



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

Case Reference : **CAM/00KF/LSC/2019/0042**
County Court claim no : **E26YM483**

Property : Flat 1, 14 Bellevue Road, Southend-on-Sea SS2 4JF

Applicants : Annette Celia Stone & Benjamin Stone

Representative : SLC Solicitors [ref : 110066.001/CXR]

Respondent : Gillian Alexander

Type of Application : determination of reasonableness and payability of service charges for the years 1st September 2013 to 31st August 2018 inclusive [LTA 1987, s.27A]
: determination of reasonableness and payability of administration charges [CLRA 2002, s.158 & Sch 11]

Tribunal : Judge G K Sinclair

Date of decision : Tuesday 7th January 2020

DECISION following paper determination

Introduction

1. This application began as a County Court claim by the landlords for recovery of arrears of ground rent, insurance premium and service charge payable by the tenant under a 199 year lease dated 18th May 1984. In addition, the claimants seek to recover administration charges under Schedule 11 to the Commonhold and Leasehold Reform Act 2002, to include legal costs. The total for arrears and administration charges is stated to be £6 645.14. On top, the claimants also seek payment of statutory interest under section 69 of the County Courts Act 1984 at the annual rate of 8%, plus their legal costs from 13th August 2018 (the date of the Particulars) to date of judgment – to be summarily assessed.
2. The claim form was issued in August 2018 and was met by a Defence dated 5th

September 2018, admitting the service charges, ground rent and insurance but not the administration charges, legal costs and charges for urgent roof works.

3. On the basis of this response the claimants' solicitors emailed the court on 30th October 2018, purported to accept the tenant's part-admission and applied to enter judgment for a reduced sum plus fixed costs and statutory interest at 8%.
4. Instead, by order dated 27th June 2019 District Judge Ashworth, sitting at the County Court at Southend, transferred the case to this tribunal "to be dealt with by a judge who exercises both Tribunal and County Court jurisdiction."
5. Tribunal directions were issued on 25th July 2019 but the respondent tenant did not comply with her obligations. Despite a final warning letter from the tribunal dated 13th September 2019 she continued to ignore the directions and as a direct consequence was debarred from defending under rules 9(7) & (8) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The landlords may thus recover what they can prove is both reasonable and recoverable, but the tribunal takes into account what she has (not necessarily wisely) admitted.
6. The tribunal has considered the matter on the basis of the documents submitted by the applicant landlords, including the County Court pleadings, the claimants' acceptance of the tenant's part-admission, the lease, annual (but very strangely dated) service charge statements, and the various arrears schedules sent to the tenant from time to time. The outcome of the tribunal's deliberations is set out in the accompanying County Court Order giving effect thereto, and dealing also with such matters as interest and costs.

Relevant provisions in the lease

7. Dated 18th May 1984, the lease predates the provisions with respect to service charges introduced by the Landlord and Tenant Act 1985 and many statutory amendments thereafter, and also those concerning administration charges. The mechanisms in the lease for the calculation, timing, and method of payment of service charges are thus not as precise as those included in more modern leases.
8. Thus, for example, clause 1 provides that the tenant shall pay by way of rent the figure specified in the Fourth Schedule (a stepped ground rent rising every 25th year) and by way of additional rent a yearly sum equal to a fair proportion (one half) of the sum expended by the landlord in insuring the demised premises. By clause 2(1) the tenant covenants to pay the rent when due. Nowhere, however, does the lease provide for the tenant to pay interest on any arrears of rent, either at a specified rate or at all.
9. By clause 3(3) the tenant also covenants to contribute a fair proportion towards the costs expenses outgoings and matters mentioned in the Fifth Schedule. That sets out various expenses of repair and reconstruction of the structure; cleaning and lighting the main entrance; decorating the exterior; rates, taxes and other outgoings payable in respect of parts of the building; and all other expenses (if any) incurred by the landlord in and about the maintenance and proper and convenient management and running of the building. At paragraph 5, however, the Schedule refers to the cost of insurance mentioned in sub-clause 4(2) (part of the landlord's covenants). This is the annual insurance premium referred to

in clause 1, which is thus payable both as additional rent and as part of the service charge (the remaining part of which is not defined as rent).

10. While paragraph 6 of the Fifth Schedule refers to the expense (if any) incurred "...in and about the maintenance and proper and convenient management and running of the building" it makes no mention whatever of legal costs.
11. Clause 5 of the lease contains the usual proviso for re-entry in case of non-payment of rent or breach of other tenant's covenants, but neither in clause 2 nor 3 is there to be found the usual covenant by the tenant to pay the landlord's legal and professional costs of and incidental or preparatory to the service of a notice under section 146 of the Law of Property Act 1925, whether or not forfeiture is avoided. The landlords therefore seek to rely upon section 146(3) of the 1925 Act, viz

A lessor shall be entitled to recover as a debt due to him from a lessee, and in addition to damages (if any), all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the lessee, is waived by the lessor, or from which the lessee is relieved, under the provisions of this Act.
12. Insofar as administration charges are concerned the lease requires the landlord's prior written approval to any structural alterations in clause 2(6), but does not require any payment for considering or granting it. In clause 2(7), however, the tenant must within one month notify the landlord of every assignment, assent, transfer, underlease or mortgage, etc; produce a copy; and pay to the landlord a registration fee of £5. No other administration fee is payable. Neither are legal costs, arrears fees, etc. recoverable by the landlords or their agents.

Material statutory provisions

13. The method of calculation and overall amount payable by tenants with respect to maintenance, repairs, other services and management costs by way of service charge are governed principally by the express terms of the lease, but always subject to the cap imposed by section 19 of the Landlord and Tenant Act 1985, which limits the recoverability of relevant costs :
 - a. only to the extent that they are reasonably incurred, and
 - b. where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.
14. The amount payable may be determined by the tribunal under section 27A. This is the provision under which this application has been brought. Please note sub-sections (5) & (6), which provide that a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment, and that an agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement)¹ is void in so far as it purports to provide for a determination in a particular manner or on particular evidence of any question which may be the subject of an application to the tribunal under section 27A.

¹ Eg. provisions in a lease stating that the landlord's accountant's certificate shall be conclusive, or that any dispute shall be referred to arbitration

15. By sub-section (4), however, no application may be made in respect of a matter which has been agreed or admitted by the tenant. In this case the service charges claimed, with the sole exception of the major works to the roof, were admitted by the tenant in her response filed with the County Court.
16. The tribunal's jurisdiction to determine the reasonableness and payability of administration charges and to vary leases accordingly is governed by section 158 of and Schedule 11 to the Commonhold and Leasehold Reform Act 2002. Not everybody payment required under a lease falls within the tribunal's jurisdiction, with paragraph 1(1) stating that :
 - In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly –
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
17. Section 168 of the Commonhold and Leasehold Reform Act 2002 provides that a landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless it has been finally determined on such an application to the tribunal by a landlord that the breach has occurred, or the tenant has admitted the breach, or a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

Discussion

18. Annexed to the claim form is an "arrears schedule" listing the various items that make up the principal amount claimed. With the email accepting the defendant tenant's part-admission the landlords' solicitor attached another schedule adding interest at 8% per annum to each item.
19. *Service charges* – While the tribunal observes that some of the service charge statements produced by the landlords refer to amounts incurred in 2017–18 and 2018–19 [pages 116–118] yet bear various dates in 2015, and that the annual management fees of £420 (rising to £516) appear well above local market rates, the fact remains that the tenant has admitted the service charges claimed (save for the major works, in respect of which some section 20 documentation has been provided) and the landlords appear to have accepted this partial admission. The tribunal therefore has no jurisdiction to intervene where issues have been agreed or admitted.
20. *Administration charges* – This appears to be another sadly too common case where the landlords or their solicitors seem to believe that in the absence of any express provision in the lease they can rely upon Schedule 11 to the 2002 Act.

This does not help, as the purpose of the Act is merely to moderate the effect of particular types of fees or charges expressly referred to in and recoverable under the lease. The Act does not make freestanding provision for the imposition by a landlord of charges of a type or types mentioned in Schedule 11 that are not already specified in the lease.

21. Although management fees have been referred to sometimes as “Administration” if they refer to matters within the Fifth Schedule then they are in fact a legitimate service charge cost. Their legitimacy is governed not by Schedule 11 to the 2002 Act but sections 18 to 27A of the 1985 Act. Some, however, such as a claim dated 31st July 2015 for “Admin Charges – Management Charge Arrears” in the sum of £90, are wholly unexplained and disallowed. The annual management charge has consistently been much higher, but from time to time an attempt has been made to recover the cost of instructing a solicitor, or “accrued legal fees.”
22. Importantly, however, the lease makes absolutely no provision for the recovery of legal costs either as a service charge item or as a freestanding administration fee or charge within the meaning of Schedule 11. Each and every such item in the schedules of arrears must therefore be struck out as irrecoverable unless there is some other lawful basis of claim.
23. Lacking any contractual basis for recovery of legal costs under the terms of the lease, the landlords argue that they can pray in aid section 146(3) of the Law of Property Act 1925, quoted in paragraph 11 above. However, the tribunal considers that this statutory provision is of no assistance. Although the landlords’ solicitors referred in correspondence as long ago as 2015 to the possibility of forfeiture proceedings the tribunal is not satisfied either that it did genuinely contemplate such proceedings or that the sub-section assists them. It refers specifically to the landlord being able to recover its costs properly incurred in the employment of a solicitor, etc
...in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the lessee, is waived by the lessor, or from which the lessee is relieved, under the provisions of this Act.
24. There is no suggestion here of the landlords having waived any breach, and there have been no forfeiture proceedings (which section 168 of the 2002 Act requires to be preceded by an admission of liability, a finding by a court or determination by the tribunal that a breach has occurred) where relief against forfeiture has been granted by the court.

County Court matters

25. The claimant landlords also seek payment of the following :
 - a. Ground rent
 - b. Insurance premiums
 - c. Statutory interest on the sums found payable, and
 - d. Costs, to be summarily assessed.
26. *Ground rent* — Liability to pay these amounts has been expressly admitted by the tenant.
27. *Buildings insurance* — Liability for this element of the annual service charge, also

payable as additional rent under clause 1, has been admitted by the tenant.

28. *Statutory interest* — The lease makes no provision for the charging of interest on any arrears, so the landlords are required to rely upon section 69 of the County Courts Act 1984. However, the interest rate claimed comes not from that Act but from section 17 of the Judgments Act 1838.² Interest under that latter Act is payable on the amount awarded by the court from the judgment date; it does not affect the rate awarded by the court at trial.
29. Paragraph 16AI.7 of the 2019 edition of the White Book notes that as a general rule the Judgment Act rate is not the rate to be awarded after a trial and includes the following note on the applicable principles when deciding on an appropriate rate of interest :
- In *Carrasco v Johnson* [2018] EWCA Civ 87 the Court of Appeal considered earlier case law as regards statutory interest, including *Challinor* and *Reinhard* and confirmed the following principles:
- (1) Interest is awarded to compensate claimants for being kept out of money which ought to have been paid to them rather than as compensation for damage done or to deprive defendants of profit they may have made from the use of the money.
 - (2) This is a question to be approached broadly. The court will consider the position of persons with the claimants' general attributes, but will not have regard to claimants' particular attributes or any special position in which they may have been.
 - (3) In relation to commercial claimants the general presumption will be that they would have borrowed less and so the court will have regard to the rate at which persons with the general attributes of the claimant could have borrowed. This is likely to be a percentage over base rate and may be higher for small businesses than for first class borrowers.
 - (4) In relation to personal injury claimants the general presumption will be that the appropriate rate of interest is the investment rate.
 - (5) Many claimants will not fall clearly into a category of those who would have borrowed or those who would have put money on deposit and a fair rate for them may often fall somewhere between those two rates.
30. The award of statutory interest is also discretionary. In this case the court takes into account the following :
- a. This is not a case where the defendant tenant has paid absolutely nothing. She has made payments, which the landlords have applied to the oldest indebtedness, and the arrears halved between 2015 and 2018
 - b. The tenant admitted liability to pay the ground rent, insurance and service charge elements of the claim (save for major works of repair) at the first opportunity, and the landlords accepted this by seeking to enter judgment for that lower amount
 - c. Despite that the tenant has failed to reduce the size of the arrears since then
 - d. Historically the commercial rate has been 1% above base rate, however
“That is somewhat less than almost all plaintiffs would have to pay if they were borrowers, but significantly more than they could earn as lenders. On occasions, which in my view should be rare, the plaintiff may justify

² By the Judgment Debts (Rate of Interest) Order 1993 (SI 1993/564), with effect from 1st April 1993, the rate of 8% was substituted for the rate of 15% (the rate in force since 16th April 1985).

a higher rate by evidence.” However, there is no presumption to the effect that that is the appropriate measure and awards of two percent above base rate are common...³

- e. No evidence has been produced justifying the Judgments Act rate of 8%, but the claimants appear to be small landlords hampered in carrying out work to the premises because one of the two tenants has, for reasons to do with her personal financial circumstances, failed to pay her service charge liabilities properly
 - f. The current Bank of England base lending rate, in force since 2nd August 2018, is 0.75% but at all material times before that was fixed at 0.5% except between 4th August 2016 and 2nd November 2017, when it fell to 0.25%
 - g. Normal practice is that interest on debts is payable from the date upon which the money should have been paid
31. Taking the above matters into account, and the material before it, the court will award interest on the amounts found due at the annual rate of 2% and not the 8% claimed.
32. *Legal costs* — The court reminds itself that the principal claimed, which is more than the sum found to be due, was only £6 645.14. That places the claim firmly within the small claims track, in which costs customarily are not awarded. The case was then transferred to the First-tier Tribunal (Property Chamber), where leasehold cases are dealt with in a non-costs jurisdiction save where a party has behaved unreasonably, as defined by rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
33. As the lease includes no contractual provision entitling the landlords to recovery of their legal costs the claimants have sought to rely upon section 146(3), which for the reasons stated above does not assist, and upon the court’s general power to award costs. As the claim would fall within the small claims track, the tenant admitted everything for which she has been held liable, and the court transferred the case to the tribunal, the court declines to award anything more than the court issue fee of £455 plus fixed costs of £100.

Conclusion

34. The tenant having admitted liability for ground rent, insurance premiums and the service charges claimed (save for major works), and the landlords having accepted that offer/admission by attempting to enter judgment for those sums plus interest and costs (neither of which were admitted), the court awards (by reference to the arrears schedule attached to the claim form at page 170):
- a. Arrears of ground rent in the sum of £200 (up to 30th June 2018)
 - b. Arrears of insurance premiums in the sum of £2 072.45 (to 24th March 2019)
 - c. Arrears of service charges in the sum of £2 773.92 (to 31st August 2018), making a total of £5 046.37.
35. Interest is awarded on those sums at the annual rate of 2%, being :

³ *Baker v Black Sea and Baltic General Insurance Company Ltd* [1996] LRLR 353, per Staughton LJ, cited at para 16AI.7 in the White Book 2019

- a. £280.54 until 10th August 2018
- b. £142.40 thereafter until today, being 515 days at the daily rate of £0.2765 and hereafter at the Judgment Act rate of 8% per annum.

36. Costs are awarded in the sum of £555 (issue fee plus fixed costs).

37. The total sum payable, inclusive of interest and costs, is therefore £6 024.31.

Dated 7th January 2020

Graham Sinclair

First-tier Tribunal Judge

also sitting as a judge of the County Court pursuant to section 5(1)(c) and (2)(u) of the County Courts Act 1984

Between :-

1) **Annette Celia STONE**

2) **Benjamin STONE**

Claimants

and

Gillian ANDERSON

Defendant

ORDER

Before Tribunal Judge G K Sinclair sitting as a judge of the County Court pursuant to section 5(1)(c) and (2)(u) of the County Courts Act 1984 at Cambridge

UPON the First-tier Tribunal (Property Chamber) (Residential Property) determining the sums payable by way of service and/or administration charges upon a paper determination

IT IS ORDERED AND ADJUDGED THAT the defendant pay to the claimants :

1. The following principal sums payable under her lease :
 - a. Arrears of ground rent in the sum of £200 (up to 30th June 2018)
 - b. Arrears of insurance premiums in the sum of £2 072.45 (to 24th March 2019)
 - c. Arrears of service charges in the sum of £2 773.92 (to 31st August 2018), making a total of £5 046.37.
2. Interest is awarded on the above sums at the annual rate of 2%, being :
 - a. £280.54 until 10th August 2018, and
 - b. £142.40 thereafter until today, being 515 days at the daily rate of £0.2765, and hereafter at the Judgment Act rate of 8% per annum.
3. The court issue fee of £455 plus fixed costs of £100.

The total sum payable, inclusive of interest to date and costs, is therefore £6 024.31.

Dated 7th January 2020

Graham Sinclair

First-tier Tribunal Judge, sitting as a judge of the County Court pursuant to section 5(1)(c) and (2)(u) of the County Courts Act 1984