Schedule 11 Commonhold and Leasehold
Reform Act 2002
(Liability to pay administration charges)
Landlord's application for the
determination of reasonableness of service
charges and administration charges for the
years 2014 and 2015.

Tribunal Member: Judge A Cresswell

Date of Decision: 19 November 2015

DECISION

The Application

1. This case arises out of the landlord's application, made on 13 July 2015, for the determination of liability to pay service charges and administration charges for the years 2014 to 2015 inclusive under Section 27A of the Landlord and Tenant Act 1985 and Schedule 11 Commonhold and Leasehold Reform Act 2002.

Inspection and Description of Property

2. The Tribunal did not inspect the property. The property comprises Flat G12 and Garage Space 10, Marine Gate, Marine Drive, Brighton, BN2 5TQ.

Summary Decision

3. Under Sections 19 and 27A of the Landlord and Tenant Act 1985 (as amended) service charges are payable only if they are reasonably incurred. The Tribunal has determined that, the landlord Applicant has demonstrated that the charges in question were reasonably incurred, and so those charges are payable by the Respondents.
4. Under Schedule 11, part 1 Commonhold and Leasehold Reform Act 2002, administration charges are payable only if they are reasonably incurred. The Tribunal has determined that the landlord Applicant has demonstrated that the charges in question are shown to have been reasonably incurred, and so the charges are payable by the Respondents.
5. The Tribunal orders the reimbursement by the Respondents of fees paid by the Applicant in the sums of £250 and £90.

Directions

6. Directions were issued on 22 July 2015. These directions provided for the matter to be heard on the basis of written representations only, without an oral hearing, under the provisions of Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
7. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
8. Further Directions issued on 30 September 2015 required the Applicant to provide further documentation and invited comments from the Respondents' Attorney, Mr

Barrett, who had until then failed to engage with the Tribunal process. No response was received from Mr Barrett.

9. This determination is made in the light of the documentation submitted in response to the Directions.

The Law

10. The relevant law is set out in sections 18, 19 and 27A of Landlord and Tenant Act 1985 and Schedule 11 of Commonhold and Leasehold Reform Act 2002.
11. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord’s costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 “the 1985 Act”). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.
12. The Tribunal has the power to decide about all aspects of liability to pay administration charges and can interpret the lease where necessary to resolve disputes or uncertainties. Administration charges are sums payable in addition to rent inter alia in respect of failure by a tenant to make a payment by the due date to the landlord. The Tribunal can decide by whom, to whom, how much and when an administration charge is payable. An administration charge is only payable insofar as it is reasonably incurred. The Tribunal therefore also determines the reasonableness of the charges.
13. In reaching its Determination, the Tribunal also takes into account the RICS Service Charge Residential Management Code (“the RICS Code”) approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993.

Ownership and Management

14. The Applicant company is the owner of the freehold. The property is managed by it.

The Lease

15. The Respondents hold Flat G12 and Garage Space 10 under the terms of leases dated 29 June 2001, which were made between the Applicant as lessor and the Respondents as lessees.
16. Under the leases, the Respondents are required to pay a two-stage service charge. The leases envisage, essentially, a payment in advance (“interim charge”) followed

by a balancing reconciliation (a "certificate" as per paragraph 6 of the Fifth Schedule and The Schedule in the two leases respectively).

17. **Service Charges and Administration Charges for 2014 and 2015**

The Applicant has provided 2 bundles of evidence. There are copies of the 2 leases signed by the Respondents. There is evidence of the demands for Service Charge payments. There are copies of the audited Service Charge accounts showing Service Charge expenditure and schedules showing how the Service Charge demands were calculated for the 2 years in question in accordance with the percentage proportions applicable to the property as required by the leases.

The leases also require the Applicant to pay interest in default of payment of the Service Charge within 21 days of its due date (clauses 4(b) and 2(4) respectively).

The Respondents have failed to engage with the Tribunal process. There is no evidence to show that they engaged in any way with the payment of the Service Charges due from them. They have had an opportunity, via their Attorney, to say if they disagreed in any way with the claim made and the documents submitted by the Applicant. Indeed, a second opportunity was given by the Tribunal's Directions of 30 September 2015.

The Tribunal has been given no reason by the Respondents to question the case or documents put forward by the Applicant.

The claim and subsequent documentation were served upon Mr Peter Barrett; the Applicant has served proof that Mr Barrett is the person with Lasting Power of Attorney for the Respondents for Property and Financial Affairs and registered as such with the Office of the Public Guardian (Rule 6.13 Civil Procedure Rules).

Mr Barrett has failed to engage with the Tribunal or provide any assistance to the Tribunal despite a request that he do so in the Tribunal's Directions of 30 September 2015.

The Applicant has referred to Mr Jacobs as being deceased. There is no evidence before me to show that Mr Jacobs is deceased; I have, accordingly and for that reason only, not referred to Mr Jacobs as being deceased.

There being no challenge to the claim made, despite opportunities presented to the Respondents to make such a challenge via their Attorney, the Tribunal finds that the claim is made out and that the following sums are due from the Respondents: for the year 2014, £5,821.14 (flat) plus £77.81 (garage) for Service Charges and interest

of £398.18 by way of Administration Charge; for the year 2015, £6,112.41 (flat) plus £81.71 (garage) for Service Charges and interest of £139.37 by way of Administration Charge.

Fees

18. The Applicant has made an application for reimbursement of its fees.
19. The relevant law is detailed below:

Rule 13 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”).

(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.

20. Whilst the test to be applied under Rule 13(2) requires no analysis of whether a person has acted unreasonably, when all that is recorded above is weighed in the balance, the Tribunal finds that it would be appropriate to order the Respondents to reimburse the Applicant with the fees paid by it. There appears to the Tribunal to have been no other viable option open to the Applicant to resolve the issues save by making its application to the Tribunal. The Respondent is ordered to pay the sums of £250 and £90 to the Applicant in reimbursement of fees.

A Cresswell (Judge)

APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

