



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

Case Reference : CHI/21UG/LSC/2014/0123

Property : Rear Garden Flat, 9 Bolebrook Road, Bexhill-on-Sea, East Sussex. TN40 1EN

Applicant : Mr M R Ashwood (the Tenant)

Representative : ---

Respondent : M W O Freeholds Limited (the Landlord)

Representative : c/o Moreland Estate Management

Type of Applications: Application for determination as to reasonableness of service charges pursuant to Section 27A Landlord and Tenant Act 1985

Tribunal Members : Judge P.J. Barber

Date of Decision: 23rd February 2015

DECISION

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Decision

- (1) The Tribunal determines in accordance with the provisions of Sections 19 and 27A Landlord and Tenant Act 1985 (“the 1985 Act”) that none of the service charges referred to in the application for the service charge periods 2009/10 to 2014/15 (inclusive), are payable.
- (2) In regard to the application in respect of costs made by the Applicant pursuant to Section 20C of the 1985 Act, the Tribunal determines that none of the costs of the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by the Applicant.

Reasons

INTRODUCTION

1. The application in this matter was dated 20th November 2014 and was made pursuant to Sections 27A and 19 of the 1985 Act for determination of the reasonable service charges payable by the Applicant to the Respondent. The application addressed issues arising over the service charge periods from 2009 to 2015.
2. Directions were issued in the matter on 24th November 2014, inter alia, requiring the Respondent to send to the Applicant by 8th December 2014, copies of all relevant service charge accounts and estimates for the years in dispute, together with all demands for payment. Such directions further included a provision that the application was to be determined without an oral hearing, unless a party objected in writing to the Tribunal within 28 days of receipt of the directions. The Respondent failed to comply with such directions and, as a result, on 16th December 2014, further directions were issued referring to the earlier failure by the Respondent to comply, and advising the parties that the Tribunal was minded to debar the Respondent from taking further part in the proceedings for such failure to comply. The directions also provided that if no representations were made in response, the Respondent would be debarred from taking further part in the proceedings, without further notice and that the Tribunal would proceed to make a determination of the application on the basis of the evidence put before it by the Applicant. No response or representations have been received by the Tribunal from the Respondent.
3. The Applicant has submitted a bundle of evidence which has been considered by the Tribunal without an oral hearing, the Applicant having indicated in his application that he would be content with a paper determination of the matter.

THE LAW

4. Section 19(1) 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 –
 - (a) only to the extent that they are reasonably incurred, and*
 - (b) where they are incurred on the provision 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.”

Sub-Sections 21B (1) to (3) of the 1985 Act provide that :

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges*
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations*
- (3) A tenant may withhold payment of a service charge which has been demanded from him if sub-section (1) is not complied with in relation to the demand*

The relevant regulations referred to in Section 21B(2) of the 1985 Act are the Service Charges

(Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 S.I. No. 2007/1257

Sub-Sections 27A (1), (2) and (3) of the 1985 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 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 cost, 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.*

“Service Charges” are defined in Section 18 of the 1985 Act as follows

(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, 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

18(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.

THE EVIDENCE

8. The Tribunal has considered the bundle of evidence provided by the Applicant which included a copy of the lease of the Property, being a lease dated 8th September 1978 and made between William Albert Spence and Margaret Elaine Spence (1) Florence Roberta Taylor (2) ("the Lease"). The Lease is a demise of the Garden Flat at 9 Bolebrook Road, Bexhill-on-Sea, East Sussex ("the Flat"), for a term of 999 years from 8th September 1978. Clause 1(2) of the Lease obliges the lessee to pay a three-sixteenths part of the cost of insuring the building of which the Flat forms a part and clause 4(2) of the Lease requires the lessee to contribute a three-sixteenths part of the costs expenses outgoings and matters mentioned in the Fourth Schedule to the Lease.
9. The Fourth Schedule of the Lease itemises the following costs to which a three-sixteenths part is to be contributed:
 1. *The expenses of maintaining repairing redecorating and renewing*
 - (1) *The main structure and in particular the roof chimney stacks gutters and rainwater pipes of the Mansion*
 - (2) *The gas and water pipes drains and electric cables and wires in under or upon the Mansion and enjoyed or used by the Lessee in common with the owners and Lessees of the other Flats*
 - (3) *The pathway of the Mansion so enjoyed or used by the Lessee in common as aforesaid*
 - (4) *The boundary walls and fences of the Mansion*
 2. *The cost of keeping the pathway and other parts of the Mansion shown on the plan annexed hereto and thereon edged brown in good condition*
 3. *The cost of decorating the exterior of the Mansion*
 4. *All rates taxes and outgoings (if any) payable in respect of the forecourt pathway and other parts of the Mansion shown on the plan annexed hereto and thereon edged brown and blue and the main entrances of the Mansion and the passages landings and staircases leading to the flats in the Mansion*

5. *The cost of insurance against third party risks in respect of the Mansion if such insurance shall in fact be taken out by the Lessors*

6. *An addition of five per cent shall be added to the costs expenses outgoings and matters referred to in the preceding paragraphs of this Schedule for administration expenses*

10. The bundle further included a copy of a Deed of Variation dated 29th July 2010 and made between New Era Investments Limited (1) Martin Roger Ashwood (2); such deed in broad terms provides for a variation in regard to the insuring obligations of the landlord so as to accord with the requirements of the Council of Mortgage Lenders Handbook.

11. In regard to the application, the categories of charges challenged by the Applicant for the relevant service charge periods are in summary as follows:-

(1) 2009/10

Accountancy fees

(3) 2010/11

Professional & accountancy fees

Administration fees

Management set-up

Management fees

(4) 2011/12

Accountancy fees

Management fee

General repairs (in advance)

Reserve (in advance)

(4) 2012/13

Management fees

General repairs (in advance)

(5) 2013/14

Management fees

General repairs (in advance)

(6) 2014/15

Service charge balance from Austin Rees (Managing Agent) £2,295.05

General maintenance £ 500.00

Management fees £1,140.00

Buildings Insurance £1,500.00

12. On the basis of the evidence as provided by the Applicant, it is apparent that the Lease makes no provision for the landlord to charge for accountancy fees,

management set-up, management fees, or for contributions in advance on an estimated basis, towards either general repairs or any reserve fund provision. In regard to the administration fee arising in the service charge year 2010/11, clause 6 to the Fourth Schedule of the Lease allows for an addition of 5% to remaining costs in the year, for administration purposes. However, in the absence of any clear evidence in the bundle as to the amount which may have been properly payable for service charge costs in 2010/11, it is not possible to ascertain how much 5% of such costs should be. Accordingly, the Tribunal determines that none of the amounts referred to in the application in respect of any of the periods 2009/10 to 2013/14 inclusive, are payable.

13. In regard to the service charge year 2014/15, there is no provision in the Lease allowing the landlord to charge for management fees. The copy demand in the bundle for 2014/15 appears to be on an estimated basis and entitled as a "Statement of Budgeted Service Charge expenditure Year End 31 March 2015". Accordingly, and on the basis that the Lease makes no provision for advance payments on account, or on an estimated or budgeted basis, the amounts so demanded are not payable. The landlord should submit demands for service charges on an actual cost basis, effectively in arrears, rather than in advance.

14. The Applicant has also made an application under Section 20C of the 1985 Act to limit costs to be recharged in connection with these proceedings.

CONSIDERATION

15. The Tribunal have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of the parties.

16. In the absence of appropriate, express enabling provisions in the Lease, and owing to a lack of clear evidence as to the total amount of any service charges which might have been chargeable in 2010/11, and upon which any 5% administration fee could be based, the Tribunal determines that none of the amounts referred to in the application for the service charge periods 2009/10 to 2013/14 inclusive, are payable. In regard to the amounts referred to in the application for 2014/15, the basis on which those various amounts are calculated or arrived at, is not entirely clear, but on the basis of such evidence as is available, such amounts appear to have been demanded in advance and given that the Lease makes no provision for payment of service charges on an estimated basis in advance, the Tribunal determines that none of those amounts is payable.

17. In regard to Section 20C the Tribunal accepts that it has been entirely necessary for the Applicant to make the application and consequently determines that none of the Respondent's costs in connection with these proceedings may be included in service charges to the Applicant.

18. We made our decisions accordingly.

Judge P J Barber

Appeals :

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.