



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/22UE/LSC/2016/0029

Property : Flat 2 Oyster Court,
Elder Tree Road,
Canvey Island,
Essex SS8 8AA

**Applicant
Represented by** : Heale Property Management Ltd.
Nicholas Heale and Michael McVeigh

Respondent : Ryan Richard Harvey
Self representing

**Date of Transfer from
the county court** : 15th April 2016

Type of Application : To determine reasonableness and
payability of service charges

The Tribunal : Bruce Edgington (lawyer chair)
Stephen Moll FRICS
John Francis QPM

**Date and Place of
Hearing** : 28th July 2016 at Basildon Magistrates' Court,
Great Oaks, Basildon, Essex SS14 1EH

DECISION

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1. In respect of the amount claimed by the Applicant from the Respondent in the sum of £8,020.84 plus interest, the Tribunal only has jurisdiction to deal with the service charges totalling £7,020.84 and finds that £4,628.59 of that sum is payable by the Respondent.
2. The Tribunal makes an order pursuant to rule 13(2) of **The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** ("the Tribunal's rules") requiring the Respondent to repay to the Applicant the hearing fee in the sum of £190.00 which should be included in any judgment sum ordered by the court.

3. All matters relating to interest, ground rent, court fees and costs incurred in the county court plus any set off or counterclaim are transferred back to the county court sitting at Chelmsford under claim no. B3QZ7C9W subject to the comments made below.

Reasons

Introduction

4. This is a claim brought in the county court by the Applicant, claiming in the court proceedings to be both freeholder and managing agents of the property, against the Respondent who is the current long leaseholder. Such property is part of a development of 22 one and two bedroom flats. The claim seeks to recover service charges going back to 1st April 2009. Quite why all this time has been allowed to pass without action being taken is not explained.
5. In a statement to the Tribunal dated 27th May 2016, the service charges claimed now only go back to 1st April 2011 and total £4,628.59. The defence filed by the Respondent in the county court proceedings says:-

“With regards to our service charge since Heale properties took over this we have requested receipts for what they was spending on the building which they havent done.

It is the law for Heale properties to supply invoices on request to the owners of the flats.

All I wanted was a list of where the money was going as apart from a carpet and Heale properties paint the halls every 6 months there hasn't been much else going on.

Also bare in mind that when Heales took over the lease hold the flats were only about a year old.

All Heale properties needed to do was to show proof of there expenditure

He also has a key to my flat which he lets himself in and out when he feels like it which is completely unacceptable

I have also contacted the property ombudsman of which Heale properties has only said he was a letting agency and not for RLM so I can't get help from them either

The flat above which is owned by Heale properties had a leak which has caused severe damage to my property and made it unlivable due to water coming through bathroom ceiling and collapsing no electrics and mould on walls also The flooring was ruined in the hall, bathroom, bedroom and cupboard next to the bathroom

Heale properties refused to claim on insurance so I have had to pay to get everything fixed

I have sent an invoice for the cost of which Heale properties have ignored”

6. In accordance with the Tribunal's directions, the Applicant has filed a statement in reply to the defence. In brief, it is said (a) that there have been annual audited

accounts and budgets, (b) there has been no request for copy invoices etc., (c) considerable work has been done to the development including re-decoration, new carpets and mats, new building signs and perimeter fences, (d) they have never held a key to the Respondent's flat and (e) the flat above (flat 10) is owned by a family member connected with Applicant and there has been a leak.

7. In connection with the leak, the statement sets out in some detail the problems there were in identifying the cause of the leak and how, with the help of insurers, they eventually located it. Their expenses have been recovered from insurers but no request has ever been made by the Respondent for financial reimbursement.
8. On the 25th July 2016, i.e. some 3 days before the hearing, an e-mail was received by the Tribunal office from the Respondent asking for an adjournment because of alleged ongoing problems with regard to the flooding and "there could now be extra costs due to the damage". Such application to adjourn was refused, partly because the Respondent has not complied with any of the Tribunal's directions and the bundle therefore contained no further information or evidence from him.

The Inspection

9. The members of the Tribunal inspected the property and the grounds of the development in the presence of Messrs. Neale, McVeigh (from the Applicant) and Harvey. The building is a purpose built block of 22 flats of cavity construction with brick facing under pitched interlocking concrete tiled roofs. There is a car park with spaces for all tenants and small grassed areas at the front and along the sides. All the window frames, soffits, fascias etc. are of uPVC.
10. The block is in the centre of the main town area on Canvey Island in close proximity to shops, entertainment and other facilities. The Tribunal was shown the interior passage serving the ground floor flats of which flat 2 is one. It is a 2 bedroom flat with a hallway, lounge/diner, bathroom and kitchen. There is a large storage cupboard on the left as you go in through the door.
11. It was immediately apparent that the flat was damaged substantially. The bath had been removed and was standing in the hallway. The bathroom had been stripped out with tiles and part of the floor removed. The ceilings in the bathroom, cupboard and one of the bedrooms had been replaced. The Respondent's sub-tenant was apparently living with her mother.

The Lease

12. The bundle of documents supplied for the Tribunal includes what purports to be a copy of the lease which is dated 24th March 2006 and is for a term of 125 years from the 1st October 2005. The Respondent is the lessee.
13. There are the usual provisions for the landlord to keep the structure and common parts insured and in repair. The main terms are set out in the Schedules and the covenants to abide by those terms are in clauses 3, 4 and 5.
14. The service charge regime is in Schedule 7 which provides for the landlord to

produce a certificate each year, on a date of the landlord's choosing, signed by the landlord's auditors or accountants setting out the service charges incurred. There is a provision for the landlord to collect monies on account of those anticipated in the future. The ground rent must be paid without deduction.

15. In Schedule 6 is a covenant by the landlord "*that in the event of the Estate including the Buildings or any part of them being damaged or destroyed by fire or any other insured risk the Lessor will re-instate the same at its own expense and with all possible speed*". Further, in Schedule 2, there is the right of all tenants "*to shelter and protection from other parts of the Buildings and from the site and roofs of the buildings*".

The Law

16. Section 18 of the **Landlord and Tenant Act 1985** ("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'.
17. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction under section 27A of the 1985 Act to make a determination as to whether such a charge is payable.
18. In **Schilling v Canary Riverside Development PTD Ltd** LRX/26/2005; LRX/31/2005 & LRX/47/2005 His Honour Judge Rich QC had to consider upon whom lay the burden of proof. At paragraph 15 he stated :

"If the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook4 case make clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard."

The Hearing

19. The hearing was attended by those who attended the inspection plus someone whom the Tribunal assumed was the Respondent's wife who assisted him. Mr. Heale was asked to say who the freehold owner was and it seems that it was not the Applicant as is stated in the court claim form. He said that the owners are Ryga Properties Ltd. and Luben Brickwork Ltd.
20. He was then asked to explain the figures in the claim form, in the audited accounts and in his statement, all of which differed from each other. Unfortunately, he had a great deal of difficulty in doing this. The Tribunal had

worked out from the audited accounts that the total service charge figures for the relevant period came to £4,637.80. The figure in the county court claim was, as has been said, £7,020.84. Mr. Heale was saying that the amount outstanding for service charges is £4,628.59 taking into account payments made and credits given.

21. The Respondent started his remarks by saying "*I don't dispute that I owe the money*". He went on to say that as the building is about 10 years old, he could not understand why so much money was being spent on it and wanted to see the evidence. He said that he had asked to see the accounts and invoices, which was denied. The Tribunal chair then asked Mr. Heale whether he would now grant facilities to Mr. Harvey to see the invoices and he answered "*of course – he can see them any time he wants*". When asked why he had not complied with Tribunal directions to give a full breakdown of what he was challenging and why, Mr. Harvey could not answer.
22. There was then some discussion about the damage to the flat caused by the leak from flat 10. Mr. Harvey told the Tribunal how, after water came pouring in, he had been to flat 10 and it took a long time for him to get a reply. He did eventually and agreed to take the bath panel off from which it was clear that there was a leak in the pipe bringing in the cold water supply. He fixed that and proceeded with remedial work in his flat only to find, some 3 weeks later, that there was obviously another problem and another leak.
23. He then described how he had had conversations with Billy Heale whom he knew personally as he had 'done business' with him in the past. None of this was in writing. He gave the keys to flat 2 to Billy Heale in June 2015 so that he could go in and inspect. That did not happen and he had to recover the keys. In November, when he filed his defence to the county court claim, the ceilings to the bathroom and the storage cupboard had come down and there was water on the floors in the bathroom and hall.
24. He said that he had made a formal claim a week before the hearing, had been referred to the insurance company and he was expecting an assessor to come to look at the damage. There was a question about whether the claim would be met in view of the delay in making it. In one of his last conversations with Billy Heale, it was apparently said by Mr. Heale that Mr. Harvey could expect a bill from the plumber.

Discussion

25. The Applicant's claim is for £4,628.59 in service charges which is made up as follows:-

	£
Due 01/04/2011	949.49
Due 01/04/2012	895.18
Due 01/04/2013	896.07
Due 01/04/2014	917.79

Due 01/04/2015

970.06
4,628.59

The court has not asked the Tribunal to determine the ground rent claimed of £1,000.00 although there does not seem to be any dispute that it is payable. Any award of costs etc. is a matter for the court save for the Tribunal hearing fee paid of £190.00.

26. As this amount was very similar to the audited accounts for the period from 1st April 2011 to 1st April 2015, and as it was substantially less than the amount claimed, the Tribunal decided to accept the new figures.
27. The Tribunal has looked at the audited accounts and notes the amounts claimed. There are no specific sums being disputed. The only item which did seem to be rather high was in respect of management fees. The Tribunal's knowledge and experience leads them to believe that management fees on a modern block of this size would be less than what would appear to be £298.43 per annum for 1 bedroom flats and £358.12 for 2 bedroom flats including VAT. However, it was also noted that the insurance figure was very low and on the basis that they effectively cancelled each other out, the figures given were accepted as reasonable for the work claimed to have been done. As has been said, the Tribunal was not assisted in having no real arguments from the Respondent.
28. As far as the damage to the Respondent's flat is concerned, the Tribunal was greatly troubled by what appeared to be a complete misunderstanding by Mr. Heale of his client's legal position. For the avoidance of doubt, it was the freehold owners' responsibility to investigate the leak and resolve it. The lease says that each tenant must be protected from damage caused by other parts of the building i.e. flat 10 in this case. The failure to protect, as clearly there has been in this case, on Mr. Heale's own admission, results in an action for damages. Such actions are usually mitigated because the landlord calls in the insurance company to rectify the problem and deal with consequential loss.
29. In this case, Mr. Heale called in the insurance company to deal with flat 10 but has completely failed to take the initiative and deal with flat 2. Even if there was no knowledge of the problem originally, it was certainly known about in November 2015 which is when Mr. Harvey filed his defence setting this out. Mr. Heale could give no explanation as to why he had not taken action himself to sort out flat 2 before now. He may regret this if the insurance company decide not to honour the claim in respect of flat 2.

Conclusions

30. Taking the evidence into account, the Tribunal determines that the service charges which are reasonable and have been reasonably incurred are £4,628.59.

Costs and fees

31. The Tribunal will leave the general question of costs and interest to the court. However, the Applicant has asked for an order that the extra fee paid to the

Tribunal for the hearing in the sum of £190.00 should be reimbursed in accordance with rule 13 of the Tribunal's rules. With regard to the service charges, it seems clear that these should have been agreed which would have avoided this hearing and, thus, the hearing fee. In the circumstances, the Tribunal considers that it is just and equitable to make the order requiring the Respondent to reimburse that fee.

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Bruce Edgington
Regional Judge
2nd August 2016

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.