



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

Case Reference : **MAN/00DA/LSC/2019/0081**

Property : **82 Merchants Quay
East Street
Leeds
LS9 8BB**

Applicant : **Merchants Quay Management
Company Limited**

Representative : **Leasehold Debt Recovery**

Respondent : **Robert James Berry**

Representative : **N/A**

Type of Application : **Landlord and Tenant Act 1985 – s27A**

Tribunal Member : **Judge J Holbrook**

**Date and venue of
Hearing** : **Determined without a hearing**

Date of Decision : **23 March 2020**

DECISION

DECISION

In respect of the service charge year which ended on 31 March 2019, the Respondent is liable to pay service charges to the Applicant in the sum of £2,379.02.

REASONS

Background

1. By order of District Judge Goldberg sitting in the County Court at Leeds on 23 September 2019, the Tribunal is required to make a determination as to whether service charges in respect of 82 Merchants Quay, East Street, Leeds LS9 8BB (the Property) are payable and/or reasonable. The period in respect of which a determination is required is the service charge year which commenced on 1 April 2018 and ended on 31 March 2019.
2. The Applicant in these proceedings is Merchants Quay Management Company Limited and the Respondent is Robert James Berry. The Respondent owns a long leasehold interest in the Property which he holds under a lease dated 18 August 2000 which was made between Crosby Homes (Yorkshire) Ltd (1) the Applicant (2) and Harvey Harris (3) (the Lease). The Applicant is the management company in respect of the development which includes the Property, and is party to the Lease for that purpose.
3. On 4 December 2019, the Tribunal issued directions for the conduct of the proceedings. Noting that the claim in the County Court concerns administration charges as well as service charges, the directions stated that the Tribunal would make a determination in respect of both. However, in response to those directions, the Applicant submitted that the terms of the referral from the County Court were such as to limit the Tribunal's jurisdiction to the question of service charges. After inviting the Respondent to make written representations on the matter, I decided it as a preliminary issue: by letter dated 3 March 2020, the parties were informed that I accepted the Applicant's argument and that the Tribunal's task would therefore be limited to determining the Respondent's service charge liability for the service charge year in question.
4. The Tribunal's original directions had also notified the parties that the substantive application would be determined on the basis of written representations alone, without an oral hearing, unless either party gave notice that they required an oral hearing to be held. No such notice was received. I have therefore determined the matter without a hearing, but taking account of the written representations and supporting documentary evidence provided by the parties.

5. I did not inspect the Property, but I understand it to comprise a residential apartment forming part of a larger residential development.

Law

6. Section 27A(1) of the Landlord and Tenant Act 1985 provides:

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.*

7. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

8. The meaning of the expression “service charge” is set out in section 18(1) of the 1985 Act. It 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.*

9. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

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.

10. “Relevant costs” are defined for these purposes by section 18(2) of the 1985 Act as:

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.

Determination

11. I have inspected a copy of the Lease and I note that it contains an obligation on the part of the management company to repair and insure the building which includes the Property, and to maintain communal facilities on the wider development. There is a corresponding obligation on the part of the tenant to reimburse the management company for 0.73% of the costs of doing so. I find that any amounts payable under the relevant provisions of the Lease are service charges for the purposes of the 1985 Act.
12. According to the unaudited accounts for the 2018-19 service charge year, the total amount incurred by the Applicant in the provision of services was £348,872. That would suggest that the Respondent's service charge contribution for the year should be £2,546.77. However, I note that, in its statement of case, the Applicant asserts that a smaller annual contribution is payable; namely, £2,379.02. The reason for this discrepancy is not immediately apparent to me but, given that it works in the Respondent's favour, I am content to adopt the figure stated in the Applicant's statement of case as a starting point. The question, then, is whether the Respondent has raised any valid challenge to the payability of that amount, or to the reasonableness of the service charge expenditure which it reflects.
13. In my judgment, the Respondent has not raised such a challenge. In seeking to defend the Applicant's claim, the Respondent acknowledges that he has not paid all the service charges demanded of him. However, he says that he has suffered a loss of rental income in recent years, as well as court fees and other expenses resulting from flood damage to the Property. None of these matters detracts from the Respondent's obligation to pay service charges in accordance with the provisions of his Lease, and none of them justify him withholding payment of sums properly due.
14. The service charge accounts provide a breakdown of the expenditure to which the service charge relates. I note that the Respondent does not dispute the reasonableness of that expenditure and, based on such information as has been provided to me, it is within the range which my knowledge and experience would lead me to conclude is reasonable in the circumstances. I therefore determine that expenditure to be reasonable and service charges to be payable as claimed by the Applicant. I note that some of those charges have been paid. The extent to which any of amount remains unpaid is a matter for determination by the County Court, not by the Tribunal.

Judge J Holbrook
23 March 2020