C

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/26UG/LIS/2019/0017**
Property	**:**	**4 The Clock Tower, Goldring Way, Napsbury Park, St Albans AL2 1GF**
Applicant	**:**	**David Decio**
Respondent	**:**	**1.Hurford Salvi Carr Property Management Ltd** **2.Crest Nicholson Ltd (Eastern Division)**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal member	**:**	**Judge Wayte**
Date of decision	**:**	**15 November 2019**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the Applicant is due a refund from the First Respondent of £4,910.91 in respect of the service charges demanded from 1 June 2012 to 1 July 2019 inclusive.

(2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the First Respondent's costs of the tribunal proceedings may be passed to the lessees through any service charge.

(3) The tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that none of the First Respondent's costs of the tribunal proceedings may be passed to the Applicant through any administration charge.

(4) The tribunal determines that the First Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2011/12 through to the current year.

2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. There have been a number of disputes relating to this development. This latest application is to establish the correct percentage for the calculation of service charges. The Applicant states his percentage should be 0.59% as opposed to the 0.97% charged. The Applicant also seeks a refund of all over payments sought since 2011 to date, amounting to some £5,514.

4. The property is part of an extensive development of a former Victorian hospital and grounds, into an estate of 403 dwellings. Apartment 4 is a one bedroom flat within the building known as the Clock Tower, the original administration block.

5. The Applicant holds a tri-partite lease, with a management company (the First Respondent, HSCPM) responsible for the services and calculation of the service charge.

6. The lease gives a number of different percentages or proportions for the service charge and states that any of the said proportions may be subject to variation from time to time in accordance with Clause 7.14. The Applicant states that a charge of 0.97% for the Leasehold Estate Schedule was "foist upon us" in 2010, supposedly using the floor area of the apartment. When comparing his service charge with a fellow Clock Tower leaseholder in June 2018, he discovered their service charge proportion was 1.07%, for a much larger three-bedroom apartment. The applicant states that, correctly calculated, his proportion should be 0.59%. He had raised the issue with HSCPM but had made no progress in reaching an agreement, hence the application.

7. Directions were given on 19 August 2019 for the matter to be considered on the papers, unless either party requested a hearing. HSCPM were requested to provide their justification for charging 0.97% by 10 September 2019. HSCPM failed to comply with that date and a later extension, leading to a final order that they provide the information by 30 September 2019 or be debarred from taking further part in the proceedings under Rule 9(3) and (7) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

8. HSCPM finally wrote to the Applicant and the tribunal on 27 September 2019. That letter was rather unclear and appeared to suggest that the correct percentage for the property was in fact 0.9025%.

9. In the circumstances, the matter proceeded to a paper determination in the absence of a request for a hearing. The Applicant's bundle was received on 11 October 2019 and the First Respondent's on 28 October 2019. The latter bundle was accompanied by a letter of the same date from HSCPM which admitted that 0.59% was indeed the correct percentage but submitted that a refund of £4,910.92 was due as opposed to the Applicant's claim of £5,513.98. The tribunal requested that the parties agree the amount between them but neither felt able to do so.

10. In addition to the determination of the refund due, the Applicant has requested that the tribunal make an order under section 20 C of the Landlord and Tenant Act 1985 limiting the landlord's costs as part of the service charge and paragraph 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 in respect of any administration charge to be levied on the Applicant personally. He has also requested an order that the First Respondent pay his application fee of £100.

The refund due to the Applicant

11. Looking again at the parties' evidence, it is apparent that the First Respondent's figure of £4,910.92 is based on service charges demanded since 1 June 2012, as although the application runs from 1 June 2011,

the correct respondent for that first service charge year was Countrywide Management, a different company. In the circumstances although with some reluctance, the tribunal determines that the refund due from HSCPM is £4,910.92. This brings the account up to date as at 1 July 2019. The tribunal trusts that future service charges will be levied at the correct percentage.

Costs and fees

12. The Applicant's statement in reply in his bundle set out the basis for his application for orders under section 20C of the 1985 Act, paragraph 5A of Schedule 11 to the 2002 Act and a refund of his application fee of £100. In particular, he had taken every conceivable step to avoid having to make an application to the tribunal and the First Respondent had made no effort to resolve matters, despite the Applicant bringing the error to their attention in 2018.

13. The First Respondent eventually admitted their error in their letters dated 27 September and 28 October 2019. They did not respond to the Applicant's claim for orders limiting their costs or his claim for a refund of fees, other than to lay blame at the door of their predecessors, Countrywide. That said, their letter of 27 September 2019 accepted that they were advised of the error in respect of floor areas back in 2014 but still followed the schedule provided by Countrywide which had not been fully amended to reflect the correct floor area for all charges.

14. The tribunal considers that HSCPM have fallen well below the standard of a reasonably competent management company. They were put on notice as early as 2014 that there were errors in the floor area attributed to a number of properties, including number 4 the Clock Tower. Checking that the correct floor area has been used for the calculation of the service charge was a relatively simple matter but they failed to do so. They compounded this omission by failing to respond to the Applicant's queries since 2018 and have only admitted at the last possible moment in the proceedings that they had overcharged him by almost £5,000. In the circumstances the tribunal has no hesitation in finding that it is just and equitable for an order to be made under section 20C of the 1985 Act, so that the First Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

15. Although the tribunal has no information as to whether any administration charges have been levied against the Applicant in relation to these proceedings and it seems unlikely; for the avoidance of doubt, the tribunal also considers it just and equitable that an order is made under paragraph 5A of Schedule 11 to the 2002 Act so that the First Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal to the Applicant as an administration charge.

16. Finally, the tribunal also has no hesitation in ordering the First Respondent to repay the application fee of £100 paid by the Applicant within 28 days of the date of this decision. This order is made in accordance with Rule 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. Given the failure of the Respondent to engage with the issue earlier in the proceedings, despite being informed by the Applicant of his serious ill-health, the tribunal would also have considered making an order for costs under Rule 13(1)(b). If he so wishes, the Applicant can make an application for any costs he has incurred within 28 days of the date this decision is sent out.

Name: Judge Ruth Wayte

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 5A

Limitation of administration charges: costs of proceedings

5A (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.