



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

Case Reference : **MAN/30UK/LSC/2014/0003**

Property : **26, 27, 26 & 47 Centenary Mill Court, New
Hall Lane, Preston PR1 5JQ.**

**Applicant
Represented by** : **Bond Dickinson LLP**

Respondent : **Luce Limited**

**Type of
Application** : **Determination of payability of service charge
and administration charges**

Tribunal Members : **Sarah Greenan**

Date of Decision : **14th August 2014**

DECISION

1. The Applicant is the head landlord of a block of apartments known as Centenary Mill Court, New Hall Lane, Preston PR1 5JQ.
2. The Respondent is the lessee of four apartments in the block, numbers 26, 27, 47, and 48. The leases of those apartments were granted in 2004 and 2005.

Background

3. In July 2013 the Applicant commenced proceedings in the Northampton County Court for the recovery of service charges payable during the year 2012 and 2013 in relation to all four apartments. Separate proceedings were commenced in relation to each apartment, but they were consolidated by the County Court on 17th October 2013.
4. The Respondent filed partial admissions in relation to each claim. The sums admitted were paid by him by 16th January 2014.
5. On 31st December 2013 the consolidated claims were transferred by the County Court to the First Tier Tribunal Property Chamber (Residential Property) for determination of the disputed balances.
6. On 2nd April 2014 a Judge of the Tribunal noted that the Tribunal was asked to make a determination in relation to both administration charges and service charges and directed that the issues for the Tribunal to determine were:
 - a. What sums are not admitted as being payable by the Respondent.
 - b. The payability and reasonableness of the non-admitted sums claimed.The Judge considered that it was appropriate for the application to be determined on the papers. Neither party has subsequently sought an oral hearing.
7. In response to the directions given the Respondent filed a defence in the form of four schedules, one relating to each property.
8. The Applicant has made its own comments on each of those schedules. It also served documents in compliance with the order made by the Tribunal for disclosure.

The law

9. Section 27A of the Landlord and Tenant Act 1985 provides that an application may be made to the Tribunal for a determination whether a service charge is payable.

10. Section 19 of the Landlord and Tenant Act 1985 states:-

- (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.

11. Schedule 11 paragraph 2 of the Commonhold and Leasehold Reform Act 2002 states:

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

Paragraph 5 of Schedule 11 permits any party to a lease of a dwelling to apply to a leasehold valuation tribunal for a determination whether an administration charge is payable.

Consideration

12. It should be noted that in relation to each apartment the Respondent had conceded that service charges were owing at the inception of the proceedings. The following sums were admitted:

No 26 - £1093.56
No 27 - £1093.56
No 47 - £1008.70
No 48 - £812.02
Total - £4,007.84

13. The documentation supplied to the tribunal indicated that as at 1st January 2012 the applicant had been seeking a total of £3806.68 in outstanding service charges from the respondent. The Respondent had tendered a cheque for £2,762.07 on 24th July 2012 and the Applicant had returned that cheque and repeated its demand for the full amount outstanding.

14. In relation to all four apartments the first disputed item was an outstanding balance (a different sum for each apartment) from the service charge due on 1st January 2012. The Respondent's objection in each case to this figure was that the sum had been paid by a cheque sent by the Respondent, which had not been cashed by the Applicant.

15. In each case the applicant's response was that the cheque had been sent on 21st July 2012 and had been returned to the Respondent on 24th July 2012 with a letter indicating that the Applicant was not prepared to accept a cheque which was not payment for the full amount then outstanding. The Applicant had indicated that proceedings would commence unless the full amount was paid.
16. In relation to each apartment it appears to the Tribunal that the balance remains outstanding and is properly payable by the respondent.
17. The second disputed item in relation to each apartment is an administration fee of £50 charged on 22nd May 2014. This charge relates to the service of an account default notice on that date.
18. In relation to those administration fees the Respondent states that they are unreasonable but does not give reasons. The Respondent relies on clause 4 of Schedule 4 of the lease which provides that the lessee shall:
"pay all expenses including the solicitors' costs and surveyors' fees incurred by the Landlord and Management Company incidental to the service of all notices and schedules relating to other breaches of the Lease...
The Landlord's expenses referred to shall be not less than £50 in respect of each breach by the tenant..."
19. In the view of the Tribunal the fee charged by the Appellant is a variable administration fee, the sum of no less than £50 being the minimum in relation to any particular breach, not a fixed fee per item.
20. The Respondent has not stated why the fee is challenged, or what a reasonable fee would be. The Tribunal is of the view that this fee, charged for a notice which was the start of the process of chasing the arrears, was reasonable.
21. The third item in dispute in relation to each apartment is a sum of interest added to the service charge account on 21st July 2012 in relation to late payment.
22. The Respondent states that this sum is unreasonable but does not give reasons.
23. The Appellant states that this sum is chargeable under clause 3 of Schedule 4 of the lease, which provides that the tenant covenants to "pay interest on any payment due under this lease not paid within fourteen days of the due date"
24. This sum is the interest due on the outstanding service charge. The respondent had already conceded in the County Court proceedings that there were arrears due under the service charge as at that date. The calculation of the interest is not challenged. It is reasonable.

25. The fourth item in dispute is an administration fee of £80 added to the service charge account for each apartment on 21st July 2012. It appears to have been charged for the sending by the Applicant of a letter before action. The Respondent states that this figure is unreasonable but does not give reasons. The fifth item is a further administration fee of £35 charged on the same date for sending a letter to the lender (stating that the borrower was in breach of covenant).
26. The Applicant states that the charge is an administration fee payable under clause 34 of Schedule 4 of the lease. The Respondent states that the fee is unreasonable because by the time it was levied a cheque had been sent for the service charge, but not cashed. The Applicant states that the cheque was not sent until 24th July 2012, after this charge was raised. The Respondent has provided no evidence to contradict this.
27. The letter sent to the Respondent on 21st June 2014 is a pro forma letter setting out a statement of what is owing including interest. The Tribunal is of the view that a fee of £80 for that letter is excessive. A reasonable fee would be £40.
28. The Tribunal regards the Applicant's action in notifying the lender of the breach as reasonable and the fee charged for each letter (£35) as reasonable.
29. The sixth item in dispute in relation to each apartment is a solicitors referral fee of £75 charged on 13th July 2012. The Applicant states that this is an administration fee payable under clause 34 of Schedule 4 of the lease. The Respondent states that the fee is unreasonable and that the payment had been offered but the cheque had not been cashed. This charge pre-dates the sending of the cheque.
30. The Applicant has provided copies of letters sent on 13th July 2012 to the Respondent which state:

“As stated in our previous letter your account is in the process of being passed onto our solicitors to recover the outstanding amount. A further administration fee of £75 has been added to your account.”
31. Clause 34 of Schedule 4 is set out above. The Tribunal does not regard a pro forma letter stating that the case is being referred to solicitors as constituting a notice or schedule relating to a breach of the lease. In addition the Tribunal notes that a further twelve months went by without any apparent involvement by solicitors. The Tribunal does not regard this charge as reasonable.
32. The seventh disputed item in relation to each apartment is a balancing fee charged on 24th August 2012. The Respondent states simply that this was never paid. The Applicant states that the sum is due under clause 3.3.2 of Schedule 3 of the lease. This figure appears simply to be a balancing payment in respect of the service charge account and the Respondent has put forward no reason why it should not be paid. The Tribunal finds that it is part of the reasonable service charge and is payable.

33. The eighth dispute item is the service charge for the whole of 2013 charged on 1st January 2013. The respondent states that this was paid as part of a cheque for £2,194.26 which was not cashed. The Applicant states that this was paid as part of a cheque for £2,914.28 received in January 2014 following partial admissions being made by the Respondent in the County Court. The 2013 service charge has therefore been paid but the Applicant seeks to claim an administration fee arising because of late payment.
34. In the case of each apartment the service charge for 2013 have been paid and should be removed from the schedule.
35. The ninth item in dispute is a solicitors' referral fee of £90 added to the account on 30th May 2013. The Applicant has disclosed copies of a short pro forma letter sent in relation to each apartment. As stated above, it is the view of the Tribunal that such a letter does not fall within clause 34 of schedule 4 of the lease and therefore cannot be the subject of an administration charge.
36. The tenth item in dispute is the balancing fee added to the account for each apartment on 7th June 2014. The Respondent does not explain why this is not payable. The decision of the Tribunal is that it is part of the reasonable service charge and is payable.
37. The final disputed items in relation to all four apartments relate to the proceedings in the County Court. In relation to each apartment the Applicant seeks legal fees, interest, the court fee, and solicitors costs.
38. In each case the solicitors costs are the fixed fee for commencing proceedings of £80. The legal fees are £420 in the case of all of the apartments save for number 47, where the figure is £417. The court fee is the issue fee due for the particular amount.
39. The Respondent states that the charges are unreasonable because the service charge had been paid but the cheque had not been cashed. The Applicant states that the legal fees are payable under clause 34 of schedule 4, and the court fees and solicitors fees are reasonably incurred.
40. It is clear that at the time proceedings were commenced the service charge was in arrears. The Respondent had tendered a cheque in July 2012 in relation to the service charge for that year, which had been rejected, but had not made any attempt to pay the service charge due for 2013. This was not paid until January 2014.
41. The solicitors costs are a variable administration charge payable pursuant to clause 34.1 of Schedule 4 of the lease. The costs relate to the commencement of proceedings, dealing with a partial admission, making an application to consolidate, and writing a detailed letter to the court on 22nd October 2013 requesting a transfer to the Tribunal.

42. This Tribunal finds that the costs incurred by the Applicant in relation to the work done by his solicitors are reasonable.
43. The Tribunal also finds the issue fees and solicitors fixed costs to be payable as a variable administration charge and to be reasonable.
44. All the disputed items common to all four flats are dealt with above.
45. In relation to number 27 there is a dispute in relation to cleaning and caretaking fees charged as a result of nuisance caused by the Respondent's tenant, whose dog, it is alleged, repeatedly urinated and defecated in the common parts, making additional cleaning necessary.
46. The Applicant has disclosed the invoices raised for additional service charge arising out of this alleged nuisance. The Applicant has also disclosed detailed diary notes kept by the caretaker/cleaner for the block, together with invoices from Sandgrown Cleaning Services for the additional work.
47. The Respondent suggests that these sums should have been charged to the tenant. The Tribunal cannot accept this submission. There is no contractual relationship between the Respondent's tenant and the Applicant: the Applicant would have no basis for making such a charge. The Respondent is the lessee of the apartment and is responsible for the service charges which are incurred by the use which is made of it.
48. The Applicant also claims administration fees in relation to the nuisance as follows:
28th March 2013 - £192
30th April 2013 - £72
49. It is not clear on what basis it is said those fees are payable. The administration fee of £72 is referred to in a demand dated 30.4.13 and is described as covering the period 1st January 2013 to 31st January 2013, and as being due on 30th May 2013. No explanation is given of what it relates to. The administration fee of £192 is referred to in a demand dated 28th March 2013 where it is charged for "time spent on dog foul issue".
50. There is no proper explanation for the administration fee of £72 and time spent by the managing agents dealing with the dog foul issue is not an item which would ordinarily be regarded as giving rise to an administration charge. The Applicant has not explained how it does. The Tribunal does not find that this sum is payable as an administration charge.

Conclusion

51. The Applicant has helpfully provided schedules (headed actual amounts outstanding) setting out the up to date calculation.

52. In relation to all four flats those figures are allowed in full save that:
 - a. Both solicitors' referral fees are disallowed;
 - b. The administration fee of £80 charged on 21st June 2012 is reduced to £40.

53. In relation to number 27 in addition the administration fees charged on 28th March 2013 and 30th April 2013 are disallowed.

54. Save as is set out above, the figures contained in those schedules are all allowed.

55. Although the attention of the Tribunal has not specifically been drawn to section 20C of the Landlord and Tenant Act 1985, the Tribunal has considered it and the exercise of its discretion under that section. It is the view of the Tribunal that the Applicant has broadly succeeded in its claim and that it would not be appropriate to make an order under section 20C.