



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

**Case Reference** : **CHI/29/UN/LIS/2015/0033**

**Property** : **Flat 4, 11 Carlton Avenue, Ramsgate, Kent,  
CT11 9BP**

**Applicant** : **G & O Rents Limited**

**Representative** : **Urban Property Management Limited**

**Respondent** : **Mr M Anastasio**

**Type of Application** : **s27A LTA'85, Sched 11 CLRA'02**

**Tribunal Members** : **Judge D Dovar**

**Date of Decision** : **3<sup>rd</sup> November 2015**

**DECISION**

1. This is an application for the determination of the payability of service charges under section 27A of the Landlord and Tenant Act 1985 and administration charges under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 in respect of the years ending 31<sup>st</sup> December 2010 to 31<sup>st</sup> December 2013.
2. This matter commenced in the County Court Business Centre under claim number 3XG55706 and was transferred by order dated 19<sup>th</sup> May 2015.
3. Directions were given by the Tribunal dated 7<sup>th</sup> July 2015, which, amongst other matters, provided for: The application to be determined without a hearing under Rule 31 of the TPR unless either party objected to that course within 28 days (neither party has); The landlord to give disclosure by 21<sup>st</sup> July 2015; The tenant to set out their case by 4<sup>th</sup> August 2015; The landlord to set out their response by 11<sup>th</sup> August 2015; The tenant to provide any reply by 18<sup>th</sup> August 2015. Those dates were subsequently extended by letter from the Tribunal dated 25<sup>th</sup> August 2015.
4. The County Court claim sought the total sum of £3,679.41, which included service charges of £3,486.14 plus interest under the County Court Act 1984.
5. In a letter dated 21<sup>st</sup> August 2015, the Respondent tenant, Mr Anastasio, set out his objections. They were:
  - a. The insurance charges were uncompetitive;
  - b. The proposed costs for works seemed excessive (he claimed they were unnecessary and no reports had been provided justifying the works);
  - c. He did not know why he had a negative balance carried over in his statement of account in the sum of £4,351.36,
  - d. There were a number of charges levied with no justification. In that regard he identified legal fees and interest.
6. The Applicant has provided a statement of case setting out the basis of the charges claimed with supporting invoices, demands and accounts. The Respondent did not make any reply.

## Lease Terms

7. Under a lease dated 19<sup>th</sup> September 1983, the Respondent holds one of the four flats in his building and in addition to rent has covenanted

*“2 (4) on demand to pay to the Lessor without any deduction one quarter of:*

- (i) the expenses and outgoings incurred by the Lessor in the repair maintenance renewal and insurance of the Building and the provision of services therein and any other heads of expenditure incurred by the Lessor in performance of its obligations under Clause 3 (5) hereof and*
- (ii) a sum equal to fifteen per cent of the aggregate expenses outgoings and expenditure referred to in Clause 2 (4) (i) hereof such sum to be in respect of the general administration and supervision costs of the Lessor relating to and in connection with the management of the Building (other than the collection of rent).*

*(hereinafter called ‘the Service Charge’) such further and additional rent being subject to the terms and provisions set out in the Fourth Schedule hereto.*

8. The Fourth Schedule allows for a reserve fund to be set up by providing that the service charge can include

*‘... a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Lessor or its accountants or managing agents (as the case may be) may in their absolute discretion allocate to the year in question as being fair and reasonable under the circumstances.’*

## **Service Charge Years**

### *Year end 2010*

9. The actual expenditure for this year was £3,637.83.
10. The Respondent challenges the insurance premium, yet he has provided no comparable insurance quotes or even an estimate of what he considered was reasonable. In the absence of that evidence, the Tribunal finds that the insurance charged for this year of £1,879.58 is reasonable.
11. The Respondent has challenged the sums claimed in advance in respect of building works. The Applicant has levied £750 per annum for a reserve fund. The Applicant has said that this provides long term advantages for both the building and lessees. However, it has not provided any basis upon which the £750 has been arrived at. No maintenance plan or other similar report has been provided showing what these sums are intended to be spent on. Whilst the lease does allow for a reserve fund, the failure by the Applicant to point to any evidence as to what the sums are for or how the £750 has been calculated mean that the Tribunal is not satisfied that this sum is payable. Given that there is a credit of £4 in respect of interest on this sum, that should also be taken into account.
12. None of the other charges are challenged for this year and so they are allowed in full.

### *Year end 2011-12*

13. The actual service charge for year end 2011 was £3,717.27 and for 2012 it was £3,760.42.
14. The same points apply as above; i.e. of those items challenged, insurance is allowed in full and the reserve fund is not allowed (being £750 for each year, but allowing for £4.38 interest credit in 2011 and £4.75 in 2012). All other items are allowed.

*Year end 2013*

15. The same applies for 2013, save that for this year, the Respondent appears to also challenge the professional fees charged of £351. The Applicant has explained that these are in respect of a health and safety and fire risk assessment. This appears a reasonable fee to incur and is allowed in full.
16. It is also noted that as well as charging £750 for the reserve there is a credit of £633.67 in respect of a surplus on the reserve as well as £5.13 in interest. In light of the points made above about the reserve fund, the charge and the credits should be removed.

*Major Works / Reserve Fund*

17. The Tribunal notes that the Applicant states that works have been carried out in the current service charge year, which is not under present consideration. It may be that if the reserves have been utilised towards those works, then given this determination (and in particular the disallowance of the reserve fund), the Respondent will have to pay his full share of those works under the current years service charge and an adjustment can be made accordingly.

*Administration fee*

18. In the statement of account provided by the Applicant, administration fees have been added to the account on 3<sup>rd</sup> June 2011 (£24), 22<sup>nd</sup> November 2011 (£60) and 3<sup>rd</sup> September 2012 (£120). In addition there is a land registry fee of £12 and a GS collection fee of £90. There are also legal fees of £230 for 18<sup>th</sup> June 2010. If these are claimed by way of service charges, then as the lease does not provide for such charges they are not allowed. If they are administration charges, then the Applicant has not set out how they are said to be recoverable and again they are not allowed.

*Interest*

19. The lease makes no provision for interest on sums due. Therefore those amounts which appear on the statements of account are disallowed. That will

not preclude recovery of any interest under the County Court Act 1984 as has been claimed in the County Court.

#### *Arrears*

20. The Respondent challenges the carry over from previous years of the debit of £4,351.36. The Applicant states that this sum has been settled and does not form part of the claim against the Respondent. The Tribunal notes a payment of £4,749.10 which was made in August 2010. The Tribunal does not consider that there is any relevant carry over.

#### *Sums due*

21. Accordingly for the service charge years in question, the following sums are payable:
- a. For the year end 2010: £3,637.83 less £750, plus £4, being £2,891.83; the Respondent's share being £722.96.
  - b. For the year end 2011: £3,717.27, less £750, plus £4.38, being £2,971.65; the Respondent's share being £742.91.
  - c. For the year end 2012: £3,760.42, less £750, plus £4.75, being £3,015.17, the Respondent's share being 753.79,
  - d. For the year end 2013: £4,529.99, less £750, plus £5.13, plus £633.67, being £4,418.79, the Respondent's share being £1,104.70.
22. The total amount payable by the Respondent for these years in respect of the service charge is therefore **£3,324.36**.

#### **Conclusion**

23. The Tribunal determines that for the years in question, **£3,324.36** is payable by way of service charges. No sums are payable in respect of administrative charges. No application under section 20C was made by the Respondent, in any event, the Tribunal would have refused such an application given the limited participation of the Respondent and the fact that the majority of the items claimed are payable. The issue of payment of any other sums and interest

(other than the interest referred to above) and costs shall be dealt with by the County Court when the matter is transferred.

A handwritten signature in black ink, appearing to read 'D. Dovar', with a long, sweeping flourish extending to the right.

Judge D Dovar

## **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.