



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

Case Reference : CHI/00LC/LSC/2022/0067

Property : 48 Ringlet Road
St Mary's Island
Chatham
Kent
ME4 3ET

Applicant : Dr M H Jones

Representative : None

Respondent : Holding and Management (Solitaire) Limited

Representative : Ms R Cunningham

Type of Application : Determination of liability to pay and reasonableness of service charges. (s27A Landlord & Tenant Act 1985) Application for an order limiting payment of Landlord's costs (s20C Landlord and Tenant Act 1985) and or (paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002)

Tribunal Members : Mr I R Perry FRICS
Mr S J Hodges FRICS

Date of Hearing : 10th November 2022

Date of Determination : 10th November 2022

DETERMINATION

Background

1. This is the determination of a claim made by Dr M H Jones who is the Leaseholder of 48 Ringlet Road, St Mary's Island, Chatham, Kent, ME4 3ET ("The Flat"). His wife is a joint owner.
2. The Freehold is owned by Countryside Management Limited. The Respondent is the management company named in the Lease. The Respondent's appointed managing agent is First Port Property Services Limited ("First Port")
3. The property is a one-bedroom flat within a modern gated development, purchased by the Applicant and his wife as a second home, that is the property is not his main residence.
4. The Application, dated 13th June 2022, relates to the reasonableness of the service charge for the years 2017, 2018, 2019, 2020, 2021, 2022 and the limitation of Landlord's costs in respect of this application.
5. The Applicant seeks a blanket reduction in the total service charges payable for the relevant periods calculated as a 33% reduction in the average service charge for the years in question of £1,656, a total reduction of £3,750. The Applicant also seeks to have the costs of these proceedings excluded from any future service charge.
6. Directions were issued by the Tribunal on 27th July 2022. The Tribunal stated that if either party intended to rely on evidence of any person (other than a person who has signed the statements of case referred to) a witness statement setting out what that witness says must be prepared, signed and dated as a statement of truth and that if there was to be an oral hearing witnesses are expected to attend the hearing to be cross-examined as to their evidence, unless their statement has been agreed by the other party.
7. A Tribunal hearing was subsequently held on 10th November 2022 via video link.
8. Ms R Cunningham represented the Respondent. Dr Jones presented his own case and was supported by Mr J Glaholm. Mr R O'Reilly, the First Port property manager responsible for the development, also attended and gave evidence. Dr Jones had submitted six written witness statements but none of the witnesses for were present for the Hearing.

Submissions

9. The Applicant had submitted a written statement of case to the Tribunal which did not specifically challenge any of the individual items within the overall service charge.
10. Within his application Dr Jones referred to a previous application he had made against First Port in 2010. He stated that since the resolution of that

case he had been trying to negotiate with First Port in respect of outstanding costs to him for legal bills incurred as part of the case. Having paid the amounts specified in service charge demands from that case onwards he accepted that he was nevertheless continually in arrears in respect of his service charge payments having deducted the disputed amount that he considered was due to him.

11. Dr Jones stated that since the 2010 case he had unsuccessfully tried to negotiate with First Port for a lower management fee within the service charge, and he informed the Tribunal that he understood that other owners had attempted a similar negotiation.
12. Dr Jones stated on several occasions that he would be content to pay more for additional repairs or improved services.
13. Referring to the present service charge fees under consideration Dr Jones had three main areas of dispute.
14. A) That the garden maintenance work is insufficient or unsatisfactory. As evidence of this he submitted one photograph which showed a small pile of autumn leaves and two small items of rubbish within the open car barn area.
15. B) That general maintenance is unsatisfactory. As evidence of this he submitted photographs, all said to have been taken in November 2021, of a broken panel in the car barn, a brick built bin store where the timber doors have been removed, iron gates to the development which are permanently tied open as a safety measure, broken electric mechanism and control panel for the gates, timber cladding that has not been treated since the property was first constructed about 20 years ago, a metal flashing below a window showing a rust stain and a damaged seal to a window.
16. Dr Jones also said that the common entrance hall to his property had not been decorated since new and that the carpet is dirty, that some guttering is held in place with duct tape, that the entry phone to his property is broken and that some builders' debris has been left on site for over 10 years.
17. One photograph taken in the car barn showed gym equipment that was stored there. Dr Jones suggested that it was the responsibility of First Port to remind tenants that the open barn was not for storage and that the barn should be kept clear.
18. C) That the management fees were excessive as the managing agents did not fulfil their obligations nor did they not communicate well with the Tenants.
19. Dr Jones stated that in normal times, pre-pandemic, he would visit the Flat for about one day every fortnight. He was referred to his statement of account in the papers and confirmed that his balance outstanding had

been finally reduced to nil in January 2021. He accepted that the balance outstanding on his account in 2010 was £7,837.50.

20. In summary Dr Jones said that he considered that First Port provided a poor level of service, the quality of work done is not good and communication is poor. He acknowledged that additional works would have resulted in an increased service charge levy and expressed a willingness to pay such increased charges for improved service and communication, and for repairs or maintenance which would preserve the quality of the development.
21. Mr O'Reilly gave evidence to the Tribunal in his capacity as the First Port's manager of the development. He has been responsible for the development since 2014 and stated that he visits the development 'about once per month'. He explained that the timber doors to the bin store were regularly damaged by refuse collectors and that, as the store could not be viewed from the homes on the site, it had been decided it best and most economical to not replace the doors. He said that this had been agreed with some residents albeit at an informal meeting on site.
22. Mr O'Reilly also stated that several residents did not want the electric gates repaired as they opened automatically when any car approached the development and therefore provided no security. He said that this had been agreed with some residents albeit at an informal meeting on site.
23. Mr O'Reilly also stated that no quotations to repair or replace gates had been obtained as due to underpayment by Leaseholders there are insufficient monies in the management fund for the development. He explained that arrears at this development are a continual problem which mitigates against further expenditure.
24. Mr O'Reilly stated that he considers that the garden maintenance contractors do a good job and that the grounds are generally well kept. He stated that it was First Port's practice to ask for three tenders for any contract and that the lowest price was usually accepted. He was not aware of any outstanding gutter repairs.
25. Mr O'Reilly explained to the Tribunal that the wood cladding referred to by Dr Jones is formed of pressure treated timber that is said to last for between 20-25 years before any further treatment is necessary. As manager responsible for the site, he has this in mind for the near future and expects to be consulting with Leaseholders on the development about this and other maintenance/repairs.
26. Mr O'Reilly also informed the Tribunal that the car barn where the leaves were shown was not strictly part of the responsibility of the management company as individual car spaces are demised to the Leaseholders and do not form part of the grounds to be maintained.
27. In her summary of the Respondent's case Ms Cunningham asked the Tribunal to take a broad view of the management of the development which is "consistently hobbled through lack of funds". Debtors included

Dr Jones who for many years had held back funds whilst in negotiation about a historic case. She explained the downward spiral of property management as arrears led to inadequate cash funds which in turn led to lack of works which in turn led to dissatisfaction which led to further arrears and so on.

28. Ms Cunningham also referred the Tribunal to Clause 7.10.2 of the Lease for the property which states that the lessee shall not be entitled to enforce any of the Management Company's or the Owners covenants respectively while any sums payable by the Lessee to them under the lease are in arrears or the Lessee is otherwise in substantial breach of his covenants under this Lease.
29. Ms Cunningham points out that Dr Jones complains of lack of communication but also refers to '100's of emails' between First Port and Leaseholders.

The Lease

30. The Applicant provided the Tribunal with a copy of the lease for the Flat for which he is a Leaseholder.
31. Within the lease the Service Charge means the yearly sum payable under the Fourth Schedule.
32. By clause 3 of the Lease the Applicant covenants to pay the service charge:
33. 3.3 in respect of every Service Charge Year to pay the Fraction of the Service Charge to the Management Company by two equal instalments on the Half-Yearly Dates;
34. 3.4 to pay the Management Company on demand the Fraction of the Service Charge Adjustment pursuant to Schedule 4 provided in respect of the Service Charge Year current at the date hereof the Lessee shall on execution hereof pay a due proportion of the Current Service Charge specified by the particulars;
35. To pay the Management Company on demand the Fraction of any Additional Contribution that may be levied by the Management Company.
36. By Schedule 5 of the Lease the Management Company will during the Term carry out the works make payments and provide the services specified in Schedule 5 provided always that:
37. 4.1.1 the Lessee shall have paid the Service Charge Adjustment or Additional Contribution due;
38. 4.1.2 the lessee shall not be in breach of any of the covenants herein contained;
39. 4.1.3 in the case of any item of disrepair the Management Company shall not be liable for breach of this covenant until the lessee has given written

notice thereof to the Management Company and the management Company has had a reasonable opportunity to remedy the same;

40. 4.1.4 if at any time the Management Company shall reasonably consider that it would be in the general interest of the lessees owners or occupiers of the properties in the Phase so to do the Management Company shall have the power to discontinue any of the matters specified in Schedule 5 (other than the obligation to effect the insurance in accordance with paragraph 8 of part 1 of Schedule 5 and paragraph 6 of part 2 of that schedule and paragraph 2 of part 3 of that schedule) which in its opinion shall have become impracticable obsolete unnecessary or excessively costly provided that in deciding whether or not to discontinue any such matter the Management Company shall consider the views and wishes of the majority of lessees owners or occupiers of properties in the Phase.

Consideration and Decisions

41. Dr Jones has been at variance with First Port since 2010 and seeks a blanket reduction of 33% of his total service charge payment for the last 6 years as he considers that First Port have not provided a good management service. He refers specifically to poor communication; repair works that have not been carried out and the standard of grounds maintenance.
42. The Tribunal first considered the evidence from the Applicant and from Mr O'Reilly on behalf of First Port regarding the ground maintenance which was only evidenced by a single photograph of the car barn which is not included in the grounds maintenance. Dr Jones considers the grounds maintenance to be inadequate whilst Mr O'Reilly says it is good. The Tribunal has not been given sufficient evidence to conclude that it is inadequate and had been given no evidence that the cost is excessive.
43. The Tribunal also considered whether there was evidence of other disrepair that should have been remedied by First Port. From the photographs provided there are clearly some repairs that are needed at the property.
44. Mr O'Reilly had given an explanation that some other residents on the development did not wish to spend monies on repairing the electric entrance gates or the gates to the bin store and that he had accepted that at the time because there were insufficient funds in the service charge account.
45. The Tribunal accepts that these are only minor and will in any case be at the cost of the Leaseholders.
46. Mr O'Reilly had explained to the Tribunal that the timber cladding referred to by Dr Jones was pressure treated and was only due for treatment in the next year or so, and that he would be issuing a section 20 consultation about these works soon. Dr Jones provided no evidence to contradict this position.

47. The Tribunal did not conclude that the general maintenance has been unsatisfactory.
48. The Tribunal also considered whether there was evidence of a lack of communication by First Port. Dr Jones himself had referred to hundreds of emails between leaseholders, many of which were within his submission. First Port and Mr O'Reilly referred to a number of meetings with Leaseholders, albeit these seemed to be on an informal basis, and it was not clear whether all Leaseholders had been notified about the meeting dates.
49. Dr Jones had provided some evidence of the costs levied by other management companies at other developments where friends of his lived, but he had not obtained any competitive quotes for the cost of managing the development in which the flat is situated.
50. The Tribunal has considered the amounts charged for the management service provided by First Port and does not consider the charges to be unreasonable. No comparable evidence was submitted which would justify a lower figure. Mr O'Reilly was of the opinion that on this development First Port was probably acting at a loss.
51. Notwithstanding its conclusions about the issues raised by Dr Jones the Tribunal concludes that under the terms of the Lease the Applicant was not entitled to enforce any covenants of the Management Company to provide the services set out in Schedule 5 while service charges were outstanding. He had failed to pay his total service charge for many years although the arrears were finally cleared in January 2021.
52. Having carefully considered all the evidence provided the Tribunal concluded that Dr Jones was not entitled to a reduction in his service charge for the years 2017-2022 and his application is refused.
53. In her argument Ms Cunningham suggested that the main purpose of the application from Dr Jones is to persuade the Respondent to employ the services of an alternative management company (i.e. not First Port). Dr Jones denies that this is the case, but he would like to see minor repairs carried and the structure of the property well maintained, in full understanding that a share of these costs will fall to him.
54. The Tribunal is hopeful that these issues can be dealt with in the upcoming schedule of works being prepared by Mr O'Reilly.

Costs

55. Within his application Dr Jones asks the Tribunal to exercise its powers under section 20C of the Landlord and Tenant Act 1985 to make an order that the costs of this Tribunal may not be included within the amount of service charge payable by the Leaseholder. He makes a similar application

under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

56. Dr Jones has been unsuccessful in his application for a reduction in his service charge and the Tribunal did not find that First Port had acted unreasonably, accordingly both applications in respect of costs are refused.

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.