

12977



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

Case reference : CAM/00KF/LSC/2018/0035

Property : 13e Preston Road,
Westcliff-on-Sea,
SS0 7NB

**Applicant
Represented by** : **BTTMM Ltd.**
Lorraine Lancaster – solicitor advocate

Respondent : **Joanne Claire Vivian Adey**

**Date of Transfer from
the county court at
Southend** : **22nd May 2018**

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

The Tribunal : **Bruce Edgington (lawyer chair)**
Gerard Smith MRICS FAAV
Nat Miller BSc

**Date and venue of
Hearing** : **10th September 2018 at Park Inn by Raddison,
Church Road, Southend-on-Sea SS1 2AL**

DECISION

© Crown Copyright

1. In respect of the amounts claimed by the Applicant in the county court proceedings in respect of service charges, the determination of the Tribunal is as follows:

<u>Charge</u>	<u>Incurred</u>	<u>Claim</u>	<u>Amount</u>	<u>Reason</u>
Survey & schedule	30.05.14	05.01.17	nil	statute barred
Rubbish etc.	30.05.14	05.01.17	nil	withdrawn
Management fees	21.01.14	05.01.17	195.00	balance withdrawn
Fire risk assessment	06.01.14	05.01.17	nil	withdrawn
Fire alarm work	24.11.14	05.01.17	92.00	balance withdrawn
Door entry system	27.01.15	05.01.17	nil	withdrawn
Roof	25.03.15	05.01.17	nil	statute barred
Electricity	14.04.15	05.01.17	nil	withdrawn
Insurance	01.08.14	05.01.17	nil	withdrawn

Insurance	01.08.15	05.01.17	nil	withdrawn
Insurance	01.08.16	05.01.17	105.28	reduced by applicant
Insurance	2017	28.04.17	110.86	reduced by applicant
Management fee	2017	28.04.17	150.00	reasonable amount
Electricity	2017	28.04.17	27.14	reduced by applicant
Alarm & lighting	2017	28.04.17	125.00	reasonable
Storm damage	2017	28.04.17	nil	withdrawn
Alarm & lighting	2018	01.11.17	125.00	reasonable
Insurance	2018	01.11.17	nil	demanded too early
Management fee	2018	01.11.17	nil	demanded too early
Front garden	2018	01.11.17	nil	demanded too early
Hall clean	2018	01.11.17	<u>nil</u>	demanded too early
			930.28	

Reasons

Introduction

2. The claim for service charges is for maintenance costs, insurance, electrical charges, management fees and some external decoration work. There is no argument by the Respondent that all the amounts claimed would be payable if the correct demands had been made within the limitations set out in Statute and with proper consultation.
3. Proceedings were issued in the county court for the recovery of the items claimed as listed above in the sum of £4,520.18 from the Respondent including £180 in ground rent. Interest and costs are also claimed. A defence was filed which said that none of the claim was payable. It also raised certain factual queries.
4. An order was made by District Judge Ashworth at the Southend County Court on the 22nd May 2018 allocating the case to the small claims track. The order went on to say:
 - “(a) This claim shall be heard by a Judge of the First Tier Property Tribunal, authorised to sit as a District Judge of the County Court for the purposes of exercising the County Court’s jurisdiction
 - (b) The court file shall be referred to such Judge for him/her to deal with as he/she may direct
 - (c) At the same time as dealing with this claim, the said Judge may also exercise the jurisdiction of the Property Tribunal in respect of the subject matter of this action or give directions as to how it shall be exercised”
5. As part of a Government initiative to rationalise and promote the best use of judicial experience and save the public money in costs, there has been a fairly recent change to the **County Courts Act 1984**. Sub-sections 5(2)(t) and (u) were amended by the **Crime and Courts Act 2013** so that First-tier Tribunal judges became County Court judges. The Civil Justice Council has authorized a certain number of Judges to deal with these cases and the Tribunal chair, Judge Edgington, is one of those so authorized.

6. A directions order was made by Judge Edgington on the 7th June 2018 which ordered the parties to file and serve evidence. Both parties have served statements of evidence and all the evidence filed has been considered by the Tribunal. The order made it clear that the county court matters such as interest and costs would be dealt with by the Tribunal chair at the hearing. Any such matters determined below will be the decision of Judge Edgington alone.

The Inspection

7. As the only real issue between the parties was whether the service charges claimed are payable rather than a question of reasonableness, the Tribunal did not inspect the property before the hearing.

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 where a service charge is payable before the relevant costs have been incurred, no greater amount than is reasonable is so payable. This Tribunal has jurisdiction to make a determination as to whether any service charge is reasonable and, if so, whether it is payable.
10. Of relevance to some of the Respondent's representations, section 20 of the 1985 Act requires consultation with tenants in respect of qualifying long term agreements involving a tenant in more than £100 in expenditure per annum and lasting more than one year.
11. Section 20B also says that if service charges were incurred more than 18 months before a demand is made then they are not payable unless, within that period of 18 months beginning with the date when the charges were incurred, the tenant was notified in writing that the costs had been incurred and a charge would be made ("the 18 month rule").
12. As far as interest is concerned, it is noted that the claim applies for interest at the judgment rate of 8% pursuant to section 69 of the **County Courts Act 1984**. Subsection 69(4) states that "*Interest in respect of a debt shall not be awarded under this section for a period during which, for whatever reason, interest on the debt already runs*". In this case, interest runs on the debt under the terms of the lease.

The Hearing

13. The hearing was attended by Lorraine Lancaster, solicitor advocate for the Applicant together with her witness, Raquel Keenan. The Respondent also attended. It turned into a reasonable discussion on the issues and, to their credit, the attendees behaved reasonable and sensibly.
14. After some discussion between the chair and Ms. Lancaster, it was conceded on behalf of the Applicant that the 18 month rule must apply to the work on the roof

because even though the Respondent may have been aware that the work had been done, she had not been informed, in writing, with the 18 months after the work had been done, of the amount to be demanded.

15. As far as the agreements for management and the other contractual figures claimed, the evidence was that the management agreement was verbal and was simply on the basis that the agreement could be terminated at any time on one month's notice. The other contractors for fire alarm work etc. were instructed as required and there was no ongoing contract which could not be terminated immediately. As an example, Ms. Keenan said that the contract for the testing of the fire alarms had just been given to someone else as they charged less.
16. The evidence so far as the weekly testing of the fire alarms was that the insurers made this a term of their cover. If that is right, then written confirmation of this should be obtained and sent to the Respondent. As to assessments of the property and their frequency are concerned, Ms. Keenan's evidence was that there should be a fire risk assessment every 5 years and one had just been done.
17. There was some discussion about the frequency of various tests and assessments with Ms. Keenan saying that annual reviews are statutorily required. The Tribunal did not accept that. Organisations such as ARMA suggest a minimum of annual reviews but this would be to ascertain whether there had been any changes to the property since the last review. Some of these could be done by managing agents who complied with the RICS code of practice which includes at least one annual inspection.
18. The Tribunal asked whether the service charge demands included the statutory information and it was said that they did. The Respondent agreed that most of them did and she did not pursue the point.
19. As far as the various amounts charged which had not been withdrawn, the Tribunal found that they were within the range of reasonableness save for the management fees. For at least one of the year's in question, the Applicant, through its solicitor and Ms. Keenan readily accepted that there had been problems when Mr. Keenan became unavailable to deal with the management.
20. The Respondent complained about the attitude of some of the contractors instructed to come onto the property and she was also concerned about the number of people who appear to have keys to the front door. No doubt Ms. Keenan will try to ensure that contractors do retain some degree of civility. As far as keys are concerned, one can certainly understand the concerns expressed although it must be said, of course, that the common parts belong to the landlord and it is really up to leaseholders to make sure that their individual flats are secure.

Conclusions

21. The Tribunal was pleased to see that so many sensible and reasonable admissions had been made, which reduced its task. At the end of the hearing the Respondent said she was grateful to the Applicant and Ms. Keenan for those

concessions.

22. As has been said, the Tribunal accepted that the remaining service charges were within the bounds of reasonableness save for management fees. It was accepted by the Tribunal that there had still been some management throughout and it is understood that the lack of management for that period has resulted in monies being lost because the claims became statute barred because of section 20B of the 1985 Act. Nevertheless the fee for one year will be reduced from £195 to £150. The particular year chosen is described on the claim as '2017' simply as a sample. The lack of management was not restricted to a particular period in time. The overall result is considered by the Tribunal to create reasonable fees for the years in question.
23. Finally, the Tribunal was satisfied that none of the contracts with managers or contractors were to last more than one year and, accordingly, no consultation was required. Further, although there has been a change of managing agent during this time, there is no requirement on a landlord to consult over such a change, although it must be said that informing a leaseholder of such a change should be a minimum requirement as a simple matter of courtesy, let alone the need to give authority for monies to be paid to a third party.
24. As far as county court matters are concerned, the claim includes £180 in ground rent, which was not denied at the hearing, plus interest and costs. The claim for interest was withdrawn and only the issue fee of £205 was claimed. There will therefore be judgment for $£930.28 + £180 + £205 = £1,315.28$. It is assumed that the ground rent is still outstanding but, if not, then it obviously does not have to be paid again.

.....
Regional Judge Edgington
12th September 2018

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and

decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.