



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

Case Reference : CHI/43UF/LSC/2018/0081

Property : Flat 5, Marjoram Court, 3 Newman Road,
Horley, Surrey RH6 9JB

Applicant : Mr David Robb

Representative :

Respondent : Orbit Group Limited

Representative : Shakespeare Martineau

Type of Application : Liability to pay service charges

Tribunal Member(s) : Judge D. R. Whitney

**Date of Hearing and
Venue** : 21st December 2018

Date of Determination : 3rd January 2019

DETERMINATION

1. The Applicant issued application seeking a determination of service charges for the year 2016/2017. Further he seeks an order under Section 20C of the Landlord and Tenant Act 1985 and under Schedule 11 of the Commonhold and Leasehold Reform Act 2002
2. Substantive directions were issued on 16th October 2018 at a telephone case management hearing. It was determined that the matter would be dealt with by way of a paper determination. The directions appear to have been substantially complied with and the tribunal has a hearing bundle. References in [] are to pages within the hearing bundle.
3. The bundle did not contain a copy of the lease however one was supplied with the hearing bundle. The tribunal has referred to the lease dated 18th June 2010 and made between the Respondent and Mark Ian Southam in making it's decision.
4. The Applicant raises three main contentions. Firstly, that the accounts with which he is presented are not in accordance with the lease and so no valid demand has been made. Secondly that if a valid demand has been made then Section 20B of the Landlord and Tenant Act 1985("S20B") [59] applies in that costs have not been demanded or details supplied within 18 months of the costs being incurred. Thirdly that the management fees charged are not reasonable.
5. The Respondent states it has complied with the terms of the lease. As for the demands it suggests that the figures included within the budget are for an amount larger than the actual costs and so S20B does not apply. Finally, that having carried out its role properly the management fee is reasonable.
6. Under the lease there are three distinct heads of service charge to which the Applicant is required to contribute. He should pay 1/6th of service charges in respect of Building Common Parts, 1/12th of service charges for Development Common Parts and a contribution to Estate Common Parts. Schedule 11 of the lease sets out the Defined Terms and clause 8 the service charge provisions.
7. The lease provides for an accounting year ending on 31st March in each year. The lease allows under clause 8.3 for an interim charge to be determined. Clause 8.4 sets out what costs may be claimed. At the end of each service charge year accounts should be effectively issued and certified by the Respondent.
8. The bundle itself contains no demands but does include the budget for the year in question [39 and 40] and the accounts [38].
9. The Applicant contends the account do not explain his charge in accordance with the lease. The accounts refer to "Actual for the

Scheme” amounts which includes some heads for which no charge is made to the Applicant e.g. “Scheme staff costs”. There is then a column headed “Actual per Property”.

10. The Applicant appears to accept he should in principle pay for each of the heads for which a charge is proposed. His position is that none of the sums charged appear to be in accordance with the proportions under the lease. The proportions charged to him vary between 0% and 5.61%. Under his lease he should pay 16.67% for effectively block specific charges and 8.33% for estate charges.
11. The Respondent contends the actual charges have been calculated correctly. They do accept that cleaning costs are apportioned over 12 properties as the contractor sends one bill for two identical blocks. Appendix 2 [48-54] supposedly is a breakdown of each element.
12. The tribunal has considered all of the papers. It is satisfied that the Respondent has failed to provide a certificate or accounts properly showing the construction of the service charges in accordance with the lease. The lease defines fixed proportions to different heads of charge. The accounts and any certificate should reflect this. Charges should be set out as being Building Common Part charges or Development Common Parts
13. Whilst it may be that these figures can be reconciled as set out in Appendix 2 the tribunal records that even in those documents some of the charges within the accounts do not match the figures within those documents. Discrepancies are referred to as “variance”.
14. This situation is unsatisfactory. Leaseholders are entitled to receive documentation which is clear as to what amounts they are being asked to pay and which reflects the mechanism included within the lease prepared by, or on behalf of, the Respondent.
15. The tribunal also records that whilst no specific payment was demanded by the accounts for this year as sufficient monies had been collected under the budget sums this tribunal believes that a Summary of Rights and Obligations should still be served with the same.
16. The tribunal now turns to the arguments that sums have not been demanded within 18 months of the date that they were incurred. The tribunal records that it has no invoices within the bundle.
17. The Respondent contends that since the sums collected under the budget exceeded the actual accounts then S20B has been complied with.
18. The tribunal does not agree with this. The tribunal determines that each item within the budget must be looked at individually, not simply that the budgeted figure exceeded the amounts claimed. The Respondent could have provided details of all costs incurred within 18

months but it did not do so. It was only upon provision of the accounts that the Applicant learnt that certain sums had exceeded the amounts budgeted for and previously notified to him.

19. The Applicant contends that in three areas the actual cost exceeded the actual amount: door entry, fire alarms and maintenance.
20. The actual accounts are not dated but the Applicant suggests these were sent under cover of a letter dated 30th May 2018 [14]. Going back 18 months takes us to the 1st December 2016.
21. We do not have actual invoices but do have information within Appendix 2 including dates of invoices. It is accepted each head included a budgeted amount. The figures by which each of the individual costs items exceeded the budget figure as set out by the Applicant in paragraph 3.6 of his statement of case [36] are not challenged.
22. The tribunal determines that the sums which exceeded the budgeted figure are not recoverable. The tribunal determines that a sum of £143.34 is not payable by the Applicant.
23. This then leaves the question of the management fee. The Respondent contends the fee should not be interfered with as they had properly conducted the service charge account. The Applicant contends that there should be a reduction due to the failure by the Respondent to properly conduct the account.
24. Given the findings it is clear the Respondent has not properly conducted the service charge account. However it is clear that they have managed and in this tribunal's opinion the fee charged to the Property is reasonable. The tribunal exercises its discretion having considered all of the evidence and does not on this occasion, given the modest charge levied, interfere with the fee notwithstanding the failures.
25. The tribunal does however exercise its discretion to make an order under section 20C and Schedule 11 that none of the costs of this application may be recovered from the Applicant either as a service charge item or an administration charge. The tribunal in making this determination has taken account of the findings it has made above.

Judge D.R. Whitney

RIGHTS OF APPEAL

1. 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.

2. 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.
3. 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.
4. 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