

10806



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

Case Reference : **BIR/37UB/LIS/2014/0028**

Property : **47 Clare Road, Sutton-in-Ashfield
Nottingham NG17 5BB**

Applicant : **R M B Trading Limited**

**Applicant's
Representative** : **S L C Solicitors**

Respondents : **Mr K Woolley & Mrs M Woolley**

Type of Application : **Application under Section 27A (and
19) of the Landlord & Tenant Act 1985
for determination of the liability to
pay and reasonableness of service
charges and an application under
Schedule 11 of the Commonhold &
Leasehold Reform Act 2002 for a
determination as to liability to pay and
reasonableness of a variable
administration charge.**

Tribunal Members : **Mr G S Freckelton FRICS (Chairman)
Mr P J Ellis LLB**

**Date and venue of
hearing** : **27th January 2015. The matter was
dealt with by a paper Determination.**

Date of Decision : **13th April 2015**

DECISION

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1. BACKGROUND

- 1.1 This Application has been referred to the Tribunal by order of District Judge Ilesley sitting at the County Court at Stafford on 8th September 2014. The transfer of the relevant papers to the Tribunal took place on 11th September 2014.
- 1.2 The Applicant is R M B Trading Limited and the Respondent Leaseholders are Mr Keith Woolley and Mrs Michelle Woolley.
- 1.3 The Applicant is the Management Company administering the development. The Landlord is James Roger Carlton trading as The Pentland Property Company of The Barn, Meeting House Lane, South Leverton, Nottinghamshire, DN22 0BS.
- 1.4 The Respondents are the leaseholders of Flat 47 Clare Road, Sutton-in-Ashfield, Nottinghamshire NG17 5BB.
- 1.5 The Applicant is represented by S L C Solicitors who have issued proceedings in the County Court for recovery of unpaid service charges and administration fees. The Tribunal issued directions on 24th September 2014 following which various submissions were made by both the applicant and the respondents.

2. THE LEASE

- 2.1 The property is held under a lease dated 15th December 2008 between James Roger Carlton trading as The Pentland Property Company of The Barn, Meeting House Lane, South Leverton, Nottinghamshire, DN22 0BS and Wendy Elizabeth Spalding of 15 Welham Grove, Retford, Nottinghamshire, DN22 6TZ.
- 2.2 The lease is for a term of 999 years from 1st February 2008.
- 2.3 On 31st July 2009 the lease was transferred to Mr Keith Woolley and Mrs Michelle Woolley. The Fifth and Sixth Schedules of the lease detail the various services and costs attributable to both the estate and the building.

3. THE LEGAL FRAMEWORK

- 3.1 Under Section 27A of the Landlord & Tenant Act 1985, the Tribunal has jurisdiction to decide whether a service charge is payable and if it is, the Tribunal may also decide:-
 - (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

3.2 Section 19 the 1985 Act provides that service charges must be reasonable for them to be payable.

“Relevant costs shall be taken into account in determining the amount of the 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 and the carrying out of works, only if the services or works are of a reasonable standard:*

and the amount payable shall be limited accordingly.”

3.3 A charge is only payable by the Lessee if the terms of the Lease permit the Lessor to charge for the specific service. The general rule is that service clauses in a lease are to be construed restrictively, and only those items clearly included in the Lease can be recovered as a charge (Gilje v Charlgrove Securities [2002] 1EGLR41). It was also stated in Gilje above “The Lease moreover, was drafted or proffered by the Landlord. It falls to be construed contra proferentum”.

3.4 If the Lease authorises the charges, they are only payable to the extent that they are reasonably incurred; and where they are incurred, only where the services for which they are incurred are of a reasonable standard.

3.5 The construction of the Lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. Essentially the Tribunal will decide reasonableness on the evidence presented to it (Yorkbrook Investments Ltd v Batten [1985] 2 EGLR 100).

3.6 Administration charges are dealt with under Schedule 11 of the Commonhold & Leasehold Reform Act 2002.

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.*

Reasonableness of administration charges

2A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

- 3(1) *Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—*
- (a) *any administration charge specified in the lease is unreasonable, or*
 - (b) *any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.*
- (2) *If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.*
- (3) *The variation specified in the order may be—*
- (a) *the variation specified in the application, or*
 - (b) *such other variation as the tribunal thinks fit.*

- (4) *The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.*
- (5) *The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.*
- (6) *Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.*

Notice in connection with demands for administration charges

- 4(1) *A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.*
- (2) *The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.*
- (3) *A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.*
- (4) *Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.*

Liability to pay administration charges

- 5(1) *An application may be made to a leasehold valuation 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 a leasehold valuation 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).*

4. THE PROPERTY INSPECTION

- 4.1 The Tribunal inspected the property in the presence of Miss B Wootton of C P Bigwoods, the Freeholder's managing agent. The flat known as 47 Clare Road was unavailable for inspection and the inspection was restricted to the common parts.
- 4.2 The estate of flats at Clare Road comprises of 40 units split between 10 separate 2 storey blocks.
- 4.3 The blocks appear to be of pre-fabricated construction with rendered elevations having UPVC double glazed windows and hardwood doors to the individual flats. They are surmounted by pitched tiled roofs.

- 4.4 The first floor flats to all but one block are approached via external steel staircases leading to balcony access areas. The block comprising 50-57 Clare Road has internal common areas comprising of a ground floor hallway and staircase leading to the first floor landing.
- 4.5 The Tribunal carried out an inspection of the common areas, both internally and externally. The external grounds and car parking areas were in good condition and well maintained. Internally the common area to the block comprising 50-57 Clare Road was clean and well maintained. It was noted that there was communal lighting provided both internally to block 50-57 Clare Road and externally to all the blocks.
- 4.6 There was ample car parking to the front of the blocks and some flats also had garages although these were not maintained by the landlord but were the responsibility of the individual leaseholders.

5. THE PARTIES' EVIDENCE AND SUBMISSIONS

- 5.1 The Tribunal had received submissions from both the Applicant and Respondents. The Tribunal noted that although the Application to the Court had included both administration charges and legal fees no reference had been made to these by the Applicant in its submissions. Indeed, the submission appeared to refer to the service charges only.
- 5.2 The Tribunal therefore wrote to the parties requesting confirmation as to whether the Applicant was still pursuing administration charges, legal fees and any contractual interest. It was pointed out to the parties that these matters were referred to in the Directions issued by the Tribunal on 24th September 2014 but that only the Respondent had commented on them.
- 5.3 The Tribunal therefore determined to consider the service charges and deal with administration and legal fees if it was subsequently confirmed that they still formed part of the application.

Service Charges

- 5.4 In making its submission in respect of service charges The Tribunal noted that the period in dispute was in respect of service charges due from 1st January 2014 to 30th June 2014.
- 5.5 The items referred to as to forming part of the service charge due comprised:

Accountancy Fee	£ 15.75
Buildings Insurance	£ 57.50
Cleaning	£ 22.50
Electricity Charges	£ 13.75
Grounds Maintenance	£ 56.25
Maintenance Agreements	£ 10.38
Management Fee	£120.00

Professional Fees	£18.75
Repairs and Maintenance	£ 22.50
Reserve Fund	£ 6.25
Window Cleaning	£10.87
Total Due	£354.50

- 5.6 The Applicant submitted that these were due under the Fifth and Sixth Schedules of the Lease.
- 5.7 Whilst not responding to individual items of expenditure the Respondents submitted that they thought the charges were excessive and that when they had visited the property the estate had been untidy and not well maintained.
- 5.8 During the inspection the Tribunal asked Miss Wootton to explain some of the items of expenditure which had been incurred and it was confirmed to the Tribunal that the cleaning included not only internal areas but also external staircases with window cleaning being carried out to communal areas only. The Tribunal understands from Miss Wootton that fly tipping is a particular problem in the area and that the grounds maintenance and cleaning charge also included clearing the rubbish left by fly tippers.

Administration Charges and Legal Fees

- 5.9 The Tribunal wrote to the parties on 28th January 2015 in respect of the administration charges and legal fees which were originally claimed by the Applicant but had not been referred to in their initial submissions. The parties subsequently made further submissions.
- 5.10 The Applicant submitted that it had set out its position in respect of costs in its original statement but submitted a further statement dated 20th February 2015 confirming that the actual costs incurred in pursuing the matter were as follows:

Fixed costs

Opening file, setting up arrears schedule and letter before action .	£ 107.50
Reviewing correspondence and second letter before action.	£ 77.50
Obtaining and reviewing Land Registry Entries, updating Arrears Schedule and Writing to mortgagee.	£ 215.00
Drafting of claim form and particulars Of claim	£ 195.00

Review of defence, dealing with application To set aside judgement, reply to defence, transfer To FTT, Statement and Scott Schedule 4.5 hours at £170.00 per hour (Grade A Fee earner)	£ 765.00
Total	£1360.00
VAT thereon	£ 272.00
<i>Disbursements</i>	
Court issue fee	£ 80.00
VAT thereon	£ 16.00
Office copies	<u>£ 4.00</u>
Total costs and disbursements claimed	£1732.00

- 5.11 The Applicant submitted that interest was payable at the contractual rate of 5% ABR Lloyds TSB Plc pursuant to clause 1 of the fourth schedule of the lease. This had been calculated at £5.13 at the date of issue of the claim (7th April 2014) and continued thereafter at a daily rate of five pence per day until the date of judgement. The Applicant submitted that the current total of interest due amounted to £21.08.
- 5.12 The Applicant further submitted that the administration charge was in accordance with clause 3.3 of Schedule 4 of the lease and the charge made was £96.00 which included all work by the managing agent in chasing payment of the service charge prior to referring the matter to solicitors.
- 5.13 The Statement submitted by SLC Solicitors on behalf of the Applicant dated 20th February 2015 was purported to have been prepared by Charlotte Collins who is described as being a solicitor. The Statement was not signed and did not contain a Statement of Truth.
- 5.14 The Tribunal wrote to SLC Solicitors confirming that the Tribunal would not be able to consider the Statement unless a signed copy was provided.
- 5.15 Following receipt of the Applicant's submission the Respondents submitted that the Applicant had still not provided a signed copy of their statement in respect of administration costs and that they were of the opinion that the costs should not be allowed as the litigious nature of the landlord resulted in costs and charges to the tenant being built up. The Respondents further submitted that they had paid £675.92 including costs to SLC Solicitors on 11th March 2014. They also submitted that interest should not be charged for the same reason.

6. DETERMINATION

- 6.1 The Tribunal first considered the service charges and although it considered that the management charge was at the top end of the range of management charges for a site of this type, it was not in itself unreasonable. The Tribunal considered that the remaining charges were reasonable and therefore determined that the proposed service charge for the period 1st January 2014 to 30th June 2014 in the sum of £354.50 was reasonable and payable.
- 6.2 The Tribunal then considered the administration charges being the legal fees incurred by the Applicant's solicitors but noted that the Statement from the Applicant dated 20th February 2015 was not signed and although the Tribunal had requested a signed copy, such a copy had not been provided either to the Tribunal or the Respondent. The Tribunal had informed the Applicant that the statement would not be considered unless it was signed and the Tribunal therefore determined not to allow the application for administration charges or legal fees.
- 6.3 However the Tribunal determined that the Court Issue Fee, VAT thereon and the Office Copies should be allowed as the Applicant had made the Application to the Court. The Tribunal therefore determined the sum of £100.00 was payable.
- 6.4 The Tribunal determined that interest was due under the terms of the lease and did not fall within the Tribunal's jurisdiction.

7. APPEAL

- 7.1 Any appeal against this Decision must be made to the Upper Tribunal (Lands Chambers). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this Decision, (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Mr G Freckelton FRICS
Chairman
First-Tier Tribunal Property Chamber (Residential Property)