

10804



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

Case Reference : CHI/29UM/LIS/2014/0059

Property : Flat 24
Hollybank Hill
36 London Road
Sittingbourne
Kent
ME10 1NF

Applicant : Orchidbase Limited

Representative : Crabtree Law LLP

Respondent : Mrs. Annette Lovell

Representative : Unrepresented

Type of Application : Liability to pay service charges
Section 27A Landlord and Tenant Act 1985
Transfer from County Court

Tribunal Member(s) : Judge R. Norman
Mr. R. Athow FRICS MIRPM

**Date and venue of
Hearing** : 20th April 2015
Maidstone

Date of Decision : 30th April 2015

DECISION

Decision

1. The Tribunal made the following determinations:

(a) The sum of £877.52 demanded on 1st August 2013 in respect of the Reserve Charge for the year ended 31st December 2012 was reasonably incurred.

(b) The sum of £240 demanded on 22nd November 2013 as Additional Management Fees was not reasonably incurred.

(c) The sum of £58.76 demanded on 25th December 2013 as Quarterly Reserve Charge in advance was not reasonably incurred.

(d) Of the sum of £268.40 demanded on 25th December 2013 as Quarterly Service Charge in Advance only £12.50 was reasonably incurred.

Background

2. Flat 24 Hollybank Hill, 36 London Road, Sittingbourne, Kent ME10 1NF is the subject property. The freehold interest is held by Orchidbase Limited (“the Applicant”) and Mrs. Annette Lovell (“the Respondent”) is the lessee. All references to page numbers are to the pages contained in the hearing bundle.

3. Proceedings were commenced in the County Court by the Applicant against the Respondent (Case No. A78YJ883). At that time the Respondent was Ms Feighery but she has since married and is now Mrs. Lovell. Those proceedings were in respect of service charge items dated from 24th June 2013 to 25th December 2013 included in the statement of account at p 37 and it is only that period with which we are concerned. On 30th June 2014 the County Court ordered that the case be referred to the First-tier Tribunal (Property Chamber)(Residential Property) to consider the reasonableness or otherwise of the service charge claimed. Directions were issued, which included that a Case Management Hearing (“CMH”) be held.

4. On 6th January 2015 at Maidstone an oral CMH took place. It was attended by the Respondent in person and by Mr. Green, solicitor acting as agent for the solicitors Crabtree Law LLP who represent the Applicant.

5. The Respondent had not appreciated that the directions required her to complete the schedule attached to the directions and therefore it was explained to her that she should complete the schedule by writing in it all the items claimed which she disputed. It was stressed that she must include all items which she disputed.

6. The Respondent completed the schedule and confirmed it contained all the items on the arrears schedule which she disputed. Those items were:

	£
1 August 2013 Reserve Charge for the year end 31.12.12	877.52
22 November 2013 Additional Management Fees	240.00

25 December 2013 Quarterly Reserve Charge in advance 58.76

7. The Respondent also disputed the costs of £720 but the Tribunal has decided that that sum is outside the matters referred by the County Court to the Tribunal.

8. The Respondent agreed that the last payment she made was, as shown on the arrears schedule, on 13th April 2013 when she made a payment of £37.50 bringing her service charge account to zero at that time.

9. At the CMH with the assistance of the Respondent and Mr. Green, the Tribunal identified the following issues to be determined:

- Service charges as set out in paragraph 6 above were disputed along with the costs of £720.
- Whether the service charges had been properly demanded
- Whether a certificate or certificates of increase of service charge had been served.
- Whether the items of service charge disputed were reasonable.

10. At the CMH the Respondent explained the following:

(a) The Respondent considered that the charges were unreasonable and excessive and stated that the Applicant and its agents did not do any work on the block of which the subject property forms part. A few windows had been replaced. A window had fallen from an upper floor and it had been replaced. A cleaner comes in. Abandoned cars and washing machines had been removed, eventually. The guttering had been leaking since she moved in in 2002. The Applicant was not doing the work it should be doing. There was no decoration and the problem with the roof of the garages had not been dealt with. There was a dispute as to whether the garage roofs were the responsibility of the Applicant or the lessees. The previous agents had put in intercoms which were fine but then the new agents replaced them when they would still have been under warranty. There is a party fence at the back of the block which a neighbour cut down in order to cut down some trees. He did not replace the fence. The managing agents were told about this and said they would do something about it but did not do so.

(b) The Respondent questioned the justification in the lease for the demands made.

(c) The managing agents Crabtree Property Management charge £9,000 a year to do nothing. There was one lady at the managing agents who was dealing with the block but she went on maternity leave and nothing more was done.

(d) The Respondent needs to know what the reserve of £28,000 has been or is going to be spent on. She has been told that the fund is for building works, paths and windows but nothing has been done. Scaffolding had been erected to put in a fall pipe but still the guttering had not been repaired. Her flat is on

the ground floor and the result of the guttering leaking is that her flat is damp and the laminate flooring has bowed. The Respondent was considering obtaining a report from a builder about the damp in her flat.

(e) The Respondent thought that the additional management fees of £240 had been demanded because she was late paying but the charge is excessive and unreasonable. She had been up to date in April 2013.

(f) The managing agents had written to her standard letters and had sent her emails but there had been no proper explanation.

(g) The Respondent produced some demands but they did not have with them the summary of tenants' rights.

11. Directions were issued, statements of case and accompanying documents were provided by the parties and the Applicant supplied a hearing bundle.

Inspection

12. On 20th April 2015 the Tribunal inspected the exterior of Hollybank Hill of which the subject property forms part, the interior of the subject property and the common parts through which entry was gained to the subject property. Present were Mr. S. Rodway of counsel, representing the Applicant, Ms J. Jacquoit of Crabtree Law LLP, Solicitors, Mr. D. Osgood and Mr. L. Cunningham of Crabtree Property Management, the Respondent and her husband Mr. Lovell.

13. We could see that work was in progress to renew the guttering and that a fall pipe had been fitted but had not been connected to the drain and discharged onto the ground close to a drain gully. Green staining on the wall at one corner of the building indicated that water had been running down the wall and the sitting room of the subject property is at that corner. Much of the concrete flaunching at the foot of the end wall was missing and the concrete path was cracked and collapsed. The sitting room and bedroom of the subject property are inside that end wall. Inside the subject property there was evidence of damp in the sitting room and bedroom.

14. We could also see that weeds were being removed from spaces between areas of concrete in the front forecourt of the building by the front boundary wall and that there were still weeds in the space between the concrete kerbing and the front wall of the building.

15. There were areas of render which were missing or damaged and the render was in need of attention. It appeared that at some time the render had been patched.

16. Most of the window frames were of uPVC construction but there were a number of window frames which appeared to be the original wooden frames with single glazing.

Hearing

17. The hearing was attended by Mr. Rodway, Ms J. Jacquoit Mr. Osgood, Mr. Cunningham, the Respondent and Mr. Lovell.
18. Evidence was received and submissions were made by those present.

Reasons

19. The Tribunal considered all the documents which had been provided by the parties, all that had been seen at the inspection and all the evidence given and submissions made at the hearing and made findings of fact on a balance of probabilities.

20. The provisions in the lease which deal with service charges appear at pp 13, 15, 20, 25 and 28-30 of the bundle.

21. The lease provides:

(a) That there is a fixed Basic Service Charge which is payable quarterly in advance on the usual Quarter Days.

(b) That the Basic Service Charge may be increased every third year on giving the required notice.

(c) That at the end of the financial year (31st December), if the Basic Service Charge and any accrued balance of service charges is less than the landlord's expenditure on items in respect of which the lessee is liable to contribute, then an Additional Service Charge is payable. That payment is due 14 days after the certificate of the landlord's agents is given as to the amount required.

(d) That the lessors may set aside such sums of money as the lessors shall reasonably require to meet such future costs as the lessors shall reasonably expect to incur in replacing, maintaining and renewing those items in respect of which the lessors have covenanted to replace, maintain or renew. In other words a reserve may be collected. While a reserve is by its very nature a payment in advance of expenditure being incurred, the lease provides that for the purpose of Part 5 of the First Schedule to the lease, such setting aside is deemed to be an item of expenditure incurred by the lessors and therefore may be demanded as part of the Additional Service Charge.

22. At the CMH, there was some doubt as to whether the demands for service charges had been accompanied by a statement of tenants' rights as required by statute. However, the Respondent included in the documents she provided, a copy of such a statement and did not challenge the demands on that basis.

23. The Tribunal was satisfied that the notice of increase of Basic Service Charge complied with the provisions of the lease and was properly served.

24. By the time the Tribunal carried out an inspection on 20th April 2015 it was clear that work to the exterior of the property was in progress and in particular that guttering was being replaced. A fall pipe was not connected to the drain but we were assured that that would be dealt with. Mr. Osgood from the managing agents stated that the works had not been commenced in 2014 because funds were still being collected and it would not have been wise to carry out the works during the winter. He also stated that at this time the Applicant is providing the money so that the works can proceed. The reserve of £28,000 is less than the lowest estimate of £38,000 for the external works, which supports the Applicant's submission that the sum of £28,000 was not unreasonable.

25. As to the demand on 1st August 2013 for a Reserve Charge of £877.52 for the year ended 31st December 2012, the Tribunal was satisfied that that was a reasonable sum to be demanded and the demand was made in accordance with the terms of the lease.

26. The Respondent disputed the Additional Management Fees of 240.00 shown as an entry dated 22nd November 2013 in the statement of account at p 37 on the basis that it was unreasonable and excessive.

27. On behalf of the Applicant it was submitted that the charge was reasonable as it was in respect of work carried out by the credit control department; entirely different people from the managing agents, and was not everyday management. It had been necessary to transfer the file to the credit control department where there would have been an examination of all relevant accounts, entries would have been made in diaries to chase the sums outstanding and decisions to send the letters in question would have been made. In this case also solicitors had been instructed and a summary of the claim would have had to be sent to the solicitors. However, it was pointed out that solicitors had been instructed after 22nd November 2013 and that in respect of the charge of £240 it was necessary to look at what had been done before that date. It was then submitted that the charge would have been for sending four letters and that that was not an unreasonable amount.

28. The letters in question are at p 282 a reminder for £12.50, at p 283 a final notice for £12.50, at p 284 a final notice for £1,101.94 and at p 285 a final notice for £1,101.94. All are simple computer generated letters. They are signed by someone on behalf of the Credit Control Team Crabtree Property Management LLP so apparently still a part of the managing agents.

29. The Respondent was clearly disputing the charges but there was no evidence of any dialogue between the Respondent and the managing agents. It was only later, in June 2014 that there was mention of spreading the payment over a period of time. It was suggested that the reason for this was that the Respondent was refusing to pay. She was not asking for time to pay. Had she done so then she would have been offered the opportunity to pay by instalments.

30. There were no attendance notes in respect of any dialogue before the charge of £240 was claimed. The failure to provide evidence of additional works over and above the normal managing agents' role of demanding charges and carrying out basic credit control lead the Tribunal to the conclusion that the charge of £240 was not reasonably incurred.

31. The charge of £58.76 shown in the statement of account at p 37 and dated 25th December 2013 as a Quarterly Reserve Charge in advance was disputed by the Respondent.

32. The Tribunal was satisfied that that sum was demanded prematurely. It should not have been demanded until after 31st December 2013; being the year end. Consequently, it was not properly demanded and not payable at that time.

33. There is shown in the statement of account at p 37 as an entry dated 25th December 2013 in respect of a quarterly service charge in advance in the sum of £268.40. Although the Respondent had not disputed that sum before the hearing, the Tribunal made clear at an early stage of the hearing that that sum could not be ignored. It appeared to be incorrect as, under the terms of the lease, the first payment of the basic service charge at that new rate could not be demanded until 25th March 2014. Indeed the letter dated 23rd December at page 245 states that the increase will not come into effect until 1st January 2014, and the letter at page 247 specifically sets out the dates when the increased payment becomes due (March, June, September and December). As the hearing progressed, Mr. Osgood quite properly agreed with the Tribunal's interpretation of the lease. Consequently the Tribunal was satisfied that of the sum of £268.40 demanded on 25th December 2013 as Quarterly Service Charge in Advance only £12.50 was reasonably incurred.

34. It follows that part of the sum claimed in the County Court proceedings relied on invalid demands.

Appeals

35. 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.

36. 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.

37. 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.

38. 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.

Judge R. Norman (Chairman)