



**FIRST TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) & IN THE
COUNTY COURT AT GLOUCESTER &
CHELTENHAM, sitting at Centre City, 5-7
Hill Street, Birmingham, B5 4UU**

Case Reference : **BIR/44UF/LIS/2019/0010**

Claim Number : **E7QZ26AH (Transferred from the County
Court at Gloucester & Cheltenham)**

Property **6 Merchants Court, Campion Terrace,
Leamington Spa, CV32 4SU**

Applicant : **Midland Heart Limited**

**Applicant's
Representative** : **Shakespeare Martineau LLP (Solicitors) &
Miss. S. Platts (Counsel)**

Respondent : **Mr Stephen White (in person)**

Type of Application **Service charges (transferred from the County
Court at Gloucester & Cheltenham by Order of
District Judge Singleton)**

Date of determination : **23 July 2019**

Tribunal Member : **Judge A McNamara**

Date of Decision : **1 August 2019**

DECISION

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Background & Procedural History

1. This is the decision of the First-tier Tribunal (Property Chamber) (Residential Property) and the County Court following the transfer of the Applicant's claim for unpaid service charges in the sum of £646.68 issued out of the County Court Business Centre on 11 October 2018 by a claim form of the same date.
2. The Applicant is the Landlord of 6 Merchants Court, Campion Terrace, Leamington Spa, CV32 4SU (the property); and the Respondent is the tenant of the property.
3. The claim was said to arise pursuant to a lease, namely the lease entered into by the parties dated 30 November 1995, a copy of which appears at pages 7 to 43 of the Applicant's hearing bundle. The relevant paragraph upon which the Applicant relies is set out at §7 of the lease, namely that which begins '*The Leaseholder **HEREBY COVENANTS** to pay the service charge...*'
4. The Respondent entered a Defence, using the N9B form, signed on 16 October 2018. In it he set out that the whole of the amount sought was in dispute and that the Applicant had miscalculated the outstanding sums since it had '*made a gross error in maintenance/service charges. A 58% increase in charges arose from an admin error*' (from £76.61 per month to £121.47 per month). He also alleged that '*They were found to be incorrect and the adjusted figure as published by [the Applicant] is now £73.99. [The Applicant] have failed to credit my account of the overcharge*'. He went on to suggest that he was also entitled to counterclaim for £1000 in respect of '*Administrator costs, monitoring of services and proving error...*'
5. The Applicant served a Reply to the Defence, dated 13 December 2018, in which it was averred that the demands were lawful; that the arrears were accurate; and remained outstanding at £646.68. Matters apparently centred around a communal cleaning contract which had been, subsequently, cancelled at the request of the Respondent since he and another neighbour would assume responsibility for the cleaning themselves.
6. Further, given that it was suggested that the Defence demonstrated no reasonable prospect of success, the Applicant averred that it was entitled to summary judgment.
7. Given the subject matter of the application, and by Order of the County Court at Gloucester & Cheltenham, on 31 January 2019 District Judge Singleton directed that the claim should be transferred to the First-tier Tribunal (Property Chamber) (Residential Property) (FTT).
8. Upon receipt of the transferred claim by the FTT, on 20th March 2019 Regional Judge Jackson directed (in short form) that:
 - 8.1. The matter should be allocated to the small claims track;

- 8.2. The Applicant should prepare a statement of case by 11th April 2019;
 - 8.3. The Respondent should prepare a statement of case by 2nd May 2019;
 - 8.4. Witness statements be exchanged by 16th May 2019; and
 - 8.5. That the case be listed before a Judge alone, sitting as a Judge of the County Court as required.
9. With the agreement of a procedural Judge, on 1 May 2019, that timetable was modified and the time for the exchange (and filing with the Tribunal) of witness statements was extended to 12 June 2019.
 10. Neither party conformed with the requirement to file witness evidence by that date; however, given that it transpired that the Applicant had served the witness statement upon the Respondent, a further 7 days for compliance was permitted. The Tribunal acknowledged receipt of the Applicant's statement on 19 June 2019. No witness statement has been received by the Tribunal from the Respondent.

The Law

11. Accordingly this case falls to be considered pursuant to section 27A(3) Landlord and Tenant Act 1985.
12. The relevant section of the Act of 1985 provides:

27A Liability to pay service charges: jurisdiction

...

(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.

...

13. Given that the nature of the FTT's jurisdiction permits an assessment of whether a service charge has been reasonably incurred, it is the Tribunal's view that it would be inappropriate to deal with the case summarily. Instead the Tribunal considered the merits of the claim/application.

14. Further, this is a case in which the Tribunal Judge sits as a Judge of the County Court under section 5(2)(t) and (u) County Courts Act 1984, as amended by Schedule 9 to the Crime and Courts Act 2013 to resolve any ancillary matters arising from the proceedings in the County Court, including the costs and interest prior to transfer to this Tribunal.
15. That is, following the case of **Avon Ground Rents Ltd v Child [2018] UKUT 0204 (LC)**, once the question under s27A(3) has been resolved, the Judge of the FTT effectively moves to sit as the County Court and deal with any costs pursuant to contract (i.e. as provided for by the lease or as the case may be) and/or section 51 Senior Courts Act 1981.

The evidence considered and the Tribunal's deliberations

16. The applicant prepared a bundle of documents which incorporated its Statement of Case [2-4]; the claim form [5-6]; the lease [7-43]; and correspondence between the parties [44-91]. That was supplemented by a further hearing bundle.
17. As set out above, the Applicant also supplied a witness statement from Alison Grimshaw dated 11 June 2019.
18. The Respondent provided an undated document received by the FTT on 23 May 2019 in which he set out his case. Despite the direction of the Regional Judge, the Respondent has filed no witness evidence. However, the undated document contains a statement of truth, so, making limited allowance for the fact that the Respondent acts in person, and that the Applicant has seen that document ahead of the hearing, the FTT treated that statement as a combined submissions/evidence document.
19. The Tribunal also heard live evidence from Ms. Grimshaw and the Respondent. Each party also made representations: in the case of the Applicant through Counsel, Miss Platts; and the Respondent on his own behalf.

The decision

20. It is the Tribunal's decision that, although representing a significant increase on both previous and subsequent years, the sums sought by the Landlord were reasonably incurred and proportionate. There is no question that the lease obliged the Respondent to pay, that the sums were properly demanded and that the Respondent failed to pay.
21. Since there is no evidence before the Tribunal to suggest that the contract price relied upon by the Applicant could have been bettered, it has no alternative but to find that the outstanding sums must be paid.

22. As an aside, it is clear that the increase in the service charge was significant: in percentage terms it amounted to a 58% rise, or £44.86, per month. By any estimation that is a huge increase and one that ought to have been identified by the Applicant as potentially controversial.
23. Although this was not a contract for services to which the consultation requirement of section 20 Landlord & Tenant Act 1985 applied, the idea that tenants should simply be expected to accept increases of that magnitude without demur goes against the spirit of section 20 and is to be discouraged.
24. Nonetheless, the Tribunal grants the Application and directs that the sum of £646.68 plus interest at 3.75%, namely £11.45, is payable by the Respondent. That is a total of £658.08.

County Court Costs

25. At the conclusion of the hearing, both the principle and amount of costs were dealt with, effectively, subject to 'liability'.
26. The entitlement to costs derives from the lease, so it is the Applicant's case that it is entitled to costs pursuant to CPR 44.5(1). That is, although the application had been placed on the small claims track by Judge Jackson, the note at §27.14.8 on page 909 of the current edition of the White Book in relation to contractual costs makes plain that the limits imposed by Part 27.14 CPR (costs on the small claims track) do not prevent recovery of costs pursuant to a contractual term.
27. Accordingly, the Applicant is entitled to recover costs in accordance with the schedule.
28. Those costs were summarily assessed as follows:
- 28.1. Letters emails 1.5 hours @ £110 = £165
 - 28.2. Telephone: 30 mins @ £110 = £55
 - 28.3. Opponents emails: as drafted 30 mins @ £110 = £55
 - 28.4. Documents:
 - 28.4.1. Draft Reply to defence: 1 hour @ £110 = £110
 - 28.4.2. Statement of case: 40 mins @ £110 = £73
 - 28.4.3. Bundle: 1 hour @ £110 = £110
 - 28.4.4. Draft witness statement: 1.5 hours @ £110 = £165
 - 28.4.5. Prep of hearing bundle: 1 hour @ £110 = £110
 - 28.4.6. Prep for hearing: 30 mins @ £110 = £55
 - 28.5. Counsel: £350
 - 28.6. Disbursements: as per the Schedule = £260
 - 28.7. Total = £1508

29. Accordingly the Respondent will pay the Applicant's costs summarily assessed at £1508.

Judge A McNamara

Rights of appeal

Appeals in respect of decisions made by the FTT

A written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court

An application for permission to appeal may be made to the Tribunal Judge who dealt with your case or to an appeal judge in the County Court.

Please note: you must in any event lodge your appeal notice within 21 days of the date of the decision against which you wish to appeal.

Further information can be found at the County Court offices (not the tribunal offices) or on-line.

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court and in respect the decisions made by the FTT

You must follow **both** routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues with either the Tribunal Judge or proceeding directly to the County Court.