



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

Case Reference : CHI/23UB/LIS/2018/0063

Property : Apartment 9, 5 St Georges Terrace,
Cheltenham, Gloucestershire, GL50 3PT

Applicants : Holding & Management (Solitaire) Ltd

Representative : Mr Paul Sweeney of Counsel

Respondents : Mr Hekmat Kaveh Baghbadrani

Representative : Not represented

Type of Application : Liability to pay service charges and
administration charges

Tribunal Members : Judge N Jutton and Mr J Reichel BSc MRICS

**Date and Venue of
Hearing** : 14 May 2019
Gloucester & Cheltenham County Court
Kimbrose Way, Gloucester, GL1 2DE

Date of Decision : 14 May 2019

DECISION

Background

1. The Applicant instituted proceedings issued against the Respondent on the 31 July 2018 in the County Court Business Centre under claim number E1CW7H7R. The Respondent filed a Defence dated 22 August 2018 and the Applicant filed a Reply to Defence dated the 20 September 2018. The proceedings were then transferred to the County Court at Gloucester & Cheltenham.
2. By an Order made by the County Court on the 19 October 2018 (as varied by further Order on 27 December 2018) the proceedings were transferred to this Tribunal. The Order further provided that those matters that fell to be determined by the County Court would be determined by a Tribunal Judge sitting as a County Court Judge exercising the powers of a Deputy District Judge.
3. Further directions were made by the Tribunal on 12 March 2019 and on 29 March 2019. Those directions provided for the Tribunal Judge sitting as a County Court Judge to hear representations on the applications made in respect of costs including contractual costs, an application made by the Respondent pursuant to Section 20c of the Landlord and Tenant Act 1985 and an application made by the Respondent pursuant to paragraph 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
4. At the start of the hearing the Tribunal identified that the issues before it (as opposed to the County Court) were the Respondent's liability to pay a service charge, whether or not the service charge demanded was reasonably incurred and the Respondent's liability, or otherwise, to pay administration charges charged by the Applicant's managing agents in the sum of £195.
5. The documents before the Tribunal comprised a hearing bundle running to 206 pages and a skeleton argument produced by the Applicant. References to page numbers in this decision are references to page numbers in the bundle. The bundle contained the County Court documents including the Claim Form, the Defence and Reply, position statements, applications and witness statements in relation to the proceedings before the Tribunal and directions made by both the Court and the Tribunal.

Inspection

6. The Tribunal inspected the property on the morning of the 14 May 2019. Present were Mrs Natalie Griffiths of First Port Property Services Limited, the Applicants managing agents, the Applicant's Counsel Mr Paul Sweeney and the Respondent.
7. The property comprises two buildings and a rear courtyard / parking area. The larger building constitutes a number of Georgian terraced town houses converted into eight residential flats. Much of the exterior walls are rendered and the exterior of the building appeared to have been relatively recently decorated. The second property which was detached

from the first was understood to have been built around 12 years ago. It is two storeys in height with a pitched roof and the external walls are clad with cedar cladding. There was an external metal balcony. The building also appeared to have been relatively recently decorated to include staining to the cladding and painting of the balcony.

The Law

8. The statutory provisions relevant to service charge applications of this nature are to be found in sections 18, 19 and 27A of the Landlord & Tenant Act 1985 (the 1985 Act). They provide as follows:

The 1985 Act

- 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.*
- 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 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*
- 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.*

9. The statutory provisions relevant to administration charge applications can be found in Part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act). They provide as follows:

- 1 (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 which is payable, directly or indirectly –*
- (a) *for or in connection with a grant of approvals under his lease, or applications for such approvals:*
 - (b) *for or in connection with the 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*
-
- (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.*
-

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

.....

5 (1) *An application may be made to the appropriate tribunal for a determination on whether 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 the appropriate 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.*

The Lease

10. A copy of the Respondent’s lease is at pages 41 - 72. By clause 3 of the lease the lessee covenants as follows –

“3.1 *To observe and perform the obligations set out in the Third Schedule*

3.2 *In respect of every Maintenance Year to pay the Service Charge to the Company by two equal instalments in advance on the half-yearly days provided that in respect of the Maintenance Year current at the date hereof the Lessee shall on execution hereof pay a due proportion of the current Service Charge specified in paragraph 11 of the Particulars*

.....

3.4 *To pay to the Company on demand any due proportion (calculated on the basis of the proportion specified in Clause 1.8) of any Special Contribution that may be levied by the Company.”*

11. By Clause 4 of the lease the Applicant Company covenants with the lessee to carry out the repairs and carry out the services specified in the Fifth Schedule. Clause 1(a) of the Fifth Schedule provides

“As often as may in the opinion of the Company be necessary to prepare and decorate in appropriate colours with good quality materials and in a workmanlike manner all the outside rendering wood and metalwork of the Block usually decorated”

12. The service charge payable by the lessee is defined at Clause 1.8 as

“...the aggregate sum calculated by reference to the proportions set out in paragraph 12 of the Particulars (or such other proportions as may be determined pursuant to Part I of the Fourth Schedule) of the Annual Maintenance Provision for the whole of the Block for each Maintenance Year (computed in accordance with Part II of the Fourth Schedule).”

13. Clause 1.9 defines “Special Contribution” as *“...means any amount which the Company shall reasonably consider necessary for any of the purposes set out in the Fifth Schedule hereof for which no provision has been made within the Service Charge and for which no reserve provision has been made under Part II of the Fourth Schedule paragraph 2(ii)”*

14. The Service Charge proportion payable by the lessee is defined at paragraph 12 of the Particulars as follows -

“(a) 9.9148% of the Annual Maintenance Provision attributable to the Block for the services set out in the Fifth Schedule except for those services which relate to (i) the internal common parts of the Block and(ii) the car parking area at the rear and the gate and access way leading thereto and (iii) the costs incurred in management as set out in paragraph 5 of the Fifth Schedule

(b) 10% of the Annual Maintenance Provision attributable to the Block for the management services set out in paragraph 5 of the Fifth Schedule”.

15. The term “The Block” is defined at paragraph 6 of the Particulars as *“the land and building comprised in the title above referred to”.*

16. The prescribed clauses (page 42) refer to two title numbers –GR288711 and GR292579.

The Issues

17. There were two issues before the Tribunal:

1. Whether a Service Charge demand made by the Applicant dated 16 March 2018 being a demand for a “special contribution” under the terms of the lease was payable and if so whether it was reasonable.

2. Whether Administration Charges raised by the Applicants totalling £195 were payable under the terms of the lease and if so whether they were reasonable.

Service Charge Claim

The Applicants' Case

18. Mr Sweeney explained that the Service Charge application related to proposed external decoration works. It was an application for a "Special Contribution" which was payable by the Respondent pursuant to paragraph 3.4 of the lease. It was a demand for payment on account, an estimated charge.
19. Mrs Natalie Griffiths (whose witness statement appears at pages 126 – 136 and who is an employee of the Applicant's managing agents First Port Property Services Ltd and who has the conduct of the day to day management of the Property) said that the main building (that part containing 8 flats) was a Grade II listed building. That when she took over the management of the Property in 2016 it was clear to her that no external decoration had been carried out for some time and that it was needed. She was also of the view that external decoration was needed to the building containing flats 9 and 10. That the cedar cladding on that building had not weathered well. That the cladding appeared darker in the middle and lighter on the outside and she referred to a photograph at page 133.
20. Mrs Griffiths said that she had liaised with the lessees at the Property as to the proposed works. She refers in her statement to drawing up a specification for works and undertaking a statutory consultation process pursuant to Section 20 of the 1985 Act. The work had now been completed as the Tribunal had seen during its inspection.
31. That prior to the work commencing Service Charge demands for "special contributions" had been sent to lessees as the amount in the Service Charge reserves was not sufficient to cover the costs of the works. The invoice which is the subject of this application is the invoice sent to the Respondent for his proportion of the Special Contribution dated 16 March 2018 and that invoice is at page 116.
32. In answer to questions from the Respondent Mrs Griffiths said that the contractors had first tried to treat the external cladding to flats 9 and 10 by the application of oil. However that, in the event, just emphasised the difference between the light and darker parts and so the decision was taken to stain the cladding. That the contractors had not charged for the abortive application of oil. She said that she had personally preferred the application of oil but in this case it didn't work. In answer to a question from the Respondent she said that in relation to other properties she managed and which had similar cladding, some were stained and some had oil applied, it depended on how the cladding was weathering.
32. Mr Sweeney said the definition of "Block" in the lease included both the main building containing eight flats and the separate building containing flats 9 and 10. He referred to the definition of "Block" in clause 6 of the

Particulars to the Lease (page 46). The definition of “Block” related to both land and buildings on the site and was by reference to title numbers. The title numbers were those that appeared at the start of the prescribed clauses at page 42 being title numbers GR288711 and GR292579. The registered title plans for both those title numbers were at pages 15 and 18. Accordingly he submitted the Respondent was liable to pay service charges spent on decoration works carried out by the Applicant not just for the building in which his flat was situated but to both buildings.

The Respondents’ Case

33. The Respondent says that he believes that the external decoration works certainly to the building which contains his flat were unnecessary and unreasonable. That he should not be contributing to the cost of carrying out the works to the main building containing the eight flats. His contribution should be limited to the cost of works reasonably carried out to the separate building containing his flat. Further that the Applicant was wrong to stain the external cladding to the building containing his flat.
34. The Respondent was of the view that the Applicant had not properly carried out the consultation process required by Section 20 of the 1985 Act and had not had proper regard or any regard to the observations made by him.
35. The Respondent says that a proper interpretation of the lease provides that his service charge contribution should just relate to the building containing his flat and he should not be paying a contribution towards the cost of the works carried out to the main building containing the eight flats. The reference to “Block” he said could not be a reference to two buildings. That the intention when the lease was drafted was for the building containing his flat to be treated separately to the main block. He referred to the definition of “Block” at paragraph 6 of the Particulars as referring to the land and “building” (singular). That the reference to “title” in the same line was in the singular. That the fact that his service charge proportion specifically excluded a contribution towards the costs of services relating to the internal common parts was consistent with his interpretation.

The Tribunal’s Decision

36. The demand for a service charge contribution dated 16 March 2018 is a demand under the terms of the lease for a “Special Contribution”. It is a demand for a payment on account, a form of estimated service charge. The question for the Tribunal is whether or not the sum demanded is payable under the terms of the lease and whether it is reasonable.
37. The Tribunal is not assisted by the Respondent’s submission that there has been a failure on the part of the Applicant to properly comply with the consultation requirements of the Section 20 of the 1985 Act. The question of whether or not those consultation requirements have been properly complied with (and the Tribunal makes no determination in that respect) may or may not be relevant once details of the actual cost of the work on external decoration are known and which no doubt will be set out in the

service charge accounts for the end of the current service charge financial year.

38. The Tribunal agrees with the Applicant's interpretation of the lease as regards the definition of the "Block". The lease clearly defines the term "Block" by reference to the land and building comprised in the title numbers. The fact that paragraph 6 of the Particulars to the Lease refers to the words building and title in the singular does not, in the view of the Tribunal, assist the Respondent. It is clear that the intention of the draughtsman was to refer to the title numbers set out in the prescribed clauses. Further that interpretation is consistent with the service charge proportion of 9.9148% payable by the Respondent and the fact that the internal common parts are excluded from that definition. If the Respondent was correct that his service charge contribution should just relate to the building containing his flat then it would be reasonable to expect that his contribution would be expressed as 50% of the cost of such works. That is not the case.
39. Based on the evidence before it the Tribunal is satisfied that the service charge demand for a special contribution on account dated 16 March 2018 in the sum of £1,439.76 was a reasonable demand as a pre-estimate of anticipated costs. (The parties agreed that the balance outstanding of that invoice was £1,049.61).
40. The Tribunal therefore determines that the service charge demand dated 16 March 2018 in the sum of £1,439.76 is reasonable in amount and is payable by the Respondent.

Administration Charges

The Applicant's Case

41. The administration charges sought by the Applicant total £195 made up as follows:
 1. Administration charge for non-payment of service charge for £60 (invoiced 11 March 2018 page 118).
 2. Administration charge for non-payment of service charge for £60 (invoiced 22 April 2018 page 122).
 3. Administration charge for "breach of lease" dated 26 April 2018 for £75.
42. Mr Sweeney submitted that the charges were payable pursuant to Clause 2(b) of the Third Schedule of the lease which provides as follows :

"To pay to the Company on a full indemnity basis all costs and expenses incurred by the Company or the Company's solicitors in enforcing payment by the Lessee of any Rents Service Charge Maintenance Adjustment Special Contribution or other monies payable by the Lessee under the terms of this lease".

43. Mrs Griffiths said that the work carried out that gave rise to such charges was more involved than just writing a letter to the Applicant. There was a consideration of the papers. There was a decision to be made as to whether or not to institute proceedings. In answer to a question from the Tribunal Mrs Griffiths confirmed that these were costs that had been incurred by the Applicant and would be payable by the Applicant if not paid by the Respondent. As to the claim for £75 Mrs Griffiths said that this was an administration charge which covered the cost of the managing agent's in-house legal team reviewing the papers, writing to the Respondent and then instructing solicitors.

The Respondent's Case

44. The Respondent says that these are charges which have been wrongly incurred. That they are not recoverable by the Applicant under the terms of the lease. The charges were in any event, said the Respondent, too high. That it was difficult to challenge them without a detailed breakdown.
45. The two charges of £60 amounted to duplication. He was not able to produce any evidence to support his contention that the charges were too high.

The Tribunal's Decision

46. The Tribunal is satisfied that the administration charges claimed if reasonable in amount are recoverable by the Applicant and payable by the Respondent pursuant to Clause 2(b) of the Third Schedule of the lease. That provision covers costs and expenses incurred by the Applicant in seeking to enforce payment from a lessee of inter alia a service charge special contribution. Upon the basis of the evidence before the Tribunal that these are charges that have been incurred by the Applicant.
47. No evidence was adduced to the Tribunal to show that the charges were unreasonable.
48. However there was no evidence before the Tribunal in the form of an invoice or any reference in a Statement of Account to the charge of £75. In the absence of any evidence to support the sum claimed of £75 that sum is disallowed by the Tribunal. The Tribunal allows the total sum of £120 in relation to administration charges.

Summary of Tribunal's Decision

49. 1. That the Special Contribution Service Charge demanded on 16 March 2018 in the sum of £1,439.76 is reasonable and is payable by the Respondent under the terms of his lease.
2. That the Applicant is entitled to recover from the Respondent Administration Charges totalling £120 as set out in the invoices addressed to the Respondent dated 11 March 2018 and the 22 April 2018.

Referral to the County Court

50. At the conclusion of the hearing before the Tribunal and in accordance with the directions referred to above the outstanding issues in relation to the Applicant's claim for contractual costs, the claim for interest and the Respondent's claims pursuant to Section 20c of the 1985 Act and paragraph 5a of Schedule 11 to the 2002 Act were referred to Tribunal Judge Jutton sitting as a Judge of the County Court (Deputy District Judge) to be heard immediately after the conclusion of the Tribunal hearing

Dated this 14th day of May 2019

Judge N P Jutton

Appeals

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.