



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

Case Reference : CHI/24UC/LIS/2018/0058

Property : 39 Ansty Road, Alton, Hampshire
GU34 2RD

Applicant : Roger McElroy
Tribunal Appointed manager

Representative :

Respondent : KJN Developments (Alton) Limited (Flats 1, 5,
6,7 and 8)
Lisa Michelle MacGregor (Flat 2)
Sylvia Maureen Newland (Flat 3)
Rohit Kakkar and Zeenat Abour Razak Kakkar
(Flat 4)

Representative : Robert Simmons Legal Services for Mrs
Newland

Type of Application : Liability to pay service charges.

**Tribunal
Member(s)** : Judge Tildesley OBE
Judge T Hingston
Mr M Ayres FRICS

**Date and Venue of
Hearing** : 6 March 2019 Havant Justice Centre, Elmleigh
Road, Havant PO9 2AL

Date of Decision : 15 April 2019

DECISION

“Judge Tildesley is not impressed with the Application. Judge Tildesley would have expected the manager to complete the sheets of paper entitled Service Charges in Question, which form an integral part of the Application. The Application does not have a copy of the management order attached and a list of the name and addresses of the leaseholders”.

18. On 23 November 2017, Judge Tildesley commented

“Judge Tildesley notes the Manager’s assertion that the form will remain the same. Judge Tildesley repeats that the Manager is required to complete the sheets of paper entitled Service Charges in Question stating a list of the items of service charge that are in issue and their value and the description of the questions he wishes the Tribunal to decide. Judge Tildesley does not understand why that is onerous. Judge Tildesley would also point out that the procedure he has adopted is designed to streamline the determination of the application in accordance with the Manager’s request”.
19. On 23 November 2017 Judge Tildesley directed Mr McElroy to serve on each leaseholder and the Tribunal: “A completed application form setting out very clearly details of the service charges in question and the order that the Applicant is seeking”, and “The Tribunal at the moment does not consider an inspection of the property proportionate provided the Applicant supplies a bundle of colour photographs showing the location of the property and the property itself from various aspects. If the Tribunal requires to inspect the property it will advise the parties accordingly at the end of the hearing”.
20. The Tribunal did not inspect the property.
21. At the hearing the Tribunal pointed out to Mr McElroy that he had not supplied the completed application form as directed and that his witness statement of effectively one page [8 & 9] did not address the Tribunal’s concerns. The Tribunal also noted that Mr McElroy had not supplied a bundle of colour photographs showing the location of the property.
22. The Tribunal established that Mr McElroy did not wish to proceed with his application to determine the estimated costs for the major works which were in the sum of £30,059.46. Mr McElroy accepted that no costs had been incurred on the proposed works, and as his appointment was due to cease there appeared to be no point in pursuing this part of his application.
23. Mr McElroy also stated that he was content for the Tribunal to determine the actual service charge for the year ended 31 December 2018 which was in the sum of £12,932.46 rather than the estimated charge in the sum of £29,417.06 [26]. Miss Meager for Mrs Newland agreed to the amendment of the application on the understanding that the amount claimed was the final amount.

24. Under the directions Mrs Newland and the other Respondents were required to submit their cases by 12 January 2019. Mrs Newland originally sent her response in manuscript. A Procedural Judge required her to resubmit her response in a legible and understandable form preferably typed up which she did on 5 February. The Tribunal regarded Mrs Newland's response of 5 February 2019 as her statement of case.
25. On 22 February 2019 the Tribunal received a letter from Robert Simmons Solicitors stating that they had taken urgent instructions from Mrs Newland and had taken a further witness statement from her. Also the solicitors had prepared two bundles of documents in readiness for the *case management hearing* on 6 March 2019. The Tribunal Office advised the solicitors that it was full hearing on the 6 March 2019. Further they would be required to make application to the Tribunal to admit the additional documents into evidence.
26. Unfortunately the solicitors did not provide Mr McElroy with copies of the witness statement and the bundles of documents until the day of the hearing. Mr McElroy objected to their admission because he had not had the opportunity to examine them and would be prejudiced if the Tribunal allowed them in.
27. The Tribunal decided not to admit the second witness statement and the bundles of documents except the section headed "Office Copy Entries" which included the title documents for each Flat and the section headed "Photographs". The Tribunal accepted that Mr McElroy would be prejudiced by late admission of the other documents. The Tribunal also considered that it had already granted Mrs Newland two extensions of time to submit her case. Finally the Tribunal did not believe that Mrs Newland's witness additional statement furthered her case.
28. The upshot was that Mrs Newland's defence included no challenges to the reasonableness of the individual charges. Her defence was essentially that Mr McElroy refused to engage with her, and that she could manage the property perfectly well without outside interference.

The Disputed Issues

29. The Tribunal was required to determine the following matters:
- The actual service charge for the year ended 31 December 2017.
 - The actual service charge for the year ended 31 December 2018.
 - Whether the Applicant had issued valid demands for service charges against KJN Developments in respect of Flats 5, 7 and 8?

- Whether an Order should be made under section 20C of the 1985?
30. The following matters were not challenged:
- The liability of the leaseholders to pay an interim charge and a service charge (Clause 4.4 of the lease).
 - Whether the category of costs claimed as service charges were duly authorised under the lease?
 - Whether the costs had been incurred?
 - The reasonableness of the costs for individual items of expenditure as assessed by comparison with alternative quotations.
 - The percentage contributions to the service charge for each Flat which were 15 per cent for Flats 1-4 and 10 per cent for Flats 5-8.

The Actual Service Charge for the year ended 31 December 2017

31. Mr McElroy relied on the Service Charge Accounts for 31 December 2017 which showed expenditure of £9,759.60 which produced an underspend of £1,900.40 [30]. The document stated that the accounts had been collated having regard to Tech 03/11 Residential Service Charge Accounts published jointly by the professional accounting bodies with ARMA and RICs. The accounts also included a Report of Factual findings signed by Canonbury Management which said that the figures had been extracted correctly from the accounting records and supported by receipts.
32. Mr McElroy explained that the services were provided in house by Canonbury Management which enabled costs to be kept down. Mr McElroy also pointed out that the estimated costs had been approved by the Tribunal when he was appointed. The Management Order gave approval at paragraph 4.1 to the Estimate Reference Number 118952 [23] which formed the basis of the actual expenditure.
33. Miss Meager challenged Mr McElroy on the variation between the estimated and actual costs. Miss Meager specifically referred to the large underspend in the costs category of "Electrical". Mr McElroy explained that the estimated costs were based on the costs for one year, whereas the actual expenditure related to the costs incurred from 9 March to 31 December 2017.
34. Miss Meager questioned Mr McElroy on the gardening costs. Miss Meager referred to Mrs Newland's statement that the lawn at the side of the property belonged to the neighbouring property. Mr

McElroy stated that the gardening also included cleaning the communal hardstanding areas at the front of the property.

35. Miss Meager asked about the costs of £126 for security for which no estimate had been provided. Mr McElroy suggested that it was probably for the cutting of additional keys and or the replacement of locks which were recurring problems for leasehold properties which were let out on short tenancies.
36. Miss Meager challenged Mr McElroy on why he insured the property having regard to the fact that Mrs Newland had already taken out insurance. Mr McElroy pointed out that he was responsible not Mrs Newland for insuring the property under the terms of the Management Order.
37. Miss Meager questioned Mr McElroy's involvement with the local authority in connection with various notices under the Housing Act 2004 on the property. Mr McElroy explained that he had a conversation with a Housing Officer who considered that Mr McElroy was not the correct person on whom such notices should be served.
38. Miss Meager asked why the estimate for major works included costs of works on the Mews which did not come within the terms of the management order. Mr McElroy was unable to provide an answer because he had been taken by surprise with the question.
39. The Tribunal was satisfied on the documentary evidence relied upon by Mr McElroy that the costs had been incurred and they were reasonable having regard to the Tribunal's general knowledge and expertise with service charges. The Tribunal did not consider that any of the charges stood out as excessive.
40. The Tribunal acknowledged that Miss Meager's attempts to undermine Mr McElroy's evidence were hampered by the limitations of Mrs Newland's statement of case. Miss Meager identification of apparent inconsistencies between the estimated and actual expenditure on "Electrical" services gave more credibility to Mr McElroy's evidence because the Tribunal would expect such variations. The Tribunal placed no weight on Miss Meager's questioning of Mr McElroy on the gardening costs and the Mews because they were not identified as issues in Mrs Newland's statement of case. Finally the Tribunal was not convinced by Miss Meager's argument that Mr McElroy had not met the standards set out in the RICs Code. The Tribunal was satisfied that he did his best to engage with the local authority Housing Officer and it was his responsibility to insure the building. The Tribunal concludes that Miss Meager's challenges on behalf of Mrs Newland were tangential to the relevant questions of whether the disputed costs had been incurred and were reasonable.

41. The Tribunal determines that the actual service charge for the year ended 31 December 2017 was £9,759.60. The contributions of each leaseholder are fixed by the proportion in their respective leases which is 15 per cent for flats 1-4 and 10 per cent for Flats 5-8.

The Actual Service Charge for the year ended 31 December 2018

42. Mr McElroy supplied the figures for the actual service charge for the year ended 31 December 2018:

| Category Group | Expenditure (£) |
|--------------------------------|------------------------|
| Accounting | 210.00 |
| Electrical | 2,040.00 |
| Fees | 3,400.00 |
| Gardening | 1,030.00 |
| Insurance | 2,584.58 |
| Legal Services | 3,222.00 |
| Plumbing & Heating | 310.00 |
| Survey & Inspection | 380.00 |
| Utilities Electricity (Credit) | - 244.12 |
| Total | 12,932.46 |

43. Mr McElroy explained that the expenditure for the year ended 31 December 2018 was based on the previous year's expenditure with an uplift for inflation. Mr McElroy stated that the fact that a credit had been recorded for Utilities added credibility to the figures.
44. The Tribunal has dealt with the challenges to the figures by Miss Meager on behalf of Mrs Newland under the previous year with the exception of the costs for legal services.
45. Mr McElroy explained that the costs for legal services were those that had been incurred bringing this application to the Tribunal. Mr McElroy said that it included the costs of printing the bundles, the costs of preparation and attending the hearing and the fees of the Tribunal.
46. Miss Meager argued that the standard of legal services was woefully inadequate. In support Miss Meager cited that the bundles had not been produced in accordance with the directions and that the Tribunal had to spend a significant amount of time at the beginning of the hearing clarifying the nature of the application.
47. The Tribunal has already expressed its concerns about Mr McElroy's apparent disregard of its directions which had an adverse impact on the conduct of the case. The Tribunal, however, is required to balance Mr McElroy's shortcomings with his preparation for the case against Mrs Newland's unwillingness to recognise his position as a Tribunal appointed manager and to meet her service charge obligations. The Tribunal decides in all the circumstances that the

costs should be reduced by 15 per cent (£483.30) which produces a figure of £2,738.70.

48. Following the adjustment for the costs to legal services the Tribunal is satisfied that the costs included in the actual service charge for the year ended 31 December 2018 have been incurred and are reasonable.
49. The Tribunal determines that the actual service charge for the year ended 31 December 2018 was £12,449.16. The contributions of each leaseholder are fixed by the proportion in their respective leases which is 15 per cent for flats 1-4 and 10 per cent for Flats 5-8.

Whether the Applicant had issued valid demands for service charges against KJN Developments in respect of Flats 5, 7 and 8

50. The service charge demands for Flats 1 and 6 have been sent to KJN Developments Ltd which is the registered owner of the respective leaseholds [40, 44, 138 & 142]
51. The service charge demands for Flats 5, 7 and 8 have been sent to Mrs Sylvia Newland [116, 124, 60, 112, 164 & 168] and not to the registered owner of the leaseholds for those Flats KJN Developments Ltd.
52. Mr McElroy was unable to provide an explanation why the demands for Flats 5, 7 and 8 had not been served on the correct legal owner of the Flats.
53. The Tribunal is satisfied that KJN Developments Ltd is a separate legal person from Mrs Sylvia Newlands.
54. The Tribunal determines that the demands for service charges for Flats 5, 7 and 8 have not been correctly served. KJN Developments are not liable to pay its contribution to service charges for the said Flats until a correct demand has been served.

Section 20C of the Landlord and Tenant Act 1985

55. The Tribunal does not consider it just and equitable to make an order under section 20C of the Landlord and Tenant Act 1985 because the Tribunal has already made a deduction in the Applicant's costs in connection with these proceedings under the service charge for the year ended 31 December 2018. In reaching its decision in respect of those costs the Tribunal took into consideration the matters that it would have done if it had done a separate determination under section 20C.

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.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

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.