

9039



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

Case Reference : **CHI/19UC/LIS/2013/0056**

Property : **Flats 2 & A, Purewell, Christchurch, BH23
1ES**

Applicants : **Mr P Gillings & Miss A Murray**

Representative : **Mr J Murray (for Miss Murray)**

Respondent : **Southern Land Securities**

Representatives : **Mrs Kath Evans & Mr Barry Taylor
Hamilton King Management Ltd**

Type of Application : **Section 27a, Landlord & Tenant Act 1985**

Tribunal Members : **Mr A Mellery-Pratt FRICS
Mr M Greenleaves
Mrs J E S Herrington**

**Date and venue of
Hearing** : **19th July 2013
Bournemouth County Court**

Date of Decision : **26th July 2013**

DECISION

Preliminary

1. This matter arose from an application dated 16th of April 2013 from Mr Gillings and Miss Murray, under section 27A of the Landlord and Tenant Act 1985. The application challenged the service charges for the years 2009/10, 2010/11, 2011/12 and 2012/13. It also sought a determination on the reasonableness of the service charges for the year 2013/14. Additionally, the applicants had made an application under section 20 C of the Landlord and Tenant Act 1985, to restrict any costs of the respondent being included in the service charge costs
2. Following receipt of the application, the tribunal issued directions dated 18th April, 2013
3. Both parties presented written representations which were copied to the other party.
4. A date for the inspection and hearing was fixed for 19 July, 2013

Documents

5. The documents in this matter are the representations from Mr Gillings, separate representations from Miss Murray and representations from Hamilton King management limited.
6. In addition, at the hearing, Mrs Evans for Hamilton King produced an invoice in respect of management fees dated 22nd of March 2011 which had been omitted from their representations and later during the hearing produced an up-to-date statement of the account for Mr Gillings dated 19th of July 2013.
7. During the hearing Mr Gillings introduced a letter from himself to Hamilton King management dated 14 June, 2012.

Inspection

8. The tribunal inspected the exterior of the property at 10 am on 19 July, 2013, accompanied by Mr Gillings and Mr Murray, the brother of Miss Murray. It was agreed that there was nothing within the individual flats which needed to be brought to the attention of the tribunal and the inspection was therefore limited to the exterior parts of the property.

9. The tribunal noted that this detached property was constructed at some time during the last years of the 19th century, with a more modern single-storey extension to the rear. The construction appeared to be of brick walls, rendered externally, beneath a pitched roof which had been re-clad in modern concrete tiles. Windows had been replaced with modern UPVC and there was modern plastic guttering.
10. The building is one property away from the junction with Cameron Road from which there is an access drive to the rear parking area which is also used by a separate freehold property which is known as 1A Cameron road.
11. The building is laid out so that the front part of the ground floor is known as flat 2, 52, Purewell while the entire first floor, which is accessed from the front is known as 52A Purewell. The rear half of the ground floor, accessed from the parking area is known as 1B Cameron Road.
12. The building appeared to be in generally reasonable condition and the tribunal noted the front wall which had been rebuilt following vehicle damage. This had been paid for by the insurers.

The Law

13. The statutory provisions primarily relevant to matters of this nature are set out in sections 18, 19 & 27A of the 1985 Act, the relevant parts of which read as follows:
 - 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 to 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 (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.*

The Leases

14. Unfortunately, the leases are in different formats and have different obligations and responsibilities.

Miss Murray's lease. (relevant clauses)

15. The lease is for a term of 99 years from 18th of February 1974 and the demise covers the first-floor flat, the covered porch at the front of the premises, the part of the land at the rear coloured brown and the garden and paved area at the front of the property.
16. (9) *to contribute and pay one half part of the cost and expenses of maintaining, repairing and renewing items 1 and 2 in the 2nd schedule hereto and 1/3rd of the cost of maintaining item 3 the driveway coloured yellow.*

17. (13) *to maintain a comprehensive insurance policy over the first-floor flat to the full value thereof with the Eagle Star insurance company through the agency of the landlord's solicitors such policy to be in the name of the tenant with the interest of the landlord endorsed as the freeholder and to produce such policy of insurance to the tenant or landlord of the ground floor flat on demand.....*
18. *The 2nd schedule.*
 1. *The expenses of maintaining and repairing redecorating and renewing:*
 - (a) *the main structure and foundations and in particular the roof chimney stacks gutters and main water pipes of the building.*
 - (b) *the gas and water pipes, drains and electric cables and wires in under or on the building and use and enjoying by the tenant of both the ground floor and first floor flats*
 2. *The cost of decorating the exterior of the property.*
 3. *The cost of keeping in good repair the entrance way coloured yellow on the said plan.*

Mr Gillings' lease (relevant clauses)

19. *The lease is for a term of 99 years from 1 January, 2002 and the demise covers the flat situated on the ground floor of the building and known as flat 2, 52, Purewell, Christchurch, Dorset and shown edged red on the plan together with the parking space shown edged red on the plan.*
20. *The maintenance charge means the yearly sum ascertained and payable under the 6th schedule.*
21. 9. *If at any time the whole or any part of the rent or any other monies due and payable under this lease shall be unpaid for 14 days after becoming due..... and until full payment..... the lessee shall be liable to interest thereon at 4% above Barclays bank base rate from time to time in force.*
22. *3rd, schedule, part 1*
 - (r) *to pay the maintenance charge to the lessor within 21 days of the receipt of the demand.*
23. *4th schedule (covenants by the lessor)*
 2. *To keep in good and substantial repair and condition:*

- (a) *the roofs and outside walls and foundations and structure gutters and drainpipes chimneys and chimney stacks of the building and all pipes, sewers drains cables and wires in under or upon the building serving the flat in common with the other parts of the building and all parts of the building not comprised in this lease or any other leases of the other parts of the building.*
 - (b) *the passages landings halls and staircases in the building retained by the lessor*
 - (c) *the driveway forecourt and parking spaces and pathways serving the building.*
 - (d) *any communal television aerial*
3. *As often as shall be reasonably necessary and in any case, at least once in every 5 years of the term, to paint all outside surfaces of the building usually painted and the interior common parts.*

24. *6th schedule.*

1. *The maintenance charge payable by the lessees shall be a yearly sum in respect of the following year being 25% of:-*
- (a) *the costs to the lessor of complying with the covenants on the part of the lessor in paragraphs 2, 3, 4, 5 and 8 of the 4th schedule, including the employment of contractors in connection therewith.*
 - (b) *the reasonable and proper fees and disbursements paid to the managing agents (if any) for the management of the building and the provision of services therein.*
 - (c) *a contribution fixed annually by the lessor to provide a reserve fund.....*
 - (d) *the reasonable and proper hire charge or other expenses paid by the lessor in respect of any communal refuse bins.....*
 - (e) *all other reasonable and proper expenses (if any) incurred by the lessor in and about the maintenance and proper convenient management and running of the building*

2. *the maintenance charge shall be paid:*
 - (a) *by payments on account of the sum conclusively estimated by the lessor as being the likely maintenance charge for the year in question by 2 equal payments on 25 March and 29 September in that year.*
 - (b) *the balance (if any) within 7 days of the service on the lessee of the certificate of the lessors auditors.....*
4. *The reserve fund shall be held by the lessor upon trust for the lessees of the flats in the building and shall be kept in a separate account and any interest thereon shall be added to the reserve fund.*

The Hearing

25. The hearing was held at Bournemouth County Court at 11:15 am on the same day. Present for the applicants were Mr Gillings, Miss Murray and her brother Mr Murray, who would be speaking for her.
26. For the respondents, from Hamilton King management limited, were Mrs Kath Evans and Mr Barry Taylor.
27. As a preliminary point, it was established from the respondent that it was accepted that Miss Murray did not have to contribute towards any costs of accountancy, management fees, legal fees and interest. It was further confirmed that all amounts which had been charged in respect of these items had now been credited to her account. Miss Murray confirmed that she had been credited with these amounts.
28. The tribunal then confirmed that the items which were in dispute, apart from those excluded from Miss Murray's case were:-

- Insurance.
- Accountancy.
- Repairs.
- Legal fees.
- Management fees.

Insurance

29. Mr Gillings case was that prior to the purchase of the freehold by the respondent, he had managed the property for the previous freeholder and had arranged the insurance for the 2 ground floor flats, Ms Murray arranging her own insurance. He had produced figures that showed that the total premiums for the 3 flats amounted to something just over £600, which he believed was the correct figure

for the insurance. He was therefore very concerned when he was advised that the premium for the year 2010/11 was £1192.75.

30. He had therefore obtained an alternative quotation based on the sums insured by the freeholder, but this had been rejected by the freeholder as the proposed policy was not on an identical basis with the landlord's policy.
31. There was some confusion with respect to the premiums for the individual years as the renewal date is March 23, whereas the accounting year finishes on March 24. Thus the premium for the year 2010/11 appears in the accounts for the year 2009/10.
32. However, for the accounting year 2011/12. He had been advised by a Mr Howard at Hamilton King that he had obtained a premium of £898.88 but had been able to reduce that to £598.88. Mr Gillings had been content with this figure as it was close to the figure at which he had insured the property a few years previously. However, in the accounts for that year, the full figure of £898.88 was shown and not the previously advised reduced figure.
33. Mr Taylor advised that his firm took no commission from the insurers or their brokers and for that reason, if any lessee produced an identical policy at a cheaper premium, he was quite happy for the freeholder to use that insurer in place of the freeholder's chosen insurer.
34. Mr Taylor further advised that Mr Gillings had been confused by the figures and pointed the tribunal to the statement of Mr Gillings account, which showed that in February 2011 a number of items had been credited to his account, including £142.46 identified as 'credit part ins'. Thus, in Mr Gillings case, he had received this credit as part of a settlement between the parties prior to a court hearing. He pointed out the 2 payments received from Mr Gillings clearing all balances on his account by 22 March, 2011 as an indication that Mr Gillings had accepted the basis agreed and that his credit in respect of the insurance, being at 25% of the premium represented a credit on the total premiums for the 2 previous years of approximately £570.
35. Looking at the policy which Mr Gillings had presented to the freeholder, he was aware that it was not on an identical basis as there was no element of 'trace and find' which is a valuable item in blocks of flats insurance. Additionally, Miss Murray's insurance had no public liability cover. It was for these reasons that the freeholder had declined to use Mr Gillings proposed policy.
36. Mr Taylor asked the tribunal to note that the premiums for the years in which the respondent had been involved, were:-

2009/10	£905.
2010/11	£1192.
2011/12	£898.
2012/13	£918.

The premiums were therefore consistent through that period, apart from 2010/11 where Mr Gillings had received a rebate.

37. With regard to Miss Murray, Mr Taylor pointed out that the lease required her to insure through the landlord and with the landlord noted on the policy. She had failed to do this and it was therefore correct that the landlord should insure her property.
38. However, on questioning from the tribunal, he accepted that there was nothing within the lease to Miss Murray, which obliged her to reimburse the landlord with any insurance premium. The matter was therefore a question of a breach of covenant rather than a service charge dispute.

Accountancy

39. Mr Gillings expressed the view that the figure charged for accountancy was too high for the work involved. He accepted that it may be necessary for the landlord to provide a certificate but he considered that £118 was too high and that £25 per annum would be more reasonable.
40. Mrs Evans advised that they employed a firm of bookkeepers who assembled all the paperwork for the accountant who then certified the accounts. She felt that their fees were entirely reasonable for something that was required by the lease. More recently, after the continuing complaints from Mr Gillings, they had not provided the accountancy certificate, but had relied upon their own internal accountancy statement to advise the tenants of the expenditure in the financial year.

Repairs

41. Mr Gillings was concerned that the figure of £485 only appeared in their demands when Hamilton King was considering carrying out major works. He was concerned that this money was collected as a reserve, but had not been put into an interest earning account as the lease required.
42. Mrs Evans advised that they had never collected money for a reserve fund, but, as with all blocks of flats, had allowed for some repairs to be carried out during the year. The budget for this had commenced at £300, increasing for the following year to £385 and then rising the following year and subsequently to £485. She accepted that no repairs had been carried out over the 4 years but did point out that within the accounting at the year-end, full credit had been given to the lessees for the monies that had been demanded on the basis of the budget. As a result, the tenants had not been charged for any repairs, although it had been prudent to allow a figure within the budget.

Legal fees

43. This matter was no longer an issue as it had been accepted that Miss Murray had no responsibility to pay towards legal fees and that Mr Gillings had had all charges for legal fees credited to his account.

Management fees

44. Mrs Evans asked the tribunal to note that in 2009/10 the fees were £328.74, which equated to £82.19 per flat. She had talked with local managing agents and had been advised of the following fees:-

Napiers	minimum charge £2000 per block plus VAT.
House and Sons	minimum charge £1600 per block plus VAT.
Burns and Co	minimum charge £1000 per block plus VAT.
Initiative	£180 plus VAT per unit per annum.

As a result, she felt that their fees were extremely reasonable.

45. Mr Gillings expressed the view that, as they did absolutely nothing for the building apart from issue demands their fees were still very high. He also noted that they had wasted money suing Miss Murray and that they had tried to put in place absurd major works that were not required.
46. Mrs Evans noted that for Mr Gillings the management fees had been refunded in respect of 3 years and had been refunded completely for Miss Murray.
47. Mr Taylor noted that the fee covers the arranging of the insurance and dealing with any claims, preparing the budget, accounting to the tenants, carrying out any repairs that might be required and general correspondence with the tenants.
48. When questioned about the need for an asbestos report or a fire safety report, Mr Taylor pointed out that there were no common parts to the building and, as such, these items were not required.
49. Mr Taylor also assured the tribunal that the statement of tenants' rights was of the correct sized typeface for the type style chosen.

Section 20C application

- 50 Mr Gillings advised that he had incurred costs as follows:-

tribunal application fee	£200.00
hearing fee	£150.00
solicitors cost	£723.56
House and sons surveyors, initial fee	£180.00
House and sons surveyors, final fee	£720.00
photocopying costs	£30.00

51. The tribunal pointed out to Mr Gillings that there were limits to any costs and only limited circumstances in which those costs could be awarded. The application now being considered was in connection with limiting any costs which the landlord might add to the service charge as a result of the tribunal hearing.
52. Mr Taylor submitted that Mr Gillings had been vexatious and had sent abusive letters. Mr Gillings did not understand the accounts and had not paid for 3 years. He therefore asked that the tribunal makes no order limiting the costs

Consideration

53. The tribunal considered all the points raised by the parties, and all the documents submitted. They considered the various headings that were in dispute:-

Insurance

54. The tribunal considered the paperwork somewhat lacking with regard to the credits that had been given to Mr Gillings and to what they had been applied. However, they were satisfied that credits had been given for the years 2009/10 and 2010/11, which were acceptable to Mr Gillings. The total insurance premiums for those 2 years, was £2091.76, made up of £1192.78 and £898.98, for which Mr Gillings had received a credit of £142.46 against his share of the total. The tribunal found that the net figure that he had paid for these 2 years is reasonable.
55. For subsequent years, the tribunal found that the figures of

2011/12	£918.72
2012/13	£889.68

are reasonable.

Repairs

56. The amounts included within the budgets were:-

2009/10	£300
2010/11	£385.
2011/12	£485.
2012/13	£485.
2013/14	£485.

57. The tribunal is satisfied that the figures were reasonable estimated amounts for repairs for each of the years in question and that the lessees have been given full credit for the amounts demanded on account.

Accountancy

58. Charges for accountancy have only been included within the accounts for the years 2009/10 and 2010/11. As it is a requirement of the lease that an accountant's certificate is provided the tribunal found that it is reasonable to include a charge for this item and that the charges that have been incurred are reasonable.

Management fees

59. The tribunal was aware that the RICS code of management practice might require more work to be carried out by the managing agents but accepted that the fees charged are reasonable when considering the limited work carried out.

General

60. In considering the cases put forward by the parties generally, the tribunal did find the accounting somewhat difficult to follow as the budgets, demands, and statements of annual accounts all came in similar formats and had to be studied carefully to appreciate the differences.

The determination

61. The tribunal determines that:-
- a) In respect of Miss Murray, she is responsible only for the charges raised in respect of repairs which the tribunal finds are reasonable and payable.
 - b) In respect of Mr Gillings, and subject to the credits already applied to his account, he is responsible for the charges raised in respect of insurance, repairs, accountancy and management fees, all of which charges the tribunal finds are reasonable and payable.
62. With regard to the application under section 20 C of the Landlord and Tenant Act 1985, the tribunal grants an order to limit the costs recoverable by the landlord to £300 plus vat.
63. The tribunal makes no order in respect of the costs incurred by Mr Gillings.

Appeals

64. 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.

65. 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.
66. 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.
67. 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.

Signed:

A J Mellery-Pratt. FRICS. Chairman

A member of the Tribunal
appointed by the Lord Chancellor