



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

Case Reference : CHI/43UB/LIS/2014/0079

Property : 8, Hillbrook Gardens, Weybridge, Surrey
KT13 0SP

Applicant : Hillbrook Gardens Residents
Association

Representative :

Respondent : Mr Julian Ricks

Type of Application : Service charges

Tribunal Member : Judge D Agnew

**Date and venue of
Determination** : By paper determination
on 2nd September 2015

Date of Decision : 2nd September 2015

DETERMINATION

Summary of decision

1. The Tribunal finds that none of the service charges claimed in the County Court proceedings under Claim Number A88YM602 are due and payable under the Respondent's lease of 8 Hillbrook Gardens, Weybridge, Surrey KT13 0SP ("the Property").
2. This decision does not concern whether or not the Respondent may be liable to the Applicant for the amount claimed under any obligation he may have to the Applicant as a matter of contract or company law outside the provisions of the lease over which the Tribunal has no jurisdiction.

Background

3. On 29th July 2014 the County Court received a Claim Form from the Applicant claiming £2700 plus interest for arrears of what was described as "maintenance" in respect of the Property going back to 2012.
4. The District Judge in the County Court at Kingston-upon-Thames transferred the case to the Tribunal and by letter of 30th December 2014 the court clarified that the issues to be decided concerned charges from 2012, 2013 and 2014.
5. The Tribunal issued directions on 5th January 2015 and 18th February 2015 providing for the case to be determined on the basis of written representations only unless either party objected. No objections were received. The directions also provided for the exchange of statements of case and written representations were received from both parties.
6. On reviewing the papers for the determination I searched for but could not find in the papers any formal demand for payment of service charges which complied with sections 20B and 21B of the Landlord and Tenant Act 1985 ("the Act") and section 47 of the Landlord and Tenant Act 1987 ("the 1987 Act") in the absence of which the tenant is not liable to pay service charges as section 21B(3) of the Act and section 47(2) of the 1987 Act provide.
7. Consequently, I caused a letter to be sent to the Applicant (with a copy to the Respondent) giving the Applicants 7 days in which to provide the necessary documentation, if it existed.
8. On 28th August 2015 an email was received by the Tribunal from a representative of the Applicant attaching copies of the leases which are relevant to this case which were documents that the Tribunal already had seen but which were not the documents that had been requested. As the Applicants had the responsibility to adduce all the evidence necessary in support of their case and having failed to do so despite having been given a second opportunity, I have proceeded with this determination on the assumption either that the necessary documentation does not exist or, if it does, the Applicants have failed to produce it to prove their case for the service charges claimed despite having been given every opportunity to do so.

The leases

9. By a lease dated the 4th January 1965 the Property was demised by Osterley Tudor Estates Limited to one Irving John Shelley for a term of 999 years less three days from 29th September 1964. The Respondent became the registered proprietor of the leasehold interest in the Property in August 1991. That lease contains covenants on the part of the tenant to pay a service charge to the landlord in respect of all expenditure or liability incurred by the landlord in complying with the landlord's covenants under the lease (clause 2(14)). The landlord's covenants are set out at clause 3 of the lease and include the usual obligations to repair and maintain the structure of the building and the common parts.

10. By a lease dated the 6th August 1965 Hillbrook Gardens, of which the block containing the Property formed part, was demised by Osterley Tudor Estates Limited to Hillbrook Gardens (Weybridge) Residents Association Limited for a term of 999 years from 29th September 1964. By clause 2 of that lease the tenant covenanted to repair and maintain the structure and common parts of the estate.

The law

11. By section 27A of the Act:

"An application may be made to a [First-tier Tribunal (Property Chamber)] for a determination whether a service charge is payable and, if it is, as to –

- (a) the person to 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.

12. By section 18 of the 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 or 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.

13. Section 20B of the Act states that: "(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then, the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

14. Section 21B of the Act requires 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 subsection (1) is not complied with in relation to the

demand. (Regulations have been made under the Service Charges (Summary of Rights and Obligations and Transitional Provision)(England) Regulations 2007 SI 2007/1257.)

15. Section 47 of the 1987 Act states:

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely –

(a) the name and address of the landlord and

(b) (not applicable).

(2) Where –

(a) a tenant of any such premises is given such a demand, but –

(b) it does not contain the information required to be contained in it by virtue of subsection (1), then.....any part of the amount demanded which consists of a service charge or administration charge “the relevant amount” shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.”

The determination

16. It is not a common situation for a lease to be granted and then for another lease to be granted for a slightly longer period involving the same property but that is the situation in this case. In law, the effect is to create a concurrent lease with the tenant of the longer lease (in this instance Hillbrook Gardens (Weybridge) Residents Association Limited) becoming the landlord of the tenant with the shorter lease (the Respondent). Thus, the covenants on the part of the Respondent are for the benefit of the Residents Association.

17. Pausing there, for a moment, however, it is to be noted that the Claimant in the County Court proceedings is stated to be Hillbrook Gardens Residents Association and not Hillbrook Gardens (Weybridge) Residents Association Limited. It is only the latter company to whom the Respondent could possibly have been liable in those proceedings. It may well be that the Claimant's name with “(Weybridge)” and “Limited” omitted was a mistake on the Claimant's part which it might still be possible to amend with regard to the remainder of the claim (such as it may be) but as things stand, the Respondent cannot owe Hillbrook Gardens Residents Association anything.

18. I am satisfied that if proper demands had been made of the Respondent some service charge payments, at least, would be payable by the Respondent to the (correctly identified) landlord, subject to proof of expenditure having been made. However, the Applicant has failed to produce any formal demand which complies with either section 20B or section 21B of the Act and, possibly section 47 of the 1987 Act.

19. As section 21B(3) of the Act and section 47(2) of the 1987 Act clearly provide, unless the demands have a summary of rights and obligations attached and unless the name and address of the landlord is stated on the demand the tenant is not obliged to make the payments demanded. Additionally, however, there is no evidence of any document that could be said to be a demand for payment.

20. It is sometimes possible to remedy the defects identified by serving proper demands but that will not suffice to remedy this particular claim in the County Court because at the date of the institution of the proceedings the amounts claimed were not owed due to the fact that no formal demands complying with the various statutes have been made.

21. There are two further obstacles to a recovery of service charges incurred more than 18 months prior to proper demands being served and that is, first, section 20B of the Act which is set out above, and also that there is a reference in the papers to the Respondent having been made bankrupt in 2006. As the Tribunal has already decided that the claim for service charges made in the County Court proceedings is not payable by the Respondent under the terms of his lease it is unnecessary for the Tribunal to consider these possible obstacles further but they are brought to the Applicant's attention in case it should seek to make valid demands of the Respondent.

21. There seems to be great reliance placed by the Applicant upon the Articles of Association of the Residents Association and the minutes of various decisions taken at meetings of the Association. There is also a reference in the County Court Claim Form to a contractual arrangement when the Respondent's flat was purchased. Neither of these matters is within the jurisdiction of the Tribunal to determine, even if they were adequately pleaded. The Tribunal is only concerned with what liability a tenant may have to his landlord by way of service charges for which he is required to pay under his lease. Whether the Respondent has any liability to the Residents Association as a matter of contract outside of the lease or under company law, that is a matter for the County Court and not this Tribunal.

22. The conclusion of the Tribunal therefore is that the Respondent is not liable to the Applicant for the sums claimed in the County Court proceedings as service charges under his lease. Whether or not the Respondent is liable in some other way to the Applicant (or, probably more properly to Hillbrook Gardens (Weybridge) Residents Association Limited) will be a matter for the County Court to determine if the Applicant wishes to take the matter further. The Applicant would, however, be well advised to seek legal advice before taking any such step and also with regard to demanding service charges properly in the future.

Dated the 2nd September 2015

Judge D. Agnew

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