



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

Case Reference : CHI/00HG/LSC/2016/0127

Property : Flat 3, 1 Clarence Place, Plymouth,
Devon PL2 1SF

Applicant : Mr Zbigniew Franczyszyn

Representative : Andrew & Andrew, solicitors

Respondent : 1 Clarence Place Management Company
Limited

Representative : Freehold Management Services

Type of Application : Service charges on account for 2015 and
2016

Tribunal Member(s) : Judge D. Agnew

**Date and venue of
hearing** : By paper determination on 1st June 2017

Date of Determination : 1st June 2017

DETERMINATION

1. On 2nd December 2016 the Applicant, who is the long leaseholder of Flat 3, 1 Clarence Place, Plymouth PL2 1SF ("the Property") made an application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination as to his liability for and reasonableness of service charges which had been rendered on account of costs by his landlord for the years 2015 and 2016.
2. The Tribunal issued Directions on 1st March 2017 which included provisions for the service of statements of case and witness statements and for the matter to be disposed of by way of a paper determination without an oral hearing unless either party objected within 28 days. Neither party did object and the Directions were complied with.
3. A statement of case was filed on behalf of the Applicant by his solicitors together with a witness statement by the Applicant himself. A witness statement on behalf of the Respondent was filed and served by Mr Donald Gerald, a Director of Freehold Management Services who are the Landlord's managing agents.

The Applicant's case

4. By the time the Applicant's solicitors filed their client's statement of case certain items of expenditure which had been challenged by the Applicant himself in his application form were no longer in issue or were not pursued. This left the following items for determination by the Tribunal:-

2015

Companies House Filing Fee	£4.33
Buildings Insurance	£142.66
Electricity	£46.67
Maintenance provisions	£100
Management fees	£166.67

2016

Companies House Filing Fee	£4.33
Building Insurance	£127.36
Electricity	£46.67
Maintenance provisions	£100
Management fees	£200

5. The Applicant's challenge to the individual items contained in the charge was essentially the same for each year in question. In a nutshell those challenges were as follows:-
 - (i) Companies House Filing Fee.
No invoice for such fees has been produced and the Applicant is not responsible for fees not incurred by the Respondent.

(ii) Building Insurance.

The certificates of insurance show the building insured to be 1, Clarence Place, Plymouth PL1 3JN. The Applicant says that the post code stated is not that of the building containing his flat which is PL2 1SF. As a

result, he says, his building was not insured and he should not have to pay the charge for insurance.

(iii) Electricity.

The Respondent has failed to provide any receipts or invoices for electricity and he puts the Respondent to proof of the expenditure.

(iv) Maintenance provisions

No maintenance has been provided for the building: indeed, the Applicant says that the Respondent has failed to maintain the property for many years. A local authority statutory notice was, at one time, served. The Applicant says he has carried out repairs "around his flat and the building for which he has not been compensated".

(v) Management fees.

The Applicant says there has been no management and the charge is in any event excessive

The Respondent's case

6. In answer to the Applicant the Respondent's case was as follows:-

(i) Companies House Fees.

The company accounts are prepared and filed by Harold Duckworth and Co but the Company Secretary is Oakley Accountants of Plymouth. They have not yet submitted invoices for the filing fee they have or will incur at Companies House and it is right that provision should be made for this fee in the on-account charges sought as the invoices will be received in due course.

(ii) Buildings insurance.

The Landlord, who is responsible for arranging the insurance mistakenly provided the insurance company with the wrong postcode for the building. However, the building was correctly described in the insurance certificate as 1 Clarence Place, Plymouth and a claim against the policy has been settled. It is not correct, therefore, to say that the building was not insured.

(iii) Electricity.

The managing agents have been having difficulty in obtaining invoices from the electricity supplier, EDF. Despite strenuous efforts EDF have so far failed to provide the Landlord with up to date bills based on actual readings. In the meantime, the managing agents say, it is prudent to continue to seek a payment on-account of the charges that will be forthcoming at some stage in the future.

(iv) Maintenance provisions.

The managing agents say they always sensibly estimate an amount that should be put to one side to cover minor maintenance issues that are likely to crop up during the year and this is included in the

budget that they say they present to the leaseholders each year. Reactive maintenance has been carried out but as there are insufficient funds available due to the Applicant's failure to pay his service charges the Landlord has covered these expenses by way of loans to the company and pro-active maintenance has not been possible.

(iv) Management fees.

The managing agents produced a document setting out the services they provide for the management fees charged. They also produced a copy of the report to lessees on the condition of the building and what works they consider should be carried out during the year. No other leaseholder has complained about their service.

The lease

7. By clause 7(2)(ii) of the lease the Lessee covenants to pay the sum of Fifty pounds or such revised sum as shall be calculated in accordance with the provisions of paragraph (x) of this sub-clause ("the advance contribution") as a contribution towards the maintenance charge such sum to be paid to the Managing Agents.....by yearly payments in advance on the First day of January in each year".
8. The maintenance charge" is, by clause 7(2)(i) of the lease a proportion of the expenditure incurred by the Landlord in complying with his obligations under Clause 6 of the lease in respect of the building. The stated proportion in the copy of the lease supplied in the determination bundle for the Tribunal has been obliterated. The Applicant's solicitor in its statement of case says that it is 40%. However, the budget shows that total expenditure is to be divided by 3, there are 3 flats and the amounts demanded of the Applicant by the managing agents is one-third of the total estimated expenditure. The Tribunal will proceed, therefore, on the assumption that the Applicant's proportion of the maintenance charge and the amount of the advance contribution towards the maintenance charge is one-third.
9. Sub-clause (x) of clause 7(2) is somewhat convoluted provision but, in short, the Tribunal construes it as enabling the Landlord or his Managing Agent to recover as an advance payment at the start of each year a sum which is estimated to cover the likely expenses to be incurred during the year where they are likely to exceed the basic £50 on account payment provided for in clause 7(2)(ii). In the Tribunal's view the on-account demand is sufficient "notice" as required to be given by sub-paragraph (x). That sub- paragraph states:-
" It is further specifically provided that the Lessor may if the Lessor thinks fit at any time before or during any financial year revise and adjust the contribution for such year to such amount as it shall reasonably deem necessary in the light of expenditure from time to time found to be necessary over and above the contribution for that year notice of such revision and adjustment to be served on the Lessee not less than one month

prior to the commencement of the works necessitating the adjustment and to be accompanied by a statement of the additional expenditure for that year and the addition to advance contribution so revised and adjusted shall be payable by the Lessee within one month of the service of the Notice but otherwise in accordance with the preceding provisions of this clause”.

The relevant statute law

10. By section 19 of the Act service charges are only payable to the extent that they are reasonably incurred and of a reasonable standard.

11. By section 19(2) of the Act states:

“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 of subsequent charges or otherwise”.

12. By Section 27A(1) of the Act it is provided that:-

An application may be made to a [First-tier Tribunal (Property Chamber)] 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.*

The Tribunal’s determination

13. The Applicant seeks a determination from the Tribunal as to the payability and reasonableness of two demands for service charge, namely a demand for £563.66 dated 1st March 2015 for estimated expenditure during 2015 and one for £581.69 dated 1st January 2016 for estimated expenditure during 2016. The demands comply with section 47 of the Landlord and Tenant act 1987 in that the landlord’s name and address for service is stated on the demands and they appear to have been accompanied by a summary of tenants’ rights and obligations.

14. As the demands are for on-account payments of service charge actual expenditure incurred during those years is irrelevant to the Tribunal’s determination in this case. What the Tribunal is required to do is to determine the reasonableness of the amount being sought in advance of expenditure so that section 19(2) of the Act is satisfied.

15. Nor is the Tribunal concerned with whether the Landlord has been in breach of its own obligations with regard to repair of the building over past years. The time when this might become relevant is if or when a demand is made for a balancing charge at the end of the service charge years in question when the landlord is seeking to recover actual expenditure it has

incurred in excess of the on-account figure, but that is not what this current application is concerned with. Nor is the Tribunal concerned with compensating the Applicant for works he says he has carried out at the property. Again, that would only be relevant in connection with an action brought by him in the County Court for damages for breach of the landlord's covenant to repair.

16. The Tribunal now turns to consider the components of the on-account charges levied and challenged by the Applicant.

a) Companies House fees.

If or when the company which is the company secretary of the Landlord seeks payment of this disbursement it would be recoverable by the landlord as a service charge item under paragraph 5 of the Fifth Schedule to the lease being "the cost of employing and the fees remuneration and administrative costs of such professional advisers and agents as shall reasonably be required in connection with the management of the building....." It can be seen from the draft company accounts of 1 Clarence Place management Limited that the company's sole activity is the management of the building containing the Applicant's flat. It is reasonable therefore for provision to be made to cover the company secretary's disbursement of Companies house fees so that this can be paid when demanded. Presumably this is a fixed fee. It is a small amount. The Tribunal finds that it is reasonable for this fee to be included in the on-account demand.

b) Buildings insurance

The only challenge to this cost was that the Landlord had quoted the postcode for the building incorrectly when arranging the insurance. However, the rest of the address of the property was correct and there has, according to the managing agent, been no problem in a claim being settled. The provision in the on-account demand for recovery of the buildings insurance premium is therefore reasonable.

c) Electricity

No doubt electricity for the communal parts was to be consumed during the period in question and it is therefore right and proper for an estimate of the cost of that electricity be contained in the on-account demand for those years. The Applicant has not asserted that £140 for the whole block for electricity is too high nor has he made any suggestion as to what he considers it should be. In the absence of this the Tribunal has no reason to find that £140 for the whole block is an unreasonable estimate and so allows it. If and when the Landlord receives accounts from the energy supplier showing a lower figure for electricity consumption and if or when the Landlord seeks a balancing charge for the years in question when all costs are known it will become apparent as to whether the estimated figure was right or not.

d) Maintenance provisions

It is perfectly reasonable, indeed necessary, for any on-account demand for service charges to include an element for estimated costs of routine repairs

and maintenance, provided that the lease provides for recovery of such costs. An estimate of £300 per year for a building containing three flats is not unreasonable and the Tribunal allows this.

e) Management fees

The managing agent's standard fee for blocks of flats where there are up to 4 flats is £200 per flat. In 2015 they were in place for only 10 months of the year and therefore the charge to the Applicant was £166.67. In 2016, where they were in place for the whole year, the amount included in the on-account charge to the Applicant was the full £200. The Applicant says that the managing agents carry out no management. However, included in the determination bundle is a document for each year being an Inspection Report, accounts are maintained, budgets are set, demands for service charges made and arrears chased. All this has to be paid for. £200 per flat is at the higher end of the spectrum of reasonable costs for managing agents and the Tribunal recognises that for a small block a managing agent does not have economies of scale. The Tribunal finds, therefore, that it was reasonable for £200 to be included in the estimated charges for 2016 and the slightly lower figure of £166.67 for the demand for 2015 which covered only 10 months.

Conclusion

17. The Tribunal finds that the demands for service charges dated 1st March 2015 in the sum of £563.66 and 1st January 2016 in the sum of £581.69 are reasonable and payable by the Applicant. To the extent that they have not been paid they are to be paid within the next 28 days.
18. The Applicant says he has been paying £200 per month towards service charges and he has produced a copy of two bank statements from Santander Bank in his name showing regular payments of £200 from 19th January 2015 to 6th May 2016. The statements do not show the name of the payee. The Respondent's managing agent says that it has not received any monies from the Applicant since it took over the management of the property during 2015. In his witness statement Mr Gerrard of the managing agents explains that the £200 per month being paid by the Applicant was pursuant to an agreement between the Applicant and a former owner of the freehold to pay off accumulated arrears of service charges amounting to £12,000.
19. The Tribunal is not in a position to establish the true position with regard to the payments that were being made by the Applicant. This is something that will have to be resolved by the County Court should the Respondent seek to enforce this Tribunal's determination as set out in paragraph 17 above.

Dated the 1st June 2017

Judge D. Agnew

APPEALS

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.