



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

Case Reference : CHI/00ML/LIS/2018/0061

Property : Flat 5, St Anne's Court, Nizells Avenue, Hove
BN3 1PR

Applicant : Greyclyde Investments Limited

Representative : Wagner & Co

Respondent : John W R Davies & Cheryl T Roach

Representative : -

Type of Application : Liability to pay service charges: section 27A
Landlord and Tenant Act 1985

Tribunal Member : Mr D Banfield FRICS

Date of Decision : 28 February 2019

DECISION & FURTHER DIRECTION

The Tribunal determines that the sum of £2,902.89 is payable as service charges for the years the subject of this application.

Further Directions

1. By **15 March 2019** the Applicant is to send to the Respondent and to the Tribunal a statement of case identifying the legislation under which the application is made and the matters which the Tribunal should take into account.
2. By **29 March 2019** the Respondent may send a reply to the Applicant and to the Tribunal.

Background

3. A case management hearing by telephone took place on 11 December 2018. The Applicant was represented by Mr Peter Ballam of Leasehold Management, the managing agents, and Mr John Davies represented himself and Ms Cheryl Roach.
4. In the application the Applicant seeks a determination that service charges demanded between July 2017 and September 2018, totalling £2902.89, are reasonable and payable. During the hearing Mr Davies explained that he was not disputing the charges as such. His reason for non-payment is that he believes he has a set-off of at least £1800.00 in respect of damage caused to his flat from a water leak in about August 2017. The leak was from a communal water tank in the roof space above his flat.
5. Mr Ballam explained that the insurers of the block had been put on notice of the claim but the Respondents had not provided quotes for the insurers to consider. He thought the insurers had closed their file but it might be possible for the claim to be reopened.
6. The judge explained to the parties that although the Tribunal has jurisdiction to consider a set-off against disputed service charges, it can decide whether or not to exercise that jurisdiction. In a case where the service charges themselves are not disputed, it would not do so because if service charges are agreed or admitted, the Tribunal has no jurisdiction in any event (section 27A(4) Landlord and Tenant Act 1985).
7. Any claim that the Respondents may have against the Applicant, in the event of the insurance claim not meeting all damage caused by the water leak, could be brought in due course as a small claim in the county court.
8. The Tribunal required the Respondents (both, or one of behalf of both) by **21 December 2018** to write to the Applicant and to the Tribunal stating clearly whether or not they agree that all the service charges demanded totalling £2902.89 are payable, ignoring any argument with respect to water damage. Further if the Respondents dispute all or part of the charges they must, by **4 January 2019** send to the Applicant a signed and dated statement of case setting out full particulars of the costs challenged, and the reasons why.
9. On 23 January 2019 the Tribunal found the Respondents have failed to comply with the directions. The Tribunal notified the Respondents that it was minded to debar them from further participation in accordance with Rules 9 (3)(b) and 9(7) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the ground that the Respondents have failed to cooperate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly.

10. The Respondents were given the opportunity to make representations by 30 January 2019 and warned that in the absence of which the Tribunal would make the debarring order without further notice and give further directions for summary determination of the application pursuant to Rule 9 (8).
11. The Respondents did not make any representations and by directions dated 7 February 2019 were barred from further participation in the proceedings.
12. The Directions also required the Applicant to send to the Tribunal and the Respondents a statement of case with a statement of truth setting out the particular clauses under the lease which authorises the recovery of the costs of major works through the service charge and the issue of demands on account of service charges, a brief description of the works, details of tenders for the works and of consultation with the lessees, the amounts claimed, the reasons why the Applicants say the amounts are reasonable and any claim for reimbursement of the Application fee from the Respondents.
13. The Tribunal received a letter dated 20 February 2019 from the Applicant's solicitor enclosing a witness statement by Peter Ballam of Leasehold Management Limited together with a claim for recovery of the Applicant's costs amounting to £3,088.38. It was noted that a copy of the letter and enclosures had been sent to the Respondents.
14. Mr Ballam's statement describes the property with which he has been involved in the management since 2005. He refers to the Respondents not challenging the amounts due only that a set off should be applied. He identifies the appropriate lease clauses and provides copies of the demands and other documents referred to in Directions.
15. In Wagner and Co's letter costs are sought on the basis of unreasonable behaviour. The Respondents were given every opportunity to at least make payment of the undisputed service charges, they failed to comply with the Tribunal's Orders and took no part in the claim.
16. A statement of costs is attached which are said to recoverable under the Fifth Schedule Part Clause 6 (of the lease).

The Law

17. Reference to the law is contained in the appendix to this determination.

Discussion and Decision

18. The Respondents have not challenged the amounts due simply whether a set off should be deducted. As explained in paragraph 4 above a set off will only be considered where they form part of a determination of disputed service charges. This is not the case here. There is no challenge to the service

charges and as such the issue of set off does not arise. **The Tribunal therefore determines that the sum of £2,902.89 is payable as service charges for the years the subject of this application.**

19. Turning now to the application for costs the Tribunal first of all briefly reviews its powers. Rule 13 (1)(b) refers to where “a person has acted unreasonably in bringing, defending or conducting proceedings “
20. Guidance as to how the Tribunal’s jurisdiction should exercise is given in the Upper Tribunal decision in “Willow Court” [UKUT]0290(LC), LRX/90/2015 & LRX/88/2015 and sets a “high bar” when considering litigants in person.
21. Where a lease permits the recharging of legal costs either by way of service charges or administration charge the Tribunal may make a determination under S.27A of the Landlord and Tenant Act 1985 or paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002 in respect of litigation costs.
22. In this application the basis of claim is unclear. Paragraph 2 of Wagner & Co’s letter refers to unreasonable behaviour implying a Rule 13 application whereas the penultimate paragraph refers to recovery through the lease.
23. Clarification is required and, as this a new point the Respondent must be given the opportunity to reply. The following further Directions are therefore made.

Further Directions

24. By **15 March 2019** the Applicant is to send to the Respondent and to the Tribunal a statement of case identifying the legislation under which the application is made and the matters which the Tribunal should take into account.
25. By **29 March 2019** the Respondent may send a reply to the Applicant and to the Tribunal.
26. The Tribunal will determine the matter on the papers it has received in a period of 14 days from 1 April 2019

D Banfield FRICS
1 March 2019

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. 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.

2. 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.
3. 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 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the

amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal leasehold valuation tribunal or the First-tier Tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

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.