

9172



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

Case Reference MAN/OOCB/LSC/2013/0028,0029,0030,0031,
0032,0033 &0034

Property Flats 1,2,3,6,7,8 & 12 Foxes Court 3 Bereford Road
Oxton CH43 1XQ

Applicant Elmdon Real Estate LLP

Respondent

Mr R. Stead	Flat 1
Mr J. Entwistle	Flat 2
Mr M Flood & Mr A. Dean	Flat 3
Mr M. Burden	Flat 6
Mr D. Mohan & Mr V. Sharma	Flat 7
Mr & Mrs J. Cairns	Flat 8
Mr M. Dillon	Flat 12

Representative Quality Solicitors, David Roberts & Co

Type of Application A referral from Birkenhead County Court for
the determination of the payability and
reasonableness of service and administration
charges pursuant to section 27A of the Landlord
and Tenant Act 1985 and Schedule 11, Paragraph
5 of the Commonhold and Leasehold Reform Act
2002

Tribunal Members Mrs J. E. Oliver
Mrs J. Brown

**Date and venue of
Hearing** 5th August 2013

Date of Decision 5th August 2013

DECISION

© Crown Copyright 2013

Decision

1. In respect of the Particulars of claim filed with the Court the Tribunal determines as follows:
 - Of the sum of £549 claimed for services the sum of £349 is payable
 - The administration charge of £125 is not payable
 - The Tribunal has no jurisdiction to determine upon the issue of unpaid ground rent but would observe that some of the notices demanding payment are defective. Further, there is no evidence to show there are arrears of £200.00.

Reasons

Introduction

2. This is a matter referred to the Tribunal by District Judge Woodburn sitting at Birkenhead County Court arising from an application issued by Emlton Real Estate LLP (the Applicant) for the payment of unpaid ground rent , service charges and an administration charge issued against the owners of 7 properties within Foxes Court , Oxton.
3. The amounts claimed within the Particulars of Claim are as follows:
 - £200 for unpaid ground rent
 - £549 for unpaid Service Charges
 - £125 for an unpaid administration charge
4. The Respondents stated that the Applicant acquired the freehold reversion of the properties sometime in 2011 although they were not notified of this until 27th April 2012. The Applicant provided no information regarding this and the Tribunal therefore accepted the validity of these dates. The Tribunal noted from the copy insurance schedule provided that the likely date of acquisition was the 14th June 2011.
5. The Respondents to the application are Ryan Stead (Flat 1), John Christopher Entwistle (Flat 2), Mark Anthony Flood and Anthony David Dean (Flat 3), Michael Anthony Charles Burden (Flat 6), Diwaker Mohan and Vijay Sharma (Flat 7), Joseph Cairns and Linda Nay Cairns (Flat 8) and Matthew Peter Dillion (Flat 12) (the Respondents) all of whom have filed the same defence to the application.

6. On the 5th February 2013 District Judge Woodburn referred the following issues to the Tribunal for determination:
 - The validity of the claim for rent
 - Liability for and calculation of service charge claimed
 - The validity of and calculations of administration charges claimed.
7. Directions were issued on 30th April 2013 providing for the filing of statements and bundles. Neither party requested a hearing.

The Lease

8. In their application the Applicant relies upon the provisions of the Leases to the various properties all of which are in similar terms.
9. Section 1 provides for the Lessee to pay:-

“the rent of one hundred pounds (£100) without any deduction by annual payments the first payment commencing on the 1st April 1995 payable in arrears.....and also paying by way of further or additional rent from time to time a sum or sums of money equal to the amount which the Lessor may from time to time expend in effecting or maintaining the insurance of the development against loss or damage by fire and other such risks (if any) as the Lessor may from time to time think fit.....”

Section 5(6) further provides:-

“The Lessor agreed to maintain the areas shown shaded brown and green on the plan attached hereto and the lighting in respect of the area shown shaded brown and green and also keep clean all windows staircases and thereafter to invoice each respective Lessee on an annual basis for 1/12th of the cost of the said maintenance.”

Submissions

10. The Applicant seeks a payment from each of the Respondents for arrears of ground rent in the sum of £200, these being for payments due on 1st April 2011 and 2012. In addition there are claims for arrears of Service charges of £200 due on the same dates and further sums , again on the same dates, for insurances of £349.00, the total being in the sum of £749.00. The claim also includes the payment of an administration charge of £125.00

11. The Applicant, within their bundle, produced copies of the statutory notices to be served with any demand for payment pursuant to section 21B of the Landlord and Tenant Act 1985 (the Act).
12. The Applicant also produced copies of the demands for the payment of ground rent pursuant to section 166 of the Commonhold and Leasehold Reform Act 2002. The Tribunal noted that the demands for some of the Respondents (Flat 1, Flat 2, Flat 8 and Flat 12) related to April 11 and April 12 whilst those for Flat 3 and Flat 7 only related to April 2011 and there appeared to be no demands in respect of Flat 6. The Tribunal observed that in accordance with section 166 of Commonhold and Leasehold Reform Act 2002 no ground rent is payable until a demand has been made for its payment. Further the notices relating to the payment of ground rent for April 12 – April 13 are defective in that they ask for payment in April 12 for the year 12-13 when the Lease provides for the payment of rent in arrears and not in advance. The payment of ground rent for the year 12-13 is not due until April 2103 whilst the proceedings were issued in November 2012.
13. The demands for Service Charges related to the years April 2011 and 2012. The Tribunal was not provided with any information as to how this amount had been calculated, nor any copy invoices to show how these monies had been expended. The terms of the Lease would suggest that the cost for the whole development amounted to £1200 per annum (per section 5(6) of the Lease) but there was no evidence to support this.
14. The Respondents maintained that no work had been carried out by the Applicant since they acquired their interest within the properties.
15. The Applicant also seek a payment of £125 within their claim for an administration charge. Whilst the statement of claim refers to potential proceedings under wither section 146 or 147 of the Law of Property Act 1925 there was no information provided by the Applicant to show any such notice of proceedings had been given. The Respondents maintained no such proceedings had either been served or intimated.
16. The Applicant produced copy insurance schedules to show the properties had been insured with AVIVA for the periods 14th June 2011 to 29th May 2012 and 29th May 2012 to 1st January 2013. The premiums for each period were £44469.11 and £2948.36 respectively. The Tribunal noted that the Applicant

had stated that no further insurance had been effected for the properties due to a lack of funds.

The Law

17. Section 27A (1) of the Act provides as follows:-

“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,
- (e) the manner in which it is payable.

18. Section 19 of the Act provides as follows:-

- (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 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.

19. Paragraph 1 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 defines an administration charge as follows:

“ In this part of the 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.....in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is a party to his lease otherwise than as landlord or tenant, or in connection with a breach (or alleged breach) of a covenant or condition in his lease.”

20. Paragraph 2 of Schedule 11 provides as follows:

“a variable administration charge is payable only to the extent that the amount of the charge is reasonable”

21. Paragraph 5 of Schedule 11 provides for a Leasehold Valuation Tribunal (now the First Tier Tribunal) to determine upon the issue of the payability of an administration charge.

Determination

22. The Tribunal considered the issue of the Service Charge and determined that the amount claimed in the total of £200 was not payable. There was no evidence provided by the Applicant to indicate that any services had been carried out at the development of which the properties form part. No invoices were available to support any of the expenditure claimed. The Tribunal also took note that the Respondents advised that no work had been carried out since the Applicant had acquired their interest in the properties.

23. The Tribunal considered the claim for insurance, in the sum of £174.50 for each year, in the total sum of £349.00. The Tribunal took note that for the premiums charged, the liability for each Respondent should have been in the sum of £372.43 and £245.70 respectively. However, given the amount claimed the Tribunal determines that each of the Respondents should pay £349.00 in total, being the amounts claimed for both years.

24. The Tribunal further considered the claim for the administration charge in the sum of £125.00 and determines that this sum is not payable. There was no evidence to support such a claim.