



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

Case Reference: CHI/43UK/LIS/2013/0091

Property: Flat 2 Denewood, Park Ley Road,
Woldingham, Caterham, Surrey,
CR3 7LD

Applicant: Mr John Patrick O'Brien

Representative: In person

Respondent: Denewood Property Ltd

Representatives: (1) Ms Dunnell (Flat 1)
(2) Ms Nesbitt (Flat 3)

Type of Application: Liability to pay and/or the
reasonableness of service charges

Tribunal Members: Judge I Mohabir
Mr A O Mackay FRICS
Mr T Sennett MA MCIEH

Date and venue of hearing: 25 February 2014
Selsdon Park Hotel

DECISION

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for a determination of his liability to pay service charges for the years ended 31 December 1999 to 31 December 2001.
2. The Applicant is the lessee of the property known as Flat 2 Denewood, Park Ley Road, Woldingham, Caterham, Surrey, CR3 7LD pursuant to a lease dated 14 May 1976 granted by Highshore Properties Ltd to Mr and Mrs J L J Sims from that date and expiring on 31 December 2073 (“the lease”). Where necessary the Tribunal will refer to the relevant lease terms as to their meaning and effect. The Respondent is the present freeholder and the Applicant is the present leaseholder
3. The Applicant commenced proceedings in the County Court in respect of a purported series of loans made to the Respondent between January 2000 and August 2001 totalling £7,118.25. His pleaded case was that the sum of £4,326 remained owing to him and this was the sum claimed against the Respondent.
4. The Respondent defended the proceedings on the basis that the payments made by the Applicant were in fact service charge payments made pursuant to his lease.
5. By an order made by District Judge Major in Croydon County Court dated 22 May 2013, the Applicant was given permission to amend his Particulars of Claim to set out in more detail the basis on which the purported loans were made to the Respondent.
6. The amended Particulars of claim filed and served by the Applicant appeared to raise various service charge issues as opposed to any loans made to the Respondent.
7. By an order made by District Judge Major dated 8 August 2013, the case was transferred to the Tribunal to determine the service charges in issue.

8. On 31 October 2013, the Tribunal gave Directions limiting the issue to the reasonableness to the following service charges:

Y/E: 31 December 1999

04.01.99 £2,327.80

Y/E: 31 December 2000

09.05.00 £296.14

15.09.00 £1,227.50

06.11.00 £130

18.12.00 £130

Y/E: 31 December 2001

01.03.01 £198

30.04.01 £200

24.06.01 £408.87

28.06.01 £2,000

28.08.01 £200

These are each considered in turn below.

Relevant Law

9. This is set out in the Appendix annexed hereto.

Decision

10. The hearing in this matter took place on 25 February 2014. The Applicant appeared in person. The Respondent was represented by Ms Dunnell and Ms Nesbitt who are, respectively, the leaseholders of Flats 1 and 3.

Procedural

11. At the commencement of the hearing an application was made on behalf of the Respondent for permission to rely on a witness statement made by Ms Nesbitt. The reason given as to why it had not been served was that there had been a lack of understanding about the time limit for serving the witness statement. In any event, having considered the document, the Applicant raised no objection to the statement being admitted.

Year Ended 31 December 1999

12. The Applicant accepted that the service charge contribution of £2,327.80 he had paid for this year had been expressly agreed by him. His case was simply that he wanted to know what had happened to the money and he raised no issues about his liability to pay this amount or its reasonableness.
13. The Tribunal ruled that, by the Applicant agreeing the sum of £2,327.80, it had no jurisdiction by virtue of section 27A(4)(a) of the Act¹ to make any determination in relation to this amount.

Year Ended 31 December 2000

14. The heads of service charge expenditure incurred for this year were Insurance and administration costs (£1,184.66), Companies House (£15), Accountancy (£141), bank charges (£50) and a building fund contribution (£2,914) totalling £4,304.66. Of this sum, the Applicant's contractual liability was calculated at 25%, being £1,076.17.
15. It seems that the long-standing arrangement agreed by the leaseholders was that the service charge expenditure in any given year was paid by

¹ See below

each of them paying monthly instalments of £65. Any overpayments made in any year are allocated to the reserve fund.

16. Ms Dunnell explained that the payments made by the Applicant on 15.09.00 for £1,227.50, on 06.11.00 for £130 and on 18.12.00 for £130 represented payments made by him pursuant to the agreed monthly payment arrangements. The sum of £1,227.50 paid by the Applicant on 15 September 2000 was for arrears of 19 months' contributions (less a contribution of £7.50). 11 of those months related to the period February 1999 to December 1999. The remaining 8 months related to the period from January to August 2000.
17. The Applicant agreed that all of the heads of expenditure for this year had been reasonably incurred and the amounts were reasonable.
18. The Applicant's submitted that his overall contractual liability, especially in relation to his insurance costs of £296.14 and maintenance costs generally, should not have been calculated at 25% of the total expenditure. He argued that he sold part of the premises to a Mr and Mrs Sturridge on 5 January 1999 and the contract of sale expressly provided that his service charge liability would be reduced by one third.
19. The Seventh Schedule of the lease sets out the covenants on the part of the management company, who is also the Respondent in this case. Paragraphs 1 and 2 of the Schedule expressly require the Respondent to repair and maintain common and external parts of the building and to insure it.
20. By clause 27 of the lease, the lessee, and therefore the Applicant, is contractually obliged to pay a contribution of 25% towards the costs

incurred by the management company in carrying out its obligations under the Seventh Schedule. The contract of sale to Mr and Mrs Sturridge dated 5 January 1999 did not vary the Applicant's contractual liability of 25%. The only express variation was in relation to the ground rent and nothing else. The lease has not been varied and he accepted that no such variation had taken place. Unless and until this takes place, the Applicant's contractual liability to pay a service charge contribution is fixed at 25% of the overall expenditure in any given year and has been calculated correctly for the year ended 31 December 2000 at £836.91.

Year Ended 31 December 2001

21. The total service charge expenditure incurred in this year was £13,896.11, of which the Applicant's liability was placed at £3,403.53. It seems that the sum of £3,777.80 had been used from the reserve fund to defray some of the expenditure for external redecorations. The heads of expenditure have, helpfully, been set out at page 8 of the Respondent's statement of case and this is found behind Tab 3 of the hearing bundle.

22. The Applicant agreed that all of the heads of expenditure were reasonably incurred and were reasonable in amount save for the scaffolding and painting costs of £13,145. In relation to this amount, the Applicant repeated the same arguments he had made earlier about his contractual liability of 25% based on the sale of part of the premises and the fact that his flat only now had two windows. For the same reasons set out above, the Tribunal did not accept that the Applicant's arguments had any validity and they were rejected. His contractual liability for the cost of the scaffolding and painting remains at 25% in the sum of £3,286.25.

Section 20C & Fees

23. Ms Dunnell told the Tribunal that the Respondent would not be seeking to recover any costs it had incurred in these proceedings either from the Applicant or through the service charge account. However, for the avoidance of doubt, the Tribunal makes no order under section 20C of the Act for the following reasons.

24. It was clear that the issues in this application (and other wider issues) had been the subject matter of long-standing and protracted correspondence between the parties. The Tribunal was satisfied that the Applicant had been provided with a clear explanation about the relevant service charge costs and how his contractual liability arose. The application had been wholly unsuccessful and the Applicant's arguments largely misconceived. Accordingly, the Tribunal did not consider it just or equitable to make an order under section 20C.

25. For the same reasons set out above, the Tribunal does not make any order requiring the Respondent to reimburse the Applicant the fees he has paid to the Tribunal to have this application issued and heard.

Judge I Mohabir

2 April 2014

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.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

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 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 that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.