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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/42UG/LSC/2017/0078**
County Court Claim No	:	**D73YJ928**
Property	:	57 Mill Road Drive, Ipswich, Suffolk IP3 8UT
Applicant	:	The Chase (Warren Heath) Management Ltd
Representatives	:	David Cattermole & Raymond Cattermole
Respondent	:	Ashley Wilson
Representative	:	no appearance or representation
Type of Application	:	for determination of reasonableness and payability of service charges for the year ending 31st March 2017 [LTA 1985, s.27A]
Tribunal Members	:	G K Sinclair, G F Smith MRICS FAAV REV & C Gowman BSc MCIEH MCMI
Date and venue of Hearing	:	Tuesday 13th February 2018, at Ipswich County Court
Date of decision	:	16th February 2018

DECISION/JUDGMENT

Determination

1. For the reasons which follow the tribunal determines that the sum of £600 that the claimant/applicant management company demanded from the defendant/ respondent is payable by him in accordance with his lease. The final order made by the court on this and other issues appears in a separate Order by the County Court, the reasons for which also appear in this judgment.

Background and jurisdiction

2. This claim was originally brought as a County Court money claim, seeking payment of an overdue service charge demand. A handwritten Defence was filed, the case was transferred to Ipswich for the issue of directions for trial and by order of DJ Mitchell dated 2nd August 2017 that court transferred it to the First-tier Tribunal Property Chamber for determination of the service charges due. By order of Tribunal Regional Judge Edgington dated 5th October 2017 it was then allocated to the Small Claims Track but continued to be administered within the tribunal.

3. Pursuant to a report by the Civil Justice Council (May 2016) on the distribution of property cases between the Courts and the Property Chamber of the First-tier Tribunal judges are now deployed in such a way as to ensure that litigants are able to resolve all the issues in a dispute in one forum. The premise for the idea is that in many cases litigants may be required to have part of their dispute resolved in the County Court and part of the dispute resolved in the Property Chamber. Since all First-tier Tribunal judges are now also judges of the County Court (and vice versa), a Tribunal judge or a Court judge is appointed to decide all aspects of multi-faceted cases in one place and at one hearing. This has become known as "double hatting".

4. In the instant case, therefore, the two non-judicial members of the tribunal are, insofar as the County Court's jurisdiction is exercised by the judge, appointed to assist him as assessors pursuant to paragraph 10.1 of the Practice Direction to Part 35 of the Civil Procedure Rules 1998.

Relevant lease provisions

5. The lease, dated 24th November 1989, demises the flat and a specific car parking space for a term of 99 years from 1st January 1989 at an escalating rent, so just over 70 years remain unexpired. The lease is tripartite, identifying specific roles for lessor, lessee and a management company of which every lessee is a member. It is the management company which is responsible for collecting service charges from and providing the services for the lessees; and it is the company which is the claimant/applicant in these proceedings.

6. By clause 3 of the lease and paragraph 1 of the third schedule the lessee must pay a 1/36th contribution towards the service charge, payable as additional rent. The charge is towards the company's or lessor's costs throughout the term for the services described in the fifth schedule to the lease, the costs being as set out in paragraph 2 of the sixth schedule. The duties imposed on the company include, at paragraph 1 of the fifth schedule, an obligation to manage, maintain and repair the development including the service media and common parts and any car parking spaces.

Material statutory provisions

7. The tribunal's powers to determine whether an amount by way of service charge is payable and, if so, by whom, to whom, how much, when and the manner of payment are set out in section 27A of the Landlord and Tenant Act 1985. The first step in finding answers to these questions is for the tribunal to consider the exact wording of the relevant provisions in the lease. If the lease does not say that the cost of an item may be recovered then usually the tribunal need go no further. The statutory provisions in the 1985 Act, there to ameliorate the full rigour of the lease, need not then come into play.

8. Two further provisions, concerning demands for payment of service charge are relevant to this case. First, by section 47 of the Landlord and Tenant Act 1987, where any written demand is given to a tenant of premises for rent or other sums payable under the lease (which expression would include a demand for payment of service charge), the demand must contain the name and address of the landlord. However, in the case of *Pendra Loweth Management Ltd v North*[1] the Deputy President, Martin Rodger QC, stated at [54-55] that :

> 54 .... s.47(1) requires that the name and address of the landlord be contained in "any written demand" given to a tenant of premises. A "demand" for this purpose is defined in s.47(4) to mean "a demand for rent or other sums payable to the landlord under the terms of the tenancy." Section 60(1) of the 1987 Act contains a definition of "landlord" applicable to s.47 as meaning "the immediate landlord"; there is no statutory extension of the expression "landlord" to include any person with the right to enforce the payment of a service charge (as there is in s.30 of the 1985 Act).
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> 55 In this case the obligation on the Owner or lessee under cl.10 of the lease was to pay the various charges to the Management Company. The obligation to pay the Vendor or landlord arose only if he had stepped in to carry out the Management Company's obligations following a default in performance of those obligations, as provided for by cl.47(a). There had been no such default. The sanction in s.47(2) therefore had no application in this case, because the sums in issue are not payable to the landlord and the demand for their payment was therefore not a "demand" for the purpose of s.47.

9. Secondly, since 1st October 2007 section 21B of the 1985 Act provides that 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. The content of that summary is prescribed by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007.[2] The document must contain the prescribed heading and text and must be legible in a typewritten or printed form of at least 10 point.[3]

Inspection and hearing

10. The development of which the flat forms part comprises four freestanding blocks, each with three flats on ground, first and second floors. Although Mr Wilson's flat

1 [2015] UKUT 0091 (LC)

2 SI 2007/1257

3 *Op cit*, reg 3

is situate in the fourth block his car parking space can be found nearby, but in a car park behind and accessed from the third block. The overall impression was that the car park, about which Mr Wilson had complained, was reasonably well maintained, although many of the spaces could not be identified by number as those painted on to the tarmac had worn away. Only where some parking spaces backed on to a small wall were there obvious signs affixed to the wall. By noting the numbers of adjoining spaces the party could identify Mr Wilson's space. A large vehicle was parked in such a way as to block both it and the adjoining space. The hedge and tree next to it, about which Mr Wilson had complained, were cut back so as not to cause an obstruction. The width of the parking spaces was not measured but they appeared reasonably uniform although, by the standards of modern private vehicles, they were probably quite tight.

11. The tribunal convened at Ipswich County Court, already alerted to Mr Wilson's declaration to the office that he would not allow the tribunal to inspect his flat (which was not necessary) and had no intention of attending the hearing.

12. It is also the case that, although identifying one or two complaints in his Defence, he had not challenged any specific aspect of the service charge for the year ended 31st March 2017 to which he had been asked to contribute. Nor had he filed any evidence in support of his opposition to the claim. Indeed, a fundamental point made by Mr Wilson was his inability, due to illness and loss of employment, to pay what he thought subjectively to be a high service charge.

13. The claimant/applicant had produced a hearing bundle as directed. It included a witness statement from Mr David Cattermole, its company secretary, to which were exhibited accounting information and a chain of email correspondence with Mr Wilson about the few issues he had mentioned. He explained that a sewage escape mentioned by Mr Wilson had occurred at another residential development nearby on the very same day, was reported to the relevant sewage undertaker and was resolved by flushing out the public drains the same day. It was not a problem caused by any failure by the management company to maintain the system.

14. No copy of the service charge demand sued upon was in the bundle, but a copy was produced. It was noted that it failed to include the name and address for service of the landlord, as required by section 47, but the tribunal then reminded itself that, following the *Pendra Loweth* case, there was no obligation to do so if the demand was made by and payment was due to the management company rather than the lessor. Mr Cattermole assured the tribunal that the demand had been accompanied by the required Summary of Tenants' Rights. No point had been taken by Mr Wilson about such technicalities.

Discussion and findings

15. Having considered the points raised by Mr Wilson and the evidence put before it the tribunal is satisfied that no valid challenge has been made to the service charge levied by the management company. The points raised about obstruction of his car parking space and a one-off incident when a sewage discharge occurred are rejected. The true issue in this case is one that is outwith the tribunal's duty, and its jurisdiction, namely Mr Wilson's inability to pay.

16. No valid challenge being made to the reasonableness of the services provided, or

as to their cost, the amount demanded is therefore determined to be payable.

17. While the tribunal has power under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to order the reimbursement of the tribunal fees paid by a party this can be dealt with equally satisfactorily by the court. The sum of £300 (court and tribunal issue fees, plus tribunal hearing fee) is therefore added to the debt.

18. Interest has been claimed pursuant to section 69 of the County Courts Act at the annual rate of 8%, which is the same as that payable under the Judgments Act. The award of interest by the court is discretionary, and modern court practice is to award a much lower rate. In the very recent case of *Carrasco v Johnson*[4] the Court of Appeal upheld the decision of the trial judge to award a rate of 3%. In setting out the relevant principles the court observed that interest was awarded to compensate claimants for being kept out of money which should have been paid to them, rather than as compensation for damage done, or to deprive defendants of profit they may have made from use of the money. That question was to be approached broadly. The court would consider the position of persons with the claimant's general attributes, but would not have regard to claimants' particular attributes or any special position in which they might have been. In relation to commercial claimants, the general presumption would be that they would have borrowed less, so the court would have regard to the rate at which persons with the claimant's general attributes could have borrowed. That was likely to be a percentage over base rate and could be higher for small businesses than for first-class borrowers. In relation to personal injury claimants, the general presumption would be that the appropriate interest rate was the investment rate. Many claimants would not fall clearly into a category of those who would have borrowed or those who would have put money on deposit, and a fair rate for them could often fall somewhere between those two rates.

19. *Carrasco v Johnson* concerned an outstanding debt of £28 500, so interest even at 3% was significant. Here an award of 3% from the date the claim for £600 was received by the court on 28th April 2017 (just over nine months) would yield only around £13.50. By comparison, an order requiring Mr Wilson to reimburse the company for the court and tribunal fees it has had to pay adds 50% to the sum owed. In the circumstances no interest is awarded to date.

Dated 16th February 2018

Graham Sinclair

Graham Sinclair
First-tier Tribunal Judge, also sitting as a judge of the County Court under section 5(2)(u) of the County Courts Act 1984

4 [2018] EWCA Civ 87 (Kitchin & Hamblen LJJ, 2nd February 2018)