FIRST – TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/11UE/LSC/2018/0062**
Property	**:**	**9 Old Fives Court, Burnham, Slough, Berkshire SL1 7ET**
Applicant	**:**	**Bettina Jackson (acting in person)**
Respondent	**:**	**Beeches Way Management Company Ltd**
Represented by	**:**	**Charles Sinclair (barrister) instructed by Brady Solicitors**
Application	**:**	**Application, pursuant to s27A of the Landlord & Tenant Act 1985, to determine the payability and reasonableness of service charges and administration charges.**
Tribunal Members	**:**	**Judge Reeder Mrs S Redmond BSc ECON MRICS Mr M Bhatti MBE**
Date of hearing	**:**	**23 January 2019 Slough County Court, Windsor Road, Slough SL1 2HE**
Date of Decision	**:**	**23 January 2018**
Date Written	**:**	**10 March 2018**

DECISION

DECISION

1. **The Tribunal determines that the applicant, if a former tenant at the date of the commencement of these proceedings, had the right to apply to this Tribunal pursuant to s27A of the Landlord & Tenant Act 1985.**

2. **The Tribunal determines the service charges challenged for the entirely of 2017 and for January and February 2018 had been agreed or admitted for the purposes of section 27A(4)(a) of the 1985 Act, and accordingly that part of the application which relates to the service charges for 2017 and for January and February 2018 is struck out pursuant to Rule 9(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.**

3. **The Tribunal determines that the January and July 2018 service charge demands were valid.**

4. **The Tribunal determines that the respondent had not failed to provide service charge information as required by section 21 of the Landlord and Tenant Act 1985, and that the applicant was not therefore entitled to withhold service charge payments pursuant to s21A of the Act.**

5. **The Tribunal determined that the 2018 managing agent fee of £220 for the applicant's property is reasonable and payable.**

6. **The Tribunal determined that the applicant shall pay the respondent's costs from 14 November 2018 being the date of her Reply.**

7. **The Tribunal determined that it was just and equitable to make an order pursuant to s20C of the Landlord and Tenant Act 1985 in respect of the current tenants of 5-28 Old Fives Court at the date of this Decision.**

REASONS

Summary of the background

8. The applicant was the lessee of 9 Old Fives Court until late September/early October 2018 when she assigned that interest by sale. She lived at that property until August 2017 and has lived elsewhere since.

9. The applicant brought these proceedings by application dated 20 September 2018. That application sought a determination in respect of the service charge years 2017 and 2018. It included 6 pages of dense narrative which addressed a number of issues including several which did not fall within the jurisdiction of the Tribunal as prescribed by section 27A of the Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 (the Tribunal's jurisdiction to determine payability and reasonableness of service charges) and section 5 in Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002 (the Tribunal's jurisdiction to determine the payability and reasonableness of administration charges).

10. On 4 October 2018 Regional Judge Edgington made a directions order in standard terms save for the following preamble –

"*The applicant should know that the only jurisdiction of this Tribunal is to consider the reasonableness and payability of service charges under section 27A of the Act as set out in the application form, not to undertake a public enquiry into the conduct of any party. Many of the questions raised such as who has the right to undertake things under the terms of the lease are matters of legal advice which the Tribunal will not give. The applicant should seek legal advice in respect of this application before any hearing".*

11. The respondent's solicitor filed its statement of case dated 2 November 2018 and the applicant filed a statement of reply dated 14 November 2018. The respondent's solicitor filed a statement dated 23 November 2018 which exhibited an up to date service charge statement for the applicant. In accordance with the directions order we have been provided with a copy of the original lease dated 28 October 1998 and associated renewal lease dated 23 July 2018.

The inspection

12. The directions order made by Regional Judge Edgington on 4 October 2018 included provision for an inspection. The applicant subsequently informed the Tribunal that she had sold the property. On 18 November 2018 she confirmed that she no longer had any right of access and stated in terms that the disputed service charges now related only to the grounds and not the property. The narrative of the application suggested that the issue relating to maintenance of the grounds was that the applicant argued that the respondent was responsible to maintain a larger estate than they had been doing, rather than a challenge to the payability of or reasonableness of service charges arising from the actual maintenance of the grounds recharged. Accordingly, the Tribunal notified the parties on 12 January 2019 that it did not propose to inspect the premises unless either party confirmed that it wanted such an inspection. Neither party requested an inspection. The Tribunal did not inspect.

The law

13. The Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 (hereafter 'the LTA 1985') sets out the Tribunal's jurisdiction to determine liability to pay service charges. Section 27A(1) of 1985 Act provides as follows –

> 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 is payable.

14. Section 18 sets out the meanings of 'service charge' and 'relevant costs'.

15. Section 19 sets out that jurisdiction to limit service charges to those relevant costs which are reasonably incurred and to those which arise from works and services of a reasonable standard.

16. Section 20C sets out the jurisdiction, where the tribunal considers that it is just and equitable to do so, to grant an order providing that all or any of the costs incurred by the landlord in connection with proceedings before this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessee or any other person or persons specified in the application.

17. Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002 (hereafter 'CLARA 2002') sets out the Tribunal's jurisdiction to determine the payability and reasonableness of administration charges. Section 5(1) of Part 1 to Schedule 11 provides –

> An application may be made to a leasehold valuation tribunal for a determination whether an administration 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.

18. Section 1 provides a definition of 'administration charge'. Sections 2 & 3 provide that a variable administration charge is payable only to the extent that the charge specified in lease is reasonable, that the formula specified for determining the charge is reasonable, and that amount of the charge is reasonable.

The hearing & the materials considered

19. The hearing was attended by the applicant Ms Jackson in person and Mr Sinclair of counsel for the respondent. The Tribunal was assisted by oral argument from both. We were provided with a 2 volume hearing bundle including the key documents as referred to us by both of them respectively. Each party provided us with an application for costs against the other, each accompanied by a costs schedule. Both asked questions of the other when they wished to in order to test the respective contentions made. Both answered questions posed by the Tribunal.

Issues, discussion and determinations

(I) Issues determined to be outside of the jurisdiction of the Tribunal

20. The application included a number of issues which the Tribunal indicated at the outset of the hearing that it considered to be outside the scope of its jurisdiction. No party sought to further argue those issues. They can be summarised as follows –

    a. A request that the Tribunal to determine the extent of the estate and the division of maintenance responsibilities for the same whereby the applicant argued that the respondent should be maintaining a larger estate than it has been doing. Notwithstanding this determination the respondent did provide the applicant with a copy of the 2018/2019 renewal terms and schedule and the terms and conditions at the hearing.

    b. A request that the Tribunal determine whether block/estate insurance secured by the respondent was adequate to fulfil its obligations under the lease or their liabilities.

    c. A request that the Tribunal determine the enforcement of recommendations by the Ombudsman Service.

    d. A request that the Tribunal determine whether it was appropriate to appoint a manager pursuant to section 24 of the Landlord & Tenant Act 1987 where, possibly by the time of the application and certainly by the time of the hearing, the applicant had assigned her leasehold interest and had no subsisting interest in the property and in fact had made no proper application for the appointment of a manager.

(II) Issues determined by the Tribunal

21. The remaining issues which the Tribunal considered and determined are set out below.

Whether the applicant was entitled to bring and/or continue with these proceedings

22. In its statement of case the respondent raised the issue of whether the applicant was entitled to proceed with her application, firstly because she had no subsisting interest in the property and secondly because she had paid the service charges demanded without reservation such that they were agreed or admitted for the purposes of section 27A(4)(a) of the 1985 Act.

23. On the first issue the Tribunal was first concerned to establish as a matter of fact whether the applicant remained the tenant of the property at the date of the application. The precise date on which the applicant assigned her leasehold interest in the property is unclear. When this was raised with her during the hearing the applicant stated late September or early October. In an email to the Tribunal office on 8 October 2018 she clearly stated that she had already sold the property. In her written statement dated 23 October the respondent's solicitor states in terms that the applicant was registered proprietor of the property until 28 September 2018, which language suggests that she may well have obtained that precise date by Land Registry search (two of which are included in her costs schedule). The date of the application is 20 September. However, it is clear from the directions order made by Regional Judge Edgington on 4 October that the application was received on 1 October 2018. If that is correct then the applicant may not have been the tenant of the property on the date that the application was received. Absent clear evidence to the contrary and for the purposes of the argument pursued the Tribunal proceeded on the basis that the applicant was no longer the tenant of the property on the date the application was issued. The legal effect of this was not argued to any useful degree by the parties. The Tribunal was mindful of the decision in *Re Sarum Properties Limited's Application [1999] 2 EGLR 131* that a section 19(2)(A) application (ie. the more defined precursor to the now unrestricted section 27A application) could be made by a previous tenant, which was considered by the Deputy President Martin Rodger QC in *Gateway Holdings Ltd v McKenzie & Greenfield [2018] UKUT 371 (LC)* who observed that there seems no doubt that a former tenant with a continuing liability would be able to make an application under s27A and, applying the decision of the CA in *Oakfern v Ruddy [2006] EWCA Civ 1389,* found that there is no justification for implying any restriction into the entirely general words of section 27A of the 1985 Act. We respectfully agreed with the Deputy President. We determined that the applicant, if a former tenant, had the right to apply to this Tribunal pursuant to s27A of the 1985 Act.

24. The reason that the first issue was not argued to any useful degree by the parties was that they concentrated on the second issue, being whether the service charges now challenged had been agreed or admitted for the purposes of section 27A(4)(a) of the 1985 Act such that no application may now be made in respect of them. The Tribunal therefore considered whether the applicant's conduct, including any series of payments made without reservation or qualification or other challenge or protest, when looked at objectively constitutes agreement or admission for the purposes of that section. The Tribunal reminded itself that s27A(5) of the 1985 Act provides that the tenant is not be taken to have agreed or admitted any matter by reason only of having made any payment, and of the decision of HHJ Gerald in *Cain v Islington LBC [2015] UKHT 542 (LC)*.

25. The last document at page 117 of the two volume documents bundle was an agreed statement of the payments made in response to the service charge demands made to the applicant for the accounting years 2017 and 2018. During the hearing we considered the precise chronology of

those payments alongside the precise chronology of any events which might arguably constitute reservation, qualification or other challenge or protest in relation to the service charges demanded and payments made in response.

26. The applicant acknowledged that she had made monthly payments between January 2017 and December 2017 by direct debit to meet the entirety of the service charges demanded for that year (by two demands in January and July) without taking any steps at all intended to communicate to the respondent any reservation, qualification or other challenge or protest in relation to the service charges demanded.

27. The applicant further acknowledged that she had made monthly payments in January 2018 and February 2018 (the latter on 1 February) by direct debit having received the January 2018 service charge demand for the first half year without taking any steps at all intended to communicate to the respondent any reservation, qualification or other challenge or protest in relation to the service charges demanded.

28. During the hearing it was agreed by both parties that the first event or step which could arguably constitute any reservation, qualification or other challenge or protest in relation to the service charges demanded was an email from the applicant to the then agent for the respondent (Messr Cleaver Property Management) on 7 February 2018 which declined to pay the service charge demanded unless and until it was demanded on behalf of the respondent rather than Wallace Properties/Wallace Partnership Reversionary Group Holding Limited (ie. the freehold landlord of the property). The applicant stated that she had not been aware that the service charges were being demanded by someone whom she considered to be the wrong party until she had explored the legal position in late 2017 or early 2018 following two attempts to sell her property which fell through in August/September 2017 and November 2017.

29. Having regard to that chronology of events and the accepted and agreed facts the Tribunal determined that the monthly service charge payments made throughout and for the entirety of the liability demanded for the 2017 service charge year, together with the service charge payments made on 2 January 2018 and 1 February 2018 and the absence of any steps whatsoever which were intended to, or could conceivably be interpreted as constituting, any reservation or qualification or other challenge or protest in relation to the service charges demanded, when taken together forced the conclusion that the service charges challenged for the entirety of 2017 and for January and February 2018 had been agreed or admitted for the purposes of section 27A(4)(a) of the 1985 Act.

30. Rule 9(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 provides that the Tribunal must strike out the whole or part of the proceedings or case if the Tribunal does not have any jurisdiction in relation to the proceedings or case or that part of them. It follows that the Tribunal strikes out that part of the application which relates to the service charges for 2017 and for January and February 2018.

31. This leaves the service charges demanded in January and July of £550 on each occasion minus the payments made in January and February 2018 of £91.67 on each occasion.

Whether the 2018 service charge demands were invalid

32. The applicant argued that the service charge demands made in January and July 2018 were invalid as they were made on behalf of the landlord Wallace Partnership Reversionary Group Holdings Ltd. This of course is the issue raised in the email from the applicant to Messrs Cleaver Property Management on 7 February 2018 in which she declined to pay the service charge demanded unless and until it was demanded on behalf of the respondent rather than Wallace Properties/Wallace Partnership Reversionary Group Holding Limited.

33. Both parties agreed that the effect of paragraph 5 of Schedule 2 to the original lease dated 28 October 2018 incorporated into the current renewal lease dated 23 July 2018 was that the respondent management company is entitled to payment of the service charges.

34. During the hearing the parties were directed to the 2018 service charge demands in the hearing bundle. Those documents clearly identify Cleaver Property Management as the agent serving the demand, Beeches Way Property Management Company Ltd as the "client" for whom they act in doing so, and Wallace Partnership Reversionary Group Holdings Ltd as the landlord. The statutory information prescribed by ss 47, 48 of the Landlord and Tenant Act 1987 is set out clearly. Each was followed separately by a document setting out the summary of tenants' rights and obligations in the form prescribed by s21B of the Landlord and Tenant Act 1985. All of these documents were in the hearing bundle and were analysed during the hearing.

35. Having regard to the documents before it and the evidence relating to their service the Tribunal determined that the 2018 service charge demands were valid.

Whether the applicant was entitled to withhold services charges

36. Despite the Tribunal's best endeavours during the hearing the applicant was not able to explain any tenable basis for claiming that the respondent had failed to provide service charge information as required by section 21 of the Landlord and Tenant Act 1985, nor why she was therefore entitled to withhold service charge payments pursuant to s21A of the Act.

37. In fact by the time this application was issued and subsequently determined the applicant had not in fact withheld payment as can be seen on the agreed statement of account in the last document in the hearing bundle. Payments made by and for her on 28 August 2018 and 5 October 2018 respectively settled the service charges demanded for that year in full.

Challenge to the reasonableness of the 2018 managing agent's fee.

38. The applicant raised a number of issues which she argued should go to reduce to the fee on the basis that the nature and quality of the service provided was not commensurate with the fee which was unreasonable. She relied upon an email to the managing agent dated 9 July 2017 and email response on 23 August 2017. None of these matters fall within the 2018 accounting year let alone from March 2018. There was no evidence to suggest the matters raised had been attended to, in so far as they were the responsibility of the respondent and landlord under the lease. The applicant confirmed that she had not lived at the property since August 2017. The Tribunal determined that this challenge was misconceived.

39. The applicant argued that the management charge of £220 for each of the 24 properties managed at 5-28 Old Fives Court was unreasonably high and that a reasonable charge would be zero. The managing agent was appointed at this fee by the respondent which is a lessee management company comprising the lessees and run by less directors. It might reasonably be assumed that the respondent had sought market value and was satisfied with the fee. 5-28 Old Fives Court is a typical block largely let by non-resident lessees to assured shorthold tenants. Having regard to the block managed, the usual type of the management tasks required and the knowledge and experience of the Tribunal as to reasonable fee levels for such a service the Tribunal determined that the managing agent fee of £220 for the applicant's property was reasonable and payable.

Costs

40. Both parties pursued an application for costs against the other, and produced schedules detailing their respective costs.

41. In considering whether to exercise its power to award costs the Tribunal had careful regard to section 29(2) of the Tribunals, Courts and Enforcment Act 2007 and Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 read against the overriding objective in Rule 3 of the 2013 Rules. The Tribunal was also mindful of the guidance given by the Chamber President and Deputy President in *Willow Court Management Ltd v Alexander, Sinclair v Sussex Gardens RTM, Stone v Hogarth Rd Management Ltd [2016] UKUT 0290 (LC)*.

42. The Tribunal considered whether the applicant acted unreasonably in bringing or conducting the proceedings. She was unrepresented throughout. She stated that she had explored the legal position in late 2017 or early 2018 following two attempts to sell her property which fell through in August/September 2017 and November 2017 respectively. When she issued the application almost a year later she was warned in terms by the directions order made on 4 October 2018 by Regional Judge Edgington that -

> "*The applicant should know that the only jurisdiction of this Tribunal is to consider the reasonableness and payability of service charges under section 27A of the Act as set out in the application form, not to undertake a public enquiry into the conduct of any party. Many of the questions raised such as who has the right to undertake things under the terms of the lease are matters of legal advice which the Tribunal will not give. The applicant should seek legal advice in respect of this application before any hearing".*

43. The respondent's statement of case was filed on or about 2 November 2018 and set out succinctly and clearly why the application was misconceived. It might reasonably be expected of an unrepresented party that the combination of a directions order from the Tribunal and a respondent's statement of case in such terms would cause her to take stock and perhaps seek legal advice, but certainly consider whether it was reasonable to continue to pursue the proceedings as currently framed having regard to the issues raised. The applicant did not do so but instead filed an 8 page narrative Reply dated 14 November 2018 which continues to frame the application as issued. Having considered the evidence and information including oral argument from both parties the Tribunal determined that there was no reasonable explanation for continuing with the application beyond receipt of and proper consideration of the respondent's statement of case. A reasonable person in the position of the applicant would not have done so. Accordingly, the Tribunal determined that the applicant acted unreasonably in conducting the proceedings from and including the date on which she filed her Reply on 14 November 2018.

44. The Tribunal therefore considered whether, in the light of this unreasonable conduct, it ought to make an order for costs or not. The Tribunal was mindful that the applicant has acted in person throughout, but also that she was able to draft a lengthy and detailed narrative application and reply, comply with directions, compile a two volume hearing bundle and represent herself at the hearing with both clarity and conviction. Ignoring the warning in the directions order and succinct and clear points made in the respondent's statement of case and continuing the proceedings as originally framed does not further the overriding objective in Rule 3.

45. The Tribunal therefore determined that the applicant shall pay the respondent's costs from 14 November 2018 being the date of her Reply. The respondent's costs schedule filed in Form N260 does not provide a chronology or any dates for the work items included. The respondent should provide that so it can be seen that the costs are only those which fall on or after 14 November 2018.

46. The applicant sought costs against the respondent. The Tribunal determined that the respondent did not act unreasonable in defending the proceedings and accordingly no order for costs is made against it.

47. The application includes an application pursuant to s20C of the 1985 Act. That application is now otiose in relation to the applicant herself given that she has assigned her interest in the property and has no subsisting liability to pay relevant costs by way of service charges. However, the applicant sought such an order also for "all tenants of 5-28 Old Fives Court". The power to make such an order provided by s20C extends to "the tenant or any other person or persons specified in the application". In the circumstances to the Tribunal determined that it was just and equitable to make a s20C order in respect of the current tenants of 5-28 Old Fives Court at the date of this Decision.

Stephen Reeder
Judge of the First Tier Tribunal, Property Chamber

8 March 2019

ANNEX - RIGHTS OF APPEAL

a. **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.**

b. **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.**

c. **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.**

d. **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.**