



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

Case References : CHI/29UG/LIS/2016/0020
CHI/29UG/LIS/2016/0022
CHI/29UG/LIS/2016/0023
CHI/29UG/LIS/2016/0034
CHI/29UG/LIS/2016/0030
CHI/29UG/LIS/2016/0035

Properties : Flats A,C,D,E,G and H, 5-7 Lansdowne
Square, Gravesend, Kent DA11 9LX

Applicant : B M Samuels Finance Group plc

Representative : Trent Park Properties Limited

Respondent : 1. David Noyes (Flats A,C,E & G)
2. Dean J Carpenter (Flats D&H)

Representative :

Type of Application : Determination of service charges: section
27A Landlord and Tenant Act 1985

Tribunal Member : Mr D Banfield FRICS

Date of Decision : 26 March 2018

DECISION

Background

1. These are money claims transferred from the County Court in the sums of;

• Flat A	Issued 31/12/2015	£4,514.41
• Flat C	Issued 31/12/2015	£6,193.08
• Flat D	Issued 14/12/2015	£6,053.12
• Flat E	Issued 31/12/2015	£6,118.63
• Flat G	Issued 31/12/2015	£6,134.93
• Flat H	Issued 11/11/2015	£6,595.60

2. The Tribunal is required by the County Court to determine the reasonableness of the service charges for the years the subject of the claims.

3. Following a case management hearing on 28 July 2016 the Applicant was directed to provide the Respondent and the Tribunal with a detailed account showing how the claims to the County Court were made up so that the Service Charge years over which the Tribunal has jurisdiction could be identified.

4. In response the Applicant provided a document for each flat entitled "Customer Balance Detail" showing outstanding balances as follows;

• Flat A	As at 5/10/2015	£3,992.99
• Flat C	As at 5/10/2015	£5,608.70
• Flat D	As at 16/9/2015	£5,525.75
• Flat E	As at 5/10/2015	£5,561.31
• Flat G	As at 5/10/2015	£5,552.27
• Flat H	As at 16/9/2015	£5,915.94
• All plus legal costs		

5. Also provided were;

- All leaseholders' statements
- All leaseholders' ground rent and service charge invoices
- Service charge budgets for 2009 to 2015
- Service charge accounts for 2009 to 2014
- HSC standard form of rent demand notice
- HSC standard service charges summary of rights and obligations

6. On examining the statements the Tribunal identified that the sums referred to in paragraph 4 above include ground rent, administration charges and were, in respect of Flats A,C,E and G the balance of account at the end of October 2015. For Flats D and H the balances are those outstanding immediately before the Invoices dated 28 September 2015. The differences between the sums shown in paragraphs 4 and 1 are solicitor's fees of £438.00 for each property and interest charges.

7. The invoice dated 28 September 2015 is in respect of the **budgeted** service charge for 2015. For flats A, C, E and G this invoice is included in the outstanding sums referred to the Tribunal by the County Court and is therefore within their jurisdiction. The County Court claims for Flats D and H do not include this invoice and with regard to these flats, the 2015 service charge year is outside the jurisdiction given by the County Court.
8. **The Tribunal has determined the budgeted 2015 service charge for all flats but makes it clear that these sums in respect of Flats D and H are not part of the County Court referral.**
9. **The Tribunal's determination is therefore in respect of actual costs for 2009 to 2014 and budgeted costs for 2015.**
10. Attached to the Applicant's letter of 4 November 2016 was a copy of the Respondents' comments on the statements together with comments lettered A to H several of which referred to awaiting information from the previous managing agent.
11. By their letter of 15 November 2016 the Applicant supplied the outstanding information in respect of Comments D and F however further comments were awaited.
12. In a letter to the Tribunal dated 5 January 2017 requesting an extension to the Direction dates the Applicant says that they expected to receive the outstanding information from HSC at the end of January and would review it within 7 days before sending it to the Respondents.
13. The Tribunal made further Directions on 12 January 2017 requiring the Applicant to send to the Respondent whatever papers had been received from Hurford Salvi Carr together with a statement setting out their position. These were received on 9 February 2017
14. On 23 February 2017 the Respondents replied as directed.
15. The Respondent subsequently submitted bundles to the Tribunal not in accordance with previous directions or in a form that enabled the Tribunal to give proper consideration to determine the matter.
16. Further Directions were made on 11 April 2017 requiring the Respondent to submit a compliant bundle but none has been received.
17. After giving due notice on 3 October 2017 the Respondent was barred from further participation in the case in accordance with Rule 9 of the Tribunal Procedural Rules.
18. The Tribunal made further directions on 10 October 2017 requiring the Applicant to send to the Tribunal a statement and Scott schedules setting out the amounts now claimed and those sums which remain in

dispute following the concessions already made and referred to in the Applicant's "First Response" and the responses of 15 November 2016 and 8 February 2017. Enclosed with a letter from the Applicants dated 19 December 2017 a copy of which was sent to the Respondents were;

- i. A Schedule showing all the amounts now claimed from 2009 up to date.
- ii. A Statement showing all the amounts now claimed from 2009 up to date including all payments received from the leaseholders.
- iii. An Analysis of Service Charges 2009 to 2017 which includes all adjustments from all LVT and Tribunal decisions and determinations.
- iv. Respondents disputed sums schedule with Landlords comments.

Determination

19. It is unfortunate that the presentation of this case by both parties has dealt with what may largely be described as an accounting exercise and includes years outside the terms of the County Court reference to the Tribunal. What seems to have been overlooked is that the order from the various County Court judges is that the Tribunal is to determine whether the service charges for the years in question are reasonable. What also has been overlooked is that the Tribunal has made determinations in respect of some of the years in question.
20. By the decisions of 6 June 2013 and 20 May 2014 a determination has already been made in respect of years 2009 to 2012, decisions which have not been challenged on appeal. As these years have already "been the subject of determination by a court" S27A (4) (c) of the 1985 Act applies and precludes the Tribunal's further jurisdiction.
21. For information the service charges determined were;
 - 2009 £8,660.13
 - 2010 £8,030.34
 - 2011 £12,741.74
 - 2012 £15,988.07
22. Although the earlier Tribunal did not determine the amount of actual service charges for 2013 it did state that the Reserve Fund contribution should be limited to £7,500.
23. The Tribunal did not determine the insurance cost for 2012 said to be £1,953.
24. The Tribunal therefore retains jurisdiction in respect of the insurance costs for 2012 and service charge years 2013 (excluding Reserve Fund) to 2015.

25. The service charges now claimed reflect the deductions made by the earlier Tribunal and are included in the Applicant's document "Service Charges 2009 to 2017" dated 19/12/2017;

- 2009 £8,660.13
- 2010 £8,030.34
- 2011 £12,741.74
- 2012 £17,940.00 (includes £1,953 for insurance)
- 2013 £18,376.00
- 2014 £9,932.00
- 2015 £11,666.00 (actual)

26. The sums disputed by the Respondents are as follows and are taken from the Applicant's document "Respondents Disputed Sums" dated 19/12/2017;

2013

Communal Cleaning

27. The invoices from Tee Squared indicate visits every two weeks at a cost of £45.60 per visit a total of £1,185.60. 18 of the invoices are from Tee Squared whilst the remaining 8 are re-charges from HSCPM. In addition however is an invoice [H278/1079] dated 29/7/13 from HSCPM for £210 described as recharge of cleaning costs. The Applicant refers to the charge as due to not having received invoices from Tee Squared and the cost not being duplicated.

28. The Respondent queries why all invoices are dated the same, says costs are excessive and states that no work has been carried out. They provide two alternative quotations from February 2017 for £15 or £25 plus VAT per visit for internal cleaning and external maintenance for £25 or £30 plus VAT per visit.

29. The Tribunal has seen no evidence that cleaning was not carried for an extensive period and from its own knowledge and experience of similar cases finds the alternative quotations unreasonably low. The dating of the invoices is unhelpful and we accept that they may well have been produced either for the Tribunal or for the accountant preparing the end of year accounts. The question over the invoice dates does not however mean that the cleaning was not carried out every two weeks. The Tribunal determines that the cost of £45.60 per visit was reasonable and therefore allows Tee Squared's invoices in full.

30. On examining the **£210 invoice [H278/1079]** however it refers to recharging Tee Squared's visits on 10 and 26 April and 9 and 23 May 2013. These visits are the subject of invoice Nos 1665, 1669, 1673 and

1677. The invoice clearly duplicates charges already made and is therefore **disallowed**.

Roof Repairs

31. This is invoice 1767 from Totman roofing contractors for £1,386.00 dated 14 September 2013 and described as "Carried out site visit and roof repairs in accordance with WO4848". Both the works order and invoice refer to the main roof leak at block 5-7.
32. The Respondent asserts that no work was undertaken the evidence for which was that scaffolding would have been required
33. The lack of reference to scaffolding is insufficient evidence to determine that the invoices from both Totman Roofing and HSC were fictional and that the work was not carried out. The sum is therefore allowed in full.

Recharge of costs incurred

34. PM66092, PM65028 and PM 64518 refer to courier charges in respect of Tribunal paperwork sent from Hertford to Chichester. The supporting invoices from the courier company have been examined and found to support the recharges by HSC. The Respondents say that this should be included in the management fee. The Tribunal disagrees and allows the sums in full.

Recharge of redecoration costs for 5-7

35. HSC invoice H2781083 dated 5 August 2013 refers to ¼ of Estate Redecorations works as invoiced by Uniserv (Invoice No 258A) The Respondents say that no works have been carried out and that at the top of the invoice appears Blocks 6-8.
36. A supporting invoice from Uniserv has not been provided and the Tribunal is not satisfied that the works have been carried out. **The sum of £1,576 is therefore disallowed.**

Preparation of accounts

37. An invoice from Darrell Palmer dated 5 June 2013 for £388 has the narrative "Preparation of Draft Statement of Service Charge Costs for the year ended 31 December 2012." The Respondents say it should be included in the 2012 service charge accounts already determined. The Tribunal disagrees and allows the sum in full.

Recharge of Fire Alarm Costs

38. Invoice H276/1086 is in respect of a recharge of part of the Fire and Security Consultancy Limited invoice 10094 for servicing. The invoice

from the contractor is in the bundle and refers to the subject property. The Tribunal is satisfied that it is properly charged.

2014

Pest Control

39. The IPM invoice 12927 for £261.00 is for pest control to Flats H&C. The Applicant says that it is usual to charge such costs to the service charge and then seek recovery from the leaseholders. The Respondents say these costs are not service charges. **The Tribunal agrees and disallows the sum of £261.00 in full.**

Communal Cleaning

40. For the reasons set out in paragraph 34 the Tribunal allows the sums in full.

Communal Gardening

41. This is an invoice from Tee Squared dated 27 November 2014 for "Grass and Grounds" at £45 per visit. The Respondents say the cost is excessive and that they may not relate to their block.
42. The invoice is headed "Block 5-7 Grass Cutting" and clearly is in respect of the subject property. The Tribunal allows the sum in full.

Buildings Insurance

43. The premium of £2,011.31 is disputed as excessive. An email from First Insurance Solutions dated 22 February 2017 stating "as an indication ...we would expect to achieve a premium of ... (£1,883.50 Total) is put in evidence in support.
44. The Applicant says that the claims history may not have been taken into account, HSC would have obtained the most competitive policy and in any event the difference is only a few hundred pounds.
45. The Tribunal agrees with the Applicant and allows the sum in full.

Rubbish Removal

46. The Applicant agrees that the following invoices should be removed as they were incorrectly allocated and should have been split ;
- 1749 £150
 - 1750 £36
 - 1751 £60

47. **The total sum of £246 is therefore disallowed.**
48. Invoices H276/1189, and H226/ 1306 totalling £93.50. These are two HSC invoices recharging Tee Squared invoices for removal of bulky rubbish.
49. The Respondents say the costs relate to more than one block.
50. The Tee Squared invoices refer to Lansdowne Square and the HSC invoices indicate that the costs have been divided between the blocks. The amount is allowed in full.

Recharge of Fire Alarm Costs

51. Invoice H276/1142 is in respect of a recharge of part of the Fire and Security Consultancy Limited invoice 11601 for servicing. The invoice from the contractor is in the bundle and refers to Lansdowne Square. The HSC invoice charges one third to block 5-7 and as such the Tribunal is satisfied that it is properly charged.

Management Fees

52. Invoice PM66772 for £195.83 is for management fees in respect of Block 5-7. The Respondents say that at 30% of total service charge it is excessive.
53. The Applicant sees no issue with the invoice and the Tribunal agrees. To simply disagree with the amount charged is insufficient. The Tribunal allows the sum in full.

2015

54. The budget for 2015 was £11,155.00 and the actual expenditure was £11,666.00. In view of the closeness of the amounts the Tribunal determines that the budget was reasonable.
55. In view of the reasons given for the Tribunal's determination in respect of Insurance costs at paragraph 45 above the Insurance costs for 2012 of £1,953 are also determined as reasonable.

Summary

56. **Set out below are the amounts already determined under tribunal reference CHI/29UG/LSC/2012/0079 in respect of years 2009 to 2012 together with the amounts determined by this Tribunal after deducting the sums disallowed in paragraphs 30,36,39 and 47 above;**

- **2009 £8,660.13**

- 2010 £8,030.34
- 2011 £12,741.74
- 2012 £17,940.00
- 2013 £16,590.00
- 2014 £9,425.00
- 2015 £11,155.00 (budget)

57. That concludes the extent of the Tribunal's jurisdiction as set out in the various transfers from the County Court. However, to assist the parties and the County Court to which this matter is now returned the Tribunal makes the following observations **which are not part of its determination**;
58. By applying the deductions now made in respect of years 2013 and 2014 Flat A's share is reduced to £1,941.75 for 2013 and £963.25 for 2014.
59. The corresponding amounts for Flats C, D, E, G & H are £2,117.75 for 2013 and £1,249.75 for 2014.
60. In applying these reduced amounts to the sums said to be outstanding the Tribunal has used as its base document the Statement provided by the Applicant dated 19/12/17. In doing so it should be noted that the balances shown do not accord with either the amounts referred to in paragraphs 1 or 4 of this determination. No explanation has been provided as to the differences and the Tribunal has simply taken the view that the later document is more likely to be accurate.
61. The sums below are those due as at the dates shown in paragraph 4 above and include ground rents, Court costs, interest and Administration charges none of which form part of the Tribunal's jurisdiction under the County Court transfers.

• Flat A	5/10/2015	£2,327.74
• Flat C	5/10/2015	£4,456.19
• Flat D	16/9/2015	£2,049.21
• Flat E	5/10/2015	£4,280.77
• Flat G	5/10/2015	£4,407.51
• Flat H	16/9/2015	£2,761.02

D Banfield FRICS
26 March 2018

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. 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.

2. 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.
3. 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.