



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

Case Reference : **CHI/43UH/LIS/2018/0062**

Property : **Flat 4, Muncaster House, Ferry Lane,
Laleham, Staines-Upon-Thames,
Middlesex, TW18 1SN**

Applicant : **Martin Robert Alistair Bailey
Matthew John Duncan Bailey
Alison Mary Jane Howe
Marianne Carol Turvey
Andrew Stephen Harlos Bailey**

Representative : **Mr Matthew John Bailey**

Respondent : **Mr Sean Richard New**

Representative :

Type of Application : **Transferred Proceedings from
County Court in relation to service
charges**

Tribunal Member(s) : **Judge Tildesley OBE**

**Date and Venue of
Hearing** : **1 February 2019
Staines County Court
The Law Courts
Knowle Green
Staines
Middlesex**

Date of Decision : **22 February 2019
Oral Decision given on the day of the
hearing**

DECISION

**AMENDED UNDER RULE 50 Page 7 Para 34 Total column and replacing
Applicant with Respondent**

Decisions of the Tribunal

1. The Tribunal determines that the sum of £4,023.23 is payable by the Respondent in respect of the service charges and insurance in total for the years ended 30 June 2012, 2013, 2014, 2015, 2016 and 2017.

The Application

1. The Applicants seek and following a transfer from the County court the Tribunal is required to make a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable; and under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 as to whether administration charges are payable.
2. The original proceedings were issued in the County Court under claim no. E34YJ335 and were transferred to the Tribunal by Deputy District Judge Mardell by order dated 19 October 2018.
3. In addition to a claim for unpaid service charges and administration charges, the Applicants seek to recover ground rent, interest incurred to the issue of proceedings and court fee.
4. Although the matters outlined in 3 above were a matter for the court, as a result of amendments made to the County Courts Act 1984, First-tier Tribunal Judges are now also Judges of the County Court. This meant that, in a suitable case, the Tribunal Judge can decide issues that would otherwise have to be separately decided in the County Court; and should the Tribunal Judge do so, this might then result in savings in time, costs and resources.
5. Judge Tildesley noted that the transfer order did not require the proceedings to be returned to the County Court at Staines. Judge Tildesley took the view that this was a suitable case for a Tribunal Judge sitting sequentially as a Judge of the County Court to determine all issues which form part of the claim no E34YJ335 .
6. The Tribunal directed a hearing for the 1 February 2019 at which Mr Matthew John Bailey represented the Applicants. Mr New attended in person.
7. There were previous proceedings before the Tribunal on 20 January 2011 when the property was described as a Grade 11 listed Georgian House built around 1750 with a later adjoining Victorian addition built about 100 years later. The decision reported that the older house was built of brick and fully rendered with two storeys and attic set back behind a raised parapet into a tiled roof with dormer windows. The later building has typical Victorian brick

elevations with pronounced gables and steeply pitched roofs. The two buildings were converted into eight self contained flats in the early 1950s. The Tribunal which inspected the property found the two buildings particularly the older of the two in a tragically poor condition and showed signs of serious neglect which has probably subsisted for some 15 or 20 years.

8. The Tribunal did not inspect the property in connection with these proceedings because it was not necessary in view of the case put forward by the Respondent.
9. The Respondent has been the registered proprietor of Flat 4 under Title Number SY427063 since 17 August 1999. The Respondent holds the property subject to a lease for a term of 99 years from 25 December 1972 with a ground rent of £25 per annum. The lease was made between Walter John Bailey of the one part and Glenys Winifred Marlow of the other part.
10. The Tribunal characterised the lease as a typical insuring and repairing lease of a certain vintage. Under the lease the tenant is required to pay by way of additional rent a contribution of one eighth to the landlord's costs of insuring the property. Under Clause 4(2) of the lease the Tenant is required to contribute and pay annually one eighth part towards the costs expenses and outgoings and matters mentioned in the Fourth schedule.
11. The Fourth Schedule identified the following costs that were recoverable through the service charge:
 - All costs and expenses incurred by the lessor for the purpose of complying or in connection with the fulfilment of their obligations under sub-clause (4) (5) and (6) of Clause 5 of the lease.
 - All rates taxes and outgoings (if any) payable by the Lessor in respect of roads, paths, forecourts and courtyard of the Property
 - The costs of management of the Property
12. Sub clauses (4), (5) and (6) of Clause 5 of the lease are concerned with the lessor's covenants to maintain and keep in good and substantial repair the main structure of the building, gas and water pipes, and the main entrance buildings, to keep clean and reasonably lighted the common areas, and to decorate the exterior of the building.
13. Mr Matthew Bailey explained that his father was responsible for the conversion of Muncaster House in the first half of the 1950s. In early to mid 1970's flats 1,2,4 and 5 were sold either to the then tenants or on the open market on 99 year leases and Flats 3, 6, 7

and 8 were made over to Mr Matthew Bailey and three of his siblings. Flat 8 was sold by one of his sisters in 1999.

14. Mr Matthew Bailey stated that following the death of his father in 1983 the freehold passed to his mother. From December 2007 when his mother died to May 2014 the executors of her estate, Mr Matthew Bailey, Mr Martin Bailey and Mr Christopher Bennett, administered the freehold. In May 2014 the freehold was transferred to Martin Bailey, Matthew Bailey, Alison Howe and Marianne Carol Turvey and Mr Andrew Bailey.
15. At the beginning of the hearing Mr Matthew Bailey produced written authority from the other executors¹ to his late mother's estate to act on their behalf in relation to the sums claimed from 23 January 2012 to May 2014 and written authority from the other freeholders in respect of the sums claimed from May 2014 to June 2017.

The Applicant's Case

16. Mr Matthew Bailey confirmed the contents of his witness statement dated 11 January 2019. Mr Bailey stated that the claim related to the period from 1 July 2011 to 30 June 2017 for ground rent, insurance rent, service and administration charges.
17. The total amount claimed was £4,173.23 comprising £150 ground rent, £3,171.23 insurance, £43.38 charge for paying the insurance by direct debit and £808.62 in service and administration charges. The Tribunal has jurisdiction to deal with all those matters except the ground rent.
18. Mr Matthew Bailey produced in the hearing bundle copies of the demands for the various charges for each six month period from 1 July 2011 together with a statement of account and documentation substantiating the expenditure for each period. Mr Matthew Bailey confirmed that the relevant Summary of Tenant's Rights and Obligations had been sent with the demands.
19. The Tribunal is satisfied from its examination of the accounts and documentation that the sums claimed as service charges and insurance were authorised by the terms of the lease.
20. Mr Matthew Bailey explained that the Respondent had not paid any of the charges due since April 2012. Mr Matthew Bailey said that despite a number of letters and emails to Mr New requesting payment of his outstanding account or an explanation why he was withholding payment, a written response was only received by email dated 21 April 2017. According to Mr Matthew Bailey, Mr New supplied no valid reason for his non-payment in that e-mail.

¹ Mr Christopher Bennett's authority was in the form of an email.

The Respondent's Case

21. The Respondent was directed to complete a schedule for each year in dispute identifying which of those charges in that year he disputed and why and send a completed schedule to the Applicant and the Tribunal.
22. The schedule returned by the Respondent simply identified the total amount for each year in dispute and then made reference to pages 3, 4 and 5. Pages 3 and 4 set out his defence to the disputed charges for 2012, 2013 and 2014. Page 5 set out his defence to 2015, 2016 and 2017. Essentially his defence was that Mr Matthew Bailey was not entitled to make the claims for the years in question because he had no legal standing to make the claims. The Respondent asserted that the correct legal entity for making the claim in the years 2012, 2013 and 2014 was the executors of the late Mrs Bailey's Estate, and the correct legal entity for 2015, 2016 and 2017 was the five freeholders.
23. The Respondent's representations went to the validity of the Claim which was dealt with by Judge Tildesley sitting as a County Court Judge. The representations were not relevant to the matters which fell within the Tribunal's jurisdiction, namely, whether the service charges including insurance were payable for the years in question.
24. When questioned by the Tribunal, the Respondent accepted that the costs claimed for insurance and service charges had been incurred and were not unreasonable. The Respondent stated that he had no evidence of alternative quotations to challenge the reasonableness of the costs incurred. The Respondent admitted that he had received the various demands and the Summaries of Tenant's rights and obligations exhibited in the Applicant's bundle.
25. The Respondent raised three other matters. He contended that the freeholders did not have a valid title to the property, and, therefore, were not legally entitled to demand the service charges. The Respondent's submission was derived from the fact that the registered title was in the names of four freeholders and not the five that inherited the property on the death of their mother. Mr Matthew Bailey explained that it was the practice of HM Land Registry to record a maximum of four names on their documentation. The Tribunal was not convinced by the Respondent's argument. The Respondent's liability to pay the service charges originates from the lease not the freehold title.
26. The Respondent's next matter was that the various demands since 2014 only included the names of Mr Matthew Bailey and Mr Martin Bailey and gave the address of Mr Matthew Bailey. The Respondent argued that the demands should include the names of the five freeholders and their addresses in order to comply with section 47

of the Landlord and Tenant Act which require the name and address of the landlord on all demands.

27. The Respondent accepted that he had been notified of the transfer of the freehold to Mr Matthew Bailey and his four siblings by letter dated 30 June 2014. The letter gave the names of each freeholder and advised the Respondent that Mr Matthew Bailey was the point of contact regarding the administration and management of Muncaster House. The letter gave details of Mr Matthew's Bailey's address and e-mail.
28. Mr Matthew Bailey had sought the advice of LEASE on whether the details given in the demands met the legal requirements. Mr Matthew Bailey informed the Tribunal that LEASE considered it would lead to confusion if all five names and addresses were put on the demands and other notices, and that the current arrangement of putting Mr Mathew Bailey's address was probably sufficient particularly as the freehold was owned privately.
29. The purpose of the requirement under section 47 is to enable the tenant to know who his landlord is. The Respondent was informed by letter of 30 June 2014 of the names of the five freeholders, three of whom have flats at the property and that Mr Matthew Bailey was acting effectively as the landlord for the property. The Tribunal is satisfied that the details on the service charge demands giving the names of Mr Matthew Bailey and Mr Martin Bailey and the address of Mr Matthew Bailey met the requirements of section 47 of the 1987 Act.
30. Finally the Respondent complained that Mr Matthew Bailey had failed to take forward repairs to the building and that the leaseholders themselves had to carry out necessary works. Mr Matthew Bailey believed that this was not part of the case but denied that he and his fellow freeholders had failed to take matters forward. According to Mr Matthew Bailey, there had been considerable correspondence and some meetings with the leaseholders to discuss works to the building and how the works would be paid for but no agreement had been had been reached with the leaseholders regarding payment.
31. The Tribunal reminded Mr Matthew Bailey of the landlord's obligations under the lease, and that it was in the interests of the freeholders to ensure that their investment was properly maintained. The Tribunal, however, did not venture into the details of this dispute because the Respondent acknowledged that he had not put in a counter claim and that he was considering taking proceedings against the landlord for breach of covenant and damages.
32. As far as the Tribunal proceedings were concerned, the Respondent had not put forward a case for historic neglect which meant that the

Tribunal was not permitted to hear the Respondent's complaint about the state of the building.

Decision

33. The Tribunal finds that the charges claimed for services and insurance for the periods from 1 July 2011 to 30 June 2017 were authorised by the lease, properly demanded and substantiated by the Applicant's evidence. The Respondent has not challenged the reasonableness of the charges and adduced no evidence of alternative quotations.
34. The Tribunal, therefore, determines that the Respondent is liable to pay the following amounts in respect of service charges and insurance for the years in question.

Service Charge Year	Amount determined for service charges, and insurance including the cost of paying the insurance by instalments (£)
1 July -30 June 2012	635.73
1 July -30 June 2013	654.62
1 July -30 June 2014	740.27
1 July -30 June 2015	659.36
1 July -30 June 2016	694.56
1 July -30 June 2017	638.69
Total	£4,023.23

RIGHTS OF APPEAL

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate 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 the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, 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 would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
 - (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
 - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.