



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

Case Reference : CAM/00KG/LSC/2013/0005 & 14

Property : 118 and 160 Conway Gardens Grays RM17
6HQ

Applicant : Argent Street F Management Co Ltd

Representative : Mr Richard Donan counsel

Respondent : Ms Lynn Tarragano

Representative : Mr David Abohayre

Type of Application : to determine reasonableness and payability
of service charges and administration
charges

Tribunal Members : Mrs E Flint DMS FRICS IRRV
Mr D T Robertson
Mr J Francis QPM

Date of Hearing : 17 June 2013

Venue of Hearing : Park Inn North Stifford Grays Essex

Date of Decision : 29 July 2013

Decision of the Tribunal

The Tribunal determines that the sum of £180 will be payable by the Respondent for outstanding service charges in respect of Claim No. 2YL81455 and a further £180 will be payable for outstanding service charges in respect of Claim No. 2YL81451 when the requisite accountant's certificate is served on the Respondent.

The Tribunal determines that the administration charges of £97.75 and £81 in respect of each flat are not payable.

The Respondent withdrew her counterclaim in respect of each application.

In respect of the S20(c) application the Tribunal determined that the costs incurred by the landlord are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable.

The case is remitted to the County Court to deal with the outstanding matters in relation to interest, fees and costs.

The application

1. On 23 August 2012 the Applicant issued a claim notice in Northampton County Court in respect of no.160 Conway Gardens and on 24 August issued an identical claim in respect of No. 118 Conway Gardens. The amount claimed in each case was £667.50 made up of £527.50 in unpaid service charges, £70 court fee and £70 solicitor's costs.
2. On 1 October 2012 the Respondent filed a defence and asked for both cases to be dealt with together to prevent extra legal costs and wasted Court or Tribunal time.
3. The proceedings were transferred to Watford County Court on the 3 November 2012 (No. 160) and 15 November 2012 (No.118) under case references 2YL81455 and 2YL81451 respectively.
4. On 5 December 2012 DDJ Bowman transferred the claim in respect of No.160 to the LVT "for determination of the total amount (if any) due to the Claimant."
5. On 29 January 2013 DJ Carr referred the proceedings in respect of No. 118 to the LVT "for them to consider whether or not to hear this case at the same time as 2YL81455 which has already been referred."

The hearing

7. The Applicant was represented by Mr R Donan counsel and the Respondent appeared in person and was represented by Mr D Aboychayre.
8. At the commencement of the hearing the Tribunal raised the terms of the transfer in respect of No.118. Both parties agreed that the Tribunal should deal with both cases as the facts and amounts claimed were the same.
9. The parties confirmed that the amount outstanding in respect of each flat was £358.75 comprising £180 service charge, £97.75 legal costs and £81 administration costs.
10. Mr Donan contended that as the previous action in the County Court had been struck out without any evidence having been heard the judge's decision was not to be considered the same as one made after hearing the evidence. The tribunal were of the opinion that the order to strike out was a final judgement in relation to those service charges claimed in that application and therefore none of those issues could be considered by it. The only matters which were before this Tribunal were the matters which had been referred to it i.e. case references 2YL81455 and 2YL81451.
11. Mr Donan conceded that the leases did not contain any provision in the lease for the Company to recover administration charges.

The background

12. The flats are situated within a development of 3 and 4 storey purpose built blocks of flats constructed in the late 1980's in communal gardens with parking spaces. The Tribunal inspected the common parts, internally and externally, on the morning of the hearing. It noted that the hallways and staircases of both blocks were in need of decoration and there were some areas of disrepair on the staircases. Externally the gardens were in fair condition.
13. The individual leases which are dated 9 June 1988 and 21 July 1988 are each for a term of 99 years from 25 December 1986 and in identical modern tripartite format. The claimant Management Company ("the Company") was a party to the lease and by clause 3 (5)(b) the lessee covenanted with both the Company and the lessor to pay the service charges calculated in accordance with the terms of the lease. The Company covenants to carry out the maintenance obligations on behalf of the freeholder. The lessee covenants at clause 5(b) to contribute and pay on demand the proportionate part set out in Part V paragraph (j) of the schedule of all costs charges and expensesincurred by the

Company in performing and carrying out its obligations under the lease.

14. Under Part IV the Company covenants to maintain repair redecorate and renew the structure and exterior of the building, balconies, common parts, installations relating to the services listed and boundary fences, maintain the external decorations including the window frames and undersides of the balconies, clean and light the common passage ways, landing and staircases and insure the building.
15. The Company is required to keep proper accounts which are to be certified by an accountant for the period ending on 31 March each year. The certified amount payable and the estimate for the following year are to be provided to the lessee within 2 months of the year end.
16. The leases do not include clauses providing for the recovery of administration charges, legal costs or interest on unpaid sums.

The issues

17. The level of the service charge had not been challenged in principle. In the year commencing 1st October 2010 the Respondent had paid £148 per quarter resulting in the arrears of £180 on each account for the year in question.
18. Administration and legal costs in relation to the arrears of £97.75 and £81 had been added to the accounts.
19. The Respondent made identical counter claims in respect of each flat: £498.75 in relation to a claim by the previous managing agents and £168.75 which had not been credited to the account at the time proceedings were issued. The payment of £168.75 was subsequently credited to the account and the claim relating to the previous managing agents was withdrawn during the hearing following confirmation that the outstanding balance on the accounts had been reduced to nil following an earlier county Court decision.
20. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The Service Charge account

21. Mr M J Attwood, a director of Attwood Property Management Ltd (APM), the Company's managing agents set out the history of the management of the block and explained that since they took over the management of the subject blocks of flats in October 2010 the service

charge has been set at £675 per annum payable at £168.75 per quarter. There were 33 flat owners, only the Respondent had challenged the charges and in fact the Respondent had been paying at that rate since APM had taken over. It was his understanding that all the invoices served by the previous managing agents had complied with the statutory requirements. Mr Albohayre had paid the charges in respect of his own flat.

22. Mr Attwood confirmed that the accounts were signed off by an accountant and agreed with the Directors of the Company. Each lessee was sent a copy of the accounts but not an accountant's certificate in accordance with the terms of the lease.
23. Mr Attwood referred to a schedule of costs which had been incurred since the applications to the County Court had been made.
24. Mr Albohayre stated that the Respondent did not know how the outstanding sums were made up until the Applicant's statement of case was received. He asserted that the state of the building in 2007 was not good; the state of the garden was poor. He explained that he had paid the arrears on his own flat because he thought it would be embarrassing at an AGM for other lessees to be informed that he, as a Director of the Company, was in arrears. He confirmed that he was appointed a Director of the Company in June 2008 and that there had to be an agreement of the members of the Company before capital expenditure could be incurred. However there had been no such agreement in either 2007 or 2008 and there was no AGM held in 2009, a year when he was jointly responsible for calling such a meeting.
25. Mr Albohayre agreed that the Company can employ staff and agents and that the reasonable costs of the managing agents were payable by the lessees. He accepted that one of the obligations of the Company was to pursue payment of service charge arrears.
26. As regards to the asserted non-compliance of the service charge demands served by GEM, the former managing agents, during cross examination he was unable to explain why the demands were not compliant.

The Tribunal's decision

27. The Tribunal determines that the service charges were reasonably incurred and payable once the accountant's certificate has been supplied in accordance with the terms of the lease.
28. The Tribunal determines that the administration charges are not payable as it was conceded by the Applicant that there is no provision

in the lease for payment of administration charges or interest on outstanding monies.

29. The Tribunal's jurisdiction is limited to those matters transferred by the County Court. Therefore it could not deal with costs incurred after the applications were made to the County Court nor any matters relating to Company law.

Reasons for the Tribunal's decision

30. The Tribunal is satisfied that no proper evidence has been produced to show that the amount of the service charge was unreasonable. No evidence was produced to show that the standard of the maintenance was unsatisfactory.

Section 20(c) application

31. Mr Donan advised that the costs are not recoverable under the service charge regime in the lease.

The Tribunal's decision

32. Accordingly, the Tribunal determines that it is just and equitable that the costs incurred by the Respondent in connection with proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable

The next steps

33. The Tribunal has no jurisdiction over county court costs. This matter should now be returned to the Watford County Court.

Chairman: _____
Evelyn Flint

Date: 29 July 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,

- (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the Tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) 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.

- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).