

12058



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/21UD/LSC/2016/0079
CHI/21UD/LBC/2017/0012

Property : Ground Floor Flat, 27 West Hill Road, St Leonards on
Sea, East Sussex TN38 0NA

Applicant : C Patel, S Patel, P Mason and D Mason

Representative : Michael Blandy solicitors

Respondent : Mr I Austin

Type of Application : Payability of service charges under s.27A Landlord and
Tenant Act 1985 and determination of breach under s.168
Commonhold and Leasehold Reform Act 2002

Tribunal Members : Judge A Johns QC (Chairman)
Mr A O Mackay FRICS (Surveyor Member)

Venue for hearing : Bexhill Town Hall, London Road, Bexhill on Sea, East
Sussex TN39 3JX

Date of hearing : 8 March 2017

Date of Decision : 9 March 2017

DECISION

Introduction

1. The applicants are the freehold owners of 27 West Hill Road, St Leonards on Sea, East Sussex TN38 0NA ("the Building"). Mr Austin is the lessee of the ground floor flat ("the Flat"). The applicants have demanded service charge from Mr Austin for 2015 in the sum of £1173 and for 2016 in the sum of £1033. Mr Austin has not paid. The applicants ask the Tribunal for a determination that such service charge is payable and that Mr Austin is therefore in breach of covenant for failing to pay.

Procedure

2. The application is dated 18 August 2016. Directions were given on 1 September 2016. Those included provision for a statement of case from the applicants and one in response from Mr Austin. While the application was for a determination as to the payability of service charges under s.27A of the Landlord and Tenant Act 1985, the applicant's statement of case also sought a determination that Mr Austin was in breach of covenant. Further, there was a complaint as to non-payment of ground rent. Mr Austin did not submit a statement of case or take any other part in the proceedings.

Inspection

3. The Tribunal inspected the Building on the morning of 8 March 2017 in the company of Mr Daniels of ADJ Property Management Ltd, managing agents. Mr Austin did not attend.

4. The inspection was limited to a view of the Building from the outside at ground level and the common ways. The Building is located in the West Hill district of St Leonards which is characterised by steep gradients. It occupies a site which slopes down steeply from West Hill Road. At the rear, the Building faces the sea and, being in a cliff top position, is particularly exposed on the side and rear to the sea and prevailing weather.

5. It is an end of terrace property probably constructed more than 100 years ago as a single family residence and now converted to form 5 self-contained flats arranged over basement, ground, and 3 upper floors. The front and side elevations are rendered and painted and the roof is pitched and covered with interlocking concrete tiles. The front elevation was seen to be in good repair whereas by comparison the exposed side elevation was showing signs of wear and in need of continuing maintenance. The internal common parts were found to be clean and tidy and well decorated.

Jurisdiction and law

6. By s.27A of the Landlord and Tenant Act 1985 (as amended by the Transfer of Tribunal Functions Order 2013) the Tribunal may determine whether service charge

is payable and in what amount. Where, as in this case, a service charge is payable before costs are incurred, s.19 of the 1985 Act provides that no greater amount than is reasonable is payable.

7. S.168(1) of the Commonhold and Leasehold Reform Act 2002 restricts a landlord's right to forfeit a long lease of a dwelling by providing that a notice of forfeiture under s.146(1) of the Law of Property Act 1925 in respect of a breach of covenant may not be served by a landlord unless subsection (2) is satisfied. One way of satisfying subsection (2) is a determination, on an application to the Tribunal, that the breach has occurred.

Lease and factual background

8. The lease of the Flat is dated 31 December 1992 and is for a term of 99 years. It provides at clause 1(b) for payment by the lessee of "one fifth of such sum which the landlord may from time to time expend and as may be reasonably required on account of anticipated expenditure" in performing the landlord's obligations as to repair maintenance and insurance in the lease (1(b)(i)), as well as in payment of agent's fees (1(b)(ii)), electricity and other outgoings for parts of the Building not demised (1(b)(iii)) and in otherwise incurring expenditure deemed necessary for the general benefit of the Building and its tenants (1(b)(iv)), amongst other things.

9. The landlord's covenants in clause 4 of the Lease include covenants to keep the Building in good and substantial repair and condition (4(1)), to decorate the interior and exterior of the Building and clean the internal common parts (4(2)), to keep the grounds in good order (4(3)), and to maintain buildings and third party claims insurance (4(4) & (5)).

10. The service charge budget for 2015 was in the total sum of £5865. The budget included the following items:

10.1	Insurance	£800
10.2	Gardening (clear front and side per 3 monthly)	£100
10.3	General maintenance and repairs	£1000
10.4	Iron gate to under pavement area	£600
10.5	Cleaning	£420
10.6	Communal ways electricity	£120
10.7	Management fee (basic)	£875
10.8	Management fees (for major works)	£300
10.9	Accountancy	£150
10.10	Reserve towards future redecoration	£1500

11. Mr Austin's 20% share of that budgeted sum is £1173. That was demanded of him by a written demand dated 7 January 2015 accompanied by a summary of tenant's rights and obligations.

12. The service charge budget for 2016 was in the total sum of £5165. The budget included the following items:

12.1	Insurance	£800
12.2	Gardening (clear front and side per 3 monthly)	£100
12.3	General maintenance and repairs	£1000
12.4	Cleaning	£420

12.5	Communal ways electricity	£120
12.6	Management fee (basic)	£925
12.7	Management fees (for major works)	£150
12.8	Accountancy	£150
12.9	Reserve towards future redecoration	£1500

13. Mr Austin's 20% share of that budgeted sum is £1033. That was demanded of him by a written demand dated 7 January 2016, again accompanied by a summary of tenant's rights and obligations.

The hearing

14. The hearing followed the inspection. Mr Blandy, solicitor, represented the applicants. Mr Austin did not attend and was not represented.

14. The Tribunal raised 2 matters with Mr Blandy at the start of the hearing. First, that s.27A of the 1985 Act did not give the Tribunal any jurisdiction as to the payability of ground rent and that no s.146 notice was necessary in order to forfeit for non-payment of rent. Second, that no application had been received for a determination of breach.

15. Mr Blandy's response on those 2 points was this:

15.1 He told the Tribunal that he did not pursue any relief in relation to the ground rent in these proceedings.

15.2 He invited the Tribunal to make a determination of breach under s.168 of the 2002 Act on his undertaking to issue a fee-paid application for such relief within 7 days of receiving the Tribunal's decision.

16. In our judgment, it is right in all the circumstances to make a determination on the question of breach of covenant. There is no unfairness to Mr Austin as the applicants' statement of case makes clear that such a determination is sought in these proceedings. And such course furthers the overriding objective as it represents a flexible approach, a saving of the resources of the parties and the Tribunal (avoiding the need for a further set of proceedings), and avoids delay.

17. Mr Blandy then addressed the Tribunal on each of the items in the service charge budgets for 2015 and 2016 and submitted that they were recoverable as a matter of principle under the Lease and, with one exception, reasonable in amount. The exception was the management fee of £300 for 2015 which he conceded was not reasonable.

Discussion and conclusion

18. The Tribunal is satisfied that none of the budgeted items fall outside the terms of the Lease summarised at paragraphs 8 and 9 above.

19. While there is no communal garden at the Building so that "gardening" is not an apt description, the £100 charge in fact relates to clearing the front and side enclosed areas including gulleys of debris. Such work is within clause 4(1) and/or 4(3) of the Lease and so properly part of the service charge.

20. The Lease provides expressly (at clause 1(b)(ii)) for the cost of an agent so that managing agent's fees are recoverable as service charge. And while there is no express reference to an accountant, the provision of service charge accounts is an important and necessary matter the cost of which is therefore properly within clause 1(b)(iv) and, again, recoverable as service charge.

21. As to a reserve for decoration, the Lease makes clear that the lessee has an obligation to contribute by way of service charge to anticipated expenditure.

22. The other items we have not specifically commented on seem to us plainly properly included.

23. Further, there was nothing to indicate to the Tribunal that the sums for any of the items, save one, was unreasonable. On the contrary, the Tribunal regarded them as plainly reasonable in amount.

24. The exception was the sum of £300 by way of a further management fee for 2015. Mr Blandy was right to concede that this was unreasonable. £1000 had been allowed for a management fee for major works in the 2014 budget. And over £300 of that remained unspent at the time of the 2015 budget. There was therefore no need to budget for any further management fee above the basic fee. We should say that this conclusion does not cast any doubt on the £150 management fee in the 2016 budget. It cannot be unreasonable then to budget for that modest sum by way of a further management fee, especially given the nature of the building. It is a large end of terrace building exposed to the elements in a sea front location. Making provision for an extra management fee to cater for unplanned work is sensible.

25. It follows from all the above, that the Tribunal's conclusion is that the service charges demanded of Mr Austin for 2015 and 2016 are payable save for his 20% share of the £300 management fee item (equating to £60) in the 2015 budget. The sums of £1113 (being £1173 less £60) and £1033 were therefore payable.

26. As they were not paid despite valid demands it also follows that Mr Austin is in breach of covenant in not paying such sums. The Tribunal therefore so determines, without deciding whether such a determination is strictly necessary given the terms of s.169(7) of the 2002 Act which provide that s.168 does not affect service of a s.146 notice in respect of a failure to pay service charge.

Summary of decision

27. From the above, the Tribunal determines:

27.1 That service charge is payable by Mr Austin for 2015 in the sum of £1113 and for 2016 in the sum of £1033.

27.2 Upon Mr Blandy's undertaking to issue a fee-paid application under s.168(4) of the 2002 Act, Mr Austin is in breach of covenant in failing to pay those sums.

Appeal

28. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

29. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

30. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit. The Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

31. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge A Johns QC (Chairman)

Dated 9 March 2017