FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/30UN/LIS/2019/0003**
Property	**:**	**22 Chestnut Gardens, 10 Firbank, Bamber Bridge, Preston, PR5 6SU**
Applicants	**:**	**Brownedge Management Company Ltd.**
Representative	**:**	**Keith Jones Partnership, Solicitors**
Respondents	**:**	**Mr M Gibbons**
Type of Application	**:**	**Landlord and Tenant Act 1985, s.27A, Commonhold and Leasehold Reform Act 2002, Sch. 11(5)**
Tribunal Members	**:**	**Professor Caroline Hunter** **Ms Jenny Jacobs MRICS**
Date of Decision	**:**	**31 January 2020**

DECISION

Summary Decision

1. The Tribunal:
    a. Finds that administration charges are payable by the respondent for 2016;
    b. Finds that the reasonable amount payable for those charges is £2000;
    c. Finds £172.40 of service for 2017 charges are **not** payable by the respondent;
    d. Makes **no** order under the Landlord and Tenant Act 1985, s.20C or the Tribunal Procedure (First-tier) (Property Chamber) Rules 2013, reg.13.

Application

2. By order of Deputy Circuit Judge Burrow sitting at the County Court at Manchester on 3 July 2019, the Tribunal was required to make a determination as to whether services charges and administration charges in respect of 22 Chestnut Gardens, 10 Firbank, Bamber Bridge (the property) are payable and/or reasonable.

3. Further to directions from the Tribunal, the applicants provided a statement of case and a bundle. Two responses from the respondent were also send to the Tribunal.

4. The Tribunal considered that it was appropriate for the application to be determined on the papers. None the of parties request a hearing, and this decision is made on the papers.

Background

5. The applicant in this case is Brownedge Management Company Ltd. (the applicant). The applicant is the named service company in a lease between Barratt Homes Ltd and the respondent, Mr Gibbons. The applicant is Mr Gibbons who is the non-residential owner of the property.

6. In 2016 Mr Gibbons was in arrears of his service charges and the applicant applied to the County Court for an order for those arrears. We have not been provided the details of the claim, but we have a transcript of the hearing in front on District Judge Molyneux on December 2, 2016. From that is appears that the originally arrears were £969.84, but by the time of the hearing only £162.34 was payable, plus costs of £247. That made a total of £407.34.

7. On 9 November 2018, the applicants made a claim in the County Court for a debt of £3172.40 plus interest and fees (in total £3955.11), for non-payment of service charges from 2017 (£172.40) and non-payment of administration charges arising from the previous case in 2016 (£3000).

The lease

8. The lease is in a common format. The lessee (ie Mr Gibbons) covenants to pay a proportion of the "Maintenance Costs" and the "Building Services Costs" – see the particulars and definitions and the Fourth Schedule, Part II. The lessee also covenants to pay quarterly on account of those charges "as the Company its managing agents or accountants from time to time and at any time shall specify at its or their discretion to be a fair and reasonable sum."

9. The Company, ie the applicant, covenants are in the Sixth Schedule. These include to repair and improve the Gardens and Grounds, insurance, and repair and decoration of the common parts and the structure of the building. In particular in para. 7 at Part I the lessee covenants to:
"To pay all legal and other proper costs incurred by the Company:
(a) In running the management of the Gardens and Grounds and in the enforcement of covenants on the part of the Tenant…."
And in para. 11:
"To pay the legal and other costs of seeking a declaration that the Interim Maintenance Charge or the Maintenance Charge are reasonable."

10. The Eighth Schedule sets out Company's expenses and outgoings and other heads of expenditure that the lessee covenants to pay in the "Building Services Costs". These include:
"Para . 1: All costs and outgoings whatsoever incurred by the Company in and about the discharge of the obligations on the part of the Company set out specifically in Part II of the Sixth Schedule hereto and the cost of providing any additional service pursuant to paragraph 9 of Part II of the Sixth of the Sixth Schedule hereto.
Para. 6: The fees of the Company's Managing Agents for the general management of the Block.
Para. 9: All fees charges expenses and commissions payable to any Solicitor Accountant Surveyor or Architect who the Company may from time to time employ in connection with the management and/or maintenance of the Block."

The Law

11. The applicable statutory provisions are set out in the Appendix of this decision. In summary, the applicant alleges the service charges are payable under the lease and the Landlord and Tenant Act 1985 (the 1985 Act), and the same for the administration charges under the Commonhold and Leasehold Reform Act 2002, Schedule 11 (the 2002 Act). In effect we are being asked to decide whether the service charges are payable under the lease at all (1985 Act, s.27A) and whether they are reasonable both in being incurred and in relation to the standard provided (1985 Act, s.19). In relation to the administration charges we must decide if the charges are payable at all (2002 Act, Sch. 11, para. 5) and whether they are reasonable (2002 Act. Sch. 11, para. 2).

Administration Charges

12. As the bulk of the claim is administration costs we will dealt with that first. As noted above the dispute dates back to 2016, when the applicant took action in the County Court against Mr Gibbons for non-payment of service charges.

13. Mr Gibbons, has in accordance with the Tribunal's directions, sent three statements dated 20 August 2019, 15 October 2019 and 20 December 2019. Some of his comments are not relevant, as the applicant has commented in their responses. In particular the fact that values on properties in the development have dropped and the fact that Andrea Ball who runs the applicant company is a flat owner are not

matters relevant to our decision. However, there are other matters that are relevant for us to consider.

14. The issue for us are:
    a. If administration costs are payable at all under the lease
    b. Even if payable, did the 2016 claim settle the matter
    c. Did the court in 2019 strike-out the case?
    d. Finally, if payable, are the charges reasonable under the 2002 Act, Sch. 11, para. 2.

Are the charges payable under the lease?

15. Mr Gibbons has not suggested that the administration charges are not payable under the lease. However, it is a matter we should consider. We have set out the relevant part of the lease above. In our view these clauses are broad enough to cover the costs claimed.

Did the 2016 case settle the matter?

16. Mr Gibbons suggests that the 2016 case was settled and any further hearing is an abuse of process (see paras. 5 and 6 of August statement, paras. 6 and 7 of the October statement and para. 9 of the December statement). As noted above the decision included some costs, but limited to court fees of £60 and £115 and solicitors' fees of £70. The extent of the costs was covers in the transcript. On the pages 2 and 3 there is an exchange between the judge and Mr Gibbons about further charges for extra invoices.

17. The judge on 3 page of the transcript states that this is not part of today's claim and continues:
    "Now, obviously there is a clause in the lease as I understand it which requires you compensate [the company] against any fees they reasonably incur in chasing after people who they say owe money on the maintenance charges, all right? So that is where that comes from. But is not part of this claim, because this was issued just for the maintenance charge…"

18. In our view it is clear from this, that the 2016 case did not settle the administration charges for the case and the applicant was able to claim separately for them.

Did the court in 2019 strike out the matter?

19. In Mr Gibbons' statement on October 2019 he suggests at paras. 6 and 7 that the claim in 2019 was struck out. See also para. 9 of the December statement. This seems to be a misunderstanding by Mr Gibbons based on an interim decision by the Court on 9 March 2019. The subsequent order on 3 July 2019 gave the Tribunal the power to decide the issue.

Are the costs reasonable?

20. The final issue is whether the charges are reasonable under Commonhold and Leasehold Reform Act 2002, Schedule 11, para.2. The administration charges are said to have been incurred in bringing the 2016 case. The original invoice on 24

August 2016 is for £3000 based on 75 hours work @ £40.00 (see p.34 of the bundle). On page 56 of the bundle the applicant has detailed the work carried out between May – December 2016 when the case was heard. Some of the work arose from the fact that the applicant did not have an up-to-date address for Mr Gibbons. The matter was originally listed in Preston County Court. The case was moved to Manchester then moved back to Preston. The other costs are for work by the agents in progressing the case and meeting with solicitors.

21. Mr Gibbons, in response, suggests that communication and correspondence from the applicants has always been poor and or sporadic. There is no evidence of this – for example we have been provided with the letter and other information provided to Mr Gibbons for the 2017 invoice. As the applicant notes it is for Mr Gibbons to provide an up-to-date address to the Company.

22. In his December statement (para. 10), Mr Gibbons challenges the amount and rate to the work by Ms Ball. He also comments that there is no contemporaneous evidence of this, and suggested that the Tribunal treat this evidence as hearsay.

23. The Tribunal reminds itself that it has to deal with matters in accordance with rule of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) rules 2013, which provides that the Tribunal must deal with a case fairly and justly and in ways which are proportionate to the case. We consider that sufficient evidence has been provided by the applicants. On the other hand, it is important that charges are reasonable in terms of the balance between the amount claimed and the costs spent. They should be proportionate. The original claim was for £969.84 and a month before the hearing had reduced to less than £200.

24. Taking the picture in the round, we consider that a reasonable amount for administration charges for the case is £2000.

Service charges

25. Mr Gibbons suggests that the service charges claimed (£172.40) were paid in 2017 as part of the settlement of the 2016 claim. The applicants say that is not correct but have arisen subsequently in 2017. The invoice for services charges in 2017 was for £950.08 plus an extra charge for 'None Cleared Balances' of £80.00 (see p.49 of the bundle). In fact, in 2017 Mr Gibbons paid a total of £990.98 (see p.50 of the bundle).

26. Because the account was not clear at the beginning of the year, it is not clear from the paperwork submitted if there are further arrears, unpaid arrears from 2016, or indeed, as seems perfectly possible, no arrears at all.

27. We have been presented with statements for Mr Gibbons from 2016 to August 2019 (bundle pp.52-54). This show a regular payment from May 2016 from Mr Gibbons but a deficit on the account of £3929.35. These tally with the bank account that Mr Gibbons provided with his 20 December statement. The deficit is largely the invoice of £3000, plus further invoices for arrears and court costs in 2016 and 2018 (for the

current case) of about £870. On-going payment since August by Mr Gibbons for the 2019 invoice have no doubt reduced the deficit further.

28. On the evidence presented, we are not satisfied that Mr Gibbons owes further service charges for 2017.

29. It is clearly in everybody's interest to bring the saga of litigation to an end. There are further administration charges that Mr Gibbons that owes. We urge the parties to settle those and move to a clear account.

Costs

30. Mr Gibbons made an application for an order pursuant to s.20C of the 1985 Act, on the basis the charges were excessive. He also seeks "compensations on an enhanced basis for the undue distress and inconvenience by the vexatious and frivolous claims for costs by the applicant". The Tribunal has power to make an order for costs under regulation 13 of the Tribunal Procedure (First-tier) (Property Chamber) Rules 2013.

31. We do not make an order under s.20C or reg.13. It is clear that most of the failings in the case are Mr Gibbons'. He needs to ensure that he notifies the company of any change of address. If he is not satisfied with the work of the company he can attend the AGM and generally be more involved in its activities.

RIGHTS OF APPEAL

32. 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.

33. 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.

34. If the person wishing to appeal does not comply with the 28 day time limit, that 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.

35. 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.

Professor C Hunter
31 January 2020

Appendix – relevant legislation

1. Landlord and Tenant Act 1985

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 leasehold valuation tribunal, the First-tier 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 a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the 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.

2. Commonhold and Leasehold Reform Act 2002, Schedule 11

Paragraph 2
A variable administration charge is payable only to extent that the amount of the charge is reasonable.

Paragraph 5.
(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).