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

Case Reference : CHI/24UH/LSC/2017/0087

Property : Flat 5, 89 Copnor Road, Portsmouth, PO3
5AB

Applicant : 89 Copnor Road Freehold Limited

**Applicant's
Representative** : Larcomes LLP

Respondents : Mr Sam Courtney

**Respondents'
Representative** : -

Type of Application : Determination of service charges

Tribunal Member(s) : Judge J F Brownhill

Date of Decision : 24th January 2018

DECISION

- 1 Where numbers appear in square brackets [] in the body of this decision, they refer to pages of the bundle before the Tribunal.
- 2 The Applicant applied to the Tribunal for a determination of the service charges for the years 2015; 2016 and 2017 [1] in relation to Flat 5, 89 Copnor Road, Portsmouth (hereinafter referred to as 'the Property').
- 3 The Respondent is the tenant of the Property under a long lease dated 12/10/2006 [27]. The Applicant is the Landlord and the current freeholder of the Property and the building in which the Property is situated [55]. The Applicant acquired such interest pursuant to a transfer dated 20/05/2016 [55].
- 4 Directions were issued by Judge Morrison on the 26/09/2017 [14], in which she highlighted that it was not clear whether the Respondent was actually challenging the service charges in any way or simply neglecting to pay them. She directed that there should be a telephone case management hearing.
- 5 Such telephone hearing occurred on the 22/11/2017. While the Applicant was represented by Ms Courtney of Larcomes LLP, the Respondent did not take part in the hearing; he did not call the relevant number, as previously advised, in order to take part in the telephone hearing. The hearing proceeded in his absence. The Tribunal heard from Ms Courtney that neither she nor the Applicant had heard from the Respondent, though they were aware that he was currently living in the property [22].
- 6 As a result of the telephone hearing, I drew up directions providing for a paper determination of the application unless a party objected [22-6]. Neither party has objected to the application being determined in this way.
- 7 The Applicant was required to send to the Respondent, by 4pm on the 29/11/2017, a copy of all relevant service charge accounts and estimates for the years in question together with demands for payment and details of any payments made [22-10]. This was done under cover of letter dated 17/11/2017 [73].
- 8 The Respondent was directed, by the 13/12/2017, to complete a schedule in the form attached to the directions and send it to the Applicant indicating which items and amounts of the service charges were in dispute [23-11]. In default of compliance with which (and as a result of his history of non-engagement with the Tribunal) he was to be automatically debarred from taking any further part in these proceedings [23-12].
- 9 The Respondent failed to comply with the Tribunal's directions and so was therefore automatically debarred from taking any further part in the proceedings. No application for the lifting of the de-barring order has been made.

The lease

- 10 A copy of the lease of the Property appears at [27] in the bundle. The tenant (the Respondent, Mr Courtney) was granted a lease of the Property for a term of 125 years from 29/09/2005. The lease provides at paragraph 1.1.24 that

“service charges’ means all sums payable under this Lease by the Tenant towards the provision of the Services by the Landlord in accordance with the Service Charge Provisions.” The Service Charge Provisions appear at schedule 5 of the lease [49]. Pursuant to clause 2.2 of the lease [35] and paragraph 4 of the Fifth Schedule to the lease [51], the Respondent tenant is liable to pay service charges (by way of further rent) to the Applicant landlord in accordance with the Service Charge Provisions.

The Service Charges

- 11 The Application has been brought in relation to the following amounts:
- a. 2015 Service Charge year [9]:
 - i. Service and Management fees 2015 £509.27
 - b. 2016 Service Charge year [10]:
 - i. Service and Management fees 2016 £880.00
 - ii. Ground rent due 25/12/2016 £150
 - c. 2017 Service Charge year [11]:
 - i. Service and Management fees 2017 £880.00
- 12 The Tribunal has no jurisdiction in relation to the determination of ground rents. Therefore the Tribunal makes no finding as to the payability or otherwise in relation to the sum of £150 claim in this regard in the 2016 service charge year.
- 13 A copy of the Applicant’s ‘final demand’ addressed to the Respondent in relation to the above amounts appears at [57] and is dated 20/06/2017. Enclosed with that final demand were various additional documents [58], including the budgets for 2016 and 2017, and a statement of service charges for 2015 and 2016, and a summary of the tenant’s rights and obligations.

Service Charge arrears for 2015.

- 14 A statement of Service Charges for the period ended 24/12/2015 (the 2015 service charge year) appears at [62]. This shows an overall budgeted figure of £5,500, and an actual spend of £6,528.51. The unallocated reserves of £1,533.51 were used to meet the budget shortfall, resulting in a net surplus of £5.
- 15 When the freehold was transferred to the Applicants, the seller advised that amongst other sums, the Respondent owed £509.27 service charge arrears [64]. On the draft completion statement (again relating to the sale of the freehold to the Applicant) at [63] these arrears were again noted.
- 16 The 2015 arrears of £509.27 are also included within the final demand addressed to the Respondent and dated 20/06/2017 [57] and also within the earlier demand at [78].

- 17 The Respondent has not challenged these arrears, and on the basis of the documentation currently before it the Tribunal finds, on the balance of probabilities, that such sums are payable.

Service Charge arrears for 2016

- 18 A budget of anticipated expenditure for the year ending 24/12/2016 appears at [59][76] and [77]. This shows a total budget £5,500. The Property is said to be responsible for a 16% share of such service charge sums, which amounts to £880. The Tribunal noted that there is a typo on the budgets at [59] and [76] – but not that at [77]. The budgets at [59] and [77] refer to the Property being liable for a 15% share of the service charge costs. However the actual figure calculated as the Property's share is 16%. The Tribunal notes that a 16% share has been used by the Applicant's consistently in the other service charge accounts before the Tribunal and indeed that the total contributions for the building, using a 16% share for the Property, amount to 100%. At [64], is correspondence relating to the Applicant's purchase of the freehold title which reiterates that the Property is responsible for 16% of the total service charges.
- 19 A demand for payment sent to the Respondent referring to the 2016 service charges of £880 (and £509.27 in relation to the 2015 service charge year) appears at [78].
- 20 A statement of service charges for the period ending 24/12/2016 in a total of £5,696.93 appears at [61] and [79]. Further included within divider 7 of the bundle are various invoices from third party contractors relating to the 2016 and 2017.
- 21 The Respondent has not challenged the arrears of £880 in relation to the 2016 service charge budget, and on the basis of the documentation currently before it the Tribunal finds, on the balance of probabilities, that such sums are payable.
- 22 The Tribunal makes no finding about the payability of the ground rent for 2016, as the Tribunal has no jurisdiction in relation to such charges.

Service Charges Budget for 2017

- 23 At [60] and [80] in the bundle is a budget of anticipated expenditure for the service charge year ending 24/12/2017 [58] (the 2017 service charge year). This again shows the Property and the Respondent as liable for a 16% share of the service charge budget amounting to £880.00. The total budget is £5,500.
- 24 A demand for payment dated 01/02/2017 for £880 in relation to the 2017 service charge year appears at [81].
- 25 Also included in the bundle, but not referred to on the face of the application is a demand for ground rent due on 25/12/2017 [74]. The Tribunal makes no finding about the payability of the ground rent for 2017, as the Tribunal has no jurisdiction in relation to such charges.

- 26 The Respondent has not challenged the arrears of £880 in relation to the 2017 service charge budget, and on the basis of the documentation currently before it the Tribunal finds, on the balance of probabilities, that such sums are payable.

Other matters.

- 27 What purports to be a demand for payment for “Yearly service charge 25 Dec 2016 to 24 Dec 2018 £1,210” is included in the bundle at page [82]. This document while addressed to the Respondent, then refers, in the body of the demand, to flat 1 and a share of 22%. But later in the same demand then refers to F1 16%. No explanation is given in relation to the same.
- 28 The Tribunal makes no finding in relation to this demand and/or the 2018 service charge year. This is because:
- a. The 2018 service charge year did not form part of the Application submitted to the Tribunal, and the Respondent has had no prior warning of its inclusion within this application;
 - b. The demand or ‘application for payment’ provided at [82] makes reference to flat 1 and a 22% share of the service charge costs. The Respondent is responsible for the service charge costs relating to the proportion attributed to the Property (flat 5), previously calculated using the figure of 16%.
 - c. The Application for payment/ demand either conflates 2 service charge years (2017 and 2018) and there is no explanation for the same or alternatively there is a typo, and should relate only to the 2018 service charge year (i.e. that ending on 24/12/2018). In which case the Tribunal repeats para 27(a) above.

Conclusion

- 29 The Tribunal notes that despite being given numerous opportunities to explain any objection or challenge to the service charge sums said by the Applicants to be due and owing, the Respondent has taken no part in these proceedings. He has not responded to any of the Tribunal’s directions or correspondence, nor, the Tribunal understands, has he responded to the Applicant’s various letters.
- 30 The Tribunal therefore finds, in accordance with the final demand at [57] that the following service charges are reasonable and payable by the Respondent:
- | | |
|--|-----------|
| a. In relation to the 2015 service charge year | £509.27 |
| b. In relation to the 2016 service charge year | £880.00 |
| c. In relation to the 2017 service charge year | £880.00 |
| Total: | £2,269.27 |

- 31 The Tribunal makes no finding in relation to the ground rent figure included in respect of the 2016 service charge year, having no jurisdiction to consider the same.
- 32 The Tribunal notes that the Applicants' solicitors have included a schedule of costs at [92]. The Tribunal's jurisdiction in relation to costs in these types of applications can be found at Rule 13(1)(b) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.
- 33 The Upper Tribunal has given guidance on the application of rule 13 and alleged unreasonable conduct costs in Willow Court Management Co (1985) Ltd v Alexander [2016] UKUT 0290 (LC). At paragraph 43 they stated:
- “...such applications should not be regarded as routine, should not be abused to discourage access to the tribunal, and should not be allowed to become major disputes in their own right. They should be determined summarily, preferably without the need for a further hearing, and after the parties have had the opportunity to make submissions. We consider that submissions are likely to be better framed in the light of the tribunal's decision, rather than in anticipation of it, and applications made at interim stages or before the decision is available should not be encouraged. The applicant for an order should be required to identify clearly and specifically the conduct relied on as unreasonable, and if the tribunal considers that there is a case to answer (but not otherwise) the respondent should be given the opportunity to respond to the criticisms made and to offer any explanation or mitigation. A decision to dismiss such an application can be explained briefly. A decision to award costs need not be lengthy and the underlying dispute can be taken as read. The decision should identify the conduct which the tribunal has found to be unreasonable, list the factors which have been taken into account in deciding that it is appropriate to make an order, and record the factors taken into account in deciding the form of the order and the sum to be paid.”
- 34 If the Applicant wishes to make an application pursuant to Rule 13 for unreasonable conduct costs, then within 14 days of the date of this decision, it is to file and serve a written application for its costs under Rule 13(1)(b). Such application is to set out the factual basis on which it is alleged that such an application is to be made, and why it is submitted that the Tribunal should exercise its discretion to make an order under Rule 13(1)(b) as well as including a schedule of costs claimed.
- 35 In the event that an application under Rule 13 is in fact made the Respondent shall, within 28 days of the date of this decision, serve on the Applicant, and file with the Tribunal, a statement on the issue of costs (specifically unreasonable conduct costs) in reply to that of the Applicant.
- 36 The Tribunal will then make a paper determination on any Rule 13 costs application. If either party objects to a paper determination being made on

this issue, they are to set out their reasons for so objecting in their respective application/ statement and specifically request an oral hearing.

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).

Judge J F Brownhill