

9130



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

Case Reference : **LON/00BC/LSC/2013/0209**

Property : **22 Monarch Way, Newbury Park,
Ilford, Essex IG2 7NY**

Applicant : **Newbury Central (East)
Management Co Ltd**

Representative : **Foulds Solicitors Ltd**

Respondent : **Firooz Alexander-Sefre**

Representative : **Douglas Lobo**

Type of Application : **Service Charges**

Tribunal Members : **Mr NK Nicol
Mr A Lewicki BSc MRICS MBEng
Mrs J Hawkins**

**Date and venue of
Hearing** : **16th July 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **24th July 2013**

DECISION

Tribunal's Decision

- 1) The Tribunal has decided that the following sums are payable, and were payable from the date of, and in the manner specified in, the original demands, by the Respondent to the Applicant:-
 - (a) For period 1/1/11-30/6/11 £270.99
 - (b) For period 1/7/11-31/12/11 £279.25
 - (c) For period 1/1/12-30/6/12 £279.25
- 2) The Tribunal further decided not to make any order under section 20C of the Landlord and Tenant Act 1985.

Background

1. The Applicant is a lessee-owned management company which manages an estate called Newbury Central East. It is also a party to each of the leases of the flats on the estate. The other parties to each lease are the freeholder which was originally the developer, Bellway Homes, and the lessee which, in this case, is the Respondent.
2. The Applicant issued proceedings in the county court in respect of allegedly unpaid service charges. By order made in the Romford County Court on 5th March 2013 the following questions were transferred to this Tribunal:-
 - a) To whom the service charge under the lease dated 4th June 2004 is payable.
 - b) Whether it is payable by the defendant.
 - c) If so the amount he must pay.
 - d) The date by which and the manner in which it is payable in respect of the service charge years, 1/7/2010-30/6/2011 and 1/7/11-30/6/2012.
3. Following the transfer, the Tribunal held a pre-trial review and issued directions on 23rd April 2013. The service charges alleged to be owing were identified as the estimated amounts in respect of the 6-month period ended 30th June 2011 and the year ended 30th June 2012 in the sum of £270.99 and £558.50 respectively.

Respondent's wider allegations

4. Both parties submitted written statements of case, the Applicant's also being supported by a witness statement from Daren Touhey. At the hearing on 16th July 2013 the Respondent said that the Applicant had provided a large quantity of documents which he received on 25th June 2013. He complained that the three weeks between then and the

hearing had been insufficient time to consider the documents. He did not ask at the hearing for an adjournment.

5. As set out in his statement of case entitled Respondent's Response, the Respondent has numerous grievances against those who have been running the Applicant's affairs, including Mr Touhey, and some of their contractors. He alleges fraud, theft, physical intimidation and numerous instances of poor service. A witness statement was produced on the morning of the hearing from Mr Douglas Lobo, a fellow lessee and director of the Applicant company, alleging numerous problems with the running of the company, including unlawful appointments of directors.
6. The Tribunal had a number of concerns about the Respondent's approach. He had not attempted to provide any evidence in support of any of these allegations, despite their extreme and serious nature. Moreover, they were mostly irrelevant to the determination of the payability of the estimated service charges which the Tribunal had been asked to consider. The Tribunal simply was not in a position to determine the validity of most of the allegations. Understandably, the Applicant objected to the Respondent making serious allegations in public without any supporting evidence and asserted that they were untrue. If the Respondent, or any fellow lessees who have similar problems with the management of the estate; wish to pursue these matters, it is imperative that they take proper legal advice.
7. The allegations of poor service were irrelevant in that the Tribunal was considering estimated service charges collected in advance of any service being delivered. Their payability depends on their being demanded in accordance with the lease and the general law relating to service charges and whether they are reasonable in amount in the light of how they were calculated and the service they are intended to pay for. The payability of an estimated service charge will not in most instances depend on the quality of the service subsequently delivered.
8. As a result of these matters, the issues which the Respondent could raise in the current proceedings were substantially narrowed. The Tribunal understands his difficulties, particularly as a litigant in person. However, the Tribunal is satisfied that he had had more than enough time to identify the relevant issues he would want to raise, including in the time before he received the Applicant's documents, and to both consider the Applicant's evidence and introduce his own.

The Lease

9. A consideration of the payability of a service charge starts with a consideration of the terms of the relevant lease. Unfortunately, neither party had been able to get hold of a copy by the time of the Tribunal

hearing. Instead, the Applicant provided a copy of the lease for a neighbouring property, 21 Monarch Way. It was asserted that, in accordance with the normal practice of Bellway Homes, the usual covenant that the freeholder should ensure leases on the estate contained similar obligations (Eighth Schedule paragraph 1) and the needs of good management on the estate, the leases across the estate were in similar form and the copy lease provided could be regarded as being in the same terms as that of the Respondent.

10. The Respondent strongly objected to the payability of his service charges being determined on the basis of a lease which was not his. He seemed to regard it as fatal to the Applicant's claim that his particular lease was unavailable. However, the Tribunal is often presented with less than perfect evidence and has to make do with what it has. The question is always whether the evidence is sufficient to establish the proposition being advanced. The Respondent gave no reason to think that the copy lease in front of the Tribunal differed from his in any respect other than the parties and the number of the property in question. The Tribunal is satisfied that the copy lease provides sufficient evidence of the terms of the Respondent's lease.
11. The lease provides that the Respondent should pay a Maintenance Contribution, namely a proportion, calculated by the ratio of the floor area of his flat to the floor area of other relevant flats, of the Maintenance Expenses, i.e. the expenditure incurred by the Applicant in relation to matters listed in the Fifth Schedule. The Sixth Schedule provides how the Maintenance Contribution is to be paid. Each year, the Applicant should estimate the amount for the year to come and the Respondent has to pay 50% of his contribution in advance of the first 6 months and the other 50% in advance of the next 6 months.
12. After the end of each year, the Applicant should draw up an account of the service charges, certified by a qualified accountant. Within 3 months of the accounts being drawn up, a copy must be served on the Respondent. If expenditure has exceeded the previously paid estimate, he must pay the balance. If it is less, then he receives a credit against his future charges.
13. The Respondent asserted that he had never received any accounts. However, that is not relevant to the payability of the estimated advance service charges. The payment of any balance is conditional on receipt of the accounts after the year end but there is no obligation to serve a copy of the estimate or any other document with any demand for those charges which are to be paid in advance.
14. The Applicant conceded that the accounts had been drawn incorrectly for the year ended 30th June while the lease specified 31st December. The Respondent objected to this and again seemed to regard this error as fatal to the Applicant's case. The Tribunal explained to the

Respondent at the hearing that not every breach of the lease has consequences of that nature. The lease does not in any way suggest that payability of the advance service charges is conditional on the correct year being used. Moreover, the use of the wrong year has had no practical effect in this case. The Applicant is seeking to collect service charges for three 6-month periods and the amounts for each period are almost identical because the estimated service charges were mostly the same for the two relevant financial years (as described further below).

15. The Respondent also pointed out that the lease required a qualified accountant to audit the accounts and asserted that the accountants used by the Applicant, Bassons in 2009 and 2010 and AavRus & Co in 2011, were not qualified as auditors. The Tribunal was not clear from where the Respondent got the information about the accountants' qualifications as it was not apparent in any documents. However, there is no evidence that the service charge accounts provided to the Tribunal, for the years ending on 30th June 2009, 2010 and 2011, had been prepared in anything other than a professional and adequate way. The Tribunal had no reason to think that the accounts were anything other than accurate.

The Charges

16. The Tribunal's directions set out 6 heads of Estate Charges and 4 heads of Block Charges which the Respondent identified as the ones he challenged. At the hearing Mr Foulds, the solicitor for the Applicant, went through each of the heads in turn with the assistance of Mr Touhey who explained that the estimates were created by a trend analysis based on previous years' actual expenditure.
17. Mr Foulds had also taken it upon himself to assess the accuracy of the estimates by comparing them to the total of the sums on all the relevant invoices which were exhibited in the bundle before the Tribunal. The Tribunal was able to check his calculations by adding the amounts of each set of relevant invoices as he went through them, although some invoices included amounts attributable to one or more of the other nine blocks on the estate for which he provided the proportion which had been charged to the Respondent's block.
18. Apart from a couple of items, this exercise showed that the estimates were under-estimates with expenditure exceeding the expected amount. The only significant over-estimate was in relation to management fees. The Applicant had terminated their contract with the previous managers, Countrywide, in 2008. They intended replacing them and so included the sum of £3,000 for further management fees in each of the two years in question. In the event, no-one was appointed and so the money was not spent. This unspent element of

the advance service charges went some way to offset the underestimate on other elements.

19. The Respondent asserted that Mr Touhey had appointed his own firm, Rynew Property Management, to manage the property which they said was at least a conflict of interest and at worst a deliberate attempt to profit himself at the expense of the other lessees. Mr Touhey explained that he had been conducting much of the management of the estate in the absence of managing agents and that some invoices were addressed to him or his firm at his home address. However, Rynew had not charged for any services during the relevant period.
20. The Respondent and Mr Lobo did not accept this. They asserted that the Applicant had deliberately withheld documents which would show that service charge monies had been siphoned off to Mr Touhey via Rynew. In fact, they had not the least shred of evidence to support this allegation. This was an example of the kind of serious unsupported allegation referred to above. Given the lack of evidence, the Tribunal has no hesitation in rejecting the allegation.
21. As it turned out, the Respondent conceded at the hearing that the estimated charges were reasonable in amount. His objections were entirely on other grounds and so it is not necessary to go further into the details as to the calculation or accuracy of the individual heads of charge.

Service Charge Demands

22. The payability of service charges also depends on their being properly demanded. The Respondent asserted that the demands for the subject service charges had not been accompanied by the Summary of Rights and Obligations required under s.21B of the Landlord and Tenant Act 1985. In fact, such a Summary was exhibited in the bundle before the Tribunal – the Applicant said it had accompanied all their service charge demands. Even if the Respondent is right to say that he did not receive it at the same time as the original demand, he has received it now. The effect of s.21B is only suspensory, meaning that service charges are due as soon as it is complied with. Even if it was not complied with before, it has been now and so s.21B cannot now support a claim that the charges are not payable.
23. At the hearing, the Respondent also sought to challenge the service charge demands on the basis that the name given for the freeholder, Chime Property Ltd, was wrong and that the address given for them was only a “care of” address rather than their proper address. However, the Respondent had not raised these allegations prior to the hearing. The Applicant had not had a chance to prepare a response, including getting details of the freeholder which would refute the

allegations. In the circumstances, it would not be fair on the Applicant to allow these allegations in as part of the Respondent's case and the Tribunal makes no findings on them.

24. In the circumstances, the Tribunal is satisfied that the service charges in question were properly demanded. This is, of course, not a decision in relation to the reasonableness of any actual expenditure or the payability of any additional service charges based on that expenditure and demanded after the year end. It is open to the Respondent to challenge those at a later date.

Costs

25. The Respondent sought an order under section 20C of the Landlord and Tenant Act 1985 that the Applicant's costs of these proceedings should not be added to the service charge. The Tribunal may make such an order if satisfied that it is just and equitable to do so, bearing in mind that it means depriving the Applicant of a right otherwise set down in the lease.
26. The Respondent asserted that the Applicant had continually failed to respond to requests for information about the service charges which might have allowed for this litigation to be avoided. However, there was no evidence of any such requests – the Applicant said they had searched their records but could not find any while the Respondent put forward no evidence of his own. The Respondent did make requests for information during the proceedings which he claimed had not been responded to but that is no excuse for his failure to provide any evidence of his own.
27. The fact is that the Respondent has made a string of serious allegations without providing any evidence to back it up. He had no real defence to the claim for these service charges. In the circumstances, the Tribunal is not satisfied that it would be just or equitable to make a s.20C order.

Tribunal Judge:

NK Nicol

Date:

24th July 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements 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.

- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.

- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.

- (2) 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 or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a Leasehold valuation tribunal 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.

- (2) Subsection (1) applies whether or not any payment has been made.

- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the Tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.