



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

Case References : **BIR/31UC/LIS/2019/0040**

Property : **Jordean Court, 12 Brook Street, Sileby
Leicestershire, LE12 7DR**

Applicant : **Mr Barry J. Wetherall**

**Applicants'
Representative** : **None**

Respondent : **Jordean Court RTM Company Ltd**

**Respondent's
Representative** : **New Estate Management Limited**

Applications : **(1) Application for a determination of
liability to pay and reasonableness of
service charges pursuant to ss 19 & 27A
Landlord and Tenant Act 1985 (the Act)**

Date of Hearing : **2 December 2019**

Tribunal : **Tribunal Judge P. J. Ellis
Tribunal Member Mr. N Wint FRICS**

Date of Decision : **20 December 2019**

DECISION

The Applicant's liability for service charges ceased upon assignment of his interest in Jordean Court.

1. This is an application for determination of the reasonableness and payability of service charges pursuant to ss 19 and 27A Landlord and Tenant Act 1985 (the Act). The Applicant has made no applications under either s20C of the Act or Paragraph 5A Schedule 11 of the Commonhold and Leasehold Reform Act 2002 relating to the Respondent's costs.
2. The Applicant is Mr Barry Wetherall of Simpkin, School Road, West End, Reading. Formerly, Mr Wetherall was the owner of flats 9 and 11 Jordean Court. He disposed of flat 9 in November 2017 and of flat 11 in July 2019.
3. The Respondent is Jordean Court RTM Company Ltd. Its directors include Mr and Mrs Ryan and Sheryl McCartney of flat 7 Jordean Court. The managing agent appointed by the Respondent is New Estate Management Limited of West Bridgford Nottingham. Mr and Mrs McCartney were not present at the hearing but Mr Adam New of New Estates attended on their behalf.
4. The Respondent acquired the right to manage in June 2018 when New Estate Management was instructed to act on its behalf.
5. Although Mr. Wetherall was not represented, he was assisted by Mr.J. Doran who is the principal director of the proprietor of the freehold owner Fountain Developments (Sileby) Limited.
6. The service charge years the subject of the application are 2018 and 2019. Each service charge year ends on 30 November. By his application the Applicant stated the application related to the period since the Respondent acquired the right to manage on 11 June 2018 to 30 November 2019.
7. By the application the Applicant complained that the Respondent had failed to issue any demands for service charges covering the period 11 June 2018 to 30 November 2019. The application went on to state that "*Doubt exists over the validity of the costs incurred due to a failure by the Respondent to have the*

accounts independently and professionally audited notwithstanding there is a requirement within the lease to do so.”

8. The Applicant complained that payments made by him by way of quarterly payments on account of the service charges should either be refunded or properly accounted for. The sums the subject of his dispute are £227.17 in respect of the period 11 June to 30 November 2018; £522.32 paid in respect of the period 1 December 2018 to 31 July 2019 and two further payments of £65.29 and 80.92 made in August 2019.
9. The first payment was made by deduction from the proceeds of sale when he sold his flat in July 2019. The other payments were made by standing order from his bank account. The payments in August were made in error as Mr Wetherall omitted to cancel a standing order after completion of the sale of his flat. The Respondent has declined to return the payment.
10. By his Statement of Case made pursuant to Directions of the Tribunal the Applicant listed all the items of service which the Seventh Schedule of the lease required the landlord to deliver but in respect of each item save for the fire alarm maintenance he asserted that the actual costs are unknown as accounts for the period had not been prepared. In respect of management fees and accountancy fees also due as part of the service charge he asserted that the services had not been fully provided.
11. The Applicant made a number of allegations against the Respondent to the effect that he had not been treated fairly and that he had not been given any information that would have enabled him to understand his liability for service charges.
12. At the hearing it was apparent that the Applicant expected the Respondent to produce all accounts, invoices and bank statements so that he could calculate his liability there and then. The only invoice he considered unreasonable £600.00 fire alarm maintenance which he considered excessive although he did not have an alternative sum in mind.

13. The Respondent's answer to the complaint was that until the service charges have been calculated the only liability the Applicant has is to make the interim payments on the due quarter days in accordance with the terms of the lease. Now the service charge year 2019 has closed the accounts will be prepared and reconciliation prepared so that service charge demands may be served.
14. The Respondent further asserted that no service charge demands had been served after November 2018. At the time of his appointment Mr New did not receive any information sufficient to enable preparation of the accounts after November 2018. Mr Doran who had provided management services until June 2018 admitted he did not provide information which he held relating to service charges until after November 2018.
15. Mr New upon advice from an accountant had decided to defer preparation of the accounts for the period 11 June onwards to the end of service charge year 2019 by which time he would have all information required.
16. The Tribunal considered the terms of the lease. Schedule 6 sets out the regulation of the service charge. Paragraph 3 imposes an obligation to pay quarterly an interim service charge of £130.00. For each service charge year ending 30 November the Managers must keep detailed Service Costs meaning the amount spent in carrying out all the obligations imposed by the lease. A Service Cost statement must be prepared for each period ending 30 November each year which is certified by a chartered accountant and states the amount by which the Service Charge exceeds the total of the Interim Service Charge.
17. The Tribunal did not consider the decision inappropriate for the replacement managing agent to wait until November 2019 to prepare a Service Charge statement for eighteen months from the date they assumed responsibility for the management of Jordean Court. New Estate Management did not have information from the previous agents until after November 2018. An accountant had advised that preparation of a service charge statement for an 18 month period was reasonable. Lessees were obliged to make interim payments in any event and that obligation was unaffected by the decision.

18. The payments made by the Applicant were made in accordance with his obligations under the lease. However, s 5 of the Landlord and Covenants Act 1995 provides

(1) This section applies where a tenant assigns premises demised to him under a tenancy.

(2) If the tenant assigns the whole of the premises demised to him, he—

(a) is released from the tenant covenants of the tenancy, and

(b) ceases to be entitled to the benefit of the landlord covenants of the tenancy,

as from the assignment.

19. The Applicant's liability for service charges ceased upon his disposal of his interest in the Property in July 2019. The service charges to the date of disposal are yet to be calculated. Therefore the only order which the Tribunal can make at the present time is that no service charges are payable by the Applicant to the Respondent with effect from his assignment of his interest in Jordean Court.

Appeal

20. If either of the parties is dissatisfied with this decision they may apply to this Tribunal for permission to appeal on a matter of law to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to them rule 52 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013).

Tribunal Judge PJ Ellis

Chair