11608

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AX/LSC/2016/0288**
Property	:	**Flat 1, 4 Oak Hill Road, Surbiton, Surrey KT6 6EH**
Applicant	:	**Mr Sean Collins & Mrs Jackie Collins (leaseholders)**
Representative	:	**In person**
Respondent	:	**R G Securities Limited (freeholder)**
Representative	:	**Pier Management Limited (managing agents)**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge S O'Sullivan** **Mr K Cartwright FRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**28 September 2016**

DECISION

The application

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the applicants in respect of the service charge year to December 2016.

2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The property which is the subject of this application is a 2 bedroom flat in a converted house. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

4. The applicants hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

5. Directions were made in this matter dated 2 August 2016 which provided for this matter to be considered by way of a paper determination unless a request was made for an oral hearing. No such request having been received the application was considered on the papers on 28 September 2016. Both parties filed statements of case in accordance with those directions.

The issues

6. In short it is the applicants' case that the previous managing agents, Affinity Property Services, sent an invoice to the applicant leaseholders on 10 February 2016 on behalf of the previous freeholders. The invoice was for service charges to June 2016 and insurance to December 2016. The Applicants paid this invoice in full on 12 February 2016 in the sum of £740.60 and this is not disputed by the respondents.

7. The invoice contained the following description;

Building Schedule 1st half year Charge	£476.70
2/4 Grounds Schedule 1st half year charge	£110
4 Oakhill Insurance Schedule Yearly Charge	£487.41

(1 Jan 2016-31 Dec 2016)

Total	£1,074.11
Less credit on account	£333.51
Amount due	£740.60

8. On 19 February 2016 the applicants received a letter dated 17 February 2016 from new managing agents on behalf of a new freeholder which stated that Affinity Property Services had been replaced with effect from 10 February and that no further payments should be made to them. It appears the new freeholder is R G Securities Limited and the new managing agents are Pier Management Limited. Pier Management then raised a new invoice covering the same periods stating that the applicants should pay the charges again and recover any overpayment from the previous freeholder. The applicants say that it is the respondents who should seek to recover the earlier payment from the previous freeholder.

9. Pier Management relied on an extremely brief statement dated 26 August 2016. It is said simply that *"credits have been applied to the applicants' service charge statement and therefore this has resolved the issue"*. It attached a series of statements of account but made no comment on the various figures included in those statements.

10. The applicants reply in a statement dated 31 August 2016. They deny that the charges in issue have been credited. Rather they say that the credit shown of £694.09 is a credit in relation to the reapportionment of insurance as shown on the invoice dated 12 April 2016 when a revised charge of £527.51 is made. It is disputed that any credit has been made in relation to the payment to the previous freeholder. It is also said that this is the first time the respondents have sought to rely on the accounting credit and rely on various correspondence between themselves and Mr Baker of Pier Management in which it is repeatedly asserted by Pier that the applicants must themselves seek to recover the payment from the previous freeholders.

The tribunal's decision

11. The directions in this matter set out in some detail the issues which the respondents were to address. It is somewhat unfortunate that the respondents have not addressed those issues set out in paragraph 9. The statement filed on the respondents' behalf fails to deal with any of the issues before the tribunal and is therefore of limited assistance. The papers filed however reveal a sorry tale.

12. By letter dated 17 February 2016 the applicants were notified that GQ Property Management had been appointed by Pier Management/RG Reversions as the new freeholders. The letter went on to provide *"please make no further payments to Affinity relating to your Service charge or Ground Rent"*.

13. By letter dated 24 February 2016 Pier Management wrote to confirm the purchase of the freehold and enclosed a formal notice of assignment dated 24 February 2016 and an invoice dated 24 February 2016 in the sum of £889.08. This included yearly insurance in advance in the sum of £694.09, an insurance administration fee of £19.99 and ground rent.

14. The applicants immediately wrote to inform the respondents of their payment of 12 February 2016 and were told to contact the previous freeholder. By letter dated 12 April 2016 the insurance was re apportioned and a revised invoice issued dated 12 April 2016 which credited the original figure and demanded the revised sum of £527.51. By letter dated 2 June 2016 Pier confirmed that an administration charge of £20 had been levied as the account had fallen overdue. A further charge appears to have been made in respect of a letter before action dated 24 June 2016 in the sum of £50.

15. By letter dated 14 July 2014 referring to the alleged overdue charges the credit controller at Pier wrote *"I wholeheartedly agree that as a leaseholder you are not obliged to make two payments...however it is your obligation to ensure your payment has been made to the current freeholder which as of 10 February 2016 was Pier Management."*

16. The tribunal has no jurisdiction in relation to ground rent.

17. Having considered the statements of account relied on by the respondents the tribunal is of the view that no credits have been made to the applicants' account to reflect the payment made of £740.60 to the previous freeholder in respect of the invoice dated 10 February 2016 which was paid on 12 February 2016. The only credit appears to have been in respect of the reapportionment of the insurance invoice which was then reissued in a revised amount.

18. Having considered the papers before us we find that the sums set out in the invoice dated 10 February 2016 in the sum of £476.70 in respect of service charges and £487.41 in respect of insurance are not payable to the respondents for the following reasons;

    (a) The applicants have made payment of the invoice in accordance with the provisions of the lease on receipt of a valid invoice in good faith to the former freeholder;

(b) The applicants were not notified of the new freeholder until after they had made payment of the invoice, it was not their obligation to check whether the freeholder had changed from the date of issue of the invoice;

(c) The applicants only received formal notification of the change of freeholder on 24 February 2016, some 12 days after payment was made and around 14 days after the change and the tribunal has been given no good reason for the delay in notifying leaseholders;

(d) The respondents have not made any submissions in relation to how is said the applicants have not been prejudiced by the delay in the respondents' notification given that they paid invoices properly demanded by the managing agents;

(e) The respondents should have put arrangements into place for the apportionment of and transfer of any service charges paid or to be paid by leaseholders; and

(f) The respondents are able to recover the sums paid from the previous landlords.

19. As far as the administration charges of £20 (late payment fee), £50 (letter before action) and £19.99 (insurance admin fee) the respondents have not addressed the basis upon which they are said to be recoverable and the tribunal does not have a copy of the relevant demands.

20. The tribunal has considered the terms of the lease and considers that the only clause potentially under which an administration charge of this nature could be levied is clause 4 of Part 1 of the Fifth Schedule pursuant to which the lessee covenants as follows;

"To pay to the Lessor all costs charges and expenses (including legal costs and fees payable to a Surveyor) incurred by the Lessor in contemplation of or incidental to the preparation and service of a Notice under Section 146 or in any proceedings thereunder or under Section 147 of that Act or any re-enactment or modification thereof notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court including the preparation and service of any schedule of wants of repair"

21. The tribunal has no evidence that the charges in question were levied in contemplation of any proceedings or any notice under section 146. In fact the charges seem to be rather levied as a standard late payment fee/letter before action issued as a matter of routine and would not in the view of this tribunal fall within the provisions of clause 4. The tribunal can see no basis in the lease for the insurance administration

fee. The tribunal therefore finds that the charges are not recoverable as administration charges under the Lease.

Application under s.20C and refund of fees

22. In the statement of case the applicants applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the respondent landlord may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

23. The applicants did not make an application for a refund of the fees that they had paid in respect of the application. The tribunal would be minded to make an order if it had an application. The applicants are therefore invited to make an application in writing by letter for a refund of their fees, the respondent must then respond to that application within 14 days to indicate whether it consents to an order or setting out the ground upon which it is challenged. The tribunal will then reach a decision on that application and write to the parties further.

Name: S O'Sullivan **Date:** 28 September 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 27A

(1) An application may be made to the appropriate 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 the appropriate 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 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 that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
- (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate 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.

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

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).