



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

Case Reference : **CAM/26UF/LSC/2017/0018**

Property : **59 Haygarth, London Road,
Knebworth, Herts SG3 6HF**

Applicant : **Hightown Housing Association**

Representative : **Ms Debi Sainsbury
– Home Ownership Manager**

Respondents : **Mr Paul William Clark
Miss J Derry**

Representatives : **None**

Type of Application : **Court referral – s27A Landlord and
Tenant Act 1985 – determination of
service charges payable**

Tribunal Members : **Judge John Hewitt
Ms Michele Wilcox BSc MRICS
Mrs Lorraine Hart**

**Date and venue of
hearing** : **18 May 2017
Stevenage Tribunal Centre**

Date of Decision : **2 June 2017**

DECISION

Decisions of the tribunal

1. The tribunal determines and reports to the court that services charges are payable as follows:

2009 Nil. At the request of the applicant we record that the sum of £541.80 paid by the respondent during the course of 2009 on account of his liability for service charges is to be repaid to him by way of a credit to his cash account;

2015 £946.24 As set out in Column 2 of Appendix A to this decision, being the respondent's contribution to the actual costs incurred in that year;

2016 £1,552.89 As set out in Column 3 of Appendix A to this decision, being the estimated amount of the respondent's contribution towards the costs estimated to be incurred in that year.

2. The file shall now be returned to the court for such further steps to be taken as the court may direct. The parties should note that they will have to contact the court (quoting Claim No. C6QZ96C7) if they wish to progress matters to a final conclusion.

3. In case it be of assistance to the court we also record:

3.1 Since the issue of the court proceedings the applicant has changed its name to Hightown Housing Association; and

3.2 The applicant accepts that Miss J Derry who was cited as second defendant is not and has never been a registered proprietor of the subject lease and that it has no claim against her at all. Evidently, when the respondent acquired the subject lease it was registered in his sole name. But when the respondent gave notice of the assignment to the applicant he mentioned to them that Miss Derry was a joint tenant. In consequence, the applicant's data base recorded them as being joint tenants and subsequent correspondence and demands were generated citing both names. The applicant says it has now corrected its data base to record Mr Clark as the sole owner of the lease.

3.3 The tribunal has undertaken a Land Registry search which records that Paul William Clark (Mr Clark) was registered as proprietor of the lease on 6 January 1994.

Procedural background

- 3A. The applicant commenced court proceedings against the respondents claiming a substantial amount of arrears of service charges going back over a number of years. A defence was filed. A hearing took place at which the judge concluded that some of the service charge arrears claimed in the proceedings and now challenged by Mr Clark had already been the subject of determinations by the First-tier Tribunal (Property Chamber) Case Refs: CAM/26UF/LSC/2013/0127 and

CAM/26UF/LSC/2014/0050 and that it was no longer open to Mr Clark to challenge the sums determined to be payable in those proceedings. By an order made 27 January and drawn 13 February 2017, District Judge B Gill sitting at the County Court at Luton ordered:

“The case is transferred to the First-tier Tribunal at Cambridge County Court ... to determine the level of leaseholder charges for the year 2009, 2015 and 2016.”

4. This tribunal gave directions on 28 February 2017. The applicant’s statement of case was to be filed and served by 17 March 2017. The respondent’s statement of case was to be filed and served by 31 March 2017. The respondent has not filed a statement of case, and the applicant’s representative has said that he has not served a statement of case. Directions (3) and (4) required each party to send to the other copies of all documents and statements of all witnesses of fact which the party wishes to rely upon at the hearing. The applicant’s representative has said that the respondent has not sent to it any documents or witness statements.
5. The parties were notified by letter that an inspection of the subject development was scheduled for 10:00 Thursday 18 May 2017 to be followed at approximately 11:00 by a hearing at the Stevenage Tribunal Centre.
6. It was reported to the tribunal by a case officer that on 11 May 2017 Mr Clark called the tribunal to seek a postponement of the hearing. He said that he had been very unwell recently, he had been admitted to hospital on 12 March 2017 and was discharged home on 4 May 2017. He said he would not be able to walk or travel for 2-3 months. He has carers who visit him on a daily basis. Mr Clark was requested to put his request in writing and to provide some evidence to support it. Mr Clark said he would be unable to do that because he does not have email and is unable to get out to post letters.
7. Mr Clark was informed by letter that his request for a postponement was refused but he was told that he could re-make it orally at the inspection on 18 May 2017.
8. At 10:00 on the morning of 18 May 2017 Judge John Hewitt and tribunal case officer, Mrs Katrina Luck, called at 59 Haygarth. We knocked on the door several times but there was no response. Mr Clark was either out or unable to get to the door to answer it.
9. Several representatives of the applicant were present at the inspection and escorted us around the development and a number of physical features were drawn to our attention. We were handed an A3 sized coloured plan of the development to aid our appreciation of it.

The development, which was constructed in the 1960s, comprises five residential blocks of varying sizes providing a mix of 68 units, some

being self-contained flats and some being two storey maisonettes. There are also single storey blocks containing a total 68 lock-up garages – one to each flat. The spacious grounds provide some roadways and some additional parking spaces. Some main parts of roadways have been adopted by the local authority, with the remainder being in the private ownership of the applicant.

The grounds are mainly laid to lawn with some beds of mature shrubs and natural planting. Also, there are a good many large and mature trees on site, most of which we were told, were the subject of tree preservation orders.

10. Mr Clark's flat, No. 59, is a first floor flat in a block of 12 flats (Nos. 57-68). All flats are accessed at ground level or via external stairways leading directly to a front door. There are no internal common parts in his block.

The service charge regime set out in the lease

11. The lease and service charge regime set out in it are relatively straightforward.

The 'demised property' is defined to include flat 59 and also the separate garage allocated to that flat;

The 'building' is defined to be the block or the building on the estate of which the flat forms part;

The 'reserved property' is defined to mean all those parts of the estate not comprising the demised property, the building, the building comprising the garage or any other building comprising a dwelling or a garage; and

The 'service charge' bears the meaning given to that expression in the Fifth Schedule.

12. Clauses 3 and 4 set out a number of covenants (set out in the Second and Third Schedules) to be observed and performed on the part of the tenant.

Paragraph 4 of the Third Schedule is a covenant to pay the service charge in the manner directed by the Fifth Schedule.

13. Clause 5 sets out a number of covenants (set out in the Fourth Schedule) to be observed and performed on the part of the landlord. In broad terms the obligations are in fairly standard terms and include to keep the buildings on the estate in good repair, maintained and insured.

14. The Fifth Schedule may be summarised as follows:

14.1 The year of account is the calendar year;

14.2 At the end of each year the landlord is to prepare a list of expenditure incurred in carrying out its obligations under the

Fourth Schedule as regards the 'Building' and as regards the 'Estate' and an estimate or budget of the amount to be necessary on account to enable the performance of those obligations in the current year;

- 14.3 Following the preparation of the list, the accounts are to be audited and certified;
- 14.4 The landlord is then to notify the tenant of amounts payable as regards the 'Building' and the 'Estate'. As regards the 'Building' the lease specifies a contribution of 9.31% as regards the 'Estate' the lease specifies a contribution "*fairly attributable to the Demised Property or otherwise fairly payable by the Tenant*" (We were told that the Estate costs were divided equally between all 68 units on the development.);
- 14.5 The landlord is then to send to the tenant true copies of the list and the certificate and a written notice requiring payment of the amount due. That amount is payable by the tenant (in full) within 28 days of receipt of the notice and copy documents.

(We were told that despite the obligation to pay the amount due for year in full, the applicant voluntarily accepts monthly payments on account where the tenant prefers to do that. Evidently a number do, and prior to Mr Clark stopping payments altogether in December 2014, it was his practice to take advantage of the concession to make monthly payments); and

- 14.6 Paragraph 2(b) of the Fifth Schedule also provides for a reserve fund because in the estimate or budget the landlord is entitled to include such sum as may reasonably be estimated in respect of the current "*... or some future Year of Account*"

The hearing

15. The hearing commenced at 11:15. In the absence of any further request for a postponement, the tribunal considered carefully whether to proceed with the hearing in the absence of Mr Clark. Rule 34 provides that where a party fails to attend a hearing a tribunal may proceed with the hearing if satisfied that the party has been notified of the hearing and if it considers that it is in the interests of justice to do so.
16. We were satisfied that Mr Clark had been notified of the hearing. A copy of the letter to him was on file as was a record of Mr Clark's telephone call on 11 May 2017 seeking a postponement.
17. We considered whether it was in the interests of justice to do so. We took into account the following matters:
 - 17.1 The applicant landlord is a charitable housing association, and three representatives were present in readiness for the hearing;

- 17.2 The last payment on account of service charges was made by Mr Clark on 2 December 2014 and that was in the sum of £72.73;
- 17.3 The applicant commenced court proceedings in April 2016 claiming substantial arrears, some of which had been the subject of tribunal proceedings commenced in 2013 and 2014 which were consolidated and heard in November 2014 with the decision being dated 5 February 2015;
- 17.4 The range of services provided to this development is very modest comprising;
- Caretaking (external);
 - Electricity (external lighting);
 - Water and sewage charges;
 - Grounds maintenance;
 - Repairs (block and garages), and maintenance of equipment;
 - Bulk refuse removal;
 - Insurance; and
 - Management
- 17.5 By order dated 13 February 2017 the court required the tribunal to determine the service charges payable for 2009 and 2015 and the budget for 2016. In the event, as will be seen shortly the applicant abandoned its claim to any 2009 service charges. The actual expenditure on services in 2015 as claimed was £513.16 (excluding a contribution to the reserve funds) and the estimate or budget for 2016 was £749.26 (excluding a contribution to the reserve funds);
- 17.6 The gist of the defence filed by Mr Clark in the court proceedings was that the issue of the proceedings against him was frivolous and designed to harass him and to prevent the quiet enjoyment of his property; they raised issues which had twice been addressed in previous court proceedings; the applicant has repeatedly ignored the terms of the leases; the applicant has demonstrated a flagrant disregard for the law over many years resorting instead to harassment and varying bullying tactics, and that the applicant is organisationally incompetent.

In the penultimate paragraph Mr Clark said:

“In summary, the central question at the heart of the dispute is whether I am entitled to be able to rely on the terms and conditions of the lease signed between both parties when I purchased the property, or whether Hightown Housing Ass has the right to do what they like, when they like simply because they have the greater financial muscle to quash any dissent?”

The defence document did not set out any details of examples of the conduct on behalf of the applicant of which he complained; and

- 17.7 Mr Clark was not present to give examples of the alleged failure to comply with the terms of the lease
18. We concluded that it would be in the interests of justice to continue with the hearing. The applicant had attended with three representatives; the service charges in issue were modest and not obviously excessive for a development such as Haygarth, we had the lease before us and we would be in a position to raise questions of the applicant if we were not satisfied that the service charge regime set out in the lease was being properly followed. If there were other alleged breaches of covenant by the landlord, outside of the service regime they would be unlikely to impact on the amount of service charges payable, and we were simply to provide a report to the court on the two years now in question and that any wider issues between the parties remained with the court.
19. Bearing these matters in mind and also the resources of the parties and the tribunal and the due and efficient despatch of the tribunal's business, we considered we should proceed in the absence of Mr Clark.
20. At the hearing, the applicant was represented by Mrs Debi Sainsbury who is the Home Ownership Manager. Mrs Sainsbury was accompanied by Ms Lindsay Fenn, Senior Home Ownership Officer and Mr Steve Treadwell, Estates Quality Inspector.

2009

21. Mrs Sainsbury informed us that the applicant had decided not to pursue any service charges for the year 2009. It was drawn to Mrs Sainsbury's attention that during the course of 2009 Mr Clark had made payments on account totalling £541.80. At Mrs Sainsbury's request we record that the applicant agreed this sum should be credited to Mr Clark's cash account.

2015

22. At the request of the tribunal Mrs Sainsbury took us in detail through the paperwork and the audited accounts for the 2015 service charge year. Mrs Sainsbury and her colleagues were asked a number of searching questions put to them by members of the tribunal. We were satisfied that the paperwork was in conformity with the provisions of the lease.
23. The routine service charge costs incurred are set out in column 2 of Appendix A. The costs incurred appeared to us to be well within what might be expected for a development such as Haygarth. There was nothing that stood out as being extraordinary. We were satisfied with answers given to specific questions on expenditure. We were told that the grounds maintenance costs were especially low for 2015 because

the contractor walked off site part way through the year and not as much work had been carried as had been planned. On this development, the high number of large mature trees and the consequent leaf-fall generated a good deal of estate expenditure.

24. We discussed in some detail the management charge which, on the face of it, was high. We were satisfied that it was in line with what had been determined in the 2015 tribunal decision and that it included a number of elements which are often charged for separately by other landlords. These include, no extra charge for evening or out of hours meetings, no extra charge for managing major works projects and no extra charge for accountancy and/or auditing. In the light of this explanation we concluded that the management charge was reasonable in amount.
25. It was explained to us of the 68 units making up the development, 42 had been sold off on long leases under the 'right to acquire' regime.

The contribution to Block expenditure was calculated by reference to the specific and fixed percentage set out in the lease. Most Estate expenditure was shared equally between all 68 units.

For management and insurance purposes the applicant separated out its long lease estate and its let estate because different expenditures applied to those two different types of estate. There are 42 units making up the long lease estate and for this reason the costs of management and insurance were calculated on the basis of $1/42^{\text{nd}}$ or 2.28%.

26. It was explained to us that the applicant maintains two reserve funds, one for block expenditure and one for estate expenditure. We found that to be within the scheme of the lease and to be appropriate and proportionate.
27. It was further explained to us that there is a vibrant and active residents' association which pays careful attention to service charge expenditure. Major works are planned for the blocks, which will entail guttering and downpipe renewals and replacements and for the garages which will entail roof, guttering and downpipe renewals and replacements. Both projects are potentially expensive. In discussion with the residents' association a three-year plan has been put in place in order to raise the necessary funds. For this reason, the amounts allocated to the reserve funds for 2015, 2016 and 2017 are much higher than have been allocated in prior years. Following detailed questioning we were satisfied that the strategy was a reasonable one for the applicant to adopt. Of course, in due course, when those projects progress they will be the subject of a s20 consultation exercise when all long lessees will have the opportunity to put forward observations. Also in due course, and when the actual expenditure has been ascertained, it will be open to any long lessee to make a challenge as to the reasonableness of the scope, quality or cost of the works.

28. Having regard to the above matters we were satisfied that the total amount for the year 2015 was £946.24, made up as shown in column 2 of Appendix A and we determine this sum is payable by Mr Clark.

2016

29. The 2016 budget was prepared at a time when the 2015 actual expenditure was known and certified. That actual expenditure thus informed the 2016 budget or estimate to a large extent.
30. We went through a similar exercise as we had for the 2015 expenditure. We put a number of questions to Mrs Sainsbury and her colleagues and we were satisfied with the answers given to us. Subsequent to the hearing we sought written clarity on two points and this was provided under copy of a letter sent on 26 May 2017 and copied to Mr Clark.
31. In the light of this exercise we were satisfied that the budget or estimate for 2016 at £1,552.89 as shown in column 3 of Appendix A is a reasonable and proper budget or estimate. We determine that it is payable by Mr Clark. It might be noted that the budget shown on Appendix A is £10.24 less than that originally issued to Mr Clark due to some downwards adjustments and corrections made by the applicant.

Judge John Hewitt
2 June 2017

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

	2015 Actual		2016 Budgeted	
Expenditure	Expenditure		Expenditure	
Estate Costs (1.47%)				
Caretaking	£	22.31	£	29.27
Electricity	£	5.37	£	11.60
Water & Sewage	£	0.03	£	0.27
Grounds maintenance	£	12.32	£	137.35
Trees maintenace	£	15.10	£	-
Repairs	£	23.70	£	8.60
Refuse removal	£	-	£	3.66
Maintenace to equipment	£	-	£	1.41
Estate Costs (2.38%)				
Insurance	£	165.71	£	178.24
Management fee	£	247.58	£	249.66
Block Costs (9.31%)				
Block repairs	£	21.04	£	37.24
Sub-total	£	513.16	£	657.30
Reserve Funds				
Estate Reserve Fund	£	176.76	£	462.60
Block Reserve Fund	£	256.32	£	432.99
Total Payable	£	946.24	£	1,552.89
Less paid on acount	£	-	£	-
Balance now payable	£	946.24	£	1,552.89