



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

Case Reference : CHI/40UC/LIS/2013/0106.

Property : 105 Riverside Close, Bridgwater, TA6
3PP.

Applicant : Mr. Daniel Lee Rybaruk.

Representative : Pardoes, Solicitors.

Respondent : Trinity Gate Bridgwater Management
Company Number Two Limited.

Representative : Powells, Solicitors.

Type of Application : Determination of reasonableness of
service charges, S27A and S20C of the
Landlord and Tenant Act 1985 (as
amended).

Tribunal Members : Judge J G Orme (Chairman)
Mr. P E Smith FRICS (Member).

**Date and Venue of
Hearing** : 11 February 2014.
Determination on written
submissions.

Date of Decision : 12 February 2014.

Decision

For the reasons set out below, the Tribunal orders:

1. Pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended), that all of the costs incurred by the Respondent, Trinity Gate Bridgwater Management Company Number Two Limited, in connection with this application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant, Daniel Lee Rybaruk.
2. Pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, that the Respondent do reimburse to the Applicant £125.00, being the fee paid by the Applicant to the Tribunal on making the application.

Reasons

Background

1. By a lease dated 7 August 2007 ("the Lease") made between Beazer Homes Limited as landlord, the Applicant, Daniel Lee Rybaruk, as tenant and the Respondent, Trinity Gate Bridgwater Management Company Number Two Limited as the management company, Beazer Homes Limited let to Mr. Rybaruk the property known as 105 Riverside Close, Bridgwater for a term of 125 years from 1 January 2006. The Lease contained covenants by the Respondent to maintain, repair and insure communal parts of the estate and covenants by Mr. Rybaruk to pay a service charge.
2. In about February 2012, the Respondent appointed Saxons Estate Agents ("Saxons") to act as its agents in the management of the estate.
3. On 22 March 2012, Saxons sent to Mr. Rybaruk a demand for payment of service charges in the sum of £2,066.72. Mr. Rybaruk instructed solicitors, Pardoes, to reply to that demand. In their letter dated 19 April 2012, Pardoes told Saxons that they did not consider that the demand complied with the terms of the Lease or statutory requirements.
4. Following further correspondence, on 10 October 2012, Saxons issued a claim in Northampton County Court under claim number 2QZ27794, which named Saxons as the claimant and which claimed the sum of £2,416.72 from Mr. Rybaruk. On 9 November 2012 Pardoes filed a defence on behalf of Mr. Rybaruk and issued a counterclaim against Saxons. Saxons' claim was struck out on 2 January 2013. Mr. Rybaruk's counterclaim was transferred to the Taunton County Court on 29 January 2013. On 23 April 2013 Taunton County Court made an order transferring the counterclaim to the leasehold valuation tribunal.

5. There followed correspondence between Pardoes and the Tribunal in which it was suggested that Saxons were not the proper defendant to the counterclaim and suggesting that there be a change of the defendant to the counterclaim.
6. Saxons did not respond to that suggestion. On 11 October 2013, Pardoes, on behalf of Mr. Rybaruk, made the present application to the Tribunal in which Mr. Rybaruk seeks a determination of his liability to pay and the reasonableness of the service charges which had been demanded of him. Mr. Rybaruk asserted that the Respondent's demands did not comply with the terms of the Lease or statutory requirements and that no service charges were due. The application included an application for an order to be made pursuant to section 20C of the Landlord and Tenant Act 1985 (as amended) ("the Act").
7. On 16 October 2013, the Tribunal directed the Respondent to provide a written statement in reply by 13 November 2013. The Respondent instructed Powells to act as solicitors on its behalf and, on 13 November 2013, Powells wrote to the Tribunal saying that they had only just been instructed and asking for an extension of time in which to provide a written statement. On 19 November 2013, Powells wrote to the Tribunal saying *"Having now had an opportunity to consider matters we have advised the Respondent that the service charge demands in issue are in fact invalid in that in particular they do not comply with the statutory requirements. In these circumstances we have been instructed by the Respondent to notify the Tribunal that the service charge demands in issue are being withdrawn. As a result there is no need for the application to proceed."*
8. There then followed correspondence between the Tribunal and the solicitors for both parties in which Pardoes said that they were pursuing the application for an order to be made under section 20C of the Act and, in addition, were seeking an order for costs against the Respondent. On 11 December 2013, Powells informed the Tribunal that the Respondent did not oppose the making of an order under section 20C but did oppose the application for costs.
9. On 19 December 2013, the Tribunal wrote to both parties directing that *"the issue as to costs will be dealt with by way of written representations as both parties agree to this. If either party wishes to add to anything already submitted by them to the Tribunal in correspondence they must do so by 4pm on 15 January 2014."*
10. Both parties have made written submissions in relation to costs.
11. Mr. Rybaruk seeks his costs on the basis of the Respondent's unreasonable conduct. His counsel submits that it was unreasonable conduct that since 22 March 2012 the Respondent's agents have been demanding payment of service charges based on demands which were invalid including issuing county court proceedings against Mr. Rybaruk. He says *"it was unreasonable of the Respondent to persist in*

seeking to recover pursuant to the service charge demand once the invalidity of the demand was pointed out."

12. In submissions on behalf of the Respondent, Powells accept that the demands for service charges were invalid. However, they say that the Tribunal has no power to make an order for costs in relation to a period of time prior to the making of the application, that it can only make an order for costs if the Respondent has acted unreasonably in defending the application and that the Respondent cannot be said to have acted unreasonably in defending the application because as soon as the application was received and they were instructed, they accepted that the demands could not be relied upon. They went on to say that the respondent had offered to and was willing to reimburse the application fee paid by Mr. Rybaruk.

The Law.

13. Section 20C of the Act provides:
- 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, ... or the First-tier Tribunal ... 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)
 - 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.*
14. Paragraph 13 of *The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013/1169* provides:
- 1) *The Tribunal may make an order in respect of costs only –*
 - a. *under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;*
 - b. *if a person has acted unreasonably in bringing, defending or conducting proceedings in –*
 - i. ...,
 - ii. ..., or
 - iii. a leasehold case; or
 - c. ...
 - 2) *The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.*
 - 3) *The Tribunal may make an order under this rule on an application or on its own initiative.*

Conclusions.

15. It is accepted by the Respondent that its agents were not entitled to rely on demands for payment of service charges which did not comply with statutory requirements. Saxons issued court proceedings relying on

those demands. Those proceedings may have been avoided if Saxons had properly considered the contents of Pardoes' letter dated 19 April 2012. Equally, Mr. Rybaruk made an error in issuing a counterclaim against Saxons rather than against the Respondent. Clearly, a substantial amount of costs have been incurred by Mr. Rybaruk in connection with those abortive court proceedings. However, the Tribunal has no jurisdiction to make an order in relation to the costs incurred in connection with those court proceedings. The Tribunal can only consider the costs incurred in connection with this application.

16. There is no application for wasted costs under rule 13(1)(a). Therefore, the only basis for the Tribunal to make an order for costs is under rule 13(1)(b). The Tribunal must consider whether the Respondent has acted unreasonably in defending or conducting the proceedings. Although there was a lengthy and costly history which preceded the making of the application, that related to the court proceedings and not this application. It was not until 11 October 2013 that Mr. Rybaruk made this application, in effect abandoning the court proceedings and starting again. The Respondent replied through its solicitors by an initial letter dated 13 November seeking further time. It then wrote on 19 November accepting that the demands were invalid. It did not seek to defend or oppose the application but, quite properly, indicated that the demands could not be relied upon. Although it may be arguable that the Respondent or its agents have acted unreasonably in connection with the court proceedings, the Tribunal is unable to say that the Respondent has acted unreasonably in connection with this application. The Tribunal is not prepared to make any order in respect of the costs of the proceedings commenced by this application.
17. Mr. Rybaruk has applied for an order to be made under section 20C of the Act. The Respondent does not oppose that application. The Tribunal must exercise its own discretion before making such an order. In the light of the history outlined above, the Tribunal considers that it is just and equitable to make such an order and will do so.
18. Although there is no application for reimbursement of the application fee, the Tribunal may make an order on its own initiative. As the Respondent has indicated that it is prepared to reimburse the application fee, the Tribunal will make such an order.

Right of Appeal

19. Any party to this application who is dissatisfied with the Tribunal's decision may appeal to the Upper Tribunal (Lands Chamber) under section 176B of the Commonhold and Leasehold Reform Act 2002 or section 11 of the Tribunals, Courts and Enforcement Act 2007.
20. A person wishing to appeal this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with this application. 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. 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. 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.

21. The parties are directed to Regulation 52 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 SI 2013/1169. Any application to the Upper Tribunal must be made in accordance with the Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 SI 2010/2600.

J G Orme
Judge of the First-tier Tribunal
Dated 12 February 2014