



Case Reference : LON/00AB/LSC/2018/0220

Property : Flat 4, 38 High Road,
Romford, Essex RM6 6PR

Applicant : Isiaka Akinfenwa

Representative : Ms N Akinfenwa

Respondent : Malibu Management
Corporation

Representative : AM Surveying & Block
Management

Type of Application : Liability to pay service
charges

Tribunal Members : Judge Tagliavini
Mr. S Mason

**Date and venue of
hearing.** : 10 Alfred Place, London
WC1 7LR
25 September 2018

Date of Decision : 19 October 2018

DECISION

The application

1. This is an application made under section 27A(1) of the Landlord and Tenant Act 1985 ("the 1985 Act") seeking the First-tier tribunal's (FTT) determination as to the Applicant's liability to pay service charges in respect of the subject property ("the Flat") situate at Flat 4, 38 High Road, Romford, Essex RM6 6PR ("the Building").

The background

2. The subject Flat is situated in the Building containing 4 residential flats on the first floor (Flats 1 to 4) and shared communal areas. There are two additional residential flats (Flats 38A and 38B) on the second floor (with no shared communal area) and one commercial property on the ground floor (Tesco).
3. The Applicant holds a long lease of the Flat under a lease dated 23 December 2014 originally granted between Naila Quereshi and Isiaka Oyeshina Akinfenwa for a term of 125 years less 3 days with effect from 1 January 2013 ("the Applicant's lease"). By clause 3, this lease is made subject to the Third Party rights and all matters contained in the Superior Lease defined as the lease made between Malibu Management Corporation and Naila Quereshi dated 12 December 2013. Clause 1(a) of the Applicant's lease states that the "Accounting Period" is from 1st January ending on 31st December in each year; clause 1(l) specifies the "Service Charge" as a fair proportion as decided by the Lessor (Quereshi) of all sums expended by the Lessor and Superior Lessor (Malibu Management Corporation) under the terms of this Lease and the Superior Lease. The Fifth Schedule refers to the "Service Charge" as meaning 25% of the Total Expenditure and makes provision for the collection of "Interim Charges". By an letter date 1 October 2015 Bushra Tariq confirmed she had completed the purchase for the assignment of Superior Lease on 22 May 2015.
3. By a demands for payment of service charges dated 3 October 2017 and 13 November 2017 in the sum of £1,114.19, the Respondent held itself out as the landlord of the subject property to whom service charges should be paid. Further demand for payment in the sum of £2,722.35 dated 6 February 2018 and 12 March 2018 were made, again identifying the Respondent as the landlord and AMS as its managing agent. However, this demand was replaced by a demand dated 31 July 2018 in which, the landlord was identified as Bushra Tariq. Documents showing insurance cover for the building to be in the name of the Respondent for the service charge years 2016, 2017 and 2018 were provided to the FTT and a demand for payment of ground rent payable on 1 January 2018 was sent to the Applicant, stating that payment should be made to AM Surveying and Block Management and that the notice was given by Malibu Management Corp c/o AM Property Surveying Services Ltd.

The issues

4. The issues to be determined by the tribunal are:
- (i) Whether the service charges are payable under the terms of the lease.
 - (ii) For the service charge year 2017, whether the estimated charges are reasonable in amount in respect of:
 - Sundry expenses
 - Accountant fees
 - General block maintenance
 - Building insurance
 - Management fee
 - Reserve fund
 - (iii) For the service charge year 2018, whether the estimated service charges are reasonable in respect of:
 - Interior general repairs
 - Communal cleaning
 - Health and safety
 - External general repairs
 - External reserve funds
 - Building insurance
 - Management fees
 - Reserve fund
 - (iv) Whether an order under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the Leasehold and Commonhold Act 2002 should be made.

The hearing

5. The tribunal was provided with a bundle of documents by the Applicant. At the hearing the Applicant was represented by his daughter Ms Akinfenwa and the Respondent by Mr. McIntosh.

The Applicant's case

6. In a Statement of Case the Applicant asserted that in a letter dated 1 July 2017 the Respondent demanded the sum of £1,120.19 for service charges, reserving it in September 2017. Subsequently, a payment plan was entered into by the Applicant with the Respondent and the sum of £371.40 was paid. A cleaning rota was placed in the communal hallway. On 5 March 2018 the Respondent sent a service charge demand of £2,733.35 including outstanding service charges and

building insurance contributions, as it was said there is a danger that the building would be left uninsured.

7. The Applicant stated that despite repeated complaints and requests for repairs to broken external pipes and consequent damage, door/lift repairs, remedy of water penetration, cleaning of communal areas and gas and electrical safety certificates, no work has been carried out by the Respondent or certificates supplied. Consequently, the demands for service and management fees are unreasonable.

8. The Applicant included in her documents a letter dated 15 April 2015 from William Sturges solicitors to the lessee of Flat 3. In this is stated;

“1. The superior landlord is Malibu Management Corporation (the Freeholder);

2. The leasehold to the Property was sold to Naila Quereshi (“Naila” in 2013, the terms of which are governed by a superior lease dated 12 December 2013 (“the Superior Lease”).”

4. Subsequently Bushra Tariq acquired the Superior Lease in May 2015. In an email to the lessees at the Property it was stated;

“Myself as the head leaseholder I am not responsible for any repairs or anything to do with the communal area/roof/walls etc as I am not the freeholder. I have spoken to the freeholder’s management company who have been very co-operative, they have clarified that if any repair need to be done, you must contact them and they will deal with repairs on behalf of the freeholder.”

9. However, in other communications (*email dated October 16, 2015*) Ms Tariq demanded payment of sums of money from the lessees, the failure of which would lead to legal proceedings and reiterated that she is not liable for repairs and maintenance.

The Respondent’s case

10. At the hearing of the application Mr. McIntosh told the tribunal that he was a Building Manager with ‘hands on’ knowledge of the subject building. He stated that AM Surveying and Block Property Management (AMS) acted for the Respondent freeholder and for Ms Bushra Tariq, having been appointed in 2017. When asked by the FTT to explain any relationship between the Respondent, Ms Tariq and AMS, Mr. McIntosh refused saying only that it was a “professional relationship.”

11. Mr. McIntosh provided the FTT with a schedule of service charges for the service charge years 2017. These were divided into Schedule A containing the service charge items of accountancy fees, sundry expenses and general block maintenance; Schedule B containing the building insurance charge; Schedule C containing the Reserve Fund charge and Schedule D the management fee divided into residential and commercial (Tesco). Mr. McKintosh told the tribunal that AMS determined the percentage payable for the service charges in Schedule A by dividing it between the 6 residential flats and the commercial property based on floor area. This arrived at a figure of 10.8% in respect of Flat 4. Schedule B insurance costs were divided between all seven properties and Schedule C charges between the six residential flats only. Management fees in Schedule D were calculated at £300 per residential flat and £253 for the commercial premises.
12. The schedule of estimated service charges for 2018 was also divided between Schedules A to D. However, Schedule A service charge items was divided between the 4 first floor flats at 25% per flat; Schedule B insurance costs were divided between all seven properties; Schedule C Reserve Fund charges were divided between the six residential flats only. Schedule D management fees were calculated at £300 per residential flat and £253 for the commercial premises.
13. Mr. McIntosh stated that no communal cleaning was provided as the leaseholders had stated they did not require this service. A management fee of £300 per flat was charged to the residential properties. A fire risk assessment had carried out and the electrical supply tested. Consultation process for the carrying out of major works had been started as the building had been neglected for some time and this was supported by a letter dated 25 January 2018 from AMS to the Applicant stating, *"In accordance with s.20 of the Landlord & Tenant Act 1985 (as amended) Malibu Management corporation must consult with leaseholders before expending or collecting sums for the works in question....."* This Notice described the intended work as *"Overhaul of flat roof membrane to upper terrace walkway only."*
14. Mr. McIntosh told the FTT that the building's insurance was placed through a broker as part of a portfolio of property and that no claims had been made in respect of the water ingress although was unable to explain why. He stated that accounts had been prepared by Knight Accountants and issued electronically to the leaseholders. A copy of accounts for the year ending 31 December 2017 prepared by Knight Accountants was provided to the FTT.

The tribunal's decision

15. The FTT finds that the freeholder of this building is Malibu Management Corporation and is responsible for the building's insurance. Ms Quereshi is the head leaseholder and the Applicant's immediate landlord and is responsible for the repairs and maintenance in the building. The FTT finds that the Respondent has a right under the Superior lease to which, the Applicant's lease is subject, to "step in" when the head leaseholder fails to carry out her obligations under the terms of the Applicant's lease (*clause 1(jj)*). Further, The FTT finds that AMS has been acting as the managing agent for both the freeholder and head leaseholder.
16. The FTT finds that the management of this building and the subject property has been extremely poor and to the detriment of the Applicant. Categorical refusals by Ms Bushra of her obligations under the lease to maintain the building have served, only to further confuse the issue of responsibility, as has the demands sent by AMS for payment of service charges holding out the Respondent to be the landlord to whom these sums are payable. Further confusion has arisen over the changing nature of the apportionments of any particular service or other charge, between the residential flats and commercial unit.

Buildings insurance 2017 & 2018

17. The FTT determines that demands for payment of building insurance can be made by the freeholder or its agent. The FTT considers the insurance sums payable under the 2017 and 2018 budget to be reasonable and payable in the amounts demanded i.e. 10.86% of the total premium.

Accountant's fees 2017 & 2018

18. The FTT determines that accountant's fees in the amount claimed are reasonable but determines that these should also be included in Schedule B for 2017 and 2018 as these charges relate to all 7 properties.

Management fees 2017 & 2018

19. The FTT finds that management fees of £50 only for the service charge year for 2017 are reasonable, in light of the part period for which AMS acted in that year and the poor standard of service provided. The FTT determines that £150 management fees are reasonable for the service charge year 2018, in light of the longer period and slightly improved service provided (subject to this improvement being maintained).

Apportionment 2017 & 2018

20. The FTT notes the varying percentage changes to Schedule A for the service charge years 2017 and 2018. The tribunal determines that the apportionment figures across Schedules A to D for the service charge year 2018 are reasonable and appropriate. However, the Tribunal determines that the apportionment among Schedules A to D for the service charge year 2017 should not now be altered, either in the Respondent's favour or otherwise to the Applicant's disadvantage. The FTT finds, as evidenced by the service charge accounts that no general block management in the total sum of £5,500 was carried out in 2017 as reflected by the actual figure of £731 as recorded in the service charge accounts. The FTT finds that the use of the floor area as a means to apportion charges payable by all 6 or 7 units to be reasonable and appropriate; the use of 25% where charges are to be paid by only the four first floor flats.

Reserve fund 2017 & 2018

21. The FTT finds that the Applicant's lease makes provision for the collection of a Reserve Fund and finds it reasonable that sums should both be collected for works to internal common parts (4 first floor flats) and the anticipated external major works (6 residential flats on first and second floors).

Estimated Service Charges/Insurance – 2018

22. The FTT finds the apportionment of these charges to more accurately reflect the terms of the Applicant's lease and the percentage applied by the Respondent under each of the Schedules (A to D) to be reasonable and appropriate.

Section 20C costs

23. Mr. McIntosh indicated to the FTT that costs of this application would not be added to the Applicant's service charge. In any event, the FTT would in any event, make an order under section 20C prohibiting the adding of the costs of and incidental to this application, to the Applicant's service charge.

Conclusion

23. The demands for payment of service charges for 2017 and 2018 should now be recalculated and fresh demands made to the Applicant if the Respondent, the head leaseholder or AMS wish to make these costs payable.

Signed: Judge LM Tagliavini

Dated: 28 October 2018