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**HM Courts  
& Tribunals  
Service**



**Residential  
Property  
TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

In the matter of section 27A of the Landlord and Tenant Act 1985 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002

Case Nos. CHI/29UL/LSC/2012/0184

Property: **Flat 3  
7 Castle Hill Avenue  
Folkestone  
Kent  
CT20 2TD**

Between: **Mr J A Batten  
(the Applicant)**  
  
and  
  
**Miss J M Burrell  
(the Respondent)**

Date of hearing: 11<sup>th</sup> March 2013  
Date of the decision: 12<sup>th</sup> March 2013

Members of the Tribunal: Mr D Dovar LLB (Hons)  
Mr R Athow FRICS MIRPM  
Mr P A Gammon MBE BA

## DECISION

### Introduction

1. This is an application transferred from the Canterbury County Court by order of DJ Sullivan dated 7<sup>th</sup> December 2012 for the determination of the payability of service charges and an administration charge pursuant to section 27A of the Landlord and Tenant Act 1985 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002. The sums claimed in the Particulars of Claim in the county court are 'Service Charge & Ground Rent of £823.65 and administration fees of £150'.
2. Directions were given on 19<sup>th</sup> December 2012 providing for the parties to set out their statements of case and for the preparation of a bundle. Those directions were complied with.
3. At the hearing, the Applicant was represented by counsel, Mr Rundall and Mr Alleyne of the managing agents attended, the Respondent appeared in person.

### The Property

4. The Property is one flat of four in a converted building of brick construction with slate roof. Flats 1 and 2 have their own separate entrances and Flats 3 and 4 have a communal door situated on the first floor up a flight of metal, fire escape, steps. There is a communal area from the front door leading to two separate doors, one for flat 3, the other flat 4. There is also a rear garden which opens out onto a larger communal garden enjoyed by many of the surrounding properties.
5. The Tribunal inspected the Property and the communal parts. The exterior and communal areas were on the whole in a poor state of repair. Despite difficult weather conditions (it was snowing), the Tribunal managed to

identify: a stretch of detached guttering at the front; cracked masonry both on the exterior of the building and on the boundary wall; various areas of dilapidated wooden frames, eaves and fascia. The Tribunal was also shown a piece of the fascia which had fallen down onto the top of the metal stairs at the entrance to the communal door for flats 3 and 4. That door was also in a poor state of repair with old paintwork and exposed wood. It was clear that no regular maintenance was in place which was confirmed not only in the accounts but by Mr Alleyne at the hearing.

### **The Lease**

6. By a lease dated 18<sup>th</sup> July 1986, Mr Batten and Mr Wood demised the Property to the Respondent for a term of 99 years from 7<sup>th</sup> January 1986. The material terms are as follows:
  - a. The Respondent agreed to pay by way of additional rent a quarter of the costs of insurance of the building (clause 1);
  - b. The Respondent covenanted to pay all costs charges and expenses incurred for the purpose of or incidental to the preparation of a notice under section 146 of the Law of Property Act 1925 (clause 3 (1) (d));
  - c. The Respondent also covenanted to 'contribute and pay to the Managing Agents or if none the Lessors in advance on the Twenty Fifth day of December in each year an equal one quarter part of the costs expenses outgoings and matters mentioned in the Fourth Schedule (clause 4 (iii));
  - d. By clause 5, the Lessor covenanted to maintain, repair, redecorate and renew the roofs and main structures and the pipes and the entrance hall, landings and staircases and other common parts of the building as well as the grounds (clause 5 (c));

- e. The Fourth Schedule sets out the costs, expenses and outgoings and matters in respect of which the Respondent is to contribute. This includes the cost of complying with their repairing obligations.

### **The Statutory Provisions**

- 7. Section 18 of the Landlord and Tenant Act 1985 defines service charges as those amounts payable by a tenant as part of or in addition to rent, which are payable directly, or indirectly for services, repairs, maintenance or insurance or the landlord's costs of management and the whole or part of which vary or may vary according to the relevant costs. Relevant costs are defined as the costs or estimated costs incurred or to be incurred by the landlord in connection with matters for which the service charge is payable.
- 8. Section 19 places a statutory limit on service charges by only allowing their recovery to the extent that they are reasonably incurred and where the service or work is to a reasonable standard. It also provides for service charges payable in advance and limits them to an amount that is reasonable to pay. It further stipulates that once the relevant costs have been incurred an adjustment should be made.
- 9. Section 27A confers jurisdiction on the Tribunal to determine whether a service charge is payable and if so, (amongst other matters) the amount which is payable and the date at or by which it is payable. The determination can be made whether or not any payment has been made and also in respect of anticipated expenditure.
- 10. Section 158 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 provide for Tribunal to determine on similar terms to service charges, the payability of administration charges. These are charges that are not divided amongst leaseholders, as service charges are, but sums demanded directly from one leaseholder and they include an amount as part of or in addition to rent payable in connection with a breach of covenant

or condition in the lease. Such a charge is only payable to the extent that it is reasonable.

### **The sums in dispute**

11. The Applicant helpfully clarified the basis of the sum demanded as comprising:
  - a. £185 being the balance outstanding for the payment on account for the period June to December 2011;
  - b. £236.65 for insurance which was demanded on 15<sup>th</sup> August 2011;
  - c. £200 for the payment on account of service charge for the period December 2011 to June 2012;
  - d. £200 for the payment on account of service charge for the period June 2012 to December 2012;
  - e. An administration fee of £150 in respect of the instruction of PDC Limited to chase the outstanding sums set out above. They were a debt collection agency.
12. It was clarified that despite the Particulars of Claim in the County Court alleging that the claim included ground rent, that did not form part of this claim.
13. Further the Applicant clarified that in respect of the payments on account, these were £400 per year, demanded in 6 monthly instalments. The £400 figure was not derived from any estimated expenditure, nor from any survey of the property identifying what works may be necessary in the future, but from an historic agreement reached when the property was converted; an agreement which the Tribunal notes did not find its way into the lease.

14. The Tribunal has also seen the statements of account for the year ending 2010 and 2011, a running account for the Respondent and the demands for the on account payments. However, the Applicant was unable to properly explain how the sums demanded on account had been reconciled with the actual expenditure, other than that any surplus was put into reserves. The Tribunal was not shown any documents relating to the reserve account.
15. The Respondent stated that she had withheld her service charge as a protest because of the lack of work carried out. Apart from the administration charge, she did not actually challenge any particular item of expenditure nor the sums demanded on account. She accepted that £400 had been the sum paid historically but wished that more work was carried out even if that meant an increase in the sums she had to pay. She states that she had suggested to the Applicant that more sums were demanded in order to carry out more works. As for the administration charge she stated that it should not be payable as she has been forced to withhold payment by reason of the Applicant's failure to carry out the necessary works.
16. The Applicant accepted that little had been done in the year 2010 and 2011. Indeed this was reflected in the statements of account. It stated that more had been done in the year 2012. Further documents were produced which showed that in that year £920 had been spent on repairs to the stairs and £840 on scaffolding.
17. The Applicant's managing agent candidly admitted that there was no maintenance programme. Part of the reason for no works being carried out was because: a.) the Applicant was not prepared to pay for it in advance of recovery of the funding by the tenants; and b.) on enquiry of the other leaseholders, at least two of whom were investor landlords, they had not requested such works as it seems likely that they did not wish to reduce their income any more than necessary.

18. The Tribunal was disappointed at the approach taken by the managing agent and the Applicant in this matter. The Applicant has obligations under the lease to keep the building and grounds in repair. From the Tribunal's observations it did not appear that it had fulfilled those obligations. Further, the Applicant appeared all too eager to state that these were issues outside of the Tribunal's jurisdiction. Whether that was the case or not, it did appear to the Tribunal that it was the Applicant's disregard of his obligations under the lease that had caused this application and the related court proceedings. This was not a case where the Respondent was trying to avoid payment; it was the opposite. She would have happily paid more if the Property was being properly maintained. Instead she had to contend with disrepair including substantial pieces of wooden fascia board falling down outside the front door and lack of security due to the main entrance door to the block not being kept in good working condition.
19. Despite those observations the Tribunal considered that the sums claimed by way of an on account demand were recoverable, including the insurance. £400 per annum appeared less than the actual expenditure figures for 2011 and given that the thrust of the complaint was with lack of work, this sum appeared a reasonable sum to pay on account under section 19 (2) of the Landlord and Tenant Act 1985.
20. In respect of the administration charges, the Tribunal does not consider that this sum is payable.
  - a. Firstly, the Tribunal was not persuaded that such a sum is recoverable without specific provision being made in the lease. The Tribunal does not agree with the Applicant that paragraph 1 (1) (d) of the 11<sup>th</sup> Schedule to the 2002 Act permits the demand of an administration charge simply because there has been a breach of covenant. There has to be some clause in the lease which stipulates that on breach a sum may be payable. It must also be payable as part of or in addition

to rent (paragraph 1 of the 11<sup>th</sup> Schedule), which suggests that it must be provided for under the lease. This also accords with paragraph 3 of the Schedule which refers to varying a term providing for an administration charge.

- b. Secondly, the Applicant relied in the alternative on clause 3 (i) (d) of the lease as permitted this charge, however, the Applicant was not contending that these proceedings were in contemplation of forfeiture, it was merely stated that they were analogous. That is not sufficient.
- c. Finally, even if the Tribunal had considered that there was provision for an administration charge, it does not consider that this charge was reasonable under paragraph 2 of the Schedule. The Tribunal's view is that the Applicant has brought much of these problems on themselves and having recourse to a debt collection agency was not necessary, particularly when they were aware that the Respondent wanted them to carry out works of repair.

21. The Tribunal therefore disallows the £150 claimed by way of administration fee.

### **Conclusion**

- 22. The full amount of the service charges are payable in the sum of £823.65.
- 23. The administration charge of £150 is not payable.
- 24. No application was made for either an order under section 20C or for the reimbursement of the hearing cost.
- 25. The Tribunal reiterates its concerns about the management of this property and considers that although the Respondent should pay the service charges claimed, there was justification in her taking the stance that she did.

26. Had the Applicant or his agent performed their role pro-actively and in accordance with the RICS Service Charge Residential Management Code together with issuing the accounts in accordance with the ICAEW recommended format, it seems to the Tribunal that it most likely that this case would not have arisen.

Daniel Dovar LLB (Hons)

Chairman

12<sup>th</sup> March 2013