

11716



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

Case Reference : **MAN/OOBN/LIS/2015/0002
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Properties **A:** **7 Croasdale Avenue Manchester M14 6GU**
B: **57 Whitebrook Road Fallowfield M14 6FW**

Applicant : **The Jubilee Place (Fallowfield) Management
Company Limited**

Representative : **PDC Legal Solicitors**

**Respondent
Representative** : **Dr Joesph McLagen Nankhonye
Wolfson & Co LLP**

**Type of
Application** : **Commonhold & Leasehold Reform Act 2002
– Schedule 11 Paragraph 5
Landlord & Tenant Act 1985 – Section 27A**

Tribunal Members : **N Ali
J Rostron**

Date of Decision : **18th January 2016**

DECISION

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Order

Service charges and ground rent for:-Property A - £1152.82 and Property B- £981.04 Are due and payable

The administration charges for Properties A and B are not due and payable until the defect in the demand notice is rectified.

Background

1. The Applicant is the Management Company. The Respondent is the leaseholder of the Properties
2. Property A is held under a lease dated 21st May 2004 with George Wimpey Manchester Limited of the first part, the Applicant of the second part and the Respondent of the third part. Title is registered at Land Registry under title number GM964701
Property B is held under a lease dated 28th March 2003 with George Wimpey Manchester Limited of the first part, the Applicant of the second part and the Respondent of the third part. Title is registered at Land Registry under title number GM930460
4. The Applicant states that there are outstanding service and rent charges in addition to the administration fees which were due and payable.
For Property A the outstanding service and rent charges were £1152.82 with administration charges of £794.00 and costs of £145.80 (£2092.62)
For Property B the outstanding service and rent charges were £981.04 with administration charges of £644 and costs of £145.80 (£1770.84)
5. On the 27th March 2014 the Applicant made an application to Stockport County Court for the determination as to the liability to pay the Service Charges and the reasonableness of the administration fees.
This matter was transferred from Stockport County Court to First Tier Tribunal Property Chamber at the Order of D J Beattie on the 21st May 2015 for a determination as :-
 - a. Whether the service charge and rent demands are compliant pursuant to section 47 and 48 of the Landlord and Tenant Act 1987; and
 - b. The reasonableness of the administration fees.
5. The Tribunal issued directions for further information on 12 June 2015 which were complied with by the Applicant.
6. A case management conference was held on the 4th August 2015 and further directions were issued.
7. The Applicant applied for an extension of time to comply with the directions dated 4th August 2015 for which consent was given.
8. Written submissions were provided by both parties' legal representatives

The Hearing

9. A determination was made on the documents filed at the Tribunal without an oral hearing.

The Law

10. Commonhold and Leasehold Reform Act 2002 Schedule 11 state:-
 - 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—
 - (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,
 - 1(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. ..
 2. A variable administration charge is payable only to the extent that the amount of the charge is reasonable
Notice in connection with demands for administration charges
 - 4(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
 - (2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
 - (3) A tenant may withhold payment if an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.
 - (4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges does not have effect in relation to the period for which he so withholds it.
 - 5(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable
11. Landlord and Tenant Act 1987 section 47 and 48 states:-

47 Landlord's name and address to be contained in demands for rent etc.

- (1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—
 - (a) the name and address of the landlord, and
 - (b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant
- (2) Where—
 - (a) a tenant of any such premises is given such a demand, but
 - (b) it does not contain any information required to be contained in it by virtue of subsection (1),then (subject to subsection (3)) any part of the amount demanded which consists of a service charge (“the relevant amount”) shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.
- (3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court, there is in force an appointment of a receiver or manager whose functions include the receiving of service charges from the tenant
- (4) In this section “demand” means a demand for rent or other sums payable to the landlord under the terms of the tenancy

48 Notification by landlord of address for service of notices

- (1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.
- (2) Where a landlord of any such premises fails to comply with subsection (1), any rent or service charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.
- (3) Any such rent or service charge shall not be so treated in relation to any time when, by virtue of an order of any court, there is in force an appointment of a receiver or manager whose functions include the receiving of rent or (as the case may be) service charges from the tenant.

27A Liability to pay service charges: jurisdiction

(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.

(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 of an application under subsection (1) or (3).

(7)The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Decision

- 13 For each property the Applicant provided the Tribunal with a copy of the relevant lease. The leases are identical and contain the following:-

Cl 1.1 'Rent'

- means the yearly rent of payable by two equal payments in advance...

Cl 2 'Estate Maintenance Charge' – means (subject to paragraph 8 the sixth schedule) the sums spent or to be spent by the Management Company

Second Schedule (Covenants by the Buyer)

1 (a) (i) To pay the Estate Maintenance Charge the Rent or any other sum payable ...

1 (a) (ii) That in the event of the Estate Maintenance t Charge the Rent or any other sum.... remain unpaid five working days ...shall be deemed to be rent recoverable ...

12 Expenses – To pay all expenses ...incurred by the Company ... in the recovery of any arrears....

Fifth Schedule Part 1

2 Payment – The Buyer shall within 14 days of receipt of demand therefor pay the Estate Maintenance Charge.....

Fifth Schedule Part 2

Sets out expenditure to be recovered by the means of the Estate Maintenance Charge.

- 14 For both properties, the Applicant has provided a list of the outstanding service charges and the associated administration fees charged in pursuant of the outstanding Service charges.

The Applicant has provided s detailed service charge statement of account from March 2008 to December 2015 showing the amount owing.

Copies of:-

service charge demands;

ground rent demands;

administration fee demands;

reminder letters from the Management company; and

copies of letters from the debt collecting agency have been provided.

- 15 The Service Charge demands and ground rent demands set out the terms as prescribed by Landlord and Tenant Act 1987 section 47 and 48 and S27A:-
namely the Landlords name and address and an address for the service of notice.
These demands state the tenants name and address, the amount owing and the methods of payment of the charges.

Thus the Service Charges and ground rent are due and payable and validly served.

However a demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings. No evidence that this summary has been provided by the Applicant has been put before this Tribunal.

- 16 The Respondent has not disputed the make-up of the service charges, just that the demands for payment are defective and thus not due and payable. He has stated that he does not consider that the 'proper invoices' were sent by the Applicant and that the fee of £192 that has been added has not be justified. The Applicant has stated that the fee of £192 was for instructions to liaise with the Respondent on 4 separate occasions over the period of the 5 years. The Tribunal does not consider this to be an excessive charge.
- 17 The Tribunal determines that in respect of both the properties:-
The Service charges and ground rents demands comply with the requirements of the Landlord and Tenant Act 1987 sections 27A, 47 and 48 namely that the prescribed terms are set out on the invoice and so the amounts are due and payable; and
The administration charges are not due and payable as defective demands for payment have been served on the Respondent as the summary of the rights and obligations of the tenant have been omitted from the demand. However if this defect is remedied and the notices are re-served the administration charges will be due and payable.