



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

Case reference : **CHI/00HH/LSC/2021/0066**

Property : **Flat 2 Villa Borghese, Ridgeway Road,
Torquay, TQ1 2ES**

Applicant : **Park House (Torquay) Management
Limited**

Representative : **Crown Property Management**

Respondent : **Mr William Wilfred Brian Montgomery**

Representative :

Type of application : **Transferred Proceedings from County
Court in relation to service charges**

Tribunal member(s) : **Judge D Whitney
Mr P Turner-Powell FRICS**

Date of hearing : **9th September 2021**

Date of determination : **9th September 2021**

DETERMINATION

Background

1. The Applicant seeks, and following a transfer from the County Court the Tribunal is required to make, a determination on liability to pay service charges under section 27A of the Landlord and Tenant Act 1985, and administration charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002 . These are matters within the jurisdiction of the Tribunal.
2. The original proceedings were issued in the County Court under Claim No. H4QZ31EO and were transferred to the Tribunal by District Judge Eaton Hart by order dated 25 June 2021.
3. The Respondent filed a Defence dated 6 May 2021.
4. On 4th August 2021 directions were issued for determining the claim. The Applicants representative filed a hearing bundle.

Hearing

5. The Applicant was represented by Mr Darren Stocks of Crown Property Management. Mr Montgomery was not in attendance.
6. Mr Stocks confirmed he had not had any communication with Mr Montgomery. The Tribunal was satisfied all documents had been sent to the email address given by Mr Montgomery within his Allocation Questionnaire and that it was happy to proceed.
7. At the start of the hearing Judge Whitney sitting as a County Court judge noted that the correct Claimant should be Park House (Torquay) Management Limited not Crown Property Management. Mr Stocks explained that he agreed the correct Claimant should be Park House (Torquay) Management Limited.
8. Judge Whitney agreed to amend the name of the Claimant to Park House (Torquay) Management Limited.
9. Mr Stocks confirmed he was attending as a director of the managing agent Crown Property Management. Mr Stocks confirmed he had received no reply to the Scott Schedule he had emailed to the Respondent.
10. Mr Stocks confirmed the bundle contained a lease for Flat 7. He did not have a lease for Flat 2 as he had not been provided with one by his client. He explained he had been given service charge apportionments by his client as set out in his witness statement at page 19 of the bundle. He understood that Mr Montgomery should contribute 17% towards service charges.
11. The Tribunal explained that on its preliminary consideration of the bundle and in particular the lease (pages 20-33) this did not allow the recovery of service charges in the way the demands were made. The lease appears to

allow only a fixed interim charge and then a variable balancing charge based upon accounts. The Tribunal explained they would expect Mr Stocks to address them on this point.

12. The Tribunal adjourned for a short time to allow Mr Stocks to consider the lease.
13. Upon resumption Mr Stocks explained he accepted the lease appeared to allow only a fixed sum of £14 to be collected in advance. However in his view the lease was very out of date and required to be varied. In his submission Mr Montgomery and other leaseholders had in the past all paid service charges and in his view the demands are reasonable. He did accept they were not in accordance with the lease.

Decision

14. The Tribunal did issue a short oral decision to Mr Stocks before Judge Whitney, sitting as a Judge of the County Court, determined the claim and associated matters.
15. We had before us no proper evidence as to the apportionment of service charges for the Respondents lease. A copy of the lease for the Respondents flat could have easily been obtained for a modest cost from the Land Registry. Mr Stocks candidly admitted none of the service charges claimed being the substance of the County Court claim were demanded in accordance with the lease terms.
16. Mr Stocks may be correct that the lease should be varied. However unless and until it is then in our judgment the terms must be adhered to by the Claimant. We are satisfied that Mr Montgomery within his defence challenged the service charges. As a Tribunal we must be satisfied that the substance of the claim is legitimate. The proper operation of the service charge mechanism within the lease is fundamental to this.
17. We determine that none of the demands issued being predominantly service charges are properly due and owing by the Respondent. We are satisfied that the lease does not allow an interim charge and so we make no determination as to whether or not the sums are reasonable.
18. Currently we are satisfied that no service charges are payable. It appears certain sums may be demanded as administration charges. Given we find that no service charges are payable we are satisfied that no sums are payable as administration charges.

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 by email to rpsouthern@justice.gov.uk 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.