

12858



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

Case Reference : CHI/21UF/LSC/2018/0014

Property : 15A Murray Avenue, Newhaven, BN9 9SF

Applicant : Mr Michael Curry

Representative :

Respondent : Ms Dawn Price

Representative :

Type of Application : Service charges

Tribunal Members : Judge D Agnew
Mr B Simms FRICS

Date and venue of : 19th June 2018 at the Hilton Hotel Brighton

Date of decision : 11th July 2018

DECISION

© CROWN COPYRIGHT 2018

The Application and Background

1. By an application dated 2nd February 2018 the Applicant, who is the long lessee of a flat situated at and known as 15A Murray Avenue, Newhaven BN9 9SF ("the Property") applied to the Tribunal for a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") as to his liability to pay service charges to the Respondent who is the freehold owner of the Property and who occupies the flat on the ground floor below that of the Applicant.

2. Directions were issued following a case management hearing which required the parties to serve statements of case. The matter came before the Tribunal for hearing on 19th June 2018. Immediately preceding the hearing the Tribunal carried out an inspection of the property.

The Applicant's case

3. In a nutshell the Applicant's case was that he had received no demands for service charges from the Respondent since 2011. It is now too late for the Respondent to demand service charges going back more than 18 months. A request for payment of £1950 made to the Applicant's conveyancer when he was trying to sell the Property is not a proper demand.

The Respondent's case

4. The Respondent admits that she has not demanded any "maintenance money" for the years for which a determination is sought. She did, however, set out the expenditure she has incurred over the period in question. Over the last 18 months there was just one item of expenditure in each year for the property insurance premium of £199.38 in 2016 and £192.47 in 2017. Mr Curry said that he would have no objection to paying one half of these sums if a proper demand was made. He also agreed that for 2018 a payment on account of insurance costs of £100 would be a reasonable sum to pay, if a proper demand were to be made.

The applicable law

5. By Section 27A of the Act it is provided that:-
- (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, improvement, 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 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.

6. By section 19 of the Act:-

Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is payable, and, after the relevant costs have been incurred, any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

7. By section 20B of the Act:-

“If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then....the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.”

8. By section 21B of the Act:-

“(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges).

.....

(3) A tenant may withhold a payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand,”

The Tribunal’s decision

9. The Respondent’s admission that no service charges have been demanded of the Applicant in respect of the years for which a determination is sought is sufficient for the Tribunal to find that as at the date of the hearing the Applicant owed nothing to the Respondent by way of service charges.

10. That situation can be remedied by the Respondent serving upon the Applicant statutorily compliant demands but only for a period going back 18 months and for costs incurred during that period. This is because section 20B of the Act restricts the recovery of stale charges incurred more than 18 months prior to demand.

11. The Tribunal concludes that if the Respondent does now serve proper demands for 2016, 2017 and on account for 2018 the Applicant will then be liable to pay the following sums:-

For 2016 one half of £199.38

For 2017 one half of £192.47

On account for 2018 £100

12. If the Respondent needs to take advice as to the requirements for a proper demand to be made, she should do so. She seems to be reluctant to have any direct contact with the applicant but a proper demand can be served simply by putting one through the Applicant's letter box.

Dated the 11th day of July 2018

Judge D Agnew (Chairman).

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