



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

Case Reference : **MAN/16UD/LSC/2019/0060**

Property : **51 East Dale Street, Carlisle, CA2 5JX**

Applicant : **The Bulman Partnership**

Respondent : **Charlotte Thompson**

Type of Application : **S 27A of the Landlord and Tenant Act 1985**

Tribunal Members : **Judge P Forster
Mr W A Reynolds MRICS**

Date of Decision : **06 January 2020**

DECISION

Decision

1. The claim made by the claimant in the sum of £480 represented by way of a demand identified as a rent and service charge demand 1st April 2018 - 31st March 2019 fails in its entirety as the demand does not comply with the terms of the lease or the relevant legislation.

Introduction

2. The proceedings have been transferred to the tribunal from the County Court sitting at Carlisle under case number 051MC574 to determine whether the service charges claimed by the applicant for 2018/19, in respect of 51 East Dale Street, Carlisle, CA2 5JX (“the premises”) are payable and whether the charges are reasonable.
3. The premises is the subject of a lease dated 29 June 1990 (“the lease”) made between Gordon Boertien (“the lessor”) and John Stubbs and Sylvia Stubbs (“the lessee”) for a term of 999 years from 1 November 1989 which is registered at HM Land Registry under title number CU68586.
4. The claimant in the County Court proceedings is The Bulman Partnership (“the applicant”), a firm of residential property agents. It is not apparent in what capacity the applicant issued the proceedings or to whom the service charge that is claimed is payable.
5. The defendant in the County Court proceedings is Charlotte Thompson (“the respondent”) who appears to be an assignee of the property, holding under the terms of the lease.
6. The premises is identified in the lease as “*the flat parking space garden (if any) forming part of the property and ancillary rights set out in Schedule A [to the lease]*”. The premises appears to be one of twelve flats within the “property” as defined in the lease as “*the land edged green on the plan annexed ...and includes buildings and all other things at any material time annexed to that land or forming part of it*”.
7. The service charged claimed for the period 1 April 2018 to 31 March 2019 amounts to £480.00 calculated as follows:

Insurance	£160.00
Management fee	£200.00
Accounts	£40.00
Maintenance & Administration	£80.00
	<u>£480.00</u>

8. The tribunal issued directions on 2 September 2019. It considered that it is appropriate for the application to be determined on the papers without holding a hearing. If either of the parties wanted to attend a hearing, they were required to inform the tribunal in writing within 28 days. Neither party has requested a hearing and therefore the case will be decided on the papers alone.
9. Directions were given that required the applicant to provide a statement of case setting out the grounds of the application, specifying the amount of the service charge claimed and explaining by reference to the lease of the property the basis on which those charges have been applied, calculated and apportioned. The applicant was to produce all relevant court documents, the lease and any relevant lease variations, service charge accounts and budgets for the year in dispute, relevant notices, invoices and demands for payment, and any other document upon which the applicant relies. Within 21 days of receiving the applicant's statement of case, the respondent was required to provide a statement of case setting out her reasons for opposing the application. The respondent's statement of case was to identify the service charge costs or items which are in dispute and that was to be done by means of a schedule or spreadsheet. Within 14 days of receiving the respondent's statement of case, the applicant had permission to provide a short supplemental statement in reply.

The applicant's case

10. The service charges are agreed each year at an annual general meeting to which all the leaseholders are invited to attend. The respondent has never attended such a meeting. Service charges are maintained at an agreed level and only increased when necessary to meet increasing costs such as insurance, accountancy fees and maintenance requirements. Invoices are produced to show the amount and nature of expenditure undertaken. In the financial year 2018/19 maintenance included weed killing to the car park, replacement of letterboxes, window cleaning and cleaning of common areas. The managing agent's fee is shown in the accounts which also shows the costs of preparation of accounts and insurance. Service charge demands are issued at the beginning of each financial year with a breakdown of anticipated costs. The respondent did not object to the demand for 2018/19 when it was issued. Leaseholders are expected to pay the charges within 2 weeks of receipt of the demand and may pay in 2 equal instalments. The respondent is the only leaseholder to have raised any objections or to have failed to pay the service charge.
11. The respondent has been a persistent late payer of the service charge and the managing agent has spent much time requesting payments. Payments have been made irregularly and in arrears.

The respondent's case

12. The respondent is willing to pay £160.00 for insurance and £40.00 “*for the account charge as billed for, on agreement of a full settlement*”. She objects to the management fee of £200.00 because it is excessive in relation to alleged maintenance costs which only amount to £30.00. The rear yard is never weeded nor is it maintained, or repairs carried out. The windows and communal hallways are not cleaned. No proof has been provided that any maintenance services have been carried out. The respondent has not seen any invoices. The cost of the letterboxes claimed in 2018/19 were actually obtained about 4 years previously.
13. The respondent says that she offered in the early stages of the claim to settle the claim, by paying £250.00.

The Law

14. The relevant law is set out in the annex to this decision.

Lease Provisions

15. It is not in dispute that the respondent is liable to the lessor to pay 1/12th of the service charge as provided by the lease. The relevant provisions are set out in the lease and for the sake of accuracy, the position is as follows.
16. The lease contains a covenant by the lessor and their successors in title to observe and perform the obligations, stipulations and restrictions set out in Schedule D to the lease (clause 3). The relevant provisions in Schedule D require the lessor to insure and keep insured the buildings of the property against several specified risks (1) and to maintain the main structure of the buildings including the roofs, foundation, entrance halls and stairways (including the main entrance door) in good and substantial repair and condition (2). Further, the lessor is required to keep accounts of the expenses incurred in carrying out the covenants in the lease(5(a)) and the lessor's surveyor shall certify the total amount of the costs, charges and expenses for the period to which the account relates and the proportion due from the lessee (6). The lessor shall within 2 months of the date to which the account provided for in paragraph (6) or as soon thereafter as possible, serve on the lessee notice in writing stating the total proportion of the amount certified in accordance with paragraph (6). The lessor shall be entitled to employ a firm of reputable managing agents to manage the property paying for such services, the proper professional fees, and to employ contractors to carry out any of their obligations under the lease (8).

17. The lessee covenants in accordance with Schedule C of the lease to pay all rates, taxes, charges and other outgoings which may at any time be assessed charged or imposed on the premises (2). Under paragraph (13) of Schedule C, the lessee shall pay the lessor in advance on the 1st day of December and the 1st day of June in every year on account of the lessee's obligations under Schedule D such reasonable sum as shall be specified by the lessor's surveyor or managing agent to be 1/12th of the estimated amount of expenses which the lessor will incur in performance of their obligations under Schedule D.. The lessee shall pay to the lessor in respect of each year ending on the 31st day of May a sum equal to the aggregate of 1/12th all costs, charges and expenses incurred by the lessor in carrying out its obligations in Schedule D less the payment made under paragraph (13) and any excess should be refunded by the lessor to the lessee or credited against the next payment due.

In short, the respondent in this case is liable to pay the lessor by way of a service charge, 1/12th of the costs incurred by the lessor in carrying out their obligations under the lease. Payment is made in advance by 2 equal instalments on the 1st December and 1st June every year. The amount to be paid is the sum specified by the lessor's surveyor or managing agent. The respondent is liable to pay the lessor on 31st May each year, any balance that is due in respect of the actual costs incurred for the previous accounting period. Any excess payment should be repaid to the respondent by the lessor or credited against the next payment due.

Disputed Sum

18. The respondent admits that at least £200.00 of the claim for £480.00 is payable to the lessor. That would leave a balance to pay of £280.00. The amount in dispute is relatively small but the application must be determined strictly in accordance with the terms of the lease and with the relevant legislation.

The Tribunal's Deliberations

19. As a preliminary issue, the Tribunal considers that the applicant has failed to establish that it has any standing in these proceedings. It has failed to establish to whom the service charge is payable under the lease although the Tribunal notes that the demand appears to be issued in the name of Extraurban Property Management Ltd. It may be appropriate for that company to be substituted for the applicant in the County Court proceedings, subject to production of additional evidence.
20. The next matter to consider is the undated service charge demand which has been produced by the applicant. This simply states the period for which the charge is made, 1 April 2018 to 31 March 2019, and provides a figure, £480.00 broken down between insurance, management fee, accounts and maintenance

and administration. No further information is provided. The period referenced represents a 12-month period and is therefore suggestive of the fact that this demand may be intended to reflect sums actually expended in the period referenced. However, the Tribunal notes that the period referenced does not accord with any of the relevant provisions contained within the lease. The Tribunal also notes that under the lease the service charge is payable in advance in 2 equal instalments on 1st December and 1st June in each year with a balancing charge payable on 31st May following the relevant year. Accordingly, the Tribunal cannot determine how the demand complies with the terms of the lease nor, if it were compliant, when payment is due from the respondent as the demand itself is un-dated.

21. Furthermore, the demand does not comply with the requirements of the Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 as it does not include the necessary prescribed information.

Decision

22. On the evidence presented, the Tribunal finds as a matter of fact that the sum demanded does not accord with the terms of the lease, nor does it comply with the relevant legislation. The Tribunal therefore determines that the Demand the applicant seeks to rely upon is invalid and of no effect.

Comment

23. The Tribunal considers that the matter at dispute may be capable of remediation and to assist the parties, and with a view to avoid further litigation, the Tribunal will now consider the sum claimed from the respondent.
24. The applicant was directed to provide a statement of case that specifies the amount of the service charge claimed by reference to the lease and to explain the basis on which the charges have been calculated and apportioned. That was not done. Although the respondent took issue with the applicant's initial failure to produce a copy of the lease, a copy of a lease for another flat was provided, the actual lease was disclosed by the applicant when prompted by the tribunal.
25. The applicant has produced draft and undated management accounts for the year to 31 March 2019 prepared by accountants Dodd & Co for Extraurban Property Management Ltd. There is no explanation of what position this company has in relation to the claim. The Tribunal notes from Companies House information that the company's registered office address changed on 2 October 2019 to Wayside, Rickerby, Carlisle, CA3 9AA, which is also the address

of The Bulman Partnership. P J Bulman is the company secretary. He was until 17 July 2018, a director of the company.

26. Following receipt of the respondents submission but outside of the timescale in which the applicant was directed by the Tribunal that it may provide a short supplemental statement, the applicant provided a variety of additional information to the Tribunal to include the following:
27. The applicant has produced 8 invoices from Graham Forsyth Property Services which appears to be the trading name of GMT Cleaning Ltd 456228. addressed to The Bulman Partnership for the period August 2017 to February 2019. Of those invoices, 5 fall within the draft management accounts period of 1st April 2018 to 31st March 2019 and total £375.00. Similarly, 5 invoices fall within the 12-month period to 31st May 2019 and also total £375.
28. 2 invoices have been produced from C & E Steel with a description stating: 'Weed killing East Dale Street', but it is not clear to whom they are addressed. They state that they relate to 26th April 2018 and 24th September 2018. A further invoice from Graham Forsyth Property Services dated 5th March 2018 references a double spray weed spraying carried out on 5th October. Of those invoices, 1 falls within the draft management accounts period of 1st April 2018 to 31st March 2019 and totals £70.00. However, only one of the invoices falls within the 12-month period to 31st May 2019 and totals £30.
29. 1 invoice has been produced from Graham Forsyth Property Services addressed to The Bulman Partnership dated 5 November 2018 in respect of the supply and fitting of 2 letterboxes at a cost of £130.00. In addition, there is an invoice from the same company dated 30 January 2019 for checking a front door lock, removing and cleaning the lock and refitting at a cost of £45.00. The Tribunal has not had the benefit of inspecting the property and assumes these letterboxes and the lock form part of the main entrance door to the buildings for which the lessor has responsibility. These charges fall within the period covered both by the draft management accounts and the 12-month period to 31st May 2019.
30. 3 invoices have been produced from A Lee Window & General Cleaning Contractors Ltd. addressed to The Bulman Partnership for the period March 2018 to November 2018 for window cleaning at a total cost of £120.28. Of those invoices, 2 fall within the draft management accounts period of 1st April 2018 to 31st March 2019 and total £80.97. Similarly, 2 invoices fall within the 12-month period to 31st May 2019 and also total £80.97.

31. The draft undated management accounts produced by the applicant do not reflect the service charge period referenced in the lease, nor do they support the sums claimed from the respondent. The claim has not been certified by the lessor's surveyor.
32. Based on the invoices produced by the applicant, the total amount that falls within the draft management accounts period of 1st April 2018 to 31st March 2019 is £700.97 whilst the total amount that falls within the 12-month period to 31st May 2019 is £660.97. Both figures are less than the amounts shown in the draft management accounts which show a total of £1,076.00 for property repairs, sundry expenses and cleaning. Based on £700.97, 1/12th amounts to £58.42 whilst based upon £660.97 1/12th amounts to £55.08. Both figures are less than the £80.00 claimed.
33. The applicant has not produced any evidence about the payment of insurance premiums, but this item is not challenged by the respondent. The draft management accounts include a figure of £1,772.00 for insurance. The proportion payable by the respondent is 1/12th which would equate to £147.66, which is less than the £160.00 claimed from her.
34. Under the lease, the lessor is able to employ the services of a managing agent and to pay proper professional fees for the service provided. A standard management charge would typically be between 10 and 15% of the expenses. In this case that would be £324.80 and £487.20 based on the expenses of £3,248.00 that are identified within the draft management accounts. The respondent has been charged £200.00 which at 1/12th is equivalent to £2,400.00. In the draft management accounts, a figure of £2,400.00 is given for "*commissions payable*"
35. In the draft accounts, accountancy fees amount to £400.00. at 1/12th that would amount to £33.34 which is less than the £40.00 claimed.
36. The Tribunal's narrative as outlined above identifies clear discrepancies as to the amount claimed whether by reference to the period covered by the draft management accounts or to the 12-month period that the lease references with respect to service charges. It also identifies that, in the Tribunal's opinion, the proper professional fees that might be considered reasonable in respect of the management service provided should be significantly less than those demanded.

Conclusion

37. The service charge claimed is fatally flawed by the failure to comply the terms of the lease and the relevant statutory requirements. Therefore, the tribunal must determine that, on the evidence presented, the respondent is not liable to pay the lessor any sum in respect of the service charge claimed for 2018/19.
38. The tribunal has no jurisdiction to consider any application under s.20C of the Landlord and Tenant Act 1985 from the respondent to make an order stopping the lessor recharging their costs associated with these proceedings by recharging them through the service charge. In this case, costs are a matter for the County Court.

06 January 2020

Judge P Forster

ANNEX

S.18 of the Act defines “service charges” and “relevant costs”:

- (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.

S.19 of the 1985 Act deals with limitation of service charges:

- (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 provision 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.

S.27A of the 1985 Act deals with the liability to pay service charges:

- (1) An application may be made to a leasehold valuation 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.

S.18 of the Act defines “service charges” and “relevant costs”:

- (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.