



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

Case Reference : **LON/00AF/LSC/2016**

Property : **4 Cork House, 77 Leasons Hill,
Orpington, Kent, BR5 2LF**

Applicant : **Cork House (77 Leasons Hill)
Management Ltd (Lease-appointed
Manager)**

Representative : **Property Services Plus Ltd
(Ms L. Reynolds)**

Respondent : **Mr A. Coutts-Lovie (Leaseholder)**

Representative : **In person**

Type of Application : **Section 27A Landlord and Tenant
Act 1985 and Schedule 11 CLARA
2002– Service charges (Court
transfer)**

Tribunal Members : **Judge Lancelot Robson
Mrs S. F. Redmond BSc (Econ)
MRICS**

**Date and venue of
Determination** : **14th July 2016
10 Alfred Place, London WC1E 7LR**

Date of Decision : **18th July 2016**

DECISION

Decisions of the Tribunal

- A. The Tribunal ordered:
- (1) that the Respondent pay the Applicant the sum of £2,200 in respect of estimated service charges demanded relating to the service charge year 29th September 2013 – 28th September 2014 pursuant to a lease of the property (the Lease) dated 24th August 1988.
 - (2) that the Respondent to pay the Applicant the sum of £118 being the deficit charge due and demanded in the final accounts for the property for the same service charge year, together with interest of £133.29 on the outstanding amounts up to 12th September 2015 at 3.5%, being the rate specified in the Lease.
 - (3) reimbursement by the Respondent of the Applicant's fees totalling £210 paid by the Applicant to the Tribunal, under Regulation 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
 - (4) payment of the Applicant's costs for preparing its statement of case and documents bundles totalling £120 under Regulation 13(1)(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (acting unreasonably in defending proceedings)
- B. All sums found due are to be paid within 21 days of the date of this decision.
- C. The Respondent's counterclaim is dismissed.
- D. The Tribunal makes the other determinations as set out below.
- E. This case shall now be referred back to the County Court at Bromley to decide upon costs in the County Court action and any other outstanding matters not within the Tribunal's jurisdiction.

The application

1. The Applicant seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 as to the reasonableness of demands made in respect of estimated service charges falling due in the service charge year commencing on 29th September 2013 payable pursuant to the terms of (the Lease)
2. This case was referred to the Tribunal by an order of Deputy District Judge Robson dated 13th April 2016 in the County Court at Bromley in case no.

- B3QZ9R92. After the Respondent filed a brief defence and counterclaim, with a request to transfer the case to the Tribunal.
3. The Tribunal gave Directions for a hearing on 4th May 2016, amended on 16th June 2016 for a determination of this case on the papers.
 4. The Applicant made a formal statement of case dated 28th June 2016 with relevant documents annexed, The Respondent did not comply with Directions except to write a short email letter to the Tribunal on 30th June 2016 (see below)
 5. Extracts from the relevant legislation are attached as Appendix 1 below.

Determination

Applicant's Case

6. The Applicant in its statement of case date 28th June 2016 submitted;
 - a) by clause 4(E) of the Lease required the Lessee to “pay the interim charge and the service charge at the times and in the manner provided in Clause 7 hereof”
 - b) In its decision of 28th October 2013 the Tribunal determined that £634 was outstanding relating to the service charge year ending on 30th September 2012, and £1,200 was outstanding for interim service charges for the year ending on 30th September 2013. The Respondent had made a part payment on 10th December 2013, leaving a balance of £634.60 outstanding. The Bromley County Court made an order totalling £1,174.60 (inclusive of costs and court fees) on 19th February 2014. As payment was not forthcoming a forfeiture notice was issued and referred to UCB, the mortgagees of the property. On 9th June 2014 the Applicant received £1,200.61 being the judgement sum plus interest.
 - c) On 2nd October 2013 and 18th March 2014 the Applicant issued interim service charge demands on the property for the service charge year ending on to 28th September 2014, each in the sum of £1,100. These demands were issued with the necessary statutory summary of rights and obligations. Reminder letters were issued on (inter alia) 18th March and 22nd May 2014. On 26th May 2015 the certified accounts for the year to 30th September 2014 were sent to the Respondent together with a demand for the deficit payment shown, being £118. Further copies were sent on 27th August 2015 together with a table showing interest due as calculated in accordance with clause 8(D) of the Lease. At that time the accrued interest was £129.29. an arrears recovery fee (pursuant to clause 3(M) of the Lease) was also notified, again with the necessary summary of tenant's right and obligations, as to service charges and also as to administration charges.
 - d) The County Court claim in this case was issued on 15th September 2015 for the sums noted at paragraphs (1) and (2) above, together with certain other fees and costs. On receipt of a copy of the Respondent's defence, the Applicant sent a letter dated 15th October 2015 requesting details of the

disputed items and enclosing further copies of the updated interest and arrears recovery costs calculation. A further letter was sent on 8th April 2016 after the transfer of the case to this Tribunal requesting clarification of the Respondent's Defence. No response of any kind had been received by the Applicant.

e) The Applicant confirmed that the Respondent commenced payments by standing order of £114 per month on 2nd October 2015 in response to a demand of 26th September 2015 for service charges for the year ending on 28th September 2015. The Applicant confirmed that the service charges for the year ending on 28th September 2015 had been paid in full.

Respondent's Case

7. The Respondent's defence in the County Court was that he was paying the charges by standing order. The charges sued for were old charges which were partly paid by UCB. He considered the interest charges illegal and that the recovery charge was made up. He disputed them. He had no proper breakdown of the charges. He asked for the case to be referred to the First-tier Tribunal for directions. He counterclaimed costs and damages which he stated could not quantify.
8. The Respondent did not comply with Directions to submit his detailed statement of case by 1st June 2016, or at all, but wrote a letter in reply to the Applicant's final statement of case dated 28th June 2016. Briefly stated, his case in his letter of 30th June 2016 was;
 - a) The Applicant had deliberately served papers late (on 30th June 2016) so as not to give him time to answer
 - b) He paid his service charges at £114 monthly on time and had overpaid by £5
 - c) that no explanation of the costs for the alleged missing period had been made as his mortgagee, UCB had paid up all the charges for the alleged missing period (*Tribunal's note – the 12 months in question*) while he was ill in 2014/15, and since then he had paid by standing order
 - d) The charges did not add up at £114 per month for the alleged missing 12 months to £2,700, and would only total £1,368
 - e) He contested that "they are paying ground rent as I have paid this separately"
 - f) He had asked for an insurance claim form in February due to a fire caused by a tenant in the flat. No form had been sent so he assumed that there was no insurance.

Decision

9. The Tribunal considered all the submissions and evidence carefully. The problem with the Respondent's challenge was that there was insufficient particularisation of the points of objection, and a total lack of engagement with the case. His case was essentially a number of assertions with no supporting evidence. The Tribunal considered that the documents provided substantially supported the Applicant's submissions although the submissions did appear slightly confused on the date of the service charge year end. However it appeared to be common ground that the year end was in fact 28th September.
10. The Tribunal noted that the Respondent had failed to make his statement of case by 1st June 2016, or communicate at all, thus preventing the Applicant from answering the issues he had raised in his defence in the most general terms. The Tribunal decided to reject his submission (at para. 7a) above) that he had had not had time to answer the Applicant's case. It could also have decided to debar his defence, but since his letter of 30th June added little to his previous defence, it decided to consider the points raised, if only to deal with them explicitly.
11. The Tribunal also decided that the Respondent's submissions in paras. 7b) and 7c) were based on a misunderstanding of the facts. The Tribunal accepted that the correct position was as stated in the Applicant's submissions, in view of the supporting documents.
12. Relating to para. 7d), the Tribunal could find no context for the figures quoted, and in any event the arithmetic appeared flawed. The Tribunal rejected this submission.
13. Relating to para. 7e), again the Tribunal could find no context for this submission, and it appeared to make no sense. No claim for ground rent was before it, and the Tribunal has no jurisdiction over ground rents under Section 27A of the Landlord and Tenant Act 1985 in any event. The Tribunal rejected the submission.
14. Relating to para. 7f), there was no explanation or documentation of any kind showing the relevance of this item to the matters in dispute. Again the tribunal rejected it. If the item was intended to relate to the counterclaim mentioned in the court proceedings, then the Tribunal rejected it for lack of evidence.
15. The Tribunal was satisfied that the Applicant had proved its case on the balance of probabilities and that it was entitled to charge the sums demanded, as noted in the decision summary above.

Costs and Fees

16. The Applicant applied in written submissions attached to its statement of 28th June 2016 for an order for the Respondent to reimburse the

Applicant's costs of the application to the Tribunal, totalling £210. The Respondent did not refer to the matter of fees and costs at all in his letter of 30th June 2016.

17. It appeared to the Tribunal that the Respondent had made no serious attempt to substantiate or even pursue his case, putting the Applicant to considerable trouble and expense. The Tribunal decided to exercise its discretion under Regulation 13(2) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 to order reimbursements of the fees of £210 as asked.
18. The Applicant further applied for an order pursuant to Rule 13(1) (b) for the Respondent to pay its costs in this case, detailed as follows:

Arrears Recovery Fee in bringing the County Court proceedings -	£250
County Court fee	£105
Costs for preparation of case and bundles	£120

The Applicant submitted that the Respondent had asked for the matter to be referred to this Tribunal, but he had failed to respond to any letter sent to him or complied with Directions to provide a statement of case. This was unreasonable behaviour in defending the proceedings.

19. The Tribunal considered the evidence and submissions. It noted that the arrears recovery fee and the county court fee were not within its jurisdiction, and should be referred back to the County Court for decision. It accepted that the Respondent's conduct fell within the high threshold required by Rule 13(1)(b). It appeared that the only discernible reason for requesting the transfer was to delay the inevitable, particularly since the Respondent had, without explanation, ignored the opportunity given in the Directions to make his case, or enter into a dialogue with the Applicant, which had on several occasions attempted to deal with his alleged concerns. All parties must co-operate with the Tribunal and each other in the despatch of cases.
20. The Tribunal made an order under Rule 13(1) (b) for the Respondent to pay the Applicant's fee of £120 for preparing its case and bundles for the Tribunal.
21. The Applicant also purported to make an application under Section 20C of the Landlord and Tenant Act 1985. However such applications can only be made by lessees. The Applicant was concerned that costs incurred in the court claim might fall on the general service charge. It should consult the Lease and/or make an application for those costs to the County Court (if so advised) when this case has been referred back to it.

Tribunal Judge Lancelot Robson 18th July 2016

Appendix 1

Landlord & Tenant Act 1985

Section 18

- (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 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.
- (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.

Section 19

- (1) 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 provisions 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.
- (2) 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.

Section 27A

- (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 costs 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.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the Tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

Regulations 13(1) - (3)

- 13.-(1) The Tribunal may make an order in respect of costs only-
- (a) under Section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
 - (b) if a person has acted unreasonably in bringing, defending, or conducting proceedings in-
 - (i) an agricultural land and drainage case,
 - (ii) a residential property case, or
 - (iii) a leasehold case; or
 - (c) in a land registration case.
- (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.

(3) The Tribunal may make an order under this rule on application or on its own initiative.

(4) – (9)...
