

Q734



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

Case Reference : CHI/29UN/LIS/2013/0092

Property : Flat 4, 9 Carroway Place,
Margate, Kent CT9 1QX

Applicant : Dr Fiona Sherriff

Representative :

Respondents : Mr Tim and Mrs Stephanie Harrison

Representative :

Type of Application : Service charge: section 27A Landlord and
Tenant Act 1985

Tribunal Members : Judge D Agnew (Chairman)
Judge M Tildesley

**Date and venue of
Paper determination** : 19th December 2013
Tribunal office, Chichester

Date of Decision : 13th January 2014

Decision

Background

1. On 18th August 2013 the Applicant applied for a determination under Section 27A of the Landlord and Tenant Act 1985 as to her liability to pay a service charge, called in her lease an "administration charge" in the sum of £125 for each of the years 2009 to 2012.
2. Directions were issued by the Tribunal on 4th October 2013 for the matter to be dealt with by way of a paper determination under Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) 2013 rather than by way of an oral hearing.
3. Neither party objected to this procedure being adopted and both parties submitted statements of case.

The Applicant's case

4. The Applicant contended that she had been charged an annual administration fee by her landlord in the sum of £125 whereas her lease stipulates that she should pay a "due proportion" of that fee and "due proportion" is defined in the lease as 30%. However, the Applicant goes further and maintains that a fair proportion of that fee for her to pay is 25% as there are four equally sized flats each having the same benefit as far as communal areas are concerned.
5. By clause 2(f) of the lease the lessee covenants as follows:-
"To contribute and pay the Due Proportion of (a) the cost and expense incurred by the Lessor in undertaking the Service Obligations and maintaining and repairing the service conduits together with either the reasonable charges of any managing Agent appointed by the Lessor to carry out the Lessor's obligations hereunder or (if the Lessor shall undertake the management) a management fee of fifteen per centum of the said cost and expense (b) the cost of the electricity supply for the external lights and for the lights in the Common Parts and (c) an annual administration charge of £125 for the first 325 years and such charge in respect of each subsequent period of 25 years as the Lessor shall reasonably determine."

The Respondents 'case

6. The Respondents contend that on a true construction of the lease the Applicant is liable to pay the whole of the administration charge of £125 which is separate from and in addition to the Due Proportion of the cost of the Lessor's Service Obligations under the lease. They say that this was the intention of the original parties to the lease. The matter was raised by a previous lessee before taking up their lease in 2005 and in correspondence with the landlords' solicitors this interpretation of the lease was stated and seemingly accepted, as payment was made accordingly. They say that in order to avoid any future ambiguity, the lease of Flat 3 was changed to reflect what they say is the true position. The Respondents therefore maintain that 100% of the administration charge of £125 is payable annually by the Applicant.

The Law

7. By section 18(1) of the Landlord and Tenant Act 1985 ("the 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 cost of management, and
- b) the whole or part of which varies or may vary according to the relevant costs."

8. By section 27A of the Act an application may be made to a leasehold valuation tribunal [now the First-tier Tribunal (Property Chamber)] 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

In making the said determination the Tribunal has power to construe the lease under which the liability is said to apply.

The Tribunal's determination

9. The Tribunal first determined that it had jurisdiction to make a determination as to the Applicant's liability to pay the so-called "administration charge" because, first it was in reality a service charge rather than an administration charge as defined in Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as it is payable for "the landlord's costs of management". Furthermore, although a fixed percentage is given as the Applicant's proportion of the said cost and the amount of the cost itself is fixed it is part of an overall service charge which varies according to cost.

10. The question that the Tribunal is asked first of all to determine is whether the Applicant's liability is for payment of 100% of the administration charge or for the Due Proportion of it which is defined in the lease as being 30%. The Tribunal determines that on a true construction of the wording of clause 2(f) of the lease the Applicant is only liable to pay 30% of the £125 charge. This is because the clause is worded in such a way that the words "Due Proportion" apply to the sub-phrases (a), (b) and(c) (emphasis added). There is no distinction made in the wording between sub-phrases (a), (b) and (c). If (c) was intended to be treated differently the wording would have been along the lines that the Lessee was to pay and contribute the Due Proportion of (a)....and (b)..... and to pay in addition an annual administration charge of £125.

11. In the Tribunal's view, the wording of clause 2(f) is clear and not ambiguous. It is of no moment in construing this clause in the Applicant's lease that the lease of Flat 3 has been amended to make the Lessee liable for an administration charge of £125 on top of the Due Proportion of the cost of the Service Obligations and electricity.

12. As has already been explained to the Applicant in correspondence from the Tribunal, the Tribunal has no jurisdiction under section 27A of the Act to vary

the contractually agreed provision in the lease that the Due Proportion shall be 30% of service charge expenditure and does not do so by this determination.

13. In her application form the Applicant sought an order from the Tribunal under section 20C of the Landlord and Tenant Act 1985 to prevent the costs of this application being added to any future service charge demands. It is doubtful that the lease entitles the Respondent to recover such costs but for the avoidance of doubt, as the Applicant has succeeded on the main thrust of her application the Tribunal does find that it is just and equitable to make such an order and does so.

Dated the 13th day of January 2014.

Judge D. Agnew (Chairman)

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.