



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/00KG/LSC/2015/0015

Property : Flat 7, 153 Manchester Drive,
Leigh-on-Sea,
Essex SS9 3EU

Applicant Represented by : Westleigh Properties Ltd.
Ms. Carly Melling – lay representative

Respondent Represented by : Christopher Bryant
Mr. C. Vernon – lay representative

Date of transfer from the county court at Southend : 13th January 2015

Type of Application : To determine reasonableness and
payability of service charges and
administration charges

The Tribunal : Bruce Edgington (lawyer chair)
Stephen Moll FRICS
Cheryl St. Clair MBE BA

Date and venue of hearing : 29th April 2015, The Court House,
80 Victoria Avenue, Southend-on-Sea,
Essex SS2 6EU

DECISION

© Crown Copyright

1. In respect of the amount claimed by the Applicant from the Respondent in the County Court at Southend under claim no. A87YM285, the decision of the Tribunal is as follows:-

| | <u>Claim(£)</u> | <u>Decision(£)</u> |
|--|-----------------|--------------------|
| Balancing charge to 28/06/2013 | 248.92 | 77.72 |
| 29 Dec 2013 half yearly charge on a/c | 626.69 | 550.00 |
| Interest | 12.93 | for the court |
| In house collection expense | 300.00 | 75.00 |
| 29 June 2014 half yearly charge on a/c | 682.13 | 550.00 |
| Interest | 27.06 | for the court |
| Cost of preparing court summons | <u>180.00</u> | <u>75.00</u> |
| | 2,077.73 | 1,327.72 |

The amount allowed includes £75 for the preparation of the court proceedings which is payable under the terms of the lease, and which the court will wish to note when considering the question of costs. It should also be noted that the Applicant's evidence is that £500.00 was paid by the Respondent on 25th February 2015 which reduces the amount owed down to **£827.72**.

2. This claim is now transferred back to the County Court sitting at Southend under claim no. A87YM285 to enable either party to apply for any further order dealing with those matters which are not within the jurisdiction of this Tribunal or any other matter not covered by this decision including interest, costs and enforcement, if appropriate.

Reasons

Introduction

3. This is a claim by a landlord against a long leaseholder for service charges and administration charges. Whether the service charges and administration charges are reasonable and payable has been transferred to this Tribunal by the county court for determination as being a matter within its jurisdiction.
4. As the claim was not detailed in the court proceedings the Tribunal issued a directions order on the 11th February 2015. This required the Applicant to file and serve a statement setting out its justification in principle and in law for the charges demanded and that it "*should attach a single sheet of A4 paper setting out exactly what is allegedly owed to include the date incurred, a full description of the item claimed, the amount and any payments made*".
5. Two statements were filed. One deals with insurance. The other purports to deal with the balance. It does not. It simply says that the charges are reasonable and then a large bundle of accounts and copy invoices is included in the bundle. The A4 sheet of paper contains virtually none of the detail requested and the page numbering in the bundle was very nearly impossible to follow particularly as the page numbering had often been missed out in photocopying.
6. Equally, the Respondent was ordered to file a statement setting out exactly what was being challenged and why. If a claim was being challenged, what would the Respondent consider to be a reasonable amount to pay? Whilst it is acknowledged that the lack of clarity in respect of the claim would make that task more difficult, the attitude seems to be to just complain about the charges without a forensic examination of the accounts and invoices submitted.
7. This lack of basic preparation by the parties has made the task of the Tribunal very much more time consuming than it should have done. It did discover, at page L39A in the bundle a list of the service charges making up the opening balance of £248.92 which is the first figure in the claim. The figures for individual service charges seem to have been taken from the certified accounts at page L38.

The Law

8. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.

9. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.

10. Paragraph 1 of Schedule 11 ("the Schedule") of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") defines an administration charge as being:-

"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable...for or in connection with the grant of approvals under his lease, or applications for such approvals...or in connection with a breach (or alleged breach) of a covenant or condition in his lease."

11. Paragraph 2 of the Schedule, which applies to amounts payable after 30th September 2003, then says:-

"a variable administration charge is payable only to the extent that the amount of the charge is reasonable"

12. On the question of the discrepancy between insurance premiums claimed and alternative quotations obtained by tenants, a well established line of cases has developed a rule which successive Tribunals have found themselves obliged to follow. As Evans LJ said in **Havenridge Ltd. v Boston Dyers Ltd [1994] 49 EG 111:-**

"...the fact that the landlord might have obtained a lower premium elsewhere does not prevent him from recovering the premium which he has paid. Nor does it permit the tenant to defend the claim by showing what other insurers might have charged. Nor is it necessary for the landlord to approach more than one insurer, or to 'shop around'. If he approaches only one insurer, being one insurer 'of repute', and a premium is negotiated and paid in the normal course of business as between them, reflecting the insurer's usual rate for business of that kind then, in my judgment, the landlord is entitled to succeed"

The Lease

13. The Tribunal was shown a copy of the counterpart lease of flat 7. It is dated 22nd May 1992 and is for a term of 99 years from the 1st July 1990 with an increasing ground rent.

14. There are the usual covenants on the part of the landlord to maintain the common parts and structure of the property and to insure it and the Respondent is liable to pay a 'fair proportion' of the cost. Such cost would include the fee of a managing agent. The landlord is able to claim monies on account of service charges and to create a reserve or sinking fund.

15. Clause 2(11) provides a contractual basis for the landlord to claim interest from the lessee at 4% above Barclays Bank base rate. However, as the Applicant appears to have claimed interest in the court proceedings pursuant to Section 69

of the County Courts Act 1984, the Tribunal will leave the question of interest to the court.

16. As far as the claim for administration charges is concerned, the only clause dealing with the payment of fees is in paragraph (6) of the Fifth Schedule which says that "*the Landlord shall pay the proper professional fees of the Landlord's managing agents (if any) for the collection of the rents and service charges and for the general management of the Estate and the Accountant's proper professional fees...*".

The Inspection

17. The members of the Tribunal inspected this estate in the presence of Tim Josh and Carly Melling from the Applicant's managing agent together with Mr. Bryant and Mr. Vernon. It was a dull, cold spring morning.
18. The property is one of 8 flats in a purpose built building of cavity brick/block construction under a pitched roof with an interlocking concrete tile covering. It was probably built at the commencement of the lease term. There is some timber cladding to some of the upper parts of the front which is in not bad condition. The window frames are timber and some are in need of attention. The sand/cement verge fillets to the front gables need re-pointing.
19. There is a drive alongside the building to the right leading to an unsurfaced car park with fairly small grass areas and some trees and shrubs. It was not clear who is responsible for the fences. Most of the fencing is in serviceable condition but some panels are breaking up and some are obviously quite new. There was a complaint that when it rains the car park ponds with water in places.
20. The Tribunal members saw the common entrance, hall and stairs which all appeared to be in reasonable condition with a sheet for the cleaner and gardener to sign when they visit. This had only dates in March and April 2015 and it was said by Mr. Vernon that this was the first such sheet to be used. Finally, it was suggested that the gutters may be blocked and the Tribunal could certainly see some vegetation in the gutters which is evidence that this is probably the case.

The Hearing

21. The hearing was attended by those who had attended the inspection plus Nigel Amos who was present to give evidence about the insurance. The first thing the Tribunal chair tried to do was to understand the figures. The only complete service charge year in the claim is that up to the 28th June 2013. Some of the invoices supplied did not seem to add up to the amounts in the end of year accounts but after some discussion and clarification, the position was understood.
22. The problem faced by the Tribunal was that the Respondent's complaints, by and large, were about the standard of management and the lack of supervision of contractors. There was some comparison with management charges in other developments but without knowing much more about those buildings it was impossible for the Tribunal to know whether it was comparing like with like.
23. The Respondent said that it had obtained an up to date insurance premium

quote. It had been available for a week but had not been circulated. It was a quote to include the risks covered by the Applicant's policy and it took into account the claims record. The quote was for £1,652.88. Mr. Amos said that this was very odd as the claims over the last 5 years were £11,174 with one relating to the rebuilding of the front wall still in the pipeline.

24. Dealing with the 'Health and Safety' item of £500, Ms. Melling said that this was for an expert to assess the building for fire risk and then prepare a comprehensive report. She said that she had been told by the fire department that there had to be an up to date report for each building. No written confirmation of such a conversation was produced. This surprised the Tribunal as a statement of such significance would be expected to have been confirmed in writing. The charge of £500 included VAT and was a standard charge per unit. This report did not assess risk for asbestos and the full fire risk assessment was said to be undertaken every year. The Tribunal noted a similar figure in the 2014 accounts.

Discussion

25. It is obviously impossible for the Tribunal to determine very precisely whether service charges incurred several years ago were reasonably incurred or not, bearing in mind the arguments put forward i.e. that the work undertaken was not thorough or adequate. There are 'statements' from other leaseholders but no detail about how much of the day these people were in their flats to monitor such things as how often the gardener came and what he or she did. It is quite possible that calls were made when no-one was around. There was little or no evidence that the lessees had complained to the Applicant about the nature or cost of the various jobs, and no evidence that the lessees had suggested alternative contractors or arrangements. The Tribunal was told that, for example, the lessees clean the communal hallway themselves; this seemed quite possible, but it did not appear that the agents had been requested to end or amend the cleaning service.
26. The problem which the Respondent has is that much of the service charge element of the claim is simply a request for the payment in advance of future service charges. The insurance figure is challenged but the Respondent's statement simply says that a 3rd party made an enquiry with a local insurance broker who "managed to obtain a quote of £1,341 as opposed to the Applicant's charge of over £3,000". The Respondent produced an up to date quote on the day of the hearing which the Tribunal said that they would look at but they could not place much weight on it.

Conclusions

27. The Upper Tribunal has reminded First-tier Tribunals on more than one occasion recently that we have an adversarial system which means that Tribunals have to be careful to deal with the points raised by the parties and avoid going into other matters themselves. In this case, for example, the Tribunal does have some concerns about what seem to be very high contract prices for window cleaning, general cleaning and gardening. However, apart from one matter mentioned below, those will not be reduced.
28. As to the **level and cost of management**, these have been challenged. The Tribunal tried to obtain detail from Ms. Melling about the management fees

because the total claimed in the 2013 accounts excluding VAT is £220 as a base cost plus £6 for bank charges of which there is no evidence plus £12 for postage which is an overhead and then £12.50 for preparing the accounts making a total of over £250 per unit plus VAT. Her only response was to say that £220 was within the range of market rates indicated by previous Tribunals and the other items were there for 'transparency'.

29. £220 per unit per annum is just within the range of reasonableness but only on the basis that it includes overhead expenses, including the cost of preparing end of year accounts. It also anticipates good management. The evidence about the alleged lack of cleaning and gardening is not strong and has not been challenged in this Tribunal until now. However, the inspection by the Tribunal did reveal some problems which need attention and if some of them are not dealt with soon, the cost of rectification in the long run is likely to be higher. It was also noted that the age of the property and the fact that it was purpose built mean that it should be very easy to manage properly. Furthermore, as the managing agents are not arranging or dealing with insurance, their task is somewhat easier than most.
30. The decision of the Tribunal is that the level of management in terms of the responsiveness to the leaseholders, the high prices negotiated for the cleaning and gardening without proper supervision and the practical problems showing at the property and noted on the inspection, lead it to the view that the cost is excessive. A reasonable cost for what is being supplied is £160 plus VAT but excluding the additional costs i.e. £192 per unit in total.
31. As far as **health and safety** is concerned, the leaseholders must understand that this is extremely important both to the freehold owner and to leaseholders or their subtenants. A full survey and report on all the fire risks in the building and the grounds does take time and £500 including VAT is not unreasonable for the first such report. As there has been no complaint about past years, it is assessed on the basis that this is a first report in which case the decision is that it is reasonable.
32. However, the Tribunal makes it clear that yearly inspections should not involve a full survey each time. The inspector should attend the building with last year's report and check all the risks. He or she only need then prepare a short certificate reciting any changes in the regulations and then saying that the risks are the same or pointing out the differences. This should cost no more than £250-300. However, there should be a plan for a full survey every, say, 5 years.
33. Turning now to the question of **insurance**, the Respondent will be aware from the case law stated above that a landlord does not have to search around for the cheapest quote. The argument put forward by the landlord as to the latest quotation provided does have merit. Why would an insurance company take on a risk when it knows from recent claims that the premium will not cover the claims if they continue as they are? Is the purpose of the quote to get the business and then increase the premium quickly? The decision is that the insurance premium is on the high side but it has been properly obtained and is payable.

34. The **gardening and cleaning** charges are, as has been said, considered to be high. As far as gardening is concerned, there appear to be visits every 2 weeks in summer and 1 per month in winter. Apart from the relatively small areas of grass, there appears to be little else done. The trees and shrubs at the rear, for example, do not seem to have received much attention and those near the building are blocking light from the windows. £35.74 per visit would usually equate to at least 2 hours i.e. 1½ hours work plus half an hour travelling and it is difficult to see what would take that time when such things as weed killing the car park are extras. The gardener should certainly be removing ivy from the fences and pruning trees. Therefore the decision is that only the basic costs of the visits will be allowed and not the additional £550 identified by the Applicant at the hearing.
35. Finally, the Tribunal turns to the **administration charges and interest**. As far as interest is concerned, the amounts owing have changed. No interest calculations have been produced but the Respondent should realise that interest is payable under the terms of the lease. As interest has been claimed in the court proceedings, the Tribunal will leave that matter for the court. The administration charges are extremely high and no breakdown of time spent could be produced. A Land Registry search takes no time and the cost is low, letters to the leaseholder and the building society will be standard letters which any reasonable software will produce at the press of a button.
36. Likewise, issuing a claim form in the county court should not take much time and it can be done on-line. It is noted, for example, that no detail is given about the way the claim is made up and so there is clearly a template being used with just a total. Having said that, the Respondent clearly took the view that he was not going to pay and the lease does provide that the managing agent can charge for collection of debts. The decision of the Tribunal is that £75 per item is more than sufficient to cover the costs involved.
37. The above figures have been transferred to the decision above. As far as the first figure is concerned i.e. the £248.92 as the balancing charge for the year ending 28th June 2013, the revised figures are:-

| | |
|-------------------------|------------------|
| Cleaning communal areas | 945.00 |
| Cleaning windows | 672.00 |
| Gardening | 934.85 |
| Electricity | 12.25 |
| Refuse | 192.18 |
| Insurance | 3,039.37 |
| Repairs and renewals | 2,969.76 |
| Health and safety | 500.00 |
| Management fees | 1,536.00 |
| Accountancy fees | 463.20 |
| Transfer from reserve | <u>-1,265.72</u> |
| | 9,998.89 |

12.5% of that figure is £1,249.86. The amount paid in advance was £1,172.14 which leaves a balance due of £77.72. Subsequent figures on account of service charges have been reduced as well to reflect the reduction of management fees

and health and safety charges.

The Future

- 38. Neither party is likely to be particularly happy with this decision. Some of the 'complaints' made have not been dealt with. The car park at the rear will need a considerable amount of money spent on it to have it properly drained and surfaced. The complaint about the overflow pipes at the side of the building and the lack of 'control' over tenants made by Mr. Vernon on the inspection is not something about which this Tribunal can do anything. It is a matter to be taken up with the landlord and pursued through the courts if necessary.
- 39. Most managing agents find it helpful and cost effective in the long run to have, say, annual meetings with leaseholders so that the sort of points made above can be resolved amicably. Do the leaseholders want to spend money on the car park? Would the leaseholders prefer to deal with the cleaning and gardening themselves? Should the exterior decoration be done this year or next?
- 40. If that does not cure the problems, then no doubt the leaseholders will consider a right to manage company. Whatever happens, just refusing to pay service charges as suggested by Mr. Vernon is not the answer. If there is a complaint, pay the service charges under protest and ask the Tribunal to determine whether a service charge is reasonable or not. Leaving it for several years when the evidence has long since disappeared is not helpful.

.....
Bruce Edgington
Regional Judge
30th April 2015