



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

Case Reference : CHI/00HN/LIS/2014/0055

Property : 2 Queens Park South Drive, Bournemouth, Dorset.
BH8 9BL

Applicant : Mr Anthony Tilley (the Tenant)

Representative : Mr Burchell

First Respondent : Ms Andrea Barlow (the Former Landlord)

Second Respondents: Mr S Leddy & Miss H Dodds (the Present Landlords)

Representative : ---

Type of Applications: Application for determination as to reasonableness of service charges pursuant to Sections 19 and 27A Landlord and Tenant Act 1985

Tribunal Members : Judge P.J. Barber
Mr P D Turner-Powell FRICS Valuer Member
Mr J Mills Lay member

Date and venue of Hearing : 18th May 2015 Poole Courts & tribunal Centre,
The Law Courts, Civic Centre,
Park Road, Poole, Dorset. BH15
2NS

Date of Decision: 1st June 2015

DECISION

Decision

- (1) The Tribunal determines in accordance with the provisions of Sections 19 and 27A Landlord and Tenant Act 1985 (“the 1985 Act”) that the liability of the Applicant to contribute to service charges to the First Respondent in respect of the Property for the period 2008 to 2014 is the sum of £168.55.

Reasons

INTRODUCTION

1. The application in this matter was made pursuant to Sections 27A and 19 of the 1985 Act for determination of the reasonable service charges payable by the Applicant to the Respondents in the service charge years 2008-2014 inclusive. Directions were issued variously in the matter on 23rd October 2014; 26th November 2014; 16th January 2015 and 3rd March 2015.
2. The claim relates to service charges in respect of 2 Queens Park South Drive, Bournemouth BH8 9BL (“the Property”). The Property is a former single house, converted originally into two flats in or about 1987, at ground and first floor levels, but with a third flat being added rather later, in or about 2004. The Applicant is the lessee of the First Floor flat known as 2a Queens Park, pursuant to a lease dated 7th August 1987 (“the Lease”) for a term of 99 years from 24th June 1987. The lease of the ground floor flat known as 2 Queens Park, was granted in 2014 and is for a term of 999 years from December 2003; the lease of the second floor flat known as 2B Queens Park was granted in March 2004 for a term of 99 years from December 2003.
3. The First Respondent was the freehold owner of the Property until 4th April 2014, when the freehold was sold to the Second Respondents. In essence the Applicant asserts that virtually no service charge costs were incurred by the First Respondent during her period of ownership, save possibly for insurance, although he states that no insurance documents had been produced.
4. There were no managing agents appointed and the Property was managed direct by the First Respondent until she sold the freehold to the Second Respondents in April 2014. The Applicant Mr Tilley, indicated in his statement dated 8th April 2015, that £78.00 was paid by him each month to the First Respondent by monthly standing order from September 2008 until August 2013. In her statement dated 1st April 2015, the First Respondent accepted that summaries of tenants` rights and obligations were never served.

INSPECTION

5. No inspection of the Property was carried out by the Tribunal.

THE LAW

6. Section 19(1) of the 1985 Act provides that :

“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 21B of the 1985 Act provides that :

“(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(a)

Sub-Sections 27A (1), (2) and (3) of the 1985 Act provide that :

“(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,
- € the amount which is payable,
- (d) the date at or by which it is payable, and
- € 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 cost, 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
- € the manner in which it would be payable.

“Service Charges” are defined in Section 18 of the 1985 Act as follows

- (b) 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-
- (c) which is payable, directly or indirectly, for services, repairs, maintenance, improvements, insurance, or the landlord’s costs of management, and
- (d) the whole or part of which varies or may vary according to the relevant costs

18(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.

HEARING & REPRESENTATIONS

7. The hearing was attended by Mr Tilley and his business partner Mr Burchell who represented him; Ms Barlow and Miss Dodds attended, but Mr Leddy was not present.
8. The bundle provided to the Tribunal included a copy of the Lease which includes a tenant covenant:

2(j) To contribute and pay to the Lessor on demand a one half share of the costs charges and expenses properly incurred by the Lessor in carrying out his obligations from time to time under Clause 3 (a) (b) (c) and (d) hereof and to make reasonable payment on account of such costs charges and expenses as and when required to do so by the Lessor upon being provided in each such case with full and proper details of each item of expenditure and the receipt thereof or in the event of payment on account being requested an estimate therefor."

It appeared that the leases of the respective flats in the Property were neither in exactly similar form nor for identical terms. Mr Burchell submitted for the Applicant that only the items of expenditure referred to and listed at Page 111 of the bundle, in a total of £337.11 were agreed and for which, he said Mr Tilley had a one third share of liability. Mr Burchell said that Mr Tilley had been paying £78.00 per month towards service charges and pointed to the schedule at Page 11 of the bundle which, he said, showed that Mr Tilley had paid £5,165.00 between September 2008 and October 2013, although no unequivocal evidence in this regard was produced. Ms Barlow accepted that £78.00 per month had been paid by Mr Tilley for a period, but said that when she had sold the Property in April 2014 most of the papers and receipts to prove expenditure had been thrown away. Ms Barlow said that the figures in respect of expenditure shown on Pages 75-76 of the bundle represented her best attempt at recalling the expenditure.

It was agreed to review the amounts and items as shown on Pages 75-76 of the bundle for each of the disputed years, one by one.

2008

Ms Barlow said that the insurance premium had been about £600.00 but that she had no premium receipt. Mr Burchell said that in the absence of clear receipts, none of the expenditure was accepted other than those items referred to on Page 111 of the bundle. Mr Burchell referred to Clause 2(J) of the lease which he said obliged Ms Barlow as lessor to provide receipts for each item of expenditure, or in the event of a payment on account, an estimate for each such item. Ms Barlow said that the service charging had always been carried out informally, but that copies of the receipts had been placed by her, with a Christmas card which she left each year at the Property for Mr Tilley. Mr Tilley denied that he had ever received such copy receipts. The Tribunal questioned the item shown as "Ground Rent annual expenses"; Ms Barlow said that this was the item she regarded as covering the cost of general expenses such as painting and hedge trimming, not ground

rent which she accepted was separately accounted for, by way of the item shown as £25.00. In regard to building works at £340.00, Ms Barlow said these were carried out by a Mr Hilton who had been a friend of Mr Tilley and that they related to damp proofing and painting to the lower plinth of the Property, and that payments had been made in cash. Mr Tilley accepted that he knew a Mr Hilton and was aware of a damp problem at some stage, but could not recall exactly when any work may have been done and that he was not prepared to agree such amount without a clear receipt being provided. The item of £30.00 for gardening was however accepted by Mr Tilley as one of the agreed items on Page 111 of the bundle. Ms Barlow said the item of £55.00 for cleaning, related to her costs over time, for clearing up syringes, bottles and other items, but that no invoices were available. Ms Barlow accepted that the £842.75 solicitors' costs related to action taken against Mr Tilley in respect of breaches of the terms of his Lease. Mr Burchell submitted that such costs would not form part of collective service charges. In regard to the item of £1075.00 shown for telephone calls, letters, dealing with bailiffs and otherwise, Ms Barlow said there were no receipts other than details she would have included with the annual Christmas card. The item shown as £25.00 for unreturned deeds, was according to Ms Barlow, the cost of providing copies of his lease to Mr Tilley; Mr Tilley denied receiving the same.

2009

The position regarding insurance costs was the same as for 2008. In regard to "Ground Rent £100", Ms Barlow said this had been intended to refer to her general expenditure in maintaining the Property and for which no specific receipts were available. In regard to the share of £84.00 for building works, Ms Barlow said this relate to work making good, when Mr Tilley's Sky boxes became loose; Mr Tilley said he had no recollection of these. Ms Barlow said the £68.78 for drains works related to a payment to a Mr Joy who frequently had to clear blocked drains at the Property; she said she had paid in cash and no receipts are now available. Ms Barlow said the item of £30.00 towards hedge trimmer rental was a rough estimate and that the item had probably been hired via Brandon Hire. In regard to the item of £10 for damage to bricks caused by Mr Tilley's letting agent's board, Ms Barlow could produce no receipt. Mr Tilley repeated that his position was that he accepted only items of expenditure for which receipts have been included and that these are limited only to the items on Page 111 of the bundle.

2010

The insurance position was the same as for 2008; similarly Ms Barlow said, in regards to the "Ground Rent £100" which she said was for general painting and hedge trimming and other similar matters. The invoice for £130.00 for drains was agreed by Mr Burchell. No receipt was provided by Ms Barlow to verify the £30 for the hedge cutter hire and similarly the £10 being the transportation cost for "free to collect" shingle/gravel for the driveway of which Mr Tilley said, he had no recollection. No figure was shown in respect of the item recorded as "Jetting frontage" but Ms Barlow said this had come out of the "Ground rent £100" item.

2011

The insurance position was the same as for 2008. The item shown for drains at £32.00 was not agreed by Mr Tilley in the absence of a receipt and similarly the

£22.00 to "S. Joy". Similarly no receipt was available for the hedge trimmer item of £30.00.

2012

The insurance position was the same as for 2008. Mr Burchell agreed the item of £90.00 for drains. However, in the absence of receipts, Mr Burchell did not agree either the item of £50.00 for bedroom ceiling damage or £30.00 for hiring garden equipment.

2013

The insurance position was the same as for 2008. Mr Burchell refused to agree the item of £12.00 for lounge ceiling damage in the absence of a receipt. Mr Tilley said he did recall some problem with ceiling leaks over the years, but was unable to recall this one, or this occasion.

2014

The insurance had been changed by Ms Barlow for 2013/14 from Premium Search to RSA. After she had sold the freehold in 2014, Ms Barlow said that she had forgotten to apply for a refund of the unexpired portion of premium, but that when she did so, she received a refund from RSA of £128.46 in October 2014, as documented on Page 87 of the bundle. However Ms Barlow was unable to produce any actual premium receipt.

13. In closing, Ms Barlow said that in each disputed year she had put an inventory of receipts for expenditure into her Christmas card to Mr Tilley but that as he was not living there, he may not have received them. Ms Barlow added that there had been no challenge in all the time whilst she had been freeholder, and that she had thought that once the Property was sold, everything was sorted. Ms Barlow said she may have had some misunderstanding about what ground rent and service charges should cover, but added that if anything, she had spent sums on the Property in addition, not shown on Pages 75-76.

14. Miss Dodds said that she felt that she and her partner Mr Leddy should not really be involved in the proceedings but that as she understood it, Mr Tilley was trying to claim back amounts which he had paid from them as the present freeholders. Miss Dodds said that she and her partner had had no documentation in regard to service charges passed to them when they completed their purchase of the freehold; she referred to Page 137 of the bundle which she said was part of the Leasehold Enquiries raised when they purchased and which in regard to "current annual service charges", indicated "N/A". Miss Dodds said that she and her partner have only recharged the insurance premium to Mr Tilley, since purchasing the freehold last year, on the basis they were awaiting resolution of this dispute. The Tribunal pointed out to Miss Dodds that she and her partner may wish to obtain professional advice as to their position.

15. Mr Burchell said in closing that Mr Tilley considered that Miss Dodds and Mr Leddy had been caught up in a matter not of their making. Mr Burchell said Mr Tilley had assumed that on the basis of the amounts paid by him, over the years, there would have been a significant surplus which would have been

passed on or allowed as a deduction to the buyers. Mr Burchell said that the Property is in a poor state and that Mr Burchell had expected that the buyers would have inherited a reserve to cover at least some of the cost of future works needed to the Property. Mr Burchell said that Mr Tilley was happy to accept a liability for the whole of the disputed period, equating to one-third of £337.11 being the sum of the amounts listed on Page 111 of the bundle and resulting in total liability for Mr Tilley of £112.37.

CONSIDERATION

16. The Tribunal have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of the parties.
17. The Tribunal notes a degree of misunderstanding by Ms Barlow regarding the distinction between ground rent and service charges. The Tribunal further notes that, having sold the freehold, Ms Barlow had mistakenly thought that it would be in order to dispose of the majority of the verifying invoices and receipts. In so far as no receipts for expenditure have been produced by Ms Barlow, and except to the extent that Mr Tilley agreed any items of expenditure, the Tribunal has little alternative but to conclude that where no clear evidence as to expenditure has been produced, such items may not be allowed as being reasonable and payable. No doubt Miss Dodds and Mr Leddy will take note of the situation for future reference and if necessary seek appropriate advice as to how they should manage the property, including the service charge arrangements necessary to comply with the law.
18. Clearly ground rent of £25.00 is not a matter within the Tribunal's jurisdiction for determination, but it is nevertheless payable as a contractual requirement of the Lease.
19. The Tribunal notes the acceptance by Mr Tilley as to his liability to contribute by way of service charges in the disputed years, towards the total amount being £337.11 as shown on Page 111 of the bundle. However Clause 2(J) in the Lease requires Mr Tilley as lessee to contribute, not one-third, but one-half of the costs charges and expenses properly incurred. Accordingly the decision of the Tribunal is that the extent of costs proven to have been reasonably incurred by Ms Barlow in the disputed years is £337.11, and that the liability of Mr Tilley to pay services charges in the disputed years is in the sum of £168.55, being one-half of £337.11.
20. In regard to the application for reimbursement of application and hearing fees the Tribunal is not however minded to exercise its discretion to make any order.
21. It is not a matter within the jurisdiction of the Tribunal to make any order for payment or financial adjustment.
22. We made our decisions accordingly.

Judge P J Barber

Appeals :

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application 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.