



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

Case Reference : CHI/29UN/LSC/2019/0014

Property : Flat 9 Samuel Court, 10-12 Athelstan Road,
Margate, Kent CT9 2BA

Applicant : Lindsey Wootton

Representative : Bampton

Respondent : Samuel Court Residents Association

Representative : Mr James Harris

Type of Application : Service Charges Section 27A of Landlord
and Tenant Act 1985

Tribunal Member(s) : Judge Tildesley OBE

**Date and venue of
Hearing** : 9 September 2019 at Margate Law Courts
Further directions issued 18 September
2019 with a response by 9 October 2019

Date of Decision : 7 November 2019

DECISION

The Application

1. The Applicant seeks a determination of service charges for the years 2013 to 2019 inclusive.
2. The Applicant also seeks an order for the limitation of the Respondent's costs in the proceedings under section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
3. The Applicant maintains that none of the service charges are payable because the Respondent has not demanded the charges in accordance with the terms of the lease and statutory requirements. The Respondent has not answered the Applicant's case.
4. The Application was heard on 9 September 2019 at Margate Law Courts. Mr Barker of Bamptons appeared for the Applicant. The Respondent did not appear. Mr Barker declared that he was the brother of the Applicant. The Applicant supplied the hearing bundle.
5. After hearing from the Applicant, the Tribunal directed the Applicant to supply the Tribunal with details of payments of service charges made covering the period 1 January 2013 to 31 December 2019. The Tribunal indicated that it would publish its decision by 1 November 2019. The Tribunal apologises for missing the deadline.

The Proceedings

6. The Tribunal received the application on 4 February 2019.
7. The Tribunal directed a case management hearing which was held on 26 February 2019. Prior to the hearing the Respondent sent to the Tribunal a copy of a County Court Online judgement dated 10 October 2018 in the sum of £6,343.44 Claim Number 014MC930 the Defendant being named as Ms Lindsey Carolyn Jane Wootton Aka L Barker. The Applicant was unaware of the judgment. The Tribunal stayed the proceedings until 26 March 2019 pending receipt of further information in respect of the County Court proceedings. Mr Harris attended the case management hearing by telephone.
8. On 12 April 2019 the Tribunal was informed that the Applicant had made application to the Court to set aside the judgment. The Tribunal stayed the proceedings until 12 June 2019.
9. On 9 July 2019 the Court set aside the judgment and stayed the proceedings pending the determination of the FTT Tribunal. The Respondent was represented at the hearing. The Court ordered the Respondent to pay costs of £500 to the Applicant.

10. On 12 July 2019 the Tribunal directed that the application would be heard on 9 September 2019 at Margate Law Courts. The Tribunal required the parties to exchange statements of case. The Tribunal received an email later in the day from Mrs Harris saying that she did not understand the County Court Order and that the Respondent was considering an Appeal against the judgment. She also said Mr Harris was too ill and requested an adjournment of the hearing for 3 to 4 months.
11. The Tribunal responded pointing out that Mrs Harris' comments appeared to relate to the Court hearing. The Tribunal indicated that it had a separate application to determine service charges and that it would be heard on 9 September 2019. The Tribunal enquired of the Applicant as to whether it had copies of the service charge accounts to assist the Respondent in respect of disclosure. The Applicant explained that it did not have invoices for service charges and ground rent for 2017, 2018 and 2019.
12. On 29 July 2019 the Tribunal varied its directions requiring the Applicant to provide its statement of case to the Respondent by 5 August 2019. The Respondent to supply its response by 19 August 2019. The Tribunal confirmed that the hearing would take place on 9 September 2019 at 10.30am. Finally the Tribunal advised Mrs Harris that if she wished to make application to stay the proceedings because of Mr Harris ill-health, it would be considered at the hearing.
13. On 15 August 2019 Mrs Harris asked for the proceedings to be adjourned until early December 2019 because of Mr Harris' continuing state of ill-health. The Applicant objected to the request pointing out that the Respondent had three directors, and surely one of them could represent the Respondent.
14. The Tribunal responded saying it was sorry to hear of Mr Harris' continuing state of ill-health but indicated that it would not consider the request until the Application was made on the prescribed form supported by medical evidence, and an explanation given why it was not possible for another director to represent the Respondent at the proceedings.
15. On 31 August 2019 Mrs Harris indicated that she had delegated this matter to Mr Harris. The other two directors were no longer interested, one had sold his flat and the other was in the process of moving to Bath. Mrs Harris said that Mr Harris had suffered a stroke in mid November 2018 and was admitted into hospital. In March 2019 Mr Harris had contracted pneumonia and in June 2019 had suffered a chest infection. There was no medical evidence attached to the application.

16. The Applicant objected to the request for adjournment. The Applicant pointed out that the Respondent had not complied with directions, the Respondent had not adduced medical evidence and that she was selling her flat and required resolution of the dispute straightaway.
17. On 5 September 2019 the Tribunal refused the Respondent's request to adjourn the hearing on 9 September 2019. The Tribunal has no medical evidence that Mr Harris was unfit to attend the hearing. The Tribunal observed that it is Mrs Harris who is the director of the Company not Mr Harris. It would also appear that one of the two remaining directors retained an interest in the property. These proceedings have been outstanding since February 2019, and the Applicant required a speedy resolution of the dispute because of the impending sale of her flat.
18. On 6 September 2019 Mrs Harris emailed the Tribunal saying that she could not attend the hearing on 9 September 2019 because she was required to take her husband, Mr Harris, to Dover hospital for a cataract operation.
19. The Tribunal considered the Respondent's application for adjournment at the commencement of the hearing on 9 September 2019. Mr Barker objected to the application. Mr Barker pointed out that the Mrs Harris had failed to provide any documentary evidence to substantiate the hospital appointment. Mr Barker stated that the Respondent had not complied with two directions of the Tribunal, namely: the provision of service charge/ground rent invoices for 2017, 2018 and 2019 (direction of 7 of 12 July 2019); and a provision of its statement of case and comments on the Scott schedule (direction 9 of 12 July 2019). Finally Mr Barker said that the Respondents had not complied with the requirements of the lease and statute in respect of the service charge demands.
20. The Tribunal concluded that an adjournment did not further the overriding objective. The Tribunal throughout these proceedings had relaxed the directions to enable the Respondent to defend the application. The Respondent had spurned the Tribunal's offer. The Tribunal formed the view from the evidence presented by the Applicant and the outcome of a previous hearing involving Flat 1 that the Respondent was highly unlikely to have the necessary evidence to challenge the Applicant's case.
21. The Tribunal decided to proceed in the Respondent's absence. The Tribunal did not inspect the property.

Background

22. The Applicant is the leaseholder of Flat 9 at Samuel Court, 10-12 Athelstan Road, Margate. Samuel Court is of brick and tile roof construction and built in 1850. The building was converted into 12

flats in and around 1970. The flats are located in the basement and on the ground, first and second floors of the building. The Applicant asserts that the building is in a generally dilapidated state internally and externally. The entry phone for Flat 9 does not work and the Applicant says there has been difficulties in the provision of services by the Respondent.

23. The Respondent is the freeholder of Samuel Court under title number K159528. The Respondent has three directors Mrs Kathleen Ann Harris of Flat 5, Mr Oladipupo Adeyemi of the Basement Flat, and Mr Maxwell Hendry also of Flat 5. Mrs Harris is the secretary of the company.

The Lease

24. The lease for Flat 9 is made between Morturn Associates Limited of the one part and Kenneth James Murray of the other part, and is dated 16 January 2003. The lease is granted for a term of 125 years from and including 24 June 2002 in return for a ground rent of £50 per annum for the first 25 years of the term rising to £100 for the next 25 years: £200 for the next 25 years, and £400 for the remainder of the term.
25. Under Clause 3.1 the tenant covenants to pay rent and additional rent on the days and in the manner set out in the lease. The rent is payable in advance on the usual quarter days. The additional rent relates to the payment of insurance (Clause 5.1) and to the payment of the cost of services (Clause 6.2).
26. The lease is badly drafted and contains a number of inaccuracies and contradictions.
27. Clause 3.8 requires the tenant to pay to the Landlord on demand a fair and just proportion fairly attributable to the Premises (the flat) to be conclusively determined by the Surveyor acting as an independent expert and not as an arbitrator of the expenses of repairing, and maintaining or rebuilding all party and other walls, fences, gutters, sewers, drains, roadways pavements entrance ways stairs and passages used in connection with the premises.
28. Clause 5.1.1 requires the landlord to insure the building against loss or damage by the insured risks. Clause 5.1.2.1 obliges the tenant on demand to reimburse the landlord with a fair and reasonable proportion of the insurance premium having regard to the floor area of the respective demise, and under Clause 5.1.2.2 a fair and reasonable proportion of the costs incurred in valuing the building for insurance purposes.
29. Clause 6.1 sets out the landlord's covenant in respect of services which include paying all charges for gas electricity, maintaining,

repairing and redecorating the external property, the common parts, and open areas, disposal of refuse, and the ability to employ or engage caretakers, managing agents, employees and contractors.

30. Clause 6.1.10 requires the landlord to keep proper books of account of the costs charges and expenses for the payment of repairs to the building and the Estate and an account shall be taken on the 31 December in every year of the amount incurred since 25 March 2000 or the date of the last preceding account as the case may be provided that the account shall be audited by accountant who shall certify the total amount of the said costs charges expenses and premium (including the audit fee of the said account) for the period to which the account relates and the proportionate amount due from the tenant to the landlord as the service charge.
31. Clause 6.1.11 requires the Landlord within two months of the date to which the account provided for in this clause is taken to serve on the Tenant a notice in writing stating the total and proportionate amount due from the Tenant as the service charge certified in accordance with clause 6.1.8¹.
32. Under clause 6.2.1 the tenant covenants to pay to the Landlord on account of the expenses to be incurred sums on account of the service charge in such amount as the Landlord shall reasonably estimate by 2 equal instalments on 25 March and 29 September in each year.
33. Under clause 6.2.2 the tenant covenants to pay to the Landlord in respect of each year which shall be equal to 2.5 per cent of all costs charges expenses incurred by the Landlord in carrying out its obligations pursuant to sub-clause 6.1 and all fees expenses interest charges demands and liabilities (including those relating to the collection of rent and computation and collection of the service charge).
34. Under clause 6.2.3 within 28 days after service on the tenant of a notice in writing stating the amount of the service charge due from the tenant pursuant to clause 6.2.1 above² for the period to which the notice relates to make payment to the Landlord the balance of the amount stated to be due any overpayment being carried forward to the next service charge year.
35. Clause 6.2.4 states that the accounts prepared pursuant to clause 6.1.8³ and audited by a chartered accountant *shall be*⁴ conclusive evidence as to the amount of the service charge.

¹ Clause 6.1.8 refers to the employment of caretakers, employees etc. The Tribunal considers this to be typographical mistake and refers to clause 6.1.10.

² The Tribunal considers this to be a typographical mistake and should refer to 6.1.11 rather than 6.2.1

³ Should be clause 6.1.10

⁴ Inserted by the Tribunal.

36. The Tribunal summarises as follows its understanding of the service charge machinery under the lease
- a) Estimated service charges on account 25 March and 29 September each year.
 - b) An account of the expenditure incurred in respect of the service charge on 31 December in every year which shall be audited by a chartered accountant who shall certify the proportionate amount due from each tenant.
 - c) Notice of the account shall be served on each tenant within two months of 31 December and the tenant is required to pay a balancing charge within 28 days of service of the notice.
 - d) The Applicant is required to pay 2.5 per cent of all service charge expenditure, note this contrasts with clause 3.8 to pay a fair and just proportion.
 - e) The Applicant is required to pay on demand a fair and reasonable proportion of the insurance premium (determined by floor area).

The Evidence

37. The hearing bundle contained the following documents which were supplied by the Applicant:
- a) Profit and Loss account for the Respondent for the year ended 28 February 2013 which showed expenditure of £12,322
 - b) Invoice for insurance, water rates, service charges and ground rent dated 30 May 2014 for the period 6 months from 27 June 2014 to 26 December 2014 in the sum of £523 which represented one twelfth of the estimated costs plus an administration charge of 12 per cent and ground rent.
 - c) Invoice for insurance, water rates, service charges and ground rent dated 30 December 2014 for the period 6 months from 27 December 2014 to 26 June 2015 in the sum of £523 which represented one twelfth of the estimated costs plus an administration charge of 12 per cent and ground rent. This invoice made reference to an estimated additional cost of £4,887 beginning January 2015 for items such as damp course, railings and steps to ground floor flats.
 - d) Invoice for damp course, railings and steps to ground floor flats in the sum of £400 dated 31 December 2014

- e) The above invoices were said to payable within 14 days of 27 December **2011**
 - f) Invoice for insurance, water rates, service charges and ground rent dated 30 May 2015 for the period 6 months from 27 June 2015 to 26 December 2015 in the sum of £523 which represented one twelfth of the estimated costs plus an administration charge of 12 per cent and ground rent.
 - g) Invoice for insurance, water rates, service charges and ground rent dated 30 November 2015 for the period 6 months from 27 December 2015 to 27 July 2016 in the sum of £523 which represented one twelfth of the estimated costs plus an administration charge of 12 per cent and ground rent.
 - h) Invoice for insurance, water rates, service charges and ground rent dated 30 May 2016 for the period 6 months from 27 June 2016 to 26 December 2016 in the sum of £523 which represented one twelfth of the estimated costs plus an administration charge of 12 per cent and ground rent.
 - i) Invoice for insurance, water rates, service charges and ground rent dated 30 May 2019 for the period 6 months from 27 June 2019 to 26 December 2019 in the sum of £612.61 which represented one twelfth of the estimated costs plus an administration charge of 12 per cent and ground rent.
38. The Applicant has received no service charge demands for the period since 30 May 2016 except for the one received on 30 May 2019.
39. The County Court Claim which was set aside referred to seven invoices dated 30 December 2014, 30 May 2016, 30 November 2016, and 30 May 2017 (2 invoices) each in the sum of £612.66. The Respondent also claimed £1,171.52 in late payment charges and interest of £370.38. The Respondent adduced no evidence to substantiate the claims.
40. No Statement of Tenant's Rights and Obligations (Service Charges) accompanied the demands.
41. Mr Barker explained that the Applicant had made a payment of £597.00 to the Respondent in respect of invoice 113/9 on 14 January 2013. Since then Mr Barker on behalf of the Applicant has written letters to the Respondent on 3 July 2014, 10 November 2014, 16 February 2015 and 14 January 2016 explaining that the Applicant was not obliged to pay the demands because they did not comply with the requirements of landlord and tenant legislation. Mr Barker offered to help the Respondent on several occasions in putting together correct service charge demands. Mr Barker has

also made requests for service charge accounts, none of which had been forthcoming. Mr Barker also stated that the Applicant was not aware of the County Court proceedings because they had been sent to a wrong address.

42. On 22 August 2018 a previous Tribunal⁵ heard an application to determine service charges brought by the Respondent against the leaseholder of Flat 1. The Tribunal found the following deficiencies with the way in which the Applicant demanded the charges from the Respondent:

- a) No Statement of Tenant's Rights and Obligations (Service Charges) accompanied the demands.
- b) The demands did not incorporate the correct period (25 December to 24 June) and give the correct due dates of payment (24 June and 25 December).
- c) Separate demands should have been issued for service charges and ground rent.
- d) The demands were not sent to the last known address of the Respondent as required by the terms of the lease.

Consideration

43. The Tribunal makes the following findings of fact:

- a) The Respondent has issued demands for service charges on a sporadic basis, which do not cover the entire period of the application from 2013 to 2019.
- b) The Applicant has evidenced the demands for 6 months from 27 June 2014 to 26 December 2014, 27 December 2014 to 26 June 2015, 27 June 2015 to 26 December 2015, 27 December 2015 to 27 July 2016, 27 June 2016 to 26 December 2016 and 27 June 2019 to 26 December 2019, and a one off demand for the estimated costs of major works on 31 December 2014.
- c) There are no demands for the period 1 January 2013 to 26 June 2014, and for the period 27 December 2016 to 27 June 2019.
- d) No Statement of Tenant's rights and Obligations has accompanied the demands.

⁵ Tribunal Reference CHI/29UN/LIS/ 2018/0024

- e) No notice has been served on the Applicant by the Respondent in compliance with section 48 of the Landlord and Tenant Act 1985.
 - f) The Respondent has demanded one twelfth of all service charge expenditure from the Applicant rather than 2.5 per cent as required by clause 6.2.2. of the lease.
 - g) The Respondents have served no statement of accounts on the Applicant.
 - h) The Respondent has issued no certificate of the proportionate amount due from the Applicant as service charge.
 - i) The Respondent has adduced no evidence to substantiate the reasonableness of the estimated charges.
 - j) The Respondent has claimed late payment charges of £1,171.52 and administration charges for which there appears to be no authority under the lease.
44. The Tribunal noted that the Application covered a period of six years from 2013. The Application was made on 12 February 2019. The Tribunal raised with Mr Barker about whether the Applicant's conduct in not challenging the service charges, particularly the early ones in 2013, constituted an admission of the charges. The Tribunal also requested Mr Barker to provide details of the payments made by the Applicant towards the service charge. Mr Barker stated that the Applicant had made one payment of £597 on 14 January 2013 and that the Applicant through her agent had been disputing the validity of the service charges since July 2014.
45. The Tribunal agrees with Mr Barker's submission that the Applicant has not agreed or admitted any matter in relation to service charges for the period 2013 to 2019, and that the Respondent has provided no evidence to the contrary.

Decision

46. The Tribunal decides in view of its findings at 43 and 45 above that the Respondent has not demanded the service charges in accordance with the terms of the lease and with statutory requirements. The Tribunal finds that there is no authority under the lease to demand late payment charges and an administration charge of 12 per cent of the costs.
47. The Tribunal determines that the Applicant is not liable to pay the service charges including insurance for the period 2013 to 2019, the administration charge of 12 per cent and the late payment charges of £1,171.52.

48. The Applicant requested an order under section 20C of the Landlord and Tenant Act 1985 and for an order under paragraph 5A to schedule 11 to Commonhold and Leasehold Reform Act 2002. The Tribunal considers that in view of the Respondent's failure to engage in these proceedings, it would be just and equitable to make orders under section 20C of the 1985 Act and under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 preventing the Respondent from recovering its costs, if any, incurred in these proceedings either through the service charge or against the Applicant direct.
49. The Applicant applied for the Respondent to reimburse her with the application fee of £100 and the hearing fee of £200. The Applicant also made an application for costs in the sum of £68.60 which comprised postage costs of £14.60, printing of £24 and delivery costs of £30, on the ground that the Respondent acted unreasonably in these proceedings.
50. The Respondent was given an opportunity to respond to the Applicant's claim of costs but failed to do so.
51. The Tribunal finds that the Applicant has been successful with the substantive application for service charges and in those circumstances the Tribunal orders the Respondent to reimburse the Applicant with fees of £300 within 28 days from the date of this decision.
52. The Tribunal finds that the Respondent acted unreasonably in the conduct of the case. The Respondent failed to comply with Tribunal directions on two separate occasions, and made repeated requests for adjournment of the case without providing the necessary documentary evidence to substantiate the requests.
53. The Tribunal orders the Respondent to pay costs of £68.60 to the Applicant within 28 days from the date of this decision.
54. The Tribunal has no jurisdiction to determine ground rent and interest.

RIGHTS OF APPEAL

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.
2. 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.
3. 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.
4. 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