12471

First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/22UD/LSC/2017/0067**
Property	:	**Flat 7 Lions Row, Avenue Road, Brentwood, Essex CM14 5EQ**
Applicant	:	**Paul Meekcoms Self Representing**
Respondents	:	**Gateway Property Management Ltd. and Gateway Holdings Ltd.**
represented by		**Carly Melling and Amy Childs**
Date of Transfer from the County Court at Romford	:	**12th June 2017**
Type of Application	:	**to determine reasonableness and payability of service charges and administration charges**
The Tribunal	:	**Bruce Edgington (Lawyer Chair) Marina Krisko BSc (Est Man) FRICS Lorraine Hart**
Date and place of Hearing	:	**20th October 2017 at Holiday Inn, Brook Street, Brentwood CM14 5NF**

DECISION

1. The Tribunal determines that in respect of the various claims made by the Applicant in the county court particulars of claim:-

   (1) The claim for solicitors' costs incurred by the Applicant is not a service charge and is not within the Tribunal's jurisdiction although the Tribunal has tried to assist the court (see below)
   (2) As to the repayment of £120 from budgeted service charges for 2014/15 and 16, this claim has been abandoned by the Applicant as final accounts for the years in question were produced after the proceedings were issued (see below)
   (3) Refund of £109 in respect of health and safety advice. The Tribunal determines that the cost of the initial Health and Safety report in 2014 was reasonable and payable in the sum of £600 but a full report is only

needed every 5 years. In the meantime, an annual review is reasonable and a reasonable cost for such review is £125 plus VAT i.e. £150 as it should take less than an hour to do this. The refund should therefore be £1,200 - £300 = £900 x 9.09% = £81.81.

(4) Refund of £200 in electricity charges. It is now clear that more recent electricity charges have been based on meter readings. However, the electricity for this, the smallest Block, has been consistently more expensive than the other 2 blocks. As the electricity needed for cleaning and the internal lights will be much cheaper with only one staircase and landing rather than 2, the apportionment of charges would clearly appear to be unreasonable. The total costs for 2015 and 2016 are: Block 1 - £479, Block 2 - £575 and Block 3 - £444. The Tribunal does not order a refund but the managing agent clearly needs to take this up with the electricity company immediately and/or find out if someone in Block 2 is taking communal electricity unlawfully.

(5) Withdrawn

(6) Recovery of £100 in respect of Block 2 repairs. The Applicant's case has changed since the proceedings have been issued (see below) and no refund is made in respect of the specific claim pleaded.

(7) withdrawn

2. The result of this is that the sum of £81.81 is deemed to be payable by the second named Respondent to the Applicant. Since the case was transferred, the Applicant has claimed other amounts. Strictly speaking, these should not be considered by the Tribunal as they are not issues 'transferred'. However, the Tribunal has given its views on those matters below in the hope that it assists the court and the parties.

3. An order is made pursuant to section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") preventing the Respondents or either of them from recovering their costs of representation before this Tribunal as part of any future service charge.

4. The claim is transferred back to the county court sitting at Romford under claim no. D4QZ546V for determination of interest up to judgment, the court fee and any legal costs which may be incurred in the court process. The parties should note that it will be up to them to make any application to the court in relation to those matters.

Reasons

Introduction

5. Court proceedings were issued by the Applicant for the sums stated above plus statutory interest on 7th March 2017 and the subsequent particulars of claim are dated 23rd March 2017. The individual claims totalled £1,079 but the Applicant, having paid the court fee for a claim of £1,000, added *"prior to disclosure and without the defendant's response the claim is rounded down to £750..."*.

6. The Applicant is the original long leaseholder of the property and the lease is dated 27th September 2013. He alleges that the first named Respondent caused an incorrect service charge demand to be sent to him upon which he took legal advice. His first claim is for £300 which is the solicitors' charge for advice given. The remaining claims arise from what the

Applicant alleges to be incompetence on the part of the Respondents or their predecessors both as to the standard of management and accounting deficiencies.

7. A defence was filed which said (a) that the demand for service charges referred to was incorrect but this was clear and attempting to recover legal costs is unreasonable and (b) the other allegations are simply incorrect.

8. The Order of Deputy District Judge Oldham dated 12th June 2017 is for the case to be transferred to this Tribunal "*which shall determine the liability and reasonableness of any charges/services/works within its jurisdiction*".

The Lease

9. The bundle produced for the hearing included what appeared to be a copy of the lease which, as has been said, is dated the 27th September 2013. However, the length of the term is uncertain. It is clear that the copy lease seen by the Tribunal is wrong. On page 19 in the bundle, it states that the term commenced on the 1st December 2007, which date has been adopted by the Land Registry at page 16. However, on page 22 it is said on another page in the lease that the term commences on the 1st December 2012.

10. This matter must be rectified as a matter of urgency because it affects both the term and the ground rent. If 2007 is found to be the correct date, the term will have 115 years to run and the ground rent can be reviewed now. If the commencement date is 2012, the term will have 120 years to run and the present ground rent will continue for 5 years. A comparison with the other leases in the development should produce the answer as the term should be the same in all cases. The second Respondent, as freeholder, should resolve this.

11. The lease provides that the landlord shall insure the property and keep the building and grounds in repair. It can then recover 9.09% of the Estate Expenses and External Building Expenses plus 33.3% of the Internal Building Expenses for his or her particular Block from the leaseholder.

12. Clauses 3.2, 3.3 and the Fourth and Fifth Schedules deal with service charges. In essence, the landlord estimates the anticipated service charge for the ensuing year and is entitled to be paid one half of that amount plus a contribution towards a sinking fund on what are described in clause 3.2 as the 'half yearly days' which are defined in the Particulars as being 1st October and 1st April.

13. The maintenance year is defined as the 12 months up to 30th September in each year or such other period as the landlord stipulates. At the end of each maintenance year, the landlord must prepare a service charge account and then make what is described as a Maintenance Adjustment for the amount by which the estimate "*shall have exceeded or fallen short of the actual expenditure in the Maintenance Year*". The leaseholder then either pays any shortfall or is credited with any overpayment.

14. In the Third Schedule, the leaseholder covenants to pay "*on a full indemnity basis all costs and expenses incurred by the Lessor or the*

Lessor's Solicitors" in enforcing the terms of the lease or in respect of any claim made by the leaseholder against the landlord. This is, in effect, repeated in the service charge provisions in the Fifth Schedule which also provides that the service charges can include "*all costs and expenses incurred by the Lessor....in the preparation and audit of the Service Charge accounts*".

The Law

15. 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'.

16. 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 such a charge is reasonable and, if so, whether it is payable.

17. 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."*

18. 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

19. The members of the Tribunal inspected the estate in the presence of the Applicant together with Carly Melling and Amy Childs from the first Respondent. The estate consists of 3 modern blocks of brick/block construction under what appeared to be a composite tiled roof which has been made to look like slate. The estate was in reasonable condition overall. It is in a pleasant residential area close to Brentwood station.

20. There are covered parking areas under the 3 Blocks at the rear plus a small car park surrounded by some plants at the rear of Block 3. The paint to the internal wall to the rear of Block 2 in the parking area is flaking and this looks to have been caused by earth being put against the outside of the wall above the damp course. The managing agents should rectify this as soon as possible because there is clearly a risk of long term damage.

21. The Tribunal saw inside Blocks 1 and 2 in order to see the internal layout of the common parts. Block 3 was said to be the same as Block 1. It was clear that there is far more to clean and light in Blocks 1 and 3 as compared with Block 2. The Tribunal considers that the cost of cleaning and lighting would be 2 times greater which means that the cost of such provisions

should be split into 5 parts with 2 parts each for Blocks 1 and 3 and 1 part for Block 2.

The Hearing

22. The hearing was attended by those who attended the inspection. In some ways, this was not an easy hearing for anyone in view of the changing position of the Applicant. The Respondents indicated, for example, that some of the points raised in the Applicant's skeleton argument in the bundle were new and had not been considered before now. However, to their credit, they agreed to go ahead with the hearing.

23. The procedure agreed and adopted was to go through each item which now appeared to be in dispute and discuss the same. The Applicant and the Respondents' representatives tried to help the Tribunal which was appreciated. However, it must be said that the Respondents' representatives did not appear to have taken proper instructions from the landlord i.e. the second Respondent on quite important points.

24. As a simple example, the Applicant has said throughout that there is a clear link between the second Respondent and many of its 'contractors'. It was admitted that the managing agent, the health and safety expert and Gateway Facilities Management Ltd. were part of the same financial group as the landlord. Thus the landlord, the health and safety expert and that contractor could be said to be making more than a reasonable 'hidden' profit out of the management of the development.

25. Contracts involving more than £100 per flat per accounting period which are more than a year in length have to be the subject of a consultation process. This issue was not raised in this case but one must wonder (a) whether the contract with the managing agent is time limited (b) whether it would ever actually be terminated and (c) if not time limited, whether there has been a proper consultation. One also wonders whether leaseholders would agree to a managing agent in the same group of companies as the landlord.

26. The Tribunal will not make any further comment on this issue but Gateway must understand that this sort of issue simply raises questions in the minds of leaseholders. For example, the invoice for the out of hours service comes from Gateway, but the evidence at the hearing was that such service was supplied by a 3rd party. An inference that could be drawn is that Gateway are simply adding a profit and passing this on. Clearly, this Applicant has doubts about the transparency of the whole set up.

Discussion

27. Part of the problem in this case appears to be that the Applicant suspects that the transfer of the freehold interest in the building from the original developer, Parkland Development Ltd. ("Parkland") to Gateway Property Holdings Ltd. was undertaken in such a way as to avoid the requisite notice having to be given to the leaseholders. Whether this is true is not a matter for this Tribunal or, indeed, the court within these proceedings.

28. Parkland had appointed a company known as Red Rock Property Management Ltd. to manage the development. The Applicant says that on

the 1st April 2014 i.e. some 6 months after he acquired his lease, he was told that the freehold title had passed from Parkland to Gateway Property Holdings Ltd. Gateway Property Management Ltd. ("the managing agent") then appeared to take over management.

29. On the 6th May 2014, the managing agent, sent an invoice to the Applicant claiming £1,232.00 being one year's service charges and ground rent from 1st April 2014 in advance (page 99). A letter was then sent on the 9th June (page 100) with a statement for the same amount. According to the defence filed at the court, the Applicant paid £741.00 on the 17th June i.e. the ground rent in total plus half the service charge demand. On the 23rd June a further statement (page 102) was sent claiming £491.00 i.e. the other half of the service charges.

30. On the 23rd June 2014 (page 103) the credit control department of the managing agent wrote to the Applicant alleging that an unspecified amount was in arrears and that proceedings would be issued in the court if payment was not made within 7 days. In addition, the Applicant's building society would be approached and a charge of £250 plus VAT would be made for this work.

31. That letter was aggressive in its terms and wrong in fact. The Applicant knew that because he had already paid the correct amount. However, he instructed solicitors to reply. That was his choice. All the letter did, in essence, was to say that any court action would be defended. The managing agents replied within 2 weeks saying, begrudgingly, that they acknowledged that the balance would not be paid until September.

32. In the Tribunal's view, the Applicant was, of course, perfectly entitled to instruct a solicitor but it is not considered that the cost of this can just be passed on to the Respondents as a matter of law. If court proceedings had actually been issued, it may have been possible to allege unreasonable behaviour, but that is not relevant in this case.

The Applicant's new claims and the Tribunal's Views thereon

33. The remainder of the Applicant's claim has changed dramatically since the proceedings were issued on the 7th March 2017 because end of year accounts have now been produced. As far as **estate costs** are concerned, the matters of guttering, window cleaning and management fees were dealt with at the hearing. There was also mention of some signage fixed as a result of the health and safety report, which has now been removed. If there is now a health and safety breach, this must be rectified. As far as gutters are concerned, the Tribunal noted that the side gutters were extremely long and too shallow for their purpose. The guttering over the front doors was very short and probably inadequate.

34. The Tribunal anticipates that with the number of trees around this development, there would probably have to be 2 visits to the development each year to clear leaves and debris from the gutters. The 'repairs' to the gutters had clearly not been completely effective. Even a simple solution such as the fitting of more sturdy holding brackets should be looked at. Overall, the Tribunal took the view that more visits than the 3 in question could have been justified. The cost of £400 plus VAT (page 226) is

excessive but the total costs incurred could not be seen to be overtly unreasonable. Having said that, the managing agents clearly need to get the contractors to do what they have been paid for i.e. repair the gutters, without further cost.

35. As far as the management fees are concerned, the sum claimed of £257 per flat plus VAT is reasonable on the assumption that the managing agents did all that they should do under the RICS Code of Practice i.e. deal with the bookkeeping and prepare service charge accounts etc. They say, at page 92 that they comply with such Code. The figure must also include all overheads incurred by any business such as bank charges and postage, particularly when, as in this case, there is simply no evidence of such expenditure.

36. The lease does allow them to recover the cost of accountancy even if, as in this case, there has been no audit. However, this is a small development and the Tribunal has seen the accounts. They are not complex. All that is arranged is cleaning, window cleaning, insurance, the health and safety visits and the small amount of repairs needed for a development of this age. The Respondents' representatives at the hearing said that they prepared draft accounts. Presumably this means that they did the bookkeeping. How the accountants could run up a cost of £700 or so without undertaking an audit is impossible to understand. A reasonable cost would be £300 plus VAT if the accountants actually prepared the accounts. That is what their invoice at page 253 says. That would allow them about 2 hours for a fairly junior person to prepare simple accounts which would be more than enough time.

37. Thus, the Tribunal considers that the correct management fee should be £225 per flat plus VAT to include overheads, having deducted a proportion of the accountants' charges for preparation of the accounts. The out of hours service is usual practice and reasonable. It is sometimes added to the management fee and sometimes included, although in the latter case, the management fee would be higher. It is reasonable for a leaseholder to have a number to call in the event of an out of hours emergency and it is reasonable for a landlord to try to ensure that action is taken if damage is being caused to the building when the managing agent is not open. The figure of £176 in the 2015 accounts is reasonable. The increase of 50% to £264 in 2016 is unjustified and unreasonable.

38. The history of the window cleaning is that in 2014 no claim was made for window cleaning. In 2015 a claim was made for £160 to clean the windows in the common parts only. In 2016, this figure went up to £1,019. At the hearing the explanation given was that the window cleaning had been expanded to include all the outside windows despite the fact that this was not a requirement of the lease and there appeared to be no request from the leaseholders for this.

39. It is perfectly possible that leaseholders – particularly on upper floors – would welcome the outside of their windows being cleaned and would be happy to pay for it. However, they need to be asked. The Applicant was not happy to pay for this. The Tribunal takes the view that the costs already incurred will not be disallowed but from now on the managing

agents need to ask the leaseholders specifically whether they want this done. There should also be enquiries to find out if the outside of the flat windows can be cleaned from inside which would obviously reduce the need for a contractor.

40. As far as **health and safety** inspections are concerned, the only issue seems to be that the Applicant sees no need for such inspections every year and the Respondents do. The Applicant also challenges the amount of the fees being £600 in 2014 and 2015 (page 112) and £600 in 2016 (page 204). The Tribunal agrees with the Applicant. Neither the ARMA advice nor the lease say that there should be a full risk assessment and report each year. ARMA simply says that any risk assessment should be 'reviewed at least annually' (page 76). As has been said, it is the Tribunal's view that full reports should be obtained every 5 years. Between then, reviews are all that is needed i.e. a look at the property to see if there have been any changes since the previous full report. The reasonable cost of such a review is in the decision above.

41. Turning now to the **electricity charges**, the Tribunal's decision and reasons are set out above.

42. Finally, so far as the pleaded issues are concerned, are the **Block 2 repairs** etc. not already dealt with above. These amount to the work to the door entry system and cleaning. As far as the door entry system is concerned, the Tribunal had some difficulty in fully understanding what had gone on. The Applicant said that the first person who attended was a locksmith whereas the repair was clearly needed to the electrics. A part of the electrics i.e. the Comelit Unit was replaced. This did not work and another contractor completed the repair. The Tribunal simply had no evidence as to why the first repair did not work. It could have been people just making efforts to find a solution as sometimes has to happen when the cause of a problem is not known. There is insufficient reason to conclude that the repairs, in total, were unreasonable.

43. As far as cleaning is concerned, the total costs need to be apportioned between the blocks differently i.e. in the proportions previously indicated. It would be unreasonable, overall, to ask the leaseholders in Blocks 1 and 3 to pay more for past years but from now on the cleaning costs must be apportioned in the way set out i.e. divided in 5 and apportioned 2 parts each for Blocks 1 and 3 and 1 part for Block 2.

44. Turning now to the claim for **landlord's legal costs** in the sum of £300. This claim is challenged. The Respondents' explanation is opaque, to say the least. They say it is 'our standard charge', i.e. is not legal costs, and they suggest that it relates to another defaulting leaseholder but will be credited back when that leaseholder has paid it. In other words one leaseholder defaults and is in breach of the terms of his or her lease and all the other leaseholders are expected to 'sub' the defaulting leaseholder by paying the legal costs charge which, of course, may never be repaid. That is clearly unreasonable.

45. Finally the Applicant denies that a **reported deficit of £1,524** due to the previous managing agents is payable. The invoice they have produced

describes this as recovery of loans (page 251). This seems very odd. The lease in this case says that the outstanding service charges when the lease was entered into were £1,015.64 (page 24) and the Applicant told the Tribunal that this was collected from him on completion.

46. The Applicant has obtained a copy of the previous accounts covering 2013 and up to 31st March 2014. At page 304 it is clear that in 2013 there was a substantial reserve fund of £8,688 which was wiped out in the following 2 years by 'repairs' of what appear to be £13,208.00 (the copies are not very clear). There was no evidence on inspection of what such repairs could have been. There is no evidence produced of what those repairs were and with a building of this age, such a figure seems to this Tribunal to be extraordinary and unreasonable. It is the Applicant's belief that the development was decorated to assist in the sale of the freehold. However, that would not account for such a large sum because the soffits, bargeboards, gable ends and windows are all uPVC/plastic and do not need decoration.

47. The managing agents say that they are waiting for Red Rock to provide an explanation. When asked whether Gateway Property Holdings Ltd. had been asked what the arrangement had been for the passing over of the service charge accounts, the Tribunal was told that no such question had been put by the managing agents. Again, that seems odd as they would presumably have had to oversee the transition. It was pointed out by the Tribunal that no reasonable and responsible freehold purchaser would just accept a bottomless pit of possible debt. No reply was given. The Tribunal finds that this proposed addition to the service charge account is unreasonable and must not be paid without clear and compelling evidence of reasonableness. If Gateway Property Holdings Ltd decided to take a financial risk, this is a matter for them and not the leaseholders. If Parkland decided to spend money extravagantly to boost their profit on the freehold sale, that is equally a matter for them and not the leaseholders.

Conclusions

48. Of the points in dispute mentioned above, the Tribunal, having taken all the evidence and submissions into account, concludes that **including** the £81.81 payable as set out in the decision, the following sums are reasonable and payable:-

	Description	Claim (£)	Payable (£)
Estate costs	window cleaning	nil	nil
01/04/14 – 30/09/14	heath and safety	600.00	600.00
	management fee	480.00	480.00
	accountancy	282.00	282.00
	bank charges	33.00	nil
01/10/14 – 30/09/15	window cleaning	160.00	160.00
	health and safety	600.00	150.00
	management fee	3,300.00	2,970.00
	accountancy	684.00	360.00
	bank charges	60.00	nil
	postage	66.00	nil
	out of hours service	176.00	176.00
01/10/15 – 30/09/16	window cleaning	1,019.00	1,019.00

	health and safety	600.00	150.00
	management fee	3,399.00	2,970.00
	accountancy	701.00	300.00
	bank charges	64.00	nil
	postage	66.00	nil
	out of hours service	264.00	176.00
	legal expenses	300.00	nil
totals		12,854.00	9,793.00

49. Dividing these totals by 9.09% means that £1,168.43 - £890.18 = £278.25 should be credited back to the Applicant as there are no refunds in respect of the Block costs. Perhaps a sensible compromise to avoid having to go back to the court would be a refund of the £278.25 to the service charge account plus a repayment of the original court fee of £60. Any further claim for interest etc. to be abandoned.

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Bruce Edgington
Regional Judge
24th October 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.