10413

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

.Case Reference	:	**LON/00AB/LSC/2014/0330**
Property	:	**Flat 36 St Aidans Court, Blessing Way, Barking, Essex IG11 0XH**
Applicant	:	**Ground Rents (Regis) Ltd**
Representative	:	**Alan Mullen, Ben Day-Marr } Gateway Property Management**
Respondent	:	**Mr T Uddin**
Representative	:	
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge and an administration charge**
Tribunal Members	:	**P Casey MRICS** **M Taylor FRICS** **C Piarroux JP CQSW**
Date and venue of Hearing	:	**16th October 2014** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**11 November 2014**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £2,713.76 is payable by the Respondent in respect of the service charges for the years ending 31 December 2010, 2011, 2012, and 2013 and a further sum of £300 in respect of administration charges demanded on 1 November 2012.

(2) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court at Romford.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years ending 31 December 2010, 2011, 2012 and 2013.

2. Proceedings were originally issued in the Northampton County Court under claim no. 3YU15282. The claim was transferred to the County Court at Romford and then in turn transferred to this tribunal, by order of District Judge Robson on 16 June 2014.

3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Alan Mullen and Ben Day-Marr of Gateway Property Management at the hearing; the Respondent did not appear at the hearing nor was he represented and no reason for his non-attendance was given to the Tribunal. A case management conference (CMC) was ordered by the First Tier Tribunal to be held on 10 July 2014. The respondent was invited to attend by a letter dated 24 June 2014 sent to the property which he gave as the address for service of documents in his defence to the County Court claim but only the Applicant's representatives attended the CMC; Mr Uddin did not provide a telephone number. A copy of the directions issued by the Tribunal which included the hearing date of 16 October 2014 was also posted to that address and in compliance with those directions the Applicant's representatives sent him copies of the documents they intended to rely on under cover of a letter dated 30 July 2014. In the absence of any contact by the Respondent they then provided the Tribunal with copies of their own hearing bundle as per the directions.

The background

5. The property which is the subject of this application is apparently a two bedroomed purpose built flat, one of 53 such flats in a block completed in 1996 on a larger estate of purpose built blocks of flats.

6. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

7. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The lease is dated 12 July 1996 and is for a term of 125 years (less 10 days) from 1 January 1996. Both parties are successors in title to the original lessor and lessee. The lease as granted involved a management company responsible for the maintenance of the block and the property but, we were told, that ceased to exist in about 2008 and the lessor had taken over its obligations as provided for under the lease. Those obligations are set out in the Fifth Schedule to the lease whilst the "Maintained Property" to which they relate is described in the Second Schedule to the lease. The Service Charge is defined as the total of the "Maintainance Expenses" themselves defined as the money spent or reserved for future expenditure in fulfilling those obligations. The lessees covenant to pay the service charge is contained in paragraph 6 of the Seventh Schedule whilst the manner in which the lessee is to pay is set out in the Sixth Schedule which defines the service charge year as the period ending 31 December in each year. The lessee is to pay in advance one half of the Lessee's Proportion, defined as 1/53rd share, on 1 January and 1 July in each year based on an estimate of expenditure. Any under or over contribution once actual expenditure is certified is dealt with by way of further demand or a service charge account credit. Paragraph 3 of the Seventh Schedule contains the lessee's covenant to pay the lessor's costs in or in contemplation of proceedings etc under S146 and 147 of the Law of Property Act 1925.

8. In 2010 the respondent had made his own application to the Tribunal under S27A of the Act. In it he challenged most of the heads of expenditure contained in the estimate of expenditure (the budget) prepared by the then managing agents Great Fleete Management Ltd (GEM) for the year ending 31 December 2010. His challenge to that budget of£58,443 (including insurance) was unsuccessful but in its decision dated 13 June 2011 the Tribunal that heard the application recorded that Mr Uddin did not deny his liability to pay service charges under the terms of the lease not that the sums claimed were properly recoverable as service charge expenditure but he merely argued that the sums were not reasonably incurred or were excessive in amount.

The issues

9. The CMC had identified the relevant issues for determination as follows:

(i) The disputed service charge years are 2010, 2011, 2012 and 2013;

(ii) whether the service charge for each of the disputed years has been paid;

(iii) whether the applicant had provided the service to which the charges related;

(iv) whether an Order under S20C of the Act should be made and

(v) whether an order for reimbursement of application/hearing fees should be made.

10. Having heard evidence and submissions from the Applicant and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Whether the service charges for each of the disputed years has been paid

11. On 9 December 2013 the Respondent filed a defence in the County Court in which he claimed to have paid the alleged service charge arrears in full and claimed the Applicant's financial information was inaccurate and misleading and that there had been false accounting.

The tribunal's decision

12. The tribunal determines that none of the sums claimed by the Applicant have been paid by the Respondent.

Reasons for the tribunal's decision

13. Mr Day-Marr, for the Applicant, told us that his company, Gateway Property Management, had been appointed to manage the block by Ground Rents (Regis) Ltd on 25 August 2012. On taking over they had received from GEM various financial records relating to the service charge accounts, copies of which were included in the bundle. These showed an outstanding debit on the Respondent's service charge account of £1,090.08 at 31 December 2010. The following year GEM had sought payment of service charge in advance of £793 from the Respondent who is shown as having made five monthly payments of £150 in August, September, October, November and December of that year including apparently ground rent to leave a balance of £1,080 outstanding. The in advance service charge that GEM asked the Respondent to pay for the year ending 31 December 2012 was £806 and as no payments are shown as having ben made the amount outstanding at the year end was £1,886, the first sum listed in the County Court claim. On 16 November 2011 GEM sent the Respondent a service charge demand together with a summary of tenants' rights and obligations in

respect of that £806, due in half yearly instalments. The demands for the earlier years were not in the bundle. In a similar fashion Gateway issued demands to the Respondent on 5 December 2012 and 31 May 2013 each for £413.88 being his contribution towards the maintenance expenses for 2013 and the third and fourth items of the claim. Mr Day-Marr says no payment has been made by the Respondent in respect of these demands and he has not responded to their invitations to produce evidence to show that he has made payments which have not been accounted for. He also told us that he is the only lessee out of the 53 in the block that has raised any issue in respect of their own service charge account on the transfer of management responsibility from GEM to Gateway. For whatever reason the Respondent has taken no part in the proceedings in the Tribunal despite having requested the County Court to transfer the matter to the Tribunal. There is thus no evidence before us of any payments made by him which GEM or Gateway have failed to record. The copies of accounting records given in evidence to us appear to have been properly compiled and maintained. They do not seem in any way to be inaccurate misleading or false. We can in the circumstances only accept the Applicant's evidence that these service charge sums claimed have been properly demanded of the Respondent under the terms of his lease and remain unpaid. He is thus, subject only to the reasonableness of those amounts, liable to pay the service charge sums.

Whether the Applicant had provided the service to which the charge related

14. Again in his filed defence the Respondent claimed nothing was done for his service charge payments

The tribunal's decision

15. On the basis of the only evidence before us we are satisfied that the in advance service charges demanded of the Respondent have or will be reasonably incurred in providing some or all of the services set out in the Fifth Schedule to the lease to a reasonable standard.

Reasons for the tribunal's decision

16. Mr Day-Marr told us that since taking on the management Gateway had had meetings with the blocks' residents association to which 35 of the 53 lessees belonged. They had agreed a programme of works to address repair and decorating issues and had served the necessary consultation notices under S20 of the Act. The residents association expressed themselves happy with progress only possible because of an improvement in the service charge arrears position which had somewhat plagued GEM's management (and which we have noted is evidenced in the Tribunal decision of 13 June 2011 referred to above). Gateway did not collect ground rents or insurance contributions as the Applicant had instructed another firm, Pier Management, to do this. He took us through GEM's service charge accounts, the budgets prepared by

Gateway and where available the finalised certified accounts for the years in question. The gardening and cleaning services were provided by their own in house company which they found to be cheaper than local firms in the main. 2012 had seen a higher spend on gardening as there were backlogs of work to tackle. There had been no complaints as to the standard of works. They also used an in house Chartered Surveyor to specify, tender etc major works programmes and an in house expert for Health and Safety surveys who they said was cheaper than outside firms. We asked why the accounts shows two Health and Safety surveys in 2012 and were told that the first of these was before they took on the management and related to urgent matters which had lead the insurers to threaten withdrawal of cover. They had a policy of undertaking such surveys annually which he thought good practice. Their management fee encompassing the normal duties of a managing agent including monthly site visits and regular meetings with the residents association was £230 plus VAT per flat. There was nothing in the expenditure as estimated in the budgets or as recorded in the finalised accounts that seemed to us other than perfectly normal for a development of this type and in the absence of any specific challenge or evidence from the Respondent we cannot do other than say that the service charge costs both as estimated and as incurred are reasonable and reasonably incurred.

Administration Charge

17. The second item listed in the sums claimed in the application to the county Court is a sum of £300 said to be due from the Respondent on 1 November 2012 in respect of legal fees.

The Tribunal's Decision

18. We are satisfied that this sum is an Administration Charge, that it is reasonable and reasonably incurred and that it is payable by the Respondent under the terms of his lease.

Reasons for the Tribunal's Decision

19. Mr Day-Marr told us this was his firm's charge which they made when the work they had to do to pursue arrears went beyond what was covered by the management fee and involved the contemplation or institution of legal proceedings. He produces copies of correspondence including a letter sent to the Respondent on 8 April 2013 being headed "Notice of intended court proceedings" which set out the costs estimated to have been incurred to that point amounting to £250 +VAT (£300). He could not find on file a similar letter to Mr Uddin on 1 November 2012 but did provide a copy of a statement sent to him that day showing the £300 as being owed together with the service charge arrears. He also produced a file copy of the letter sent the same day to the respondent's mortgage company seeking payment of the arrears and threatening forfeiture proceedings. These he said were at the root of the money claim in the County Court as establishing the service charge

arrears in the amount claimed would enable them to commence such proceedings. Paragraph 1(1) of Schedule II of the Commonhold and Leasehold Reform Act 2002 defines an Administration charge and is set out in the appendix to this decision. The lessee's covenant at paragraph 3 of the Seventh Schedule to the lease and the Applicant's evidence that this cost was incurred in contemplation of forfeiture proceedings for the alleged breach of the covenant to pay service charges clearly makes this sum a variable administration charge which we have jurisdiction to determine the payability of and the reasonableness of. In our opinion the Respondent is liable to pay this sum which is both reasonable and reasonably incurred in the circumstances under the terms of his lease.

Application under s.20C and refund of fees

20. At the end of the hearing, the Applicant did not make an application for a refund of the fees paid in respect of the hearing[1] nor, in the absence of the Respondent was there any application under S20C of the Act.

The next steps

21. The tribunal has no jurisdiction over county court costs and Mr Day-Marr said he would leave interest on the sums claimed to the County Court. This matter should now be returned to the County Court at Romford.

Name: **PATRICK CASEY MRICS** **Date:** 11 November 2014

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 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.

Section 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 provisions 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.

Section 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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(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, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 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 rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of 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.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(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.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).