

11447



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

Case Reference : CHI/21UC/LSC/2015/0016

Property : Flat 1, Cavendish Court
12-14 Blackwater Road
Eastbourne
BN21 4JD

Applicant : Cavendish Court Eastbourne Ltd

Representative : Mr Andrew Taylor

Respondent : Mrs Sharon Sinclair

Type of Application : To determine reasonableness and payability
of the service charge S.27A
Landlord & Tenant Act 1985

Tribunal Member : B H R Simms FRICS (Chairman)

Date of Consideration : 22 June 2015

Date of Decision : 10 July 2015

DECISION

DECISION

1. The amount due and payable for the half year interim payment on 29 September 2014 is £10.00 (ten pounds).

REASONS

BACKGROUND

2. This is an Application dated 04 March 2015 made on behalf of the Residents Management Company for the Tribunal to make a determination in accordance with S. 27A of the Act.
3. The dispute concerned whether the service charges for the half year from 29 September 2014 to 24 March 2015 are payable.
4. Directions for the conduct of the case were issued dated 09 March 2015 and notice was given that the application would be determined on the papers without an oral hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 and no objections were received. A timetable was issued for the presentation of the parties' cases and documents and evidence in support.
5. The amount claimed in the application is shown on a demand dated 13 September 2014 sent to the Respondent at the property address in the sum of £440.68.
6. The chairman sitting alone considered the case on 22 June 2015 based upon the documents submitted.

THE LAW

7. The Tribunal's jurisdiction derives from the Landlord & Tenant Act 1985 as amended.
8. S.18 defines the meaning of a service charge as being "*an amount payable by a tenant ... in addition to the rent – (a) which is payable directly or indirectly, for services, repairs, maintenance, 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*".
9. S.19 limits the relevant costs to be taken into account in determining the amount of service charge only to the extent that they are reasonably incurred and only if the services or works are of a reasonable standard.
10. S.21B provides that any demand for service charges must be accompanied by a summary of the rights and obligations of tenants in relation to service charges. A tenant may withhold payment if the requirement is not complied with.

11. S.27A provides that a Tribunal may determine whether a service charge is payable and if it is, the Tribunal may also determine the person by whom it is payable, the person to whom it is payable, the amount which is payable, the date at or by which it is payable and the manner in which it is payable. These determinations can (with certain exceptions) be made for current or previous years and also for service charges payable in the future.

LEASE

12. The Tribunal has been provided with a photocopy of the lease of Flat 1 dated 04 April 1972 for a term of 99 years paying a yearly ground rent of £25 per annum by half yearly instalments on the 25 March and 29 September.
13. Clause 6 deals with payments by the lessee for the maintenance of the building.
14. (6. (ii)) *The maintenance charge ... shall be all sums actually paid ... during each calendar year in connection with the maintenance and management of the building and in particular without limiting the generality of the foregoing shall include the costs expenses and outgoings ... mentioned in the fourth Schedule ...*
15. The clause sets out the mechanics and arrangements for calculating and paying the relevant proportion of the service charge.
16. The agent or surveyor of the lessor is required to issue in every year a certificate showing ... *the proportion of the balance of the ... maintenance charge [due] being the proportion which the rateable value of the Flat bears to the total of all of the Flats in the Building ...* (6.(iv)).
17. On every rent day the lessee has to pay the [interim] amount of Ten Pounds or some other sum calculated in accordance with clause 6.(v). This clause sets out a detailed mathematical calculation based upon one sixth of the total costs specified in a notice served by the lessor on the lessee in a detailed form described. Only then shall the interim amount be increased.
18. The Tribunal has had regard to the full lease when making its Determination.

INSPECTION

19. The Tribunal did not inspect the property. It is described by the Applicant's surveyor Gavin Lewis DipSurv MRICS C.Build E MCABE of Messrs Kingston Morehen as a pair of semi-detached Victorian town houses containing six self-contained, long leasehold flats. The report of Mr Lewis dated 26 November 2014 describes the general condition of the building and makes recommendations.

THE RESPONDENT'S CASE

20. The Respondent made a brief statement stating that she had lived in the property for twelve years and had been paying the service charge.

21. She has not paid the amount demanded because the service provided by the lessor falls below the standard she expects. Her main concern is the state of poor repair of the premises which will affect the value of the property when she tries to sell.
22. She states the service charge as having increased by 180% with nothing to show for it.

THE APPLICANT'S CASE

23. The Applicant's statement is in the form of a reply to the Respondent's statement. The amount due is supported by a demand attached to the application and reply.
24. Although not directly relevant the Landlord disputes the statement that service charges have been paid and details past arrears.
25. A surveyors report by Kingston Morehen dated 26 November 2014 is submitted as evidence of the condition of the building.
26. A letter regarding UPVC doors and paving slabs addressed to the Respondent is included without explanation.
27. The Landlord Applicant states that the Respondent's service charge has not been increased and the charge payable is as specified in the lease.

THE CASES GENERALLY

28. The Directions (11.) required that supporting documents should be submitted and suggested that these might include invoices, accounts, and set out a full list of other requirements. A statement from both parties was requested and those matters that might be helpful to be included is suggested including details of the relevant lease covenants and an interpretation of these relevant to the subject case.
29. Neither party managed to provide useful statements and the bundle was deficient in many areas particularly the calculation of the amount demanded.

CONSIDERATION

30. The Tribunal has to be satisfied that the service charge has been properly demanded and is in accordance with the terms of the lease.
31. All the statutory requirements have been satisfied by the demand dated 13 September 2014.
32. The demand shows an amount for a half yearly charge. The lease requires payment of an interim sum of ten pounds unless a substituted amount is due fixed in accordance with the terms of the lease. The Tribunal has not been provided with any evidence of a calculation of the proportion or costs involved to support the demand of £440.68. No evidence of any certificate under 6 (iv) or notice under 6 (iv)(a) in fact no evidence at all is provided in support of the amount demanded.

Faced with this lack of evidence the Tribunal has no alternative but to conclude that the only interim half yearly service charge payable is the amount stated in the lease at £10.00.

33. Whether or not the landlord has properly carried out its obligations under the Fourth Schedule or any other part of the lease is not an issue before it and the tribunal makes no determination.

10 July 2015

PERMISSION TO APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. 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.
4. 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.