



**First-tier Tribunal  
Property Chamber  
(Residential Property)**

**Case reference** : CAM/00KF/LSC/2015/0010

**Property** : Flats A & D, 21 Valkyrie Road,  
Westcliff-on-Sea,  
SS0 8BY

**Applicant  
Represented by** : Circle Residential Management Ltd.  
Mr. Martin Paine

**Respondent** : Aleksej Beresnev

**Date of Application** : 29<sup>th</sup> January 2015

**Type of Application** : To determine (a) reasonableness and  
payability of service charges and (b) whether  
the Respondent should pay punitive costs and  
reimburse fees

**The Tribunal** : Bruce Edgington (lawyer chair)  
David Brown FRICS

---

**DECISION**

---

© Crown Copyright

**UPON** the Applicant having withdrawn the application relating to Flat A, 21 Valkyrie Road with the Tribunal's consent,

**IT IS ORDERED** that:-

1. In respect of the amount claimed by the Applicant from the Respondent on account of service charges for the year 2014/2015 in the sum of £1,059.63 for Flat D, the decision of the Tribunal is that they are reasonable and payable.
2. The Respondent must also repay to the Applicant the sum of £125 in respect of the fee paid to the Tribunal for this application within 28 days from the date of this decision.
3. The claim for costs by the Applicant under rule 13 of the **Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** ("the rules") is dismissed.

**Reasons**

## **Introduction**

4. This is the second decision of the Tribunal in this application. On the 23<sup>rd</sup> April, the Tribunal considered whether the application could proceed when it was not known whether the Respondent agreed or admitted the service charges being claimed. That matter was determined in favour of the Applicant. A person who purported to be the Respondent's agent in this country, one Andrius Voveris was ordered to supply the Respondent's name and address but has failed to provide that information.
5. The claim is for money on account of service charges i.e. payments for maintenance costs, insurance, water rates and management fees. The lease provides for demands to be made for such payments according to clauses 3.2.4 and 9.1.3 of the lease to flat A which has been produced. The amounts claimed seem, on the face of it, to be unremarkable.
6. It seems that the Respondent, who is the long lessee of both flats, lives abroad but the Applicant does not know where he lives. He has an e-mail address and the address of Mr. Voveris. Whilst Mr. Voveris did respond to one e-mail from the Tribunal, he has failed to respond to anything else. However, that exchange was significant because he had clearly received a letter from the Tribunal and e-mailed to ask more about this application so that he could inform the Respondent. He was given that information by e-mail to the address from which he had written. The Tribunal therefore finds, on the balance of probabilities, that both Mr. Voveris and the Respondent are aware of this application and the Tribunal's intention to make a decision.
7. A directions order was made by the Tribunal on the 1<sup>st</sup> June 2015 which ordered the parties to file and serve evidence. The Applicant has complied with the order but the Respondent has not. The order said that the Tribunal would not inspect the property and would be prepared to deal with the determination on the basis of the papers and written representations made. It pointed out that a determination would not be made before 29<sup>th</sup> June 2015 and either party had the opportunity to both ask for an inspection of the property and have an oral hearing if they so requested. No request was made for either an inspection or an oral hearing.

## **The Inspection**

8. As has been said, the parties were given notice that the Tribunal did not intend to inspect the property and neither asked for an inspection.

## **The Law**

9. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.
10. Section 19 of the 1985 Act states that where a service charge is payable, as in this case, before the relevant costs have been incurred, no greater amount than is reasonable is so payable. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.
11. Rule 13 of the rules gives the Tribunal the power to order one party to pay the

costs of another party where such party “has acted unreasonable in bringing, defending or conducting proceedings” in this sort of case. There is the additional power to order reimbursement of fees paid to the Tribunal at the Tribunal’s discretion but without the pre-condition.

**Conclusions**

12. The Upper Tribunal has made a number of criticisms of First-tier Tribunals recently in cases where the Tribunal itself has taken points. It has been made very clear that these are adversarial proceedings, not inquisitorial. If a Tribunal wants to raise a point of its own, it must tell the parties and give them the right to make representations.
13. In this case, the landlord, through the Applicant as its agent, has demanded service charges on account i.e. before they are to be incurred for the year 2014-2015. As has been said, those service charges are the sort of charges the Tribunal would expect and are permitted under the terms of the lease to flat A which, the Tribunal infers, is the same as for flat D. They do not appear to be unreasonable on the face of it.
14. The Tribunal therefore finds them to be reasonable and payable but, it makes clear, on the basis that they have not been challenged at all by the Respondent. Whilst the Tribunal has found, on the balance of probabilities, that the Respondent is aware of this application, it is always possible that he is not. Thus, the need for this reservation.
15. As far as any claim for the re-imbusement of the fees is concerned, the Respondent has not paid the charges or disputed them. He has chosen to live abroad and avoid communication with his landlord. The Tribunal therefore agrees that he should reimburse the Applicant for those fees.
16. On the other hand, he has not behaved unreasonably in defending or conducting these proceedings. Quite the reverse. These are still ‘no costs’ proceedings which means that if a party chooses to make an application, he or she knows that costs do not ‘follow the event’. Even if successful, no costs order will be made unless there has been unreasonable behaviour relating to the proceedings themselves. There has been none in this case and such application for costs is therefore dismissed.

.....  
**Bruce Edgington**  
**Regional Judge**  
**2<sup>nd</sup> July 2015**