

9347



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

**Case Reference** : MAN/OOCX/LSC/2013/0098

**Property** : 6 Woolcombers Hall, Dale Street, Shipley, West  
Yorkshire, BD18 3PU

**Applicant** : Barbara Whitfield

**Respondent** : Jimmy's Properties Ltd

**Type of  
Application** : Landlord and Tenant Act 1985, section 27A

**Tribunal Members** : Habib A Khan (Tribunal Judge)  
Aisling Ramshaw (FRICS)

**Date of Decision** : 16 October 2013

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**DECISION**

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## **Introduction**

1. By an application dated 17 June 2013, the Applicant, Barbara Whitfield, applied to the Tribunal for the determination of liability to pay and reasonableness of service charges for the years 2008, 2009, 2010, 2011 2012 and 2013. The application was made pursuant to section 27A and section 19 of the Landlord and Tenant Act 1985.
2. The Applicant is the leaseholder of the property at 6 Woolcombers Hall, Dale Street, Shipley, BD18 3PU. The Respondent is Jimmy's Properties Limited, 138 New Line, Greengates, Bradford, BD10 0BX.

## **Description**

3. The Tribunal inspected the property on 16<sup>th</sup> October 2013 in the presence of the Applicant and her husband Darren Whitfield. The Respondent was not present at the inspection.
4. The subject property is a modernised former mill. In total, the development has 8 flats comprising of leaseholders and private tenants. The flats varied in size depending on bedrooms. The property in question comprised of two bedrooms. There was communal lighting, which had recently been changed and replaced with a more efficient light switches. The premises were reasonably clean. There was a CCTV cameras but the Tribunal was informed that these did not work. The development was found to be in reasonably good condition.

## **Paper Determination**

5. The directions provided for the matter to be determined on paper but gave any party the right to ask for an oral hearing. No such request was made, so the Tribunal determined the matter on the basis of the written materials. Written representations had been received from both the Applicant and the Respondent.

## **The Lease**

6. The Tribunal was provided with a copy of the lease made between Jimmy's Properties Ltd (Landlord) and Barbara Kitson (Tenant) dated 27<sup>th</sup> of February 2007
7. Under the Lease, the Lessee's Proportion means the proportion of the Maintenance Expenses payable by the Lessee in accordance with the provisions of Schedule 7

8. Maintenance Expenses is defined at para (h) as the money actually expended or reserved for periodical expenditure by or on behalf of the Landlord Company at all times during the term hereby granted in carrying out the obligations specified in Schedule 6
9. The Second Schedule defines the extent of the maintained property.
10. Schedule 6 lists the Maintenance Expenses. Schedule 7 lists the proportion payable. The relevant provisions of Schedule 6 are set out below.
  7. The provision maintenance renewal and insurance of firefighting appliances communal television aerials security entry systems and other such equipment relating to the maintained property as the landlord Company may from time to time consider necessary or desirable for the carrying out of the acts and things mentioned in this schedule.
  11. Insuring the building and other structures to their full the reinstatement value against loss or damage....

#### SCHEDULE 7

##### The Lessee's Proportion of the Maintenance Expenses

1. One eighth of the amount attributable to the matters mentioned in part (A) of the Sixth Schedule hereto and of whatever of the matters referred to in part B of the said schedule are expenses properly incurred by the management company which are relative to the matters mentioned in part (A) of the Sixth Schedule
5. An account of the maintenance expenses (distinguishing between actual expenditure and reserve expenditure) for the period ending 31 March next and for each subsequent years ending on 31 March during the term shall be prepared as soon as is practicable and the Landlord Company shall serve a copy of such account and of the accountant certificate on the Lessee.

#### **The Law**

Section 27A of the Landlord and Tenant Act 1985 provides:

- “(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, 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.”

Section 18 of the Act provides that “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 cost of management...”

Section 19 of the Act provides that:

“(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 provision 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.”

20B.— Limitation of service charges: time limit on making demands.

(1) 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 (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 47(1) provides as follows:

“(1) Where any written demand is given to a tenant of premises to which this part applies, the demand must contain the following information, namely  
(a) the name and address of the landlord, and  
(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.”

Subsection (4) provides that in this section “demand” means a demand for rent or other sums payable to the landlord under the terms of the tenancy (including, therefore, a service charge).

Under subsection (2) where any demand for a service charge does not contain the information required by subsection (1) the amount demanded is to be treated as not being due from the tenant at any time before the information is furnished to him.

### **The Applicants Submissions**

12. The Applicants submissions focused on the following issues;

- a. The Applicant states that the Respondent has not complied with the terms of the lease.
- b. The Respondent has not served her with a summary of rights and obligations.
- c. Some of the service charge demands did not contain the Landlords name.

- d. The Respondent has not made the demands within the relevant statutory time limits.
- e. The Applicants intention is to sell the property and the Applicants wishes to ensure that all the paperwork is in order to assist any future sale.
- f. At present, the Applicant is not paying the service charge.
- g. The Applicant claims she wrote to Respondent in April 2009 and requested proper certified accounts and service charge demands.
- h. The Applicant reminded the Respondent of the need to ensure that any demands contain the relevant summary of rights and obligations as far back as 2009. However, as the Respondent has not complied with this request, the Applicant has withheld service charge payments since then.

13. The evidence which the Applicant provided in the Appendices consist of;

- a. Copies of handwritten note requesting service charge payment (undated) referring to 2009/10.
- b. Service charge demand dated 3 June 2009, from Jimmy's properties Ltd not addressed to any specific individual requesting service charge payment.
- c. A further demand dated 27<sup>th</sup> March 2010 requesting service charge payments for 2008/2009 and 2009/2010.
- d. Service charge demand from Jimmy's Property Management Ltd (undated) , which referred to an outstanding service charge demand for £1600, which consisted of demands for payment of £400 for each of the 4 years from 2008 to 2011.
- e. Service charge demand dated 3 June 2013, demanding £2400 which is made up of service charges of £400 of each of the 6 years starting from 2008.

### **The Respondents Submissions**

14. The Respondent provided a witness statement from Jimmy Hawthorne who is described as a director of Jimmy's Properties Ltd and Jimmy's Property Management Limited. His evidence was;

- a. He has rounded up the annual service charge demand and does not think the figure of £400 per year is excessive.
- b. He has provided certified accounts from Ashford's Chartered Certified Accountants.
- c. He claims that the Applicant informed him that she would settle her account when she sold the property.

### **The Tribunals Decision**

15. The first issue was the service charge demands. Under the terms of the lease, the Respondent clearly has to provide an account of the maintenance expenses (distinguishing between actual expenditure reserves expenditure) for the period ending on 31 March each year and under the terms of the lease has to serve a copy of such account and of the accountants certificate on the lessee. That does not appear to have been the case. Although, the Respondent claims that this was provided, it is not produced save for 2013.
16. Furthermore, the Respondent has not at any time accompanied any service charge demand served on the Applicant with a notice complying with section 21B of the 1985 Act. Section 21B came into force in October 2007 and applies to all the demands which are the subject of the current dispute. The Applicant is therefore entitled to withhold payment of the sums currently outstanding pursuant to section 21B(3) of the Act until the Respondent has complied with section 21B(1). The Respondent confirms that he was made aware of the deficiency with his paperwork, in 2009, by the Applicant but does not appear to have taken any steps to correct this.
17. The second issue was omission of the Respondent Landlords name on two demands. The demands, which had been prepared and sent by the Respondent were varied in what they disclosed. Appendix A did not contain any name or address, Appendix B & C contained the name and address as *Jimmy's Properties Limited* and gave the address as Woolcombers Hall, Dale Street, Shipley BD18 3BU. Appendix D & E provided the name as *Jimmy's Property Management Limited* and gave an address as 138 New Line, Bradford, BD10 0BX. The Applicant raises no dispute in relation to Appendix A, B & C but challenges Appendix D & E as it does not disclose the name of the Respondent Landlord but does contain the correct address. The Applicant could have challenged the demand at Appendix A for lacking both but has not done so. The Tribunals determination in respect of service charge demands and the lack of accompanying information, referred to above, has made this issue, somewhat academic.
18. The final issue for determination was whether the service charge demands were made within the time limits. Section 20(b) contains provisions intended to deal with historic claims for service charges. 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 is not liable to pay the relevant service charge. However, this restriction does not apply where the Tenant was notified in writing that those costs had been incurred and that Tenant would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge. The Tribunal determined that as the Applicant accepts that she was made aware that charges had been incurred, albeit that she wasn't provided a detailed breakdown and it did not include a summary of rights and obligations, the

provisions of section 20B did not prevent the Respondent from recovering the service charges. In fact, the Applicant herself refers to the fact that she knew this related to the services charges as she asked her landlord to comply with the legal requirements.

19. The Tribunal, therefore, determined that as the Applicant accepts that she was made aware in writing, that the service charges had been incurred, (in April 200, March 2010, October 2011, June 2013), in respect of the service charge years 2008-2013, the provisions of section 20B did not prevent the Respondent from recovering the service charges.
20. The Applicants case, at this stage, does not challenge the reasonableness of the service charge itself, but focuses on the fact that it has not been properly demanded and not in accordance with the lease. The Tribunal, therefore, did not address the issues of the reasonable of the charges given the issues that were raised at this stage. It will clearly be a decision for the Applicant to challenge any aspects of the service charges once she has been furnished with the correct information. Simply by way of an observation only, the Tribunal noted that the service charge accounts for each year were not particularly expensive for a development of this size.

#### **Summary of Decision**

21. The Applicant is therefore entitled to withhold payment of the sums currently outstanding pursuant to section 21B(3) of the Act until the Respondent has complied with section 21B(1).
22. The Tribunal determined that as the Applicant accepts that she was made aware in writing, that the service charges had been incurred, (in April 200, March 2010, October 2011, June 2013), in respect of the service charge years 2008-2013, the provisions of section 20B did not prevent the Respondent from recovering the service charges.