



12470
First-tier Tribunal
Property Chamber
(Residential Property)

Case reference : CAM/33UG/LSC/2017/0081
Property : 18 Horns Lane,
Norwich,
NR1 3ER
Applicant : Paul McGregor
Respondent : Norwich City Council
Date of Application : 18th August 2017
Type of Application : to determine reasonableness and
payability of service charges
The Tribunal : Bruce Edgington (Lawyer Chair)
David Brown FRICS

DECISION

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1. The Tribunal determines that when the claim for service charges of £2,982.45 is made, it will be both reasonable and payable.
2. The Tribunal also makes orders under section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") and Paragraph 5A of Schedule 11 to the **Commonhold and Leasehold Reform Act 2002** preventing the Respondent from recovering its cost of representation in this application from the Applicant as either a service charge or an administration charge.

Reasons

Introduction

3. This is a case involving one narrow issue, namely whether the Applicant is liable to pay service charges arising out of the replacement of a staircase forming part of the building in which his flat is situated. He has a 'right to buy' lease. The Applicant does not challenge the reasonableness of the amount of the claim, merely his liability to pay. He says that he has never used the staircase, doesn't need to use it and can't see why he has to pay towards its cost. He also does not challenge the fact that it was reasonable to replace the staircase.

4. The Tribunal chair issued a directions order on the 7th September 2017 agreeing with the Applicant that this matter could be determined on the papers and written representations of the parties. It was said that this would be on or after the 19th October. The parties were told that if either of them wanted an oral hearing, then one would be arranged. There was no such request made.

The Lease

5. The bundle produced for the Tribunal included 2 copies of the lease which is dated the 29th April 1996 and is for a term of 125 years with a ground rent of £10 per annum. Clause 4(3) of the lease provides that the Applicant shall pay a service charge towards the Council's expenditure in accordance with Schedule C. Schedule C says that such service charge shall be paid to cover the cost of the Council's compliance with sub-clause 6(2) of the lease.
6. Sub-clause 6(2) says that the Council must keep in repair any property over which the Applicant has a right of way. The Applicant has a right of way over "*the lobbies stairways and landings...in the building*" (Schedule A, paragraph (b)(ii)). The building is defined as being edged red on the lease plan. Neither copy lease has any colouring but it seems clear that the building with flats 17, 18, 19 and 20 has edging.

The Law

7. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.

The Inspection

8. The members of the Tribunal did not consider that an inspection of the property was necessary and neither party asked for one. The Applicant had helpfully put photographs in the bundle showing the staircase of the building.

Conclusions

9. Whilst the Tribunal can understand the position taken by the Applicant, the lease terms are clear. He has to pay a contribution towards the cost of replacing the staircase. It is said that he will be asked to contribute one quarter of the cost which, in a building of 4 flats, seems to the Tribunal to be reasonable.
10. This sort of situation can be annoying for ground floor tenants, particularly in blocks of flat with lifts. The ground floor tenants never use the lifts and cannot see why they should contribute to the sometimes considerable amounts involved in repairing and maintaining the lifts. However, all leases of ground floor flats contain a provision that they shall contribute to that cost. This is a similar situation.

11. As far as the costs order is concerned, the Applicant has asked for the orders to be made and this has been pointed out to the Respondent who has not commented. The Tribunal feels that the Respondent could have been more forthcoming in explaining the lease terms which may have avoided this application. The orders are therefore made.

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Bruce Edgington
Regional Judge
19th October 2017

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.