



Case Reference : **MAN/00FF/LSC/2014/0034**

Property : **15 Marlborough Wharf,
Marlborough Grove, York YO10 4AX**

Applicant : **Mr G D Brown**

Respondent : **Boston Holdings Limited**

Type of Application : **Landlord and Tenant Act 1985 – s27A
& s20C
Commonhold and Leasehold Reform
Act 2002 – schedule 11, paragraph 5**

Tribunal Members : **Judge J Holbrook (chairman)
Judge L Bennett**

**Date and venue of
Hearing** : **Determined without a hearing**

Date of Decision : **27 May 2014**

DECISION

DECISION

- A** No part of the sum of £13,563.84 (being costs incurred by the Respondent following service upon it on a notice claiming collective enfranchisement – and not being costs allowed by decision of the Tribunal dated 4 November 2013) is payable as a service charge or as an administration charge by the Applicant.
- B** No costs incurred by the Respondent in connection with the current proceedings before the Tribunal are to be regarded as “relevant costs” (within the meaning of section 18 of the Landlord and Tenant Act 1985) to be taken into account in determining the amount of any service charge payable by tenants of the Property.
- C** Within 14 days of the date of this decision the Respondent must reimburse the Applicant for the tribunal application fee paid by him in relation to these proceedings in the sum of £250.00.

REASONS

1. On 4 November 2013 the Tribunal made a determination under section 91 of the Leasehold Reform, Housing and Urban Development Act 1993. That determination (the November Decision) followed an abortive attempt by a number of tenants of premises known as Marlborough Wharf, Marlborough Grove, York (the Property) to acquire the freehold of the Property from the Respondent. The Tribunal determined that the amount of costs payable to the Respondent under section 33(1) of the 1993 Act was £5,090.97 (this being £9,913.84 less than the costs which the Respondent had been seeking to recover).
2. The Applicant in the current proceedings, Mr Gilbert Brown, is the leasehold owner of Flat 15 Marlborough Wharf and he is one of the tenants who had sought to acquire the freehold of the Property.
3. On 13 March 2014 Mr Brown applied to the Tribunal for a determination that no costs relating to the abortive enfranchisement bid (other than the costs allowed by the Tribunal in its November Decision) could be recovered from him as a tenant of the Property – either as a service charge or as an administration charge. Mr Gilbert also sought orders as to the costs of these proceedings.
4. During the course of preliminary correspondence with the Tribunal it became clear that the Respondent accepted (as is clearly the case) that the November Decision is determinative of its right to recover costs incurred in connection with the enfranchisement claim and that it would not seek to argue before the Tribunal that it has a right to recover additional such costs by other means. The Respondent

consented to the making of the orders at A and B of the decision set out above, and we consider it appropriate to make orders in those terms.

5. The only issue of dispute for determination by the Tribunal therefore concerns the question of whether the Respondent should be ordered to reimburse Mr Gilbert for the tribunal application fee paid by him in connection with the current proceedings. The Tribunal has a discretion to make such an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
6. Both the Applicant and the Respondent submitted written representations on the issue of the reimbursement of fees. In essence, Mr Gilbert's case was that, whilst the Respondent now conceded the principal issue, he had felt obliged to commence proceedings because the Respondent had hitherto appeared to be asserting a claim for additional costs. The additional costs in question were apparently the costs previously disallowed by the Tribunal, plus unparticularised further costs of £3,650.00 (making £13,563.84 in total). Mr Gilbert says that the Respondent's claims in this regard were detrimentally affecting efforts by some tenants to sell their flats.
7. The Respondent concedes that it did contact tenants of the Property by letter dated 12 December 2013 to discuss recovery of additional costs relating to the enfranchisement claim, but maintains that it did so explicitly on the basis that such costs would only be charged with the consent of tenants. Apparently none of the tenants did agree to accept additional charges – which is hardly surprising – and so the 2013 service charge accounts were issued without the inclusion of such charges.
8. A copy of the Respondent's letter dated 12 December 2013 was produced to the Tribunal. The letter fails properly to acknowledge the effect of the November Decision and states that the Respondent had been advised that "the shortfall it has incurred is recoverable pursuant to the service charge provisions of your lease". It also suggests that additional costs could be recovered by way of administration charges. In our judgment the letter was both incorrect and misleading, and Mr Gilbert's decision to seek clarification from the Tribunal is understandable. We consider that the Respondent should bear the cost of him doing so, and that it should therefore reimburse him for the tribunal application fee in full.