

12268



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

**IN THE COUNTY COURT sitting at  
10 Alfred Place, London WC1E 7LR**

**Tribunal reference** : LON/00BH/LSC/2017/0162

**Court claim number** : DooYX644

**Property** : Flat 7, Oaks Court, 226-228 Cann  
Hall Road, E11 3NF

**Applicant/Claimant** : Cann Hall Limited

**Representative** : Mr Hussain, Mr Ali & Ms Parveen  
of Hexagaon Management Limited

**Respondent/Defendant** : Mr Xiaoming Wang

**Representative** : None – not present at the hearing

**Tribunal member** : Judge Martyński

**In the county court** : Judge Martyński

**Date of decision** : 31 July 2017

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**DECISION**

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**Summary of the decisions made**

1. The following sums are payable by the Respondent;
  - (i) Service charges: £72.73
  - (ii) Ground rent: £nil
  - (iii) Legal costs £nil
2. The Service Charges of £72.73 must be paid by 1 September 2017.

## **The application**

3. The Applicant freeholder seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) and schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the amount of Service Charges, Administration charges and ground rent payable by the Respondent leaseholder.
4. Proceedings were originally issued against the Respondent in December 2016 in the County Court Business Centre. The Respondent filed a Defence dated 30 January 2017. The proceedings were then transferred to the County Court at Clerkenwell & Shoreditch and then to this tribunal by the order of District Judge Bell dated 25 April 2017.
5. The tribunal issued directions and the matter eventually came to hearing on 19 July 2017.

## **The hearing**

6. The Applicant was represented by various members of Hexagon Property Management which is the current managing agent for the subject property.
7. Mr Wang did not attend the hearing. He had sought an adjournment of the hearing on the grounds that he was taken by surprise that Hexagon Management was representing the Applicant and on the ground that he had only recently received the bundle of documents for the hearing.
8. I refused the application for an adjournment. The fact that Hexagon were representing the Applicant is immaterial to the subject matter of the dispute between the parties. The reason why the Respondent got the hearing bundle late was because he had failed to collect it from the Post Office when he was notified that it was ready for collection.
9. By email sent shortly before the hearing, Mr Wang said that he would not be attending the hearing because he was away in China. He had not mentioned these travel plans beforehand.

## **The background**

10. The subject property is a flat in a building which was formerly a public house. The building was originally converted in or about 1988 so as to contain eight flats. A few years later (possibly in 2014 according to some Land Registry entries that I was shown), four further flats were added to the building; three in the basement and one at ground floor level to the rear of the building (although according to the Respondent’s defence filed in the County Court, four flats were

constructed in the basement with a further additional flat at ground floor level).

### **The issues**

11. The claim issued in the County Court claimed the following sums:

(i) Ground Rent	£50.00
(ii) Service Charges	£2,464.09
(iii) Interest	£250.95
(iv) Legal fees and disbursements	£816.00
(v) Court fee	£205.00
(vi) Solicitors costs	£80.00
  
12. The defence filed by the Respondent can be summarised as follows:-
  - (i) He had paid the ground rent
  - (ii) As to Service Charges, he had not been provided with a conclusive itemised Service Charges statement
  - (iii) He was not liable to pay Service Charges in respect of the additional flats created in the building
  - (iv) Services charges were unreasonably incurred/unreasonable in amount
  
13. The Respondent did not send any further Statement of Case (as allowed for in the directions given by this tribunal).

### **County court transfer order**

14. The order transferring issues to the tribunal was in very wide terms: "The claim to be transferred to the First Tier Tribunal (Property Chamber)."
  
15. The tribunal now has jurisdiction to determine issues relating to ground rent or to costs, following amendments to the County Courts Act 1984, made by schedule 9 of the Crime and Courts Act 2013; and all First-tier Tribunal judges are now judges of the County Court.

### **The Respondent's lease**

16. The Respondent's lease is dated 26 February 1988 and is for a period of 99 years from 25 December 1986. The rent payable during the first 33 years of the term is £50 per annum. The rent is due by 25 December in each year.
  
17. The recitals to the lease contain a definition of "the Property" as follows:

The Landlord is registered at H.M. Land Registry with Absolute Title under title numbers .....which is being developed as 8 residential flats which together with the communal areas are to be known as Oak's Court 226-228 Cann Hall Road Leytonstone London E11 ("the Property").

18. The Fourth Schedule to the lease deals with the Service Charge mechanism. The Schedule provides that the leaseholder is liable to pay one-eighth of the expenditure on services. Expenditure on services is defined as:-

the expenditure of the Landlord in complying with his obligations as set out in the Sixth Schedule including interest paid on any money borrowed for that purpose.

19. The Sixth Schedule lists the landlord's obligations which are subject to reimbursement. All of those obligations refer to matters concerning "the Property" (as defined in the lease).
20. Going back to the Fourth Schedule, provision is made for the landlord to provide a "Service Charge Statement" [Paragraph 1(4)]. That Statement is defined as an itemised statement of:-
- (a) expenditure on matters in the Sixth Schedule for a year ending on 31 December
  - (b) the amount of Service Charge due
  - (c) sums to be credited against that Service Charge – being interim payments or surplus payments from the previous year (accompanied by a certificate from the Accountant)
21. Paragraph 1(2) of the Schedule defines "Service Charge" as one-eighth of the expenditure on services.
22. Paragraph 1(3) of the Schedule defines 'Interim Service Charge Instalment' as a payment on account of one-eighth of the Service Charge shown on the Service Charge Statement last served on the tenant.
23. The Schedule goes on to provide that the landlord will keep a detailed account of expenditure [paragraph 2].
24. Paragraph 4 of the Schedule provides that an interim Service Charge shall be paid to the landlord on 25 December.
25. Paragraph 6 of the Schedule provides that the tenant shall pay any Service Charge deficit upon service on him of the Service Charge Statement.

## **The evidence and my decisions**

### *Service charges*

26. The Service Charges claimed in the County Court amount to £2,464.09. In fact the figure of £2,464.09 as set out in the Particulars of Claim in the County Court is a mistake, the sum should be £2,564.09. This sum is made up as follows;
- |        |                     |
|--------|---------------------|
| £50.00 | Ground Rent (14/15) |
|--------|---------------------|

£50.00	Ground Rent (15/16)
£15.00	Service Charge (2014)
£872.82	Service Charge (14/15)
£1,438.27	Estimated Service Charge (15/16)
£90.00	Legal preparation cost

27. In considering this part of the claim, I have excluded the Ground Rent claimed because; (a) that is not a Service Charge, and; (b) it is claimed separately in the claim.
28. I was told by the Applicant's representative that the Service Charge of just £15 for the year 2014 was a fee of £120 for a review of the lease which was apportioned 1/8<sup>th</sup> to the Respondent. The review of the lease appears to have been carried out when either the Applicant took ownership of the building or when the current managing agents were instructed.
29. This part of the Service Charge is not payable by the Respondent. A fee for reviewing leases is not one of the matters set out in the Sixth Schedule of the Respondent's lease for which a Service Charge can be levied. There does not appear to be any other provision in the Respondent's lease that allows for such a charge. There was no evidence that this charge was a management fee (which is allowable as a Service Charge under the terms of the Sixth Schedule). I have considered whether or not this could be payable as such a fee. I have decided that the fee would not be payable. It appeared to me at the hearing that the Applicant's managing agents were not familiar with the lease and had not been complying with its terms and that the standard of financial management was poor. If it is a management fee therefore, it was not reasonably incurred.
30. As to the amount of £872.82 in respect of Service Charges for the year 14/15 – I was shown a Certificate of Expenditure bearing the Respondent's name dated 2 March 2016. This certificate appears to set out the total amounts spent on various Service Charge heads (total amount £6,982.55) and divides this by eight to arrive at £872.82. The Certificate did not contain a certificate from an accountant that it was a fair summary of expenditure as required by the Fourth Schedule of the Respondent's lease. This sum is not therefore currently payable because the Service Charge is only payable upon receipt of a 'Service Charge Statement' as defined in the lease as including an accountant's certificate.
31. Further, the Respondent's lease is clear, he is only liable to pay 1/8<sup>th</sup> of the Service Charge sums spent on "*the Property*" – that is the Property as originally converted into eight flats and the necessary common parts.
32. The Applicant's representatives thought that the four extra flats created at the building were small and had a combined footprint equal to approximately one of the original eight flats; therefore the Service

Charge for the building could be split into ninths, the original eight flats each paying 1/9<sup>th</sup> and the four additional flats each paying 25% of 1/9<sup>th</sup>.

33. How much then of the expenditure (if it were payable) for this period is properly attributable to "*the Property*". I did not have any evidence on this. I have taken the view that, in the absence of such evidence, I have to assess whether or not I have sufficient information to make an assessment. I consider that I can make an assessment by assuming that the additional four flats have increased the anticipated Service Charge expenditure by 50%. I have assumed this because, even if the four flats have a combined footprint of just one of the original flats (bearing in mind there was no independent evidence before me showing that this was in fact the case and in any event the Respondent considered there were five extra flats), they will still create significant extra expense - more in proportion to their number than their footprint. I have therefore reduced the figure for 14/15 to £581.88. However, as I have said above, that sum is not yet payable as a proper 'Service Charge Statement' has not been served on the Respondent in accordance with the terms of his lease.
34. Moving on to the estimated Service Charge for the year 15/16 in the sum of £1,438.27, the paperwork for this charge shown to me is in the form of an Estimated Budget Report addressed to the Respondent and dated 11 February 2016. This document sets out various estimated heads of expenditure which amount to £11,506.16. The document then gives the Respondent's contribution as 11.1114% of that total in the sum of £1,278.50. Of that sum, a half yearly contribution in advance of £639.25 is demanded.
35. The Applicant's representatives told me that the percentage of 11.1114% is 1/9<sup>th</sup> of the total Service Charge budget. However, the Respondent's lease provides that the interim payment is "one-eighth of the Service Charge shown on the Service Charge Statement last served on the tenant. The amount payable therefore by way of an interim payment is not the estimate for the current year, but 1/8<sup>th</sup> of the previous year's "Service Charge". As stated above, the lease defines "Service Charge" as one-eighth of the expenditure on services. Therefore, the lease is providing for an interim payment of just one-eighth of the previous year's Service Charge. The previous year's Service Charge is (as adjusted by me) £581.88; one-eighth of that is £72.73. Accordingly the only sum payable by the Respondent in respect of this demand is the sum of £72.73.
36. As to the £90 charge for 'legal preparation cost', this of course is not a Service Charge, it is an Administration Charge. I was shown an invoice for this sum dated 15 September 2016. The Applicant's representatives argued that this sum was properly due as the correspondence with the demand (and other correspondence) made it clear that the charge was incurred pursuant to the standard forfeiture clause in the lease [clause 2 (vii)] because the fees were incurred 'of and incidental to the preparation and service of a notice under Section 146 of the Law of

Property Act 1925'. I find that the fee is not payable, it could not have been incurred in relation to a Section 146 notice; the reason being that as at the date the fee was incurred, the amount of Service and other charges outstanding (as determined by me) was less than the statutory limit of arrears and so accordingly there could be no forfeiture.

#### *Ground Rent*

37. I was shown a demand for Ground Rent to be paid by 16 March 2016 for the period 25 December 2015 – 24 December 2016. In his defence, the Respondent asserted that he had paid the ground rent for the period and attached a copy of a cheque for that sum and an accompanying letter. In the absence of any further evidence, I can only assume that this sum was therefore paid by the Respondent and is not now due.

#### *Interest*

38. The interest claimed of £250.95 is stated in the Particulars of Claim as being 'contractual interest'. The lease does not provide for interest to be paid. Accordingly no interest is payable.

#### *Legal fees and disbursements*

39. The nearest I got to any explanation of this fee was that it was a fee charged to the Applicant for legal fees. It has not been claimed as a Service Charge. In order to be payable by the Respondent it would have to have been demanded from him with a written summary of the relevant statutory rights and obligations. There was no evidence of such a demand and accordingly it is not due.

#### *Court fee*

40. The court fee is dealt with in the issue of costs generally below.

#### *Summary*

41. Of the total claim therefore, I find that only the sum of £72.73 is payable by the Respondent.

#### *Other matters*

42. In his defence, the Respondent challenged various Service Charges on the grounds that they were not reasonably incurred/of a reasonable standard. I have not made, in general, any findings on those challenges as the Respondent provided no evidence in respect of them. However, so far as a challenge to the Management Fees (contained within the Service Charges) are concerned. I have found the management of this building to be confused and chaotic so far as observance of the lease and accounting is concerned. In any event, in the light of the fact that I have found only a tiny proportion of the Service Charges payable, there

is no need for me to take that finding any further. It may however be relevant if any further claim is made.

### **Costs**

43. I have allocated this claim to the Small Claims Track. Accordingly costs are limited. The only costs of which I am aware are the issue fee of £205 and the fixed solicitor's costs on that claim of £80.00.
44. I have decided to make no order as to costs. The Applicant has succeeded on just a tiny fraction of the amount claimed. By and large the claim and the evidence in support of it was confused and confusing. It is entirely understandable that the Respondent was confused by the demands made from him.

**Name:** Judge Martyński

**Date:** 31 July 2017

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).