FIRST-TIER TRIBUNAL PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference :	(1) CHI/00MS/LBC/2018/0025 (2) CHI/00MS/LSC/2018/0086 (3) CHI/00MS/LAC/2018/0016
Property :	15 Clifton Gardens, Clifton Road, Southampton SO15 4GX
Applicant :	Buildinvest Limited (the Landlord)
Representative :	Withers LLP
Respondent :	Mr Jeremy Grove (the Tenant)
Representative :	---
Types of Application:	(1) Section 168(4) Commonhold and Leasehold Reform Act 2002 – breach of covenant (2) Section 27A Landlord and Tenant Act 1985 – service charge determination (3) Schedule 11 Commonhold and Leasehold Reform Act 2002 – administration charge determination
Tribunal Member :	Judge P.J. Barber
Date of Decision:	23rd January 2019

DECISION

Decision

(1) The Tribunal determines in accordance with the provisions of Section 168(4) of the Commonhold and Leasehold Reform Act 2002, that a breach of covenant has occurred, being a breach by the tenant of the obligations imposed pursuant to Clause 6.3.1 of the Lease dated 27th November 1991.

(2) The Tribunal determines that the following amounts only, in respect of those sums claimed by way of service charges and/or administration fees are reasonable and payable:-

Service charge (2017) £1,320.00

Service charge (2018) £1,233.84

Reserve fund contribution (2018) £86.13

DAC Beachcroft Fees (2015) £918.00

Debit fee (2016) £78.00

Lessee debit fee (2017) £188.40

Professional services fee (2017) £180.00

Withers Fees (2018) £2,733.84

Reasons

INTRODUCTION

1. Three applications have been received by the Tribunal respectively for determination of breach of covenant, service charges and administration charges liability; the applications were received variously between August to November 2018. Directions were issued in respect initially of the breach of covenant and service charge matters, providing for those matters to be joined and heard together and, subsequently on receipt of the third application in relation to administration charges, for that matter also to be determined at the same time as the two earlier applications.
2. A telephone case management hearing was arranged in respect of the breach of covenant and service charge matters and heard on 25th October 2018, although the Respondent who had been notified of that hearing appointment, did not participate. Further directions were then issued in those two matters on 25th October 2018 providing a timetable in respect of actions to be undertaken by the parties, and further providing that the matters would be determined on the papers without a hearing, unless a party objected in writing to the Tribunal within 28 days of receipt of the directions. Directions were issued in the third matter relating to administration charges on 21st November 2018 providing for that matter to be determined with the other two applications. No objections have been received by the Tribunal and accordingly all three matters are determined on the papers.
3. The Applicant has provided a bundle of documents to the Tribunal and the Applicant has confirmed that a copy of the bundle was also sent to the Respondent by email and by post, although the latter had been returned seemingly undelivered. The bundle contains various documents including a position statement, a copy of the lease, copies of the applications and the directions, witness statement, service charge

accounts and various other documents. The directions dated 25th October 2018 provided for the Respondent to submit a position statement to the landlord, setting out his reply to the matters alleged, together with any signed witness statements.

4. The Property is a ground floor flat and demised pursuant to a Lease dated 27th November 1991 made between J & C Burns Developments Limited (1) Clifton Gardens Management Limited (2) Hugh Morris Edward Flatt and Molly Deloris Flatt (3) ("the Lease") for a term of 999 years from and including 25th March 1990.

5. In broad terms, the complaint made by the Applicant as landlord, is that the Respondent tenant has failed to keep the Property in repair by allowing a leaking overflow pipe to cause or risk the adjacent ground to subside over the course of time. In relation to service charges, the Applicant seeks a determination of certain service charge items in the years 2015-2018. The third application relates broadly to legal and other fees also arising.

THE LAW

8. Section 168 of the Commonhold and Leasehold Reform Act 2002 (as amended by *Regulation 141 of the Tribunals and Inquiries, England and Wales Order No. 1036 of 2013) provides that :*

"168 – No Forfeiture Notice before determination of breach

(1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c.20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied

(2) This subsection is satisfied if -

(a) it has been finally determined on an application under subsection (4) that the breach has occurred,

(b) the tenant has admitted the breach; or

(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post arbitration agreement, has finally determined that the breach has occurred.

(3) But a notice may not be served by virtue of subsection 2(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made

(4) A landlord under a long lease of a dwelling may make an application to the appropriate tribunal for a determination that a breach of a covenant or a condition in the lease has occurred.

(5) But a landlord may not make an application under subsection (4) in respect of a matter which-

(a) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party

(b) has been the subject of determination by a court, or

(c) has been the subject of determination by an arbitral tribunal pursuant to a post dispute arbitration agreement

(6) For the purposes of subsection (4), "appropriate tribunal" means-

(a) in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to a dwelling in Wales, a leasehold valuation tribunal"

Section 27A(1) Landlord and Tenant Act 1985 provides that:-

(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, the date at or by which it is payable, and

(d) The manner in which it is payable.

Schedule 11 Part 1 Paragraph 1(1) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") provides that:-

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 application 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 a 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.

WRITTEN REPRESENTATIONS

10. The bundle includes the Applicant`s witness statement but included no statements or responses made in the matter, by the Respondent. In a witness statement dated 22nd November 2018 made by Linda Long of Harcourts Letting Agents, Ms Long referred to Harcourts as being the agents appointed by the Applicant to manage the estate known as Clifton Gardens, Clifton Road, Southampton, which includes the Property. Ms Long referred to Clause 6.3.1 in the Lease which provides as follows:-

"*6.3.1 To repair the Premises and keep them in repair excepting damage caused by any Insured Risks other than where the insurance money is irrecoverable in consequence of any act or default of the Tenant or anyone at the Premises expressly or by implication with the Tenant`s authority.*"

Ms Long further referred to the definition in the Lease of the Premises including at Clause 1.3.8 of the Lease the following:-

"any Conduits that are in or on and exclusively serve the Premises."

Ms Long submitted that the overflow pipe in question protrudes from the northern wall of the Premises, and that there are no shared water pipes, all plumbing being contained within each individual flat. Ms Long further submitted that it is clear that the leaking water pipe exclusively serves the Premises and she referred to a letter and email sent by Harcourts to the Respondent requesting repair in or about May and/or June 2017. Ms Long stated that the Applicant`s solicitors Withers LLP had then written to the Respondent on 31st October 2017, demanding repair of the leaking pipe. Ms Long stated that water has been trickling out of the pipe for 24 hours a day for over eighteen months, resulting in the ground below becoming waterlogged and a risk that the land will subside; she considered that the problem is likely to be due to an overflowing toilet cistern.

11. In regard to service charges claimed, these were set out in the relevant application as being:

    2015

    Legal fees for DAC Beachcroft £918.00

    2016

    Debt fee £78.00

    2017

    Service charge £1,320.00

    Deficit due on account £9.80

    Lessee debt fee £188.40

    Professional services fee £180.00

    2018

    Service charge £1,233.84

    Reserve fund £86.13

    Withers Legal expenses £2,733.84

    Deficit due on account £99.54

    Ms Long submitted in her aforementioned statement, that Harcourts manage the service charges for the estate and that the Respondent is required to pay 5% of the total service charge, alleging that the Respondent had repeatedly failed to pay his service charges. Ms Long stated that a Summary of Tenant`s Rights and Obligations is included with demands for service charges and administration charges and that as a result of arrears in 2014 amounting to £1,618.93, the Applicant had instructed DAC Beachcroft to write to the Respondent and demand payment. A copy of DAC Beachcroft`s invoice dated 31st July 2015 in a sum of £750.00 for costs plus VAT, and disbursements of £18.00 for a Land Registry fee in a total of £918.00 was appended to Ms Long`s statement.

12. A copy of Harcourts "debt fee" charged in a sum of £78.00 was also appended to Ms Long`s statement relating to their fee for chasing payments from the Respondent. Similarly, a copy of the service charge demand for 2017 in a sum of £1,320.00 was appended, together with a copy of a demand for £996.00 being "Legal Costs & Debt fee". Ms Long`s statement further referred to a copy of Harcourt`s invoice dated 19th May 2017 in a sum of £9.80 being a deficit due on

account for the year ended 31st December 2016. Ms Long also appended a copy of a further Harcourts invoice dated 18th September 2017 in a sum of £188.40 for administration costs for chasing payments and instructing solicitors.

13. Ms Long`s statement further referred to a copy of a service charge demand for 2018 in a sum of £1,233.87 plus a reserve fund contribution of £86.13; the statement further referred to a copy of an invoice dated 19th December 2017 from Withers LLP in respect of their professional charges claimed from the Applicant in a sum of £2,733.84 as well as a letter sent by Withers LLP to the Respondent referring to such legal fees to be added to the service charge account. Finally Ms Long referred to and appended a copy of Harcourts` invoice dated 3rd May 2018 in a sum of £99.54 being a deficit due on account for the year ended 31st |December 2017. Ms Long submitted in her statement that if any of the sums claimed are not deemed to be recoverable as service charges, then they are alternatively claimed as recoverable as administration charges.

CONSIDERATION

14. The Tribunal, have taken into account all the case papers in the bundle and the fact that the Respondent has made no statement in the matter, nor raised any challenge to the various claims made.

15. In regard to the alleged breach of covenant, the Tribunal notes the tenant covenant to repair the Premises, contained at Clause 6.3.1 of the Lease, and also the definition of the Premises, as including at Clause 1.3.8, any conduits that are in or on and that exclusively serve the Premises. On the basis of the evidence provided for the Applicant and in the absence of any challenge thereto by the Respondent the Tribunal determines a breach of covenant in the Lease has occurred in regard to the failure by the tenant to repair and/or to keep the overflow pipe in repair.

16. In regard to the service charges, the bundle included copies of service charge accounts for the two years in question and on the face of it according to the evidence provided, the charges appear to have been properly demanded; accordingly, and in the absence of any challenge being made by the Respondent as to the respective amounts claimed, the Tribunal determines that the sums of £1,320.00 for service charges in 2017 and of £1,233.84 for service charges, together also with a reserve fund contribution of £86.13 in 2018, are reasonable and payable by the Respondent to the Applicant. Clause 1.3.9 to the Third Schedule of the Lease allows for provision within the service charge, in respect of anticipated expenditure at the absolute discretion of the management company.

17. In regard to the remaining items claimed in the applications, the Tribunal notes that the Third Schedule to the Lease includes at clause 1.3, within the service charge provisions, the proper fees and disbursements (and any VAT payable on them) of the managing agents for the management of the Property and/or the collection of service charges; clause 1.3.1.1 also provides for inclusion of the proper fees and disbursements of the surveyor, accountant and any other firm employed or retained by the management company for or in connection with accounting functions or the management of the Property. Accordingly the Tribunal makes the following determinations:

    DAC Beachcroft Legal fees 2015 - £918.00: the Tribunal notes that a copy of the invoice has been provided and is satisfied on the evidence as tendered, that these

fees constitute administration charges within paragraphs 1(1)(c) and/or (d) of Part 1 of Schedule 11 of the 2002 Act, and are reasonable and payable

Debit fee 2016 - £78.00: the Tribunal accepts on the evidence provided, that Harcourts undertook work as referred to in the relevant copy invoice, to pursue outstanding charges and in the absence of challenge, determines this sum to be reasonable and payable pursuant to Clause 1.3 of the Third Schedule of the Lease.

Deficit due 2017 - £9.80: the Tribunal notes that the copy invoice provided refers somewhat obscurely to "Deficit due on account for the year ended 31st December 2016". However, no clear explanation or persuasive rationale has been offered to justify this sum and accordingly the Tribunal determines that it is not payable.

Lessee debt fee 2017 - £188.40: the Tribunal notes that this invoice refers to Harcourts` administration and office costs chasing overdue service charges and in regard to instructing and contacting solicitors. Accordingly the Tribunal accepts on the evidence as provided and in the absence of challenge, that Harcourts undertook this work and determines this sum to be reasonable and payable pursuant to clause 1.3 of the Third Schedule of the Lease.

Professional services fee 2017 - £180.00: the Tribunal notes that the copy invoice provided, refers to Harcourts` services for attending the Property on three occasions following a report of a leak, and to attempts to request repair, followed by reporting to the freeholder`s solicitors. In the absence of challenge the Tribunal determines this sum to be reasonable and payable pursuant to Clause 1.3 of the Third Schedule of the Lease.

Withers Legal expenses 2018 - £2,733.84: the Tribunal notes that a copy of the invoice has been provided and is satisfied on the evidence as tendered, that these fees constitute administration charges within paragraphs 1(1)(c) and /or (d) of Part 1 of Schedule 11 of the 2002 Act, and are reasonable and payable.

Deficit due 2018 - £99.54: the Tribunal notes that the copy invoice provided refers somewhat obscurely to "Deficit due on account for the year ended 31st December 2017". However, no clear explanation or persuasive rationale has been offered to justify this sum and accordingly the Tribunal determines that it is not payable.

18. We made our decisions accordingly.

Judge P J Barber (Chairman)

A member of the Tribunal
appointed by the Lord Chancellor

Appeals

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.