



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

**Case Reference** : **MAN/00BX/LSC/2013/0043**

**Property** : **43, York Road, Huyton, Liverpool, L36 1UZ**

**Applicant** : **Homestead (Harrington Court) Limited**

**Representative** : **Mr David Bentham**

**Respondent** : **Mr James R Farrell**

**Type of Application** : **Under Section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) and Schedule 11 of the Commonhold & Leasehold Reform Act 2002 (the 2002 Act)**

**Tribunal Members** : **Mr Paul W J Millward LL.B  
Mr Tudor Roberts FRICS**

**Date and venue of Hearing** : **12<sup>th</sup> July 2013 at Liverpool Civil & Family Courts, 35, Vernon Street, Liverpool, L2 2BX**

**Date of Decision** : **12<sup>th</sup> July 2013**

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**DECISION**

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## **The Application**

1. By a claim issued in Northampton County Court the Applicant seeks to recover unpaid service and administration charges from the Respondent relating to the Property. The claim was transferred to St Helens County Court by order dated 13 February 2013 and thereafter the St Helens County Court ordered that the claim be transferred to the Tribunal. The Residential Property Tribunal Service (RPTS) notified the parties that it had received the papers from the Court pursuant to that Order and thereafter an Order for Directions (the Directions) was made by a Chairman of the Tribunal on 19 April 2013 and sent to the parties on that date.
2. Pursuant to the Directions both parties provided Statements of Case with supporting documentation to enable the Tribunal to proceed to a determination under section 27A of the Landlord and Tenant Act 1985 (the 1985 Act), as to the payability of the service charge in respect of the Property and under schedule 11 of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act).
3. The Application relates to demands for service charges in respect of the year commencing 1 July 2011 and ending on 30 June 2012. The total service charge outstanding at commencement of proceedings is in the sum of £663.84 to which have been added £125.00 administration fees, comprising an "administration fee" of £42.00, a "lease fee" of £23.00 and a "court fee" of £60.00, making a total of £788.84.

## **The Lease**

4. The Respondent is the lessee of the Property under a lease dated 19 August 1992 and made between Knowsley Borough Council (1) Barratt Chester Limited (2) the Applicant (3) and the Respondent (4) and for a term of 125 years from 1 January 1992 (the Lease).
5. Under the Lease, management of the Property (together with all other flats in the same development) is assigned to the Applicant.
6. By clause 6 in the 7<sup>th</sup> schedule of the Lease the Respondent covenant to contribute and pay "the lessee's proportion".
7. "The lessee's proportion" is defined in the Particulars on page 3 of the Lease as "the proportion of the maintenance expense payable by the Lessee in accordance with the provisions of the 7<sup>th</sup> schedule of the Lease" and in paragraph 1 of the 7<sup>th</sup> schedule is stated that the proportion is to be a reasonable part of the total expenses being solely determined by the Management Company.
8. The "maintenance expenses" is defined in the Particulars on page 2 of the Lease

as the monies actually expended or reserved for periodical expenditure by or on behalf of the Management Company .....in carrying out the obligations specified in the 6<sup>th</sup> schedule of the Lease.

9. The obligations set out in the 6<sup>th</sup> schedule of the Lease include (inter alia) “redecorating so often as in the opinion of the Management Company being necessary but at least once every 5 years”.

### **The Law**

10. Section 18 of the the 1985 Act provides:

- (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 of the 1985 Act provides that

- (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 provision 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.

Section 27A of the 1985 Act provides that

- (1) an application may be made to a 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 date at or by which it is payable, and

(d) the manner in which it is payable.

- (2) Subsection (1) applies whether or not any payment has been made.
- (3) ....
- (4) No application under subsection (1)...may be made in respect of a matter which –
  - (a) has been agreed by the tenant.....
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

11. Paragraph 1(1)(d) of Schedule 11 of the the 2002 Act provides that administration charge” means an amount payable by the tenant of a dwelling as part of or in addition to the rent which is payable in connection with a breach (or alleged breach) of a covenant or condition in the lease.

12. Paragraph 1(3) of Schedule 11 of the 2002 Act provides that a “variable administration charge” means an administration charge which is neither specified in the lease nor calculated in accordance with a formula specified in the lease. Paragraph 5 of Schedule 11 of the 2002 Act provides that an application may be made to a Tribunal for determination whether an administration charge is payable, and if it is, as to the person by whom it is payable, the person to whom it is payable, the amount which is payable, the date at or by which it is payable and the manner in which it is payable.

### **The Inspection**

13 The Tribunal (the Tribunal) inspected the Property and the common areas of the block in which the Property is situated on the morning of 12 July 2013 in the presence of the Respondent and the Applicant’s representative.

14 The Property is a second floor flat situated in a purpose built block of similar flats. There are in total 4 blocks of flats comprising a total of 24 flats. The block of flats is 3 storeys high. There is communal parking and gardens by each of the blocks. The Property is allocated one parking space. There are additional visitor spaces. The houses adjacent to the flats on the development are not subject to the same service charge. Only the flats pay the service charge.

### **The Submissions of the Parties**

15. The Applicant’s statement includes (inter alia) the following submissions:-

- 15.1 It included copies of the court papers the service charge budgets and accounts for the year in question, a copy of the Lease and relevant correspondence. It also referred the Tribunal to the important clauses in the Leases.
- 15.2 It confirmed that the Applicant had carried out its management obligations pursuant to the covenants contained in the Lease.
- 15.3 It confirmed that the service charge demands had been served on the

- Respondent and that the Respondent had failed to pay the whole of the supplementary demand raised in relation to the external decoration. It set out a schedule of the amounts outstanding.
- 15.4 That the Applicant had served the appropriate notice under section 20 of the 1985 Act in relation to the estimates obtained in relation to the external decoration.
  - 15.5 The Applicant also filed a supplemental statement in answer to the Respondent's statement. This included details of the percentages used to calculate the share of total expenditure payable by each flat-owner, a confirmation that at the various meetings in 2009 it had been agreed that the flat-owners would repair the cladding at their own expense and that resin was used to repair the Respondent's window frames as these were deemed to be of acceptable standard by the site manager and decorator. Furthermore repairs to the downspouts has now been completed.
16. The Respondent's statement includes (inter alia) the following submissions:-
- 16.1 The Applicant is the company to whom he pays his service charge. The Applicant's responsibilities include effecting insurance, all external repairs including the replacement of rotten woodwork, the cleaning and upkeep of the communal areas and the gardens.
  - 16.2 That in 1999 the Respondent had had to take legal action against the Applicant as it had not carried out necessary repair work.
  - 16.3 That he agreed with the terms set out in paragraph 5 of schedule 11 of the 2002 Act and had calculated how much each tenant should pay towards the decoration costs. He had paid the sum of £399.00 which he had calculated was his reasonable share. Receipt of that sum has been acknowledged by the Applicant.
  - 16.4 That this dispute is about the Applicant not carrying out repair work as required. In particular rotten wood in the window frames has not been replaced. When the external decoration was carried out the decorators used decorator's chalk to hide the rotten wood. His window frames were in such a poor condition that he had to replace the same. He had to obtain a loan from his bank to do so. Furthermore, failed light bulbs in the communal areas are not replaced for 3 months. The landings can be in complete darkness as a result. He has reported necessary repairs on 12 February 2013 but these repairs have still not been carried out.
  - 16.5 The Respondent supplied copies of various documents and correspondence

### **The Hearing**

17. The hearing took place on the 12 July 2013. Both the Applicant (represented by Mr David Bentham) and the Respondent attended. Both parties confirmed the contents of their respective statements.
18. Mr Bentham on behalf of the Applicant then gave evidence as follows:-
  - 18.1 The Property was built in 1992.

- 18.2 Under the terms of the Lease a deferred service charge of 1% was levied at the time of sale of a flat. This was to be used as a contingency fund for long term repairs. But not many of the flats have been sold and the money is therefore not being paid into the fund. This creates a cash flow issue.
- 18.3 The Applicant has difficulty in collecting service charges. The Respondent is in general quite good. A consultation meeting took place in 2009 to discuss how the Applicant could get over the lack of funds for decoration. A copy of the minutes has been provided. The residents said they would do their own cleaning of the common areas but that did not work.
- 18.4 Estimates had been obtained for external decoration. New estimates were obtained in 2011. The total was £12,000 plus vat. The expenditure was apportioned in the same way as the service charges with larger flats paying a higher percentage. The Respondent objected to this. After the work was carried out all tenants paid their respective shares except the Respondent. (at this point the Respondent interceded and stated that one tenant owes over £1,000, but the Applicant said that that sum related to annual service charge and not the surcharge).
- 18.5 The Applicant has tried to raise the level of service charge but this proved unpopular. The Applicant has tried to work hand-in-hand with the tenants.
- 18.6 The Respondent is not disputing the annual service charge – only the decoration surcharge. He owes over £400. This represents 10% of the budget.
- 18.7 No Directors of the Applicant company live in the flats. Mr Bentham is the only Director. Many tenants do not attend meetings. The Applicant is not a Right to Manage company and the owners of the flats have never been invited to join. None requested to do so.
- 18.8 After the s.20 notice, a copy of which has been provided, the Applicant received no response. Three estimates had been obtained, which had been trimmed down to 2. Part of the estimates was to replace the bin shelter. This work was not carried out but everything else included in the estimates was done, although some cladding was repaired instead of being replaced. The work was undertaken in June 2012.
- 18.9 Internal decoration has not taken place for many years and the original carpets are still down. The occupants of the block in which the Property is situated take care, but those in other blocks are not so good.
- 18.10 On cross-examination by the Respondent, the Applicant admitted that when demanded the total was higher, but this was because the Applicant had intended to pay in instalments as funds were low. Ultimately the bill was settled in one lump sum and the credit surcharge was therefore not payable. It was admitted that the Respondent had not been notified of the reduction. The Applicant also confirmed that the actual sum paid was £14,409. He was not sure where the extra £9 had come from.
- 18.11 The Applicant confirmed that the administration charges were for collecting arrears and were payable under clause 3 of the 8<sup>th</sup> schedule of the Lease which authorises the Applicant to recover all costs and expenses in or in contemplation of any proceedings under s.146 and s.147 of the Law

of Property Act 1925.

19. The Respondent then gave evidence as follows:-

- 19.1 The problem with the Applicant has always been in relation to repairs. They don't do repairs. Decorators use ladders – never scaffolding.
- 19.2 He was told he must have cracked his windows on the inside, not the outside. He said he doesn't believe anything Mr Bentham says.
- 19.3 (at that point Mr Bentham interceded and said that the Applicant had taken proceedings in relation to the service charge, but had met with Solicitors and the matter was settled. He had intended to make an insurance claim).
- 19.4 Electricity bills have risen dramatically from £370 to £1,261 (to which Mr Bentham stated that this was probably as a result of receiving estimated bills and that low bills were never challenged).
- 19.5 Insurance premiums have risen (Mr Bentham said as a result of a revaluation). Downspouts are broken, quarry tiles are missing and security lighting is not repaired when necessary.

20. In summing up Mr Bentham said that all of the deferred service charge had been used up and extra charges were required to pay for the decoration and other repairs. The sinking fund does not exist even though some flats have been sold as the money has been used elsewhere. The annual service charge has now been increased to £604 per annum for the Respondent's flat.

### **The Tribunal's Determination**

21. The Tribunal considered very carefully the written submissions of the parties, the evidence given at the hearing and the documents provided.
22. The issues to be determined by the Tribunal are (a) is the demand for the supplemental service charge (including the administration charges) valid and if so (b) to what extent is the demand reasonable and if so (c) to what extent (if any) the Respondent should pay towards the same.
23. No evidence has been provided to the Tribunal to suggest that the service charge demands are invalid. A s.20 Notice had been served, although the Tribunal had some reservations about the wording of the Notice and whether it strictly complied with statutory requirements. However the Respondent did not raise any objections thereto and as the Notice set out the basic details required the Tribunal determined that the same was valid.
24. In relation to the reasonableness of the demands the Tribunal firstly considered the points raised by the Respondent relating to repairs and electricity charges. It is probably true to say that repairs should have been carried out earlier, but as funds were not available the service charge would have had to rise substantially a number of years ago to fund this work. In any event the Respondent had paid the annual service charge without intimating that he objected to the same.

25. The repairs carried out had been carried out at the same time as the external decoration and are therefore chargeable under the terms of the Lease. The last decorating had been carried out many years ago and obviously some repairs will have been outstanding for much of the intervening period as a result. Furthermore it is unlikely that the Applicant has complied with its obligations under s.4 and s.5 of part A of the 6<sup>th</sup> schedule of the Lease. It may also be the case that the Applicant has incorrectly used the monies raised by the deferred service charge as the works undertaken are not within the definition set out in paragraph (n) on page 3 of the Lease.
26. Nevertheless the Tribunal determined that the balance of the deferred service charge was reasonable and payable in full by the Respondent. In particular the question of the electricity charges was not part of the application.
27. The Tribunal then considered the administration charges raised by the Applicant. It has been said that these are chargeable under paragraph 3 of the 8<sup>th</sup> schedule of the Lease. The Tribunal did not accept this argument as the charges were clearly not incurred in or in contemplation of forfeiture proceedings. The two charges in the sum of £23 and £42 were not payable. The Court fee of £60 is a matter for the County Court and would not be added to the sum payable by the Applicant at this time.
28. The total amount payable by the Respondent in relation to the service charges is therefore in the sum of £264.84, calculated as follows:-

Amount claimed by the Applicant (see para. 3)	£788.84	
Less		
Sum paid by Respondent	£399.00	
Court fee	£60.00	
Administration fee	£42.00	
Lease fee	<u>£23.00</u>	
	£524.00	£524.00
Payable		£264.84