10723

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/11UB/LSC/2018/0009**
Property	:	**81 Barnshaw House, Coxhill Way, Aylesbury HP21 8FH**
Applicant	:	**Grand Central Management Company Ltd**
Representatives	:	**Neil Douglas Block Management Ltd, Managing Agent**
	:	**Mr Jonathan Wragg of Counsel**
Respondent	:	**Jonathan Anthony Stacey**
Date of Application	:	**19th October 2017 (rec'd 18th January 2018)**
Type of Application	:	**to determine the reasonableness and payability of the Administration Charges (Schedule 11 Commonhold & Leasehold Reform Act 2002)**
Tribunal	:	**Judge JR Morris** **Miss M Krisko BSc (Est Man) BA FRICS** **Mr N Miller BSc**
Date of Hearing	:	**16th April 2018**
Date of Decision	:	**9th May 2018**

DECISION

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The Tribunal having made a determination of the reasonableness of the Administration Charges (Schedule 11 Commonhold & Leasehold Reform Act 2002) following the transfer of Claim Number C36YY611 from the County Court, the case is now returned to the County Court sitting at Peterborough for such further order as may be appropriate.

Decision

1. The Tribunal determines that the Administration Charges demanded of £265.00 comprising £25 for the reminder letter, £192.00 for employing a debt collection company and £48.00 for a land registry search are reasonable and payable.

2. The Tribunal found that the Estimated Service Charge and contribution to the Reserve Fund are payable.

3. The extent of the land comprised in the demise was agreed

Reasons

Application

4. This Application is for a determination of the reasonableness of the Administration Charges (Schedule 11 Commonhold & Leasehold Reform Act 2002) in the form of costs payable for enforcement of service charge payments. The years in issue are the Administration Charges for non-payment of the Estimated Service Charge incurred for the period 1st June 2015 to 31st May 2016.

5. Claim Number C36YY611 was issued by the Applicant on 28th October 2016 and Judgement in Default for £1,685.45 (comprising Service Charge of £1,350.45 and Debt Collection Costs (PDC) of £299.95) was made on 20th March 2017.

6. Following an application by the Respondent for the judgement in default to be set aside on the 6th April 2017 Deputy District Judge Child ordered that the judgement of 20th March 2017 be set aside and the case referred to the First-tier Tribunal (Property Chamber – Residential Property) to determine the issues raised by the Defendant [Respondent] as to the extent of the land included in his lease and the reasonableness of Administration Charges.

7. The total claim is for £630.45 (comprising Estimated Service Charge of £312.15, Reserve Fund £53.30 and Administration Charge of £265.00).

The Law

8. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.

9. Section 18 Landlord and Tenant Act 1985
   (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, improvement 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 of which the service charge is payable.*

(3) *for this purpose*

(a) *costs include 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 period*

10. Section 19 Landlord and Tenant Act 1985

(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.*

11. Section 27A Landlord and Tenant Act 1985

(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.*

(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 arbitration agreement to which the tenant was a party*

(c) *has been the subject of a determination by a court*

(5) *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*

12. Schedule 11 Commonhold and Leasehold Reform Act 2002

1. *Meaning of "administration charge"*
   (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
      (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
      (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
      (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
      (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
   (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
   (3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
      (a) specified in his lease, nor
      (b) calculated in accordance with a formula specified in his lease.
   (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

2. *Reasonableness of administration charges*
   A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

3. *(1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—*
      (a) any administration charge specified in the lease is unreasonable, or
      (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.
   (2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.
   (3) The variation specified in the order may be—
      (a) the variation specified in the application, or
      (b) such other variation as the tribunal thinks fit.

(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

5 *Liability to pay administration charges*

(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
a) in a particular manner, or
b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

The Lease

13. A copy of the Lease for the Property was provided dated 16th July 2007 for a term of 999 years from 1st January 2004 between Taylor Wimpey Developments Limited (the Lessor) (1) Grand Central Management Company

26. Paragraph 4 of part one of the Eighth Schedule states as follows;
To pay all costs charges and expenses (including legal costs and fees payable to a Surveyor) incurred by the Lessor in or in contemplation of any proceedings or service of any notice under Section 146 and 147 of the Law of property Act 1925 including the reasonable costs charges and expenses aforesaid of and incidental to the inspection of the Demised premises the drawing up of schedules of dilapidations and notices and any inspection to ascertain whether any notice had been complied with and such costs charges and expenses shall be paid whether or not forfeiture for any breach shall be avoided otherwise than by relief granted by the Court.

Description & Inspection of the Property

27. The Tribunal inspected the Property in the presence of Ms Louisa Myatt, Director of Neil Douglas Block Management Ltd for the Applicant and the Respondent.

28. The Property is a ground floor flat in a three-storey block of 91 one and two-bedroom self-contained purpose-built flats (Barnshaw House). The flats are arranged around an inner area which is covered over at first floor level. At ground floor there is a car park, bike and bins store. The first floor is the Amenity Deck with lighting and seating and containers. The Amenity Deck is available to all Leaseholders in the block.

29. The Common Parts of Barnshaw House are accessed via a door entry system and comprise a carpeted hall, stairs to landings, protected by fire doors, off which are the flats. Lighting is controlled by passive infrared sensors (PIR) or timers. Internally, the Common Parts are in fair condition.

30. The Development comprises four blocks of flats. Two have a quadrangle layout with a first-floor Amenity Deck in the central area and a car park, bike store and bin store at ground floor level. A third also has an Amenity Deck. The fourth does not. It was stated at the inspection and confirmed at the hearing that the cost of maintaining the Amenity Decks is shared by the three blocks (totalling 259 flats) which benefit from them (Part B of the Sixth Schedule Maintenance Expenses and related Proportion).

31. All the blocks are of brick with tiled pitched roofs. The windows are upvc double glazed units and there are upvc rainwater goods. Some of the blocks have external metal features.

32. Externally Barnshaw House is in fair to good condition. However, there are metal features of pillars and balconies which require decoration.

33. The blocks are in grounds which comprise grassed areas and beds of shrubs and allocated car parking spaces. The grounds were in fair condition.

34. It was stated at the inspection and confirmed at the hearing that some of the repairs and maintenance are specific to a block and these costs are apportioned in accordance with Proportion A of the Lease. Other costs are

under a Development wide contract, such as gardening and landscape maintenance. These costs are allocated to each block and apportioned in accordance with Proportion A of the Lease. The allocation to Barnshaw House is understood to be 23.02% of the total cost of such works. The Part A apportionments are based upon the internal area of the flat.

Attendance

35. The hearing was attended by Ms Louisa Myatt, Director of Neil Douglas Block Management Ltd and Mr Jonathan Wragg of Counsel for the Applicant and Mr Jonathan Stacey, the Respondent.

Preliminary Issue

36. Counsel for the Applicant submitted that the referral to the Tribunal was solely for a determination of the extent of the land included in the Respondent's lease and the reasonableness of Administration Charges. The Tribunal was not being asked and should not consider the reasonableness of the Service Charge.

37. Firstly, the extent of the land included in the Lease was addressed. The Respondent said that there was an area outside the French windows of his flat which were hedged in such a way that he was under the impression that they were part of the demise and therefore his responsibility to maintain and not part of the communal grounds. He said that he had since made inquiries at the Land registry and found that the area was not part of the demise and was part of the communal grounds and to be maintained as such. It was said that the design was to make the French doors appear less exposed and thereby reduce the risk of burglary.

38. It was agreed that this part of the referral was no longer in issue.

39. Secondly, the Respondent submitted that he had been under the impression from what the Deputy District Judge had said at the time of the referral that the reasonableness of the service charge was to be determined as well.

40. The Tribunal noted that in his Statement of Case to comply with the Directions issued on 31st January 2018 the Respondent had objected to paying the Service Charge and contribution to the Reserve Fund because works had not been carried out. In particular he had complained about the failure to paint the exterior metalwork which he had been told by the Managing Agent had been planned but still no start date had been set, to repair his intercom which had not worked for 3 years and what he had considered was substandard gardening and landscaping outside the French windows of his flat. He said he had settled a previous claim by Tomlin Order on the understanding that these works would be done.

41. He added that he felt the reserve fund was unreasonable because he was paying for something that he was not receiving i.e. money was being set aside for work that was not being done.

42. Counsel for the Applicant said that the demand was for estimated expenditure which the Respondent was obliged to pay. The Respondent's objection to paying the Estimated Service Charge and contribution to the Reserve Fund was not because he considered the amount excessive but because he believed work that should be done was not being done. This was not a justifiable reason for refusal.

43. Counsel for the Applicant also stated that the Respondent's complaint about the intercom was not limited to his flat. It had been found that the intercom system originally installed was defective and that a new system had to be installed in 2015 to 2016. However, it was found that the new system was not compatible with some of the individual hand sets in the flats so these had to be changed in 2017.

44. Counsel added that the Applicant agreed the re-painting of the exterior metalwork was overdue. However, as this was qualifying work the consultation process under section 20 Landlord and Tenant Act 1985 had commenced in February 2018.

45. By way of explanation for the time taken to carry out the work Counsel said the Lease is a tripartite agreement of Landlord, Management Company and Leaseholder. The intention of this was that the Leaseholders would also be shareholders in the Management Company which would appoint an Agent to manage the Development. The Leaseholders would therefore be able to control the services, maintenance, repairs etc. Before the Management Company was operative the Developer appointed RMG Ltd to act as Agent and carry out the work of the Management Company.

46. The operation of the Management Company passed to Leaseholders in early 2016. There had been some dissatisfaction with RMG Ltd as Agents and Neil Douglas Block Management Limited were appointed on 1st June 2016. Initially maintenance was reactive until the accounts from the previous agent were reconciled. Once this had taken place the current Agent set out a long-term maintenance plan which required the contributions to the reserve to be increased to ensure there were sufficient funds to carry out the works necessary.

47. The above was confirmed by Ms Myatt on behalf of the current Agent.

48. Counsel stated that the total claim in the County Court is for £630.45, comprising Estimated Service Charge of £312.15 and Reserve Fund of £53.30 and the Administration Charge of £265.00. He said the Tribunal is being asked by the Court to determine the reasonableness of the Administration Charge of £265.00.

Determination of Preliminary Issue

49. The Tribunal considered the submissions of the parties in relation to whether or not it could make any determination in respect of the reasonableness of the Service Charge.

50. The Tribunal was of the opinion that if the Service Charge was not reasonable or correctly demanded then the Administration Charge may not be reasonable.

51. The Tribunal found that the Respondent's objection to paying the Estimated Service Charge and contribution to the Reserve Fund was because works were not being carried out. It was not because any particular part of the Service Charge or Reserve Fund contribution were unreasonable or incorrectly demanded. Essentially, the Respondent was refusing to pay because he considered the Applicant to be in breach of the Lease by failing to repaint the external metalwork, repair his intercom in a timely manner and what he considered was the unduly vigorous manner in which the plants in front of his flat were cut back.

52. The Tribunal appreciated the challenges experienced by both the Leaseholders in taking over the role of the Management Company and the current Agents in taking over the management of the Development. It accepted that the painting of the metalwork was belatedly in hand, the intercom was now operating and that the plants had re-grown.

53. The Tribunal had considerable sympathy for the Respondent with regard to the failure of the intercom. Nevertheless, the refusal by a leaseholder to pay the Estimated Service Charge and contribution to the Reserve Fund is not the appropriate remedy to deal with an alleged breach of the Lease. The Tribunal therefore found that the Estimated Service Charge and contribution to the Reserve Fund are payable.

Administration Charges

54. The Applicant provided a Statement of Case which stated that the demand for the Estimated Service Charge and contribution to the Reserve Fund for the period 1st June 2015 to 31st May 2016 was sent by post to the Respondent on 28th October 2015 (copy provided). The demand states that:
if payment is required and not received a reminder letter may be sent and an administrative charge of £25.00 will apply.

55. A reminder letter was sent on 11th January 2016 (copy provided) in which it was stated that a charge of £25.00 was incurred. The reminder letter also states (here précised) that no further request for payment will be issued and if the account is still overdue after 7 days the account will be referred to a debt collection representative (Property Debt Collection Ltd) which will incur additional charges which may be in excess of £240.00.

56. The account was not paid and on the 29th January 2018 Property Debt Collection Ltd demanded £192.00. A further sum of £48.00 is added for the Land Registry search fee.

57. The Statement went on to catalogue a quantity of correspondence between the Respondent and his Mortgagee relating to payment of the account.

58. In response to the Tribunal's questions Counsel for the Applicant referred the Tribunal to paragraph 4 of part one of the Eighth Schedule of the Lease as authority for the Applicant's claim for Administration Charges.

59. In addition, Counsel referred the Tribunal to *Freeholders of 69 Marina St Leonards on Sea - Robinson Simpson & Palmer v John Oram & Mohammed Ghoorun* [2011] EWCA Civ 1258 where consideration was given to a very similar provision in the Lease (Clause 3(12)). In that case the Chancellor held at paragraph 20:
Given that the determination of the tribunal and a section 146 notice are cumulative conditions precedent to enforcement of the Lessees' liability for the freeholder' costs of repair as a service charge it is, in my view, clear that the freeholders' costs before the Tribunal fall within the terms of clause 3(12). If and insofar as any of them may not have been strictly costs of the proceedings they appear to have been incidental to the preparation of the requisite notices and schedule.

60. Counsel submitted that the Administration Charges claimed were incidental to the preparation of the requisite notices and hence the potential proceedings.

61. The Tribunal noted that paragraph 4 of part one of the Eighth Schedule stated that the costs were to be *incurred by the Lessor* and that only the lessor could forfeit the Lease not the Management Company. In response, Counsel for the Applicant stated that the Management Company was acting as an agent for the Lessor in enforcing the service charge the costs of which were incidental to a section 146 Notice being served following an application by the Lessor under section 81 Housing Act 1996.

62. The Respondent submitted that the Administration Charges were unreasonable because they were nearly as much as the Service Charge claimed.

Administration Charges Determination

63. With regard to the authority under paragraph 4 of part one of the Eighth Schedule the Tribunal noted that at the time of the enforcement of the Estimated Service Charge and contribution to the Reserve Fund the Landlord was still operating the Management Company through the Managing Agent. The actions of the Management Company in this instance could therefore be seen as the actions of the Landlord (or Lessor as referred to in the Lease).

64. In determining whether the costs incurred in serving a reminder letter and employing the debt collection company were incidental to the service of a section 146 Notice the Tribunal found that there was an intention to serve such notice. One had been drafted by the debt collection company (copy provided), however, it could not have been served until a determination had been made under section 81 Housing Act 1996. The Tribunal therefore found in this case that the reminder letter and employing the debt collection company were Administration Charges incidental to the service of a section 146 Notice.

65. The Tribunal then considered whether the Administration Charge was reasonable. The Tribunal determined that the cost of £25 for the reminder letter was reasonable. The Respondent was made aware of the potential charge in the initial demand for payment and it encouraged Leaseholders to pay promptly without being extortionate and was proportionate to the amount demanded.

66. The Respondent was made aware of the potential charge of £192.00 by the debt collection company in the reminder letter. The Tribunal found this charge was also reasonable when the communications with the Respondent in attempting to obtain payment without going to court are taken into account. The Tribunal also found that it was appropriate to undertake a Land Registry search and therefore found the fee of £48.00 reasonable.

Judge JR Morris

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.