



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

Case Reference : CHI/18UC/LIS/2012/0044 and CHI/18UC/LIS/2013/0013

Property : Flat 3, 14 Victoria Road, Exeter EX4 6JB

Applicant : 1 and 2 Victoria Street Amenity Limited

Representative : Mr J Lang

Respondent : Mr C Joshi

Representative : In Person

Type of Application : Section 27A of the Landlord and Tenant Act 1985
Landlord's application for the determination of
reasonableness of service charges for the years 2007 to
2013.

Tribunal Members : Judge of the First-Tier Tribunal A Cresswell (Chairman)
Mr T Dickinson FRICS

**Date and venue of
Hearing** : 5 June 2013 at Exeter Magistrates' Court

Date of Decision : 6 August 2013

DECISION

The Application

1. On 28 March 2012, District Judge Harvey transferred to this Tribunal a claim by the Applicant in relation to Service Charges for the years 2007 to 2011 inclusive. On 14 January 2013, the Applicant, the owner of the freehold interest in Flat 3, made an application to the Leasehold Valuation Tribunal for the determination of the reasonableness of the Service Charge costs claimed for the years 2012 and 2013.

Inspection and Description of Property

2. The Tribunal inspected the property on 5 June 2013. Present at that time were Mr J Lang, Mr S Ryder and Mr O Hale. The property in question consists of the end and corner of a terraced 2-storey block converted into flats.

Summary Decision

3. This case arises out of the landlord's application, made in County Court proceedings and at this Tribunal on 14 January 2013, for the determination of liability to pay Service Charges for the years 2007 to 2013 inclusive. The Tribunal has determined that the landlord has not demonstrated that the charges in question are currently payable by the Respondent.

Directions

4. Directions were issued on 28 May 2012 and 24 January 2013. These directions provided for the matter to be heard on the basis of an oral hearing.
5. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. It was, in particular, ordered that the Applicant should provide "*copies of all relevant Service Charge Demands and Statements, correspondence.....and other documents which it wishes the Tribunal to see in support of its case*".
6. This determination is made in the light of the documentation submitted in response to those directions and the evidence received at the hearing from the Respondent and Mr Ryder, Mr Hale and Mr Lang.

The Law

7. The relevant law is set out in sections 18, 19, 21B and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
8. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 “the 1985 Act”). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.
9. The relevant law is set out below:
Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

Section 21B

Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State 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 a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

Ownership and Management

10. The witnesses told the Tribunal that the Applicant is the freeholder of the property. The Tribunal was told at the hearing that the shareholders of the Applicant company are Exe Finance Ltd, Mr J Lang, Mr C Aird and Mr Doshi, the Respondent. The Tribunal was amazed to learn that Mr Doshi had never communicated directly with Mr Ryder (Exe Finance Limited). Mr Doshi is the tenant of Flat 3. The flats at the property are student lets. Although the Respondent is a shareholder and director in the landlord management company, he has taken no part in the management of the property.

The Lease

11. The Respondent holds Flat 3 under the terms of a lease dated 23 September 2003, which was made between Colourcolt Limited as lessor and the Respondent as lessee.

The Applicant's Case

12. Mr Ryder explained that the freeholders were attempting to manage the property without the costs of an external management company. His father maintained an Excel programme to log costs and the accounts are closed each year on 31 October.
13. He told the Tribunal that normally a comprehensive letter would be sent to shareholders and an invoice is attached with an apportionment of costs done in accordance with the fractions detailed in the lease. He did not have an example of such a comprehensive letter; all documents were stored at Exmouth and he had not appreciated that they would be needed.
14. The letter produced for 10 January 2013 in correspondence from Mr Doshi was truncated due to personal circumstances.
15. Mr Ryder told the Tribunal that he was aware of the RICS Code and that he tried to adhere to it; he had been aware for 2 to 3 years.
16. He told the Tribunal that no correspondence had ever been received from the Respondent; that there was only a postal address for him; that any part payments had come via Solo Properties (Mr Hale) who lets Flat 3 for the Respondent and all but 1 of the other 5 flats too and which deducted sums from the rent due to the Respondent.
17. Mr Lang told the Tribunal that he had telephone discussions with Mr Ryder and that he did receive a letter of explanation.

The Respondent's Case

18. The Respondent told the Tribunal that he had paid all of the invoices presented via Solo Properties, but that he had not paid the Service Charge demands. He said that whenever he wrote to ask why he should pay, there was no return communication until he received the County Court papers.
19. Each year, he had requested a breakdown of costs. He provided 2 examples of these requests.
20. He told the Tribunal that he did not know the 3 witnesses for the Applicant and that he had never attended a shareholders' meeting or been invited to one.

21. He said that if he was given an opportunity to liaise, he would pay what was due. He could pay some now and instruct Solo Properties to make deductions from the rent for any more owing.

Consideration and Determination

22. The Tribunal found it clear that there was a considerable problem with communication. Here were joint freeholders who had never even spoken to each other. Each party was saying it had sent documentation to the other, which the other was denying receiving. And yet, all appeared to be reasonable people.
23. The Tribunal believed that the proper course here was to give the parties time and an opportunity to resolve the issues themselves. The intention was that Mr Doshi would be allowed to inspect the documents of account, invoices, etc and that he would make part payment and commit to paying what was due for the years from 2007.
24. Unfortunately, although the Respondent has now written to the Tribunal, by letter of 20 July 2013, to indicate that he accepts that some £1200 may be due from him to the Applicant, further sums remain unresolved.
25. There has to be certainty to litigation.
26. The Tribunal was not given any Service Charge demand which complies with Section 21B of the 1985 Act, providing a summary of the Respondent's rights and obligations. The examples it did see did not have such a summary. The Applicant was given an opportunity via the Directions to provide comprehensive detail of the Service Charge demands and supporting invoices, but failed to take that opportunity; only sparse documentation was submitted. The Service Charge demands seen by the Tribunal are, for the most part, lacking any detail as to the nature or amount of the relevant costs. In those circumstances, the Tribunal can find only that the charges sought are not currently payable. The Applicant also appears to be operating on the basis of a year (year to 31 October and a single payment) which differs from that detailed in the lease (financial year with equal payments on 1 January and 1 July).
27. This is not a satisfactory outcome for either party as the Applicant has no wish to pay the Respondent's proper share of the maintenance of the property for him and the Respondent does wish to pay his proper share. Better communication may be

the way forward. With advice, the Applicant may still be able to issue proper demands for some of the outstanding sums.

Section 20c

28. The Respondent has not made an application under Section 20C Landlord and Tenant Act 1985 in respect of the Respondent's costs incurred in these proceedings.

Signed A Cresswell
Judge of the First-tier Tribunal

Date 6 August 2013