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

Case reference : CAM/00KF/LSC/2017/0036 and 37

Property : Ground floor and first floor flats,
59 Silverdale Avenue,
Westcliff-on-Sea,
Essex SSo 9BB

**Applicants
Represented by** : Colin Andrew Miles (GFF)
Christopher Carroll (lay representative)
Yousif Shohet (FFF)

**Respondent
Represented by** : Westleigh Properties Ltd.
Heidi Slassor (lay representative)

Date of Application : 16th February 2017

Type of Application : to determine reasonableness and
payability of service charges and
administration charges

The Tribunal : Bruce Edgington (Lawyer Chair)
Stephen Moll FRICS
John Francis QPM

**Date and place of
Hearing** : 10th July 2017 at Southend Magistrates'
Court, 80 Victoria Road,
Southend-on-Sea SS2 6EU

DECISION

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1. The claim for service charges and administration charges from the first Applicant, Colin Miles, is determined as follows:

<u>Date</u>	<u>Item</u>	<u>Amount (£)</u>	<u>Determination</u>
19.06.14	court fee	155.00	not payable
29.06.14	insurance	352.96	not payable separately
24.09.14	interest	.94	not payable
24.09.14	interest	6.81	not payable
24.09.14	legal expenses	300.00	not payable
05.01.15	balancing charge for 2014	652.12	444.50 payable
29.06.15	insurance	381.46	not payable separately
29.10.15	balancing charge for 2015	199.37	718.50 payable
29.06.16	insurance	409.84	not payable separately

19.10.16	interest	25.15	not payable
19.10.16	interest	217.76	not payable
19.10.16	legal expenses	180.00	not payable
19.10.16	court fee	455.00	not payable
25.11.16	balancing charge for 2016	300.00	710.00 payable
01.01.17	ground rent	50.00	payable
24.01.17	interest	.34	not payable
24.01.17	interest	<u>49.97</u>	not payable
		3,736.72	

Thus the amount of £1,923.00 is reasonable and payable at this time. If Mr. Miles wants to settle all outstanding amounts at this stage, he would be well advised to come to an agreement about the court fees which will become payable if the Respondent goes back to the court and seeks a judgment.

2. The claim for service charges and administration charges from the second Applicant, Yousif Shohet, is determined as follows:

<u>Date</u>	<u>Item</u>	<u>Amount (£)</u>	<u>Determination</u>
20.11.13	balance after 2 nd decision	4,215.47	payable
01.07.14	ground rent	50.00	payable
29.06.14	insurance	352.97	not payable separately
01.01.15	ground rent	50.00	payable
01.07.15	balancing charge for 2014	652.13	444.50 payable
01.07.15	ground rent	50.00	payable
29.06.15	insurance	381.47	not payable separately
01.07.14	balancing charge for 2015	199.37	718.50 payable
01.01.16	ground rent	50.00	payable
01.07.16	ground rent	50.00	payable
29.06.16	insurance	409.85	not payable separately
01.07.15	balancing charge for 2016	300.00	710.00 payable
01.01.17	ground rent	50.00	payable
01.07.15	interest	13.42	not payable
11.06.10	interest	<u>971.40</u>	not payable
		7,796.08	
Less paid		<u>502.97</u>	
		7,293.11	

Thus the amount of £5,885.50 is reasonable and payable at this time. If Mr. Shohet wants to settle all outstanding amounts at this stage, he would be well advised to come to an agreement about the court fees which will become payable if the Respondent goes back to the court and seeks a judgment.

3. Although the costs incurred by the Respondent in these proceedings are not recoverable under the terms of the lease, a specific determination has been requested and the Tribunal makes an order under section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") preventing the Respondent from recovering such costs from the Applicants as part of any future service charge demand.

Reasons

Introduction

4. This is yet another application relating to this property about claimed service charges and administration charges. Two previous applications have been CAM/00KF/LSC/2011/0064 ("the 1st decision") and CAM/00KF/LSC/2013/0099 ("the 2nd decision"). The 2nd decision determined the charges claimed until 11th February 2013.
5. The usual directions order was made providing that all parties were to put their cases in writing. The particular concern of the Tribunal was that the only reason given for disputing service charges was that enfranchisement was taking place and the Respondent would not complete without the service charges being paid. No indication whatsoever was given as to why service charges were being challenged.
6. Mr. Miles has set out what charges are disputed and why. However, once again, the position with regard to insurance premiums has been raised. This happened in the 2nd decision case and the decision itself makes it clear that the Tribunal needs to have that information at an early stage so that appropriate directions can be made. As it is, one alternative quotation has been obtained which was not seen by the Tribunal until the day of the hearing. It was said that it had been sent in to the Tribunal office but was not on the file. The Respondent received it on the 7th July i.e. the working day before the hearing.
7. Mr. Shohet says that he tendered £1,747.74 through his solicitors but this was not accepted and he lists a number of cheques he has tendered for insurance and ground rent. He disputes the balancing service charges, insurance, management charges, interest, recovery charges, professional and accountancy fees.

The Lease

8. The terms of the 2 leases are set out in the 1st and 2nd decisions and will not be repeated here save to repeat that the leases do not allow the Respondent to claim administration charges or interest. This was clearly set out in the 1st and 2nd decisions, with reasons. However, its managing agents have continued to add these claims. This is a very serious matter and the Respondent is reminded what the Tribunal said in the 2nd decision about administration charges i.e. "*...Gateway have continued to raise these charges, presumably in the hope that they would just 'get away' with it. Not only is this unprofessional but some would say that it has much more serious implications*".

The Law

9. 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'.
10. 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 to make a determination as to whether a charge for payment on account of a service charge before it is incurred is reasonable and, if so,

whether it is payable.

11. Paragraph 1 of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") ("the Schedule") defines an administration charge as being:-

"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable... directly or indirectly in respect of a failure by the tenant to make a payment by the due date to the landlord."

12. Paragraph 2 of the Schedule, which applies to amounts payable after 30th September 2003, then says:-

"a variable administration charge is payable only to the extent that the amount of the charge is reasonable"

The Inspection

13. The members of the Tribunal inspected the outside and common parts of the property in the presence of Mr. Miles, Mr. Shohet, Mr. Carroll and Heidi Slassor from Gateway. It is fully described in the 1st and 2nd decisions. Of interest to this application is the fact that no work appears to have been done to the exterior or common parts of the building since the 2nd decision except that Mr. Shohet said that he has put new roofing over the bay window on the first floor plus new rendering over part of the wall over the said window. New rendering was clearly visible. The gardens were largely overgrown and the parking space at the rear had supermarket trolleys and rubbish dumped on it.

The Hearing

14. The hearing was attended by those who were at the inspection plus Nigel Amos from the agents who insure the property. Ms. Slassor said that all the correct demands had been sent with the requests for payment of service charges, administration charges and ground rent. Mr. Amos pointed out that the insurance quote produced by the Applicants from Abacus in the sum of £409.14 was not a like for like quote.
15. It did not cover accidental damage such as water overflowing from a bath on an upper floor damaging a lower floor; terrorism; any occupier other than an employed/self employed person and contents in the common parts. It only covered £5,000,000 public liability whereas the current national view was that £10,000,000 was more appropriate and it did not cover sub-letting.
16. The Tribunal explained to Ms. Slassor that it could not understand how the figure of £652.13 was arrived at as the balancing charge for 2014 now that it has seen the 2014 accounts. She pointed to the profit and loss account which showed a balancing service charge figure of £1,304. Half that figure rounded down was £652. She was then asked whether this included the insurance premium set out in the income and expenditure account on page 408. She could not answer. All she could say was that insurance was invoiced separately.

17. As far as the county court fees in the lists of expenditure claimed were concerned, Ms. Slassor confirmed that none were the subject of any court judgment save for the one for £445 where the judgment obtained had been set aside. As no costs of litigation are recoverable under the terms of the leases, the court would have to order these fees to be payable.

Discussion

18. It will not come as any surprise to the parties that the decision of the Tribunal on matters raised and determined in the 1st and 2nd decisions will be and are determined in the same way. For example, the 2012 insurance premium of £395.64 for the ground floor flat was deemed to be reasonable for the reasons stated. The subsequent premiums are in the same range and are therefore determined to be reasonable. The quotation obtained was indeed not a 'like for like' quotation. Professional landlords in the shoes of Westleigh Properties Ltd. have no ability to place restrictions on the type of person who occupies a property. They must cover the accidental damage claims referred to above and cover for terrorism is deemed to be reasonable.
19. Administration charges and interest are deemed to be not payable because of the terms of the leases and for the legal reasons set out in those decisions.
20. As far as management fees are concerned, the Respondent's agents continue to add accountancy charges, bank charges and postage, all of which were disallowed in the 1st and 2nd decisions. The agents justify this by saying that they have been allowed by other Tribunals. The cases involving 76A Pall Mall, Leigh-on-Sea and 13A Bournemouth Park Road, Southend-on-Sea have been used to support the agents' contention that previous Tribunals have approved these additions. However, in both cases, these additions were agreed by the paying party which means, of course, that the Tribunal did not determine or 'approve' them, as suggested. As with any case in an adversarial legal system, the court or Tribunal only determines those matters which are contested.
21. As to the level of management fees, the Tribunal noted that little 'management' had occurred since the 2nd decision. However, the refusal to pay any service charges does cause a managing agent to have to spend time on a case particularly when court proceedings are concerned. Furthermore the Tribunal is satisfied that a section 20 consultation was at least partly carried out to include the preparation of a specification and undertaking a tender process. This is despite the denial of Mr. Miles recorded in the 2nd decision. Accordingly, the Tribunal will allow a management fee of £400 plus VAT for 2014 and 2016. Only £240 in total has been claimed for 2015.
22. Doing the best it can from the information available to it, the Tribunal determines that the correct amounts due as balancing charges in the years 2014, 2015 and 2016 are as follows:

		£
<u>2014</u>	insurance	706.00
	management fees	<u>480.00</u>
		1,186.00
	Less deduction in profit and loss a/c	<u>297.00</u>
	Balance	889.00

<u>2015</u>	insurance	763.00
	management fees	240.00
	major works' fees	<u>960.00</u>
		1,963.00
	Less LVT credit for 2013	<u>526.00</u>
	Balance	1,437.00
<u>2016</u>	insurance	820.00
	management fees	480.00
	repairs and maintenance	<u>120.00</u>
	Balance	1,420.00

23. Thus, half these amounts come to £444.50, £718.50 and £710.00 respectively including insurance premiums. These are the figures set out in the decision above.

Conclusions

24. The Tribunal, having taken all the evidence and submissions into account, concludes that the figures set out in the decision above are reasonable and payable. As is also said, the Applicants should make some proposals for payment of at least part of the court fees to ensure a speedy settlement to this dispute.

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Bruce Edgington
Regional Judge
12th July 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.