

10573



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

Case Reference : CHI/29UG/LSC/2014/0009

Property : 19 The Maltings
Clifton Road,
Gravesend
Kent
DA11 0AH

Applicant : The Maltings RTM Company Limited

Representative : Ms A. Sedgwick of Counsel

Respondent : Mr. R.T. Turner

Representative : Unrepresented

Type of Application : Liability to pay service charges
Section 27A Landlord and Tenant Act 1985
Transfer from County Court

Tribunal Members : Judge R. Norman (Chairman)
Mr. R. Athow FRICS MIRPM

**Date and venue of
Hearing** : 18th December 2014
Chatham, Kent

Date of Decision : 21st January 2015

DECISION

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Decision

1. Mr. R. T. Turner (“the Respondent”) is liable to pay to The Maltings RTM Company Limited (“the Applicant”) the sum of £2,097 in respect of service charges for 19 The Maltings, Clifton Road, Gravesend, Kent DA11 0AH (“the subject property”). On payment of that sum the Respondent’s service charges in respect of the subject property will be paid to 5th December 2014.

Background

2. The Applicant is the Right to Manage company in respect of the Maltings, Clifton Road, Gravesend, Kent DA11 0AH of which the subject property forms part. The Respondent is the lessee of the subject property.

3. Proceedings were commenced in the County Court (Claim No. 3YS56598) and by an order dated 7th January 2014 the Court of its own initiative referred to the First-tier Tribunal (Property Chamber) (Residential Property) for determination, the question of the amount of service charges payable by the Respondent to the Applicant. The Applicant applied for that order to be set aside but the application was unsuccessful.

4. Directions were issued and statements of case and a hearing bundle were received. Page references are to pages in the hearing bundle.

Inspection

5. On 18th December 2014 the Tribunal attended The Maltings for the purpose of an inspection. Present were the Respondent and Mr. Burton of Amax Estates & Property Services (“Amax”), the managing agents of the Applicant. We saw the exterior of the Maltings and the entrance and hallway nearest to the subject property. Neither the Respondent nor Mr. Burton wished to point out anything to us.

Hearing

6. Present at the hearing were Ms A. Sedgwick of Counsel representing the Applicant, Ms H. Warnes and Ms A. McIlwraith the Residential Estate Manager and the Accounts Manager respectively of Amax, and the Respondent.

7. Before the hearing commenced, Ms Sedgwick produced a skeleton argument for the Tribunal and the Respondent and those present discussed the situation.

8. As a result of that discussion the Respondent conceded that his mortgage provider had not made a payment of £4,050.41 to the Applicant because having found there was a dispute the mortgage provider had stopped the cheque.

9. The Respondent also stated that in the proceedings before us he did not wish to dispute the reasonableness of the service charges. His dispute was as to the amount owing and to be paid.

10. The claim referred from the County Court concerns service charges from 25th March 2011 to 24th March 2014.

11. Service charges in the sum of £5,147.77 had been claimed in the claim form but that had now reduced because the Respondent had been making payments. Unfortunately there was not one statement to cover the whole period but Ms Sedgwick had gone through the accounts and had found that £4,102.07 was owing in respect of service charges. Interest and costs were also claimed but that would be dealt with in the County Court.

12. The statement of account at pp 74 and 75 had been drawn up by the Respondent and he now accepted that it was incorrect in that it included the cheque for £4,050.41 paid by his mortgage providers which had later been stopped. The account at p 50 included an opening balance of £2,110.64 but there was no evidence to support that figure. The statements of account at pp 59 and 60 showed the payments of £100 per month and then increased to £120 per month being made by the Respondent.

13. Ms Sedgwick confirmed that, in accordance with normal accounting practice, payments made had been credited to the oldest debt because the Respondent has not dictated otherwise. At the point of issue of the proceedings the Applicant's solicitor had worked out the arrears and started proceedings for the period.

14. However, the Respondent produced a copy of one of his letters enclosing a cheque in which he had stated that payments should be made against current service charges.

15. The Tribunal referred to the letter dated 13th May 2010 at p 70 from SLC Solicitors representing the Applicant. In that letter they stated that "Our records show that you have now made payments in the sum of £2382.45 leaving a sum of £170.38 outstanding." Also the letter dated 21st July 2010 from SLC Solicitors at p 72 in which it was stated "We refer to the above matter and acknowledge receipt of your payment in the sum of £170.38. We confirm that full payment has now been received and we have been instructed to take no further action and close our file." Ms Sedgwick explained that SLC Solicitors had made a mistake in sending those letters but submitted that the Respondent must have known that he had not made the payment of £2,382.45. The Respondent explained that he had made some payments on a payment plan and had made it clear to SLC Solicitors and to Amax that he disputed that sum. He received no response from them but when he received letters stating that he had paid in full he assumed it had been agreed that he did not have to pay the disputed sum.

16. Amax had taken over as managing agents from Peverel in January 2009 but had not produced in the bundle a demand for an opening balance in January 2009.

17. The Respondent calculated that for the period covered by the claim the sum was £4,759.28 and he had paid £3,960 leaving £799.28 outstanding but taking into account recent payments of £1,080 and demands of £970.28 the sum outstanding was £689.56 including some current charges.

18. Ms Sedgwick's calculation at paragraph 7 of her skeleton argument was that demands totalling £4,806.36 had been made for the period 25th March 2011 to 24th March 2014.

19. Ms Warnes gave evidence that she had spoken to the Respondent in 2009. He disputed the balance brought forward from Peverel. He wanted a payment plan and that was accepted. He said he had paid some of the brought forward balance. The plan was to pay £100 per month. She wrote to him a year or so later as she had not heard from him and £100 per month was not enough. He had paid by cheque and never had a standing order. She did not have a telephone number for him so only spoke to him when he telephoned. £100 per month was never enough to cover the arrears as years went on. She wrote to him to say the sum was inadequate but did not have the letters to produce.

20. There was some confusion as to payment plans and whether the Respondent had made payments as arranged. The Respondent stated that he had written to Amax on 10th February 2010 saying he wanted a breakdown of outstanding service charges but that letter was not in the bundle. The original letter was found by the representatives from Amax and shown to the Respondent before being produced to the Tribunal. In that letter the Respondent stated:

"Further to previous correspondence, I would note that I am still awaiting a full and detailed breakdown of any outstanding service charges against 19 The Maltings.

Whilst your most recent 'statement' clearly shows a breakdown of service charges from 25th March 2009, the alleged 'Balance per previous Manager' amounting to £1,355.38 is the amount that I am specifically querying and, indeed, disputing.

In the meantime, I propose to clear the balance of £1,006.92, for charges relating to 25th March 2009 to 24th March 2010, by way of three payments of £335.64, between now and 24th March 2010.

Accordingly please find enclosed my cheque amounting to £335.64, being the first of the above payments, the second of which will be sent to you on or around 1st March 2010.

I trust that the above will be to your satisfaction and look forward to confirmation of same, together with acknowledgement of the enclosed remittance."

There is a handwritten note on the letter which appears to state: "posted 16/2/10" which appears to refer to the date the cheque was posted by Amax to the Respondent's account.

21. A copy of the reply dated 17th February 2010 was also produced. It read:

"Thank you for your letter of 10 February with your cheque for £335.64 which has been credited to your account.

With regard to your arrears brought forward from Peverel I enclose a copy of their statement of your account. The outstanding balance comprises the balance of service charge to 28/09/07 £168.19, service charge to 28/9/08 £593.60 and service charge to 24/3/09 £593.59."

22. The Respondent produced a copy of his letter dated 1st March 2010 to Amax enclosing a cheque for £335.64 "...against my payment arrangement for undisputed service charges between 25th March 2009 and 24th March 2010...". The cheque was banked. In that letter he again disputed that any service charges were outstanding when the collection of service charges was taken over by Amax and requested that Amax refer back to Peverel. At p 53 the account summary shows the receipt of the three payments of £335.64.

23. When the Respondent received the letters referred to in paragraph 15 above stating that he had paid in full he assumed it had been agreed that he did not have to pay the disputed sum.

24. The Respondent had produced (p 70) the first page of a letter dated 13th May 2010 which he had received from SLC Solicitors. He had not produced the second page of that letter or the arrears schedule which had been enclosed with it. The representatives of Amax produced at the hearing a copy of an arrears schedule which they thought had been sent with that letter dated 13th May 2010. Below the schedule itself, there were acknowledgements and below them a space for the leaseholder to sign, print his name and add the date. The acknowledgements included that the amounts shown in the schedule were reasonable and payable, that by signing the schedule the leaseholder admitted or agreed the service charges, that that would be a ground for the landlord to seek forfeiture and that the leaseholder's mortgage provider could pay the sums. There was no signed arrears schedule produced. The Respondent then produced the original of the letter dated 13th May 2010. On the second page it was stated that unless the solicitors heard from the Respondent on or before 4pm on 20th May 2010 they would proceed as set out on the first page without further notice and informed him that he was entitled to seek his own legal advice. However, the arrears schedule attached contained just the schedule and nothing further. In particular there were no acknowledgements to be signed. Also the original showed the total amount of £170.38 due as at 13th May 2010. The arrears schedule produced on behalf of Amax showed a payment of £85.19 on 3rd June 2010 and the total amount due as at 6th July 2010 of £85.19. Clearly that arrears schedule could not have been attached to the letter dated 13th May 2010. In both arrears schedules produced, there

appears the sum of £2,382.45 and the transaction is stated to be "Credit – payment plan with client".

25. Ms Sedgwick explained that when Peverel Mint folded and Amax became the managing agents, they employed an accountant to work out arrears of payments etc. At p 53 there is shown an adjustment of £31.58 dated 24th March 2010 which was all the accountant could find that the Respondent had paid of the previous managing agent's balance. The balance of £1,355.38 less £31.58 was owed for the time Peverel were the managing agents. Ms Sedgwick produced a letter dated 12th December 2007 from Mint Property Management Ltd. to the Respondent stating that he owed £2,358.17.

26. Ms Warnes stated that the Respondent had given her post dated cheques but the Respondent denied that. He stated that he sent a letter each month with a cheque and his letter dated 1st March 2010 was an example of his procedure. He also produced copies of letters to Amax dated 22nd August 2011, 20th September 2011, 27th October 2011 and 29th September 2014. These were further examples of how he paid and each letter included the words "...against current interim service charges ...". In spite of that the sums received were credited to the old debt.

27. Ms Sedgwick had carried out a forensic exercise with the evidence provided to her but she suggested that she would not necessarily expect the solicitors to have done so.

28. The hearing was adjourned to give those present the opportunity to seek further instructions and to consider the position.

29. When the hearing continued Ms Sedgwick stated that she and the Respondent had had a long chat.

30. As to the apportionment of money received, she had seen evidence in the Respondent's file that he started writing letters about current service charges back to 22nd September 2010. Every month he had worded his letter in the same way. She had seen letters to July 2011 and he had told her that they go up to July 2014. There was no evidence of specific instructions before September 2010 of what the payments were to be attributed to. So, referring to p 53, payments made before September 2010 would discharge that original debt of £1,355.38. Alternatively there is a demand from Peverel OM Ltd. dealing with that original debt at pp 51 and 52. They are a statement of account but Ms Sedgwick submitted they were asking for payment by the wording at the end of the statement: "Cheque: Payable to Peverel OM Ltd We accept Debit & Credit Cards. All Credit Card payments are subject to a 1.75% surcharge... Sales Ledger Department". Ms Sedgwick submitted that the Respondent had never disputed that the sum was demanded only that it had been paid. There was no evidence that £1,355 had been paid. In fact there was evidence to the contrary in the letter from Mint Property Management Ltd. which confirmed that the Respondent was in arrears in 2007 in a large sum.

31. In order to assist, Ms Sedgwick had gone back and taken out the old debt of £1,355. She had calculated that from January 2009 to 5th December 2014 the Applicant had demanded £8,775.50 and the Respondent had paid £6,978.50 which leaves £1,797. That calculation removes entirely the old debt. However the Applicant's case is that it was entitled to reapportion all of the payments. If the Tribunal did not accept that, because of the letters, then the Applicant can go back only to September 2010. There is no evidence that the sums claimed have been paid.

32. Adding £1,355.38 to £1,797 produces a lower figure than was claimed in the County Court proceedings because the Respondent has paid more than demanded in the course of the past year. In order to bring the Respondent completely up to date to 5th December 2014 in respect of service charges would require a payment of £1,797 without the old debt or £3,152.38 including the old debt. It must be stressed that these sums would be in respect of service charges only. The calculation had been made to 5th December 2014 because the Respondent had paid quite a sum of money since 24th March 2014, the end of the period in the claim, and it was only fair that credit be given.

33. Ms Sedgwick later in the hearing informed us that the representatives of Amax had made further calculations to correct those figures and that from January 2009 to 5th December 2014 the Applicant had demanded £8,975.50 and the Respondent had paid £6,878.50 which leaves £2,097. In order to bring the Respondent completely up to date to 5th December 2014 in respect of service charges would require a payment of £2,097 without the old debt or £3,452.38 including the old debt. It must be stressed that these sums would be in respect of service charges only.

34. The Respondent submitted that the £1,355 in dispute was not in the claim. He had disputed it on numerous occasions with Amax and SLC Solicitors but there had been no resolution or breakdown of what it related to and he thought it had been resolved when he received letters stating the account was clear.

35. Back to September 2009 his letters had stated that the sums were to be allocated to current service charges, so they should not be allocated to previous debts. Since the initial demands and claims the amounts claimed varied from demand to demand and from claim to claim. He disagreed with all the figures put forward. Amax had yet to clarify the matters raised in his letters of 10th February 2010 and 25th August 2010 requesting information and the letter dated 30th November 2009 concerning a letter from Amax chasing service charges of £1,908.84. His reply challenged the amount and asked for a breakdown and he had sent a cheque for £200 for ongoing charges. On 20th February 2010 there had been full payment of service charges from 25th March 2009 to 24th March 2010. All letters sending subsequent payments stated that they were to be allocated to current interim service charges. He conceded that there may be some service charges outstanding including current service charges from Sept 2014 to March 2015.

36. Earlier the Respondent had given a figure of £689.56 owing but he had in the brief time available revised his calculation which was that charges from 25th March 2009 to date amounted to £8,564.71 and that payments of £7,046.92 were made during that period leaving £1,517.79.

37. The Respondent was in agreement that the Tribunal make a determination in respect of service charges up to 5th December 2014.

38. The Respondent received a letter (pp 85 and 86) dated 6th September 2010 from SLC Solicitors. In that letter they stated that they had been instructed to commence proceedings for service charges totalling £2,362.30 but had been advised by their client that a payment plan was in place and to purely chase for the legal fees that had accrued but that they had recently been advised that the payment plan had not been adhered to and to commence proceedings again for monies then remaining. The Respondent replied by a letter dated 10th September 2010 (p 87) in which he stated that the payment plan related to undisputed service charges for the period 25th March 2009 to 24th March 2010 which had been adhered to resulting in those charged being paid in full. Furthermore he stated that a payment arrangement was then in place regarding the current charges for the period 25th March 2010 to 24th September 2010. He also stated "As per previous correspondence with yourselves and your client, the disputed portion of the amount originally demanded by yourselves related to "arrears brought forward from Peverel" which, as previously stated was cleared in full with the previous management agents." He also referred to the letter dated 21st July 2010 (p 72) from SLC solicitors which confirmed that full payment had been received and that they had been instructed to take no further action and close their file. The Respondent stated that he heard nothing further from SLC Solicitors until 15th February 2012, some 17 months later.

39. The Applicant pointed out that in respect of the old debt of £1,355.38, the Respondent claims to have paid that debt but has never produced evidence of payment. The Applicant also accepted SLC Solicitors had made a mistake in stating that payment had been made in full when it had not.

40. Ms Warnes gave further evidence of a telephone conversation with the Respondent on 25th July 2009 concerning a sum of £2,008.84 outstanding. She wanted him to pay 9 instalments of £223.20 beginning August 2009 so sent him another letter on 10th August 2009. He paid £200 on 31st August and then another £200 later. As to the £1,355.38 she told him that if he produced evidence of payment she could credit it.

41. The Respondent stated that he had striven to resolve the issue and that there had been copious correspondence to Amex and SLC Solicitors but it remained unanswered. He submitted that there had been unreliable evidence on behalf of the Applicant and contradictory figures and correspondence. He had never tried to evade what was due. He had tried to clarify what was outstanding. The payment plan had never been confirmed in writing and should have been. There was a query about a payment of £400 which had been raised for the first time at the hearing. He accepted that there were some

charges outstanding but refuted the amounts suggested by the Applicant and disputed the brought forward figures.

Reasons

42. The Tribunal considered all the documentary evidence produced in advance of the hearing and at the hearing and all the evidence and submissions made at the hearing and made findings of fact on a balance of probabilities.

43. The Tribunal makes it clear that this determination relates only to service charges and not to any other monies which may or may not be payable such as interest and costs.

44. The letter dated 13th May 2010 (p 70) from SLC Solicitors stated that: "Our records show that you have now made payments in the sum of £2382.45 leaving a sum of £170.38 outstanding." The letter dated 21st July 2010 (p 72) from SLC Solicitors stated "We refer to the above matter and acknowledge receipt of your payment in the sum of £170.38. We confirm that full payment has now been received and we have been instructed to take no further action and close our file." At the hearing it was accepted on behalf of the Applicant that it was a mistake for those letters to be worded in that way, but we were not shown any letter from SLC Solicitors explaining this. The Applicant relied to some extent on the words "Credit – payment plan with client" in the transaction section of the arrears schedule. However, there appear to have been 3 payment plans. One was for 3 payments of £335.64 which the Respondent stated were in respect of undisputed service charges. A second appears to have been 2 instalments of £85.19 to pay the £170.38 and the third to deal with more recent service charges. The Respondent had made it clear that he disputed some of the service charges and it should have been made clear on behalf of the Applicant that the disputed service charges were still being pursued. The Respondent knew he had not paid the disputed service charges but the receipt of those letters coupled with his letters disputing some of the service charges and in particular the brought forward figure from the previous managing agents and that for 17 months he heard nothing from SLC Solicitors understandably led him to believe that it had been accepted that he was not liable to pay the disputed service charges.

45. All monies received had been credited first against the oldest debt, and in the absence of instructions to do otherwise, that was to be expected. However, it became clear that instructions had been received for at least some of the payments to be credited to later undisputed service charges and that had not been done. In his letter (produced on behalf of the Applicant at the hearing) dated 1st March 2010 to Amax enclosing a cheque for £335.64 he stated that it was "...against my payment arrangement for undisputed service charges between 25th March 2009 and 24th March 2010." He also produced copies of letters to Amax dated 22nd August 2011, 20th September 2011, 27th October 2011 and 29th September 2014. These were further examples of how

he paid and each letter included the words "...against current interim service charges ..."

46. This gave rise to complications which had to be resolved at the hearing by those present. On behalf of the Applicant, Ms Sedgwick and the representatives of Amax made calculations and produced figures which they then realised were incomplete and made further calculations. The Respondent also made further calculations and arrived at different figures. We accepted the revised calculations made on behalf of the Applicant. Those calculations were that from January 2009 to 5th December 2014 the Applicant had demanded £8,975.50 and the Respondent had paid £6,878.50 which leaves £2,097 outstanding. In order to bring the Respondent completely up to date to 5th December 2014 in respect of service charges would require a payment of £2,097 without the old debt or £3,452.38 including the old debt. It must be stressed that that would be in respect of service charges only.

47. As to the brought forward figure which was in dispute, it had been accepted on behalf of the Applicant that when Peverel Mint ceased to be the managing agents and Amax took over, Amax employed an accountant to work out arrears of payments etc. At p 53 there is shown an adjustment of £31.58 dated 24th March 2010 which it was stated on behalf of the Applicant was all the accountant could find that the Respondent had paid of the previous managing agent's balance. On behalf of the Applicant it was submitted that the balance of £1,355.38 less £31.58 was owed for the time Peverel were the managing agents. Ms Sedgwick produced a letter dated 12th December 2007 from Mint Property Management Ltd. to the Respondent stating that he owed £2,358.17. However no evidence, other than that, had been produced to support the brought forward figure at the beginning of the claim. In addition, the fact that it had been thought necessary to employ an accountant to try to resolve the position, shows that the Applicant did not feel confident in the figures produced by the former managing agents. It was probably a difficult accounting exercise and we were not told what evidence the accountant had relied on and how a figure was reached. As a result we were not satisfied that the Respondent was liable to pay the old debt.

48. It was suggested on behalf of the Applicant that the Tribunal make a determination of the service charges payable by the Respondent up to 5th December 2014 and the Respondent agreed to that.

49. Consequently, the Tribunal determined that the Respondent is liable to pay to the Applicant the sum of £2,097 in respect of service charges for the subject property. On payment of that sum the Respondent's service charges in respect of the subject property will be paid to 5th December 2014.

Appeals

50. 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.

51. 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.

52. 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.

53. 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.

Judge R. Norman (Chairman)