



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

Case Reference : CHI/29UN/LSC/2020/0010

Property : Basement flat, flat 3 and flat 4
9 Carroways Place, Addington Street, Margate,
Kent, CT9 1QX

Applicants : Claire Blackwell, Dr Fiona Sheriff, and
David and Susan Homewood.

Respondents : The Ground Rent Trust Limited

Representative : Moreland Estate Management

Type of Application : Liability to pay service charges and/or
administration charges.

Tribunal Members : Judge S Lal, Mr R Athow FRICS, MIRFM

**Date and venue of
Hearing** : 26th May 2020, Judge's home

Date of Decision : 27th May 2020

DECISION

Application

1. This is an application by the leaseholders of the basement flat 1, flat 3 and flat 4 of 9 Carroways Place (“the Property”) for a determination as to the payability of service charges for the period from 1st January 2019 to 31st December 2019. The Applicants have also made a Section 20C Landlord and Tenant Act 1985 application asking the Tribunal to make an order that costs incurred by the Respondent in connection with these proceedings are not to be included in the service charge expenditure payable by the Applicants.

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2. Two recent Tribunal decisions are relevant to this case. The first decision was on 13th January 2014. The Tribunal was asked to consider whether the applicant (Dr Fiona Sherriff) of flat 4 was liable to pay an administration charge in the sum of £125 for each of the years 2009 to 2012 or whether she was only liable to pay a 30% proportion of that charge. Judge Agnew determined that the administration charge was in reality a service charge as defined in Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as it is payable for the “landlord’s costs of management’. Judge Agnew further determined on the true construction of the wording of the lease that Dr Sherriff was liable to pay 30% of the £125 charge rather than the whole amount.
3. The second decision was on 31st October 2019. The Tribunal was asked to consider, inter alia, the payability of the service charges for the same period being considered in this application (namely 1st January 2019 to 31st December 2019) but in respect of flat 2. Judge Dovar concluded on the facts that a lower figure of £190.54 was payable by the leaseholder of flat 2 in respect of this service charge period rather than the sum of £788.41 initially demanded by the Respondent. Judge Dovar also make a Section 20C order in favour of the leaseholder of flat 2. The Applicants have indicated that the Respondent is not willing to apply the judgement for flat 2 to the other three flats.
4. The application is to be determined on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013.
5. The Property is part of a converted building comprising four flats
6. Each of the three Applicants have submitted a bundle of paperwork in respect of the application. The Respondent has not submitted any paperwork in response.
7. The Applicants submit that the Tribunal decision of 31st October 2019 should be applied to the basement flat and flats 3 and 4 in the same manner as it was applied to flat 2. The first Applicant, Claire Blackwell, sums up the position of the Applicants in her letter of 19th December 2019 to the Respondent’s representative and her statement of case, referring specifically to the First Tier Tribunal decision in respect of flat 2.
8. In his decision of 31st October 2019, Judge Dovar determined, when referring to the service charge demand for the period in question, that “the budgeted amount for the year end 2019 appears high”. He went on to consider each aspect of the service charge in detail and determined that a figure of £1,905.29 was more reasonable. He then determined that the leaseholder of flat 2 should only be obliged to pay its percentage of this amount in service charge for the period in question.

9. The first Applicant has pointed out that the Right to Manage of the Property came into effect on 15th August 2019. This means that the figure for service charge of £1905.29 decided by Judge Dovar should be apportioned as the service charge should only apply for 226 out of 365 days in the year, resulting in a figure of £1,179.71 payable in service charge by the four flats for the period in question.

The Decision

10. The Tribunal has reviewed the documentation provided together with the statements from each of the Applicants and the two Tribunal cases referred to in the bundle. The Tribunal has also considered the terms of the leases and the obligations of the parties thereunder together with the statutory provisions that are relevant to this issue.
11. The Tribunal has had proper regard to the decisions of Judge Agnew in his decision of 13th January 2014 and Judge Dovar in his decision of 31st October 2019. Although not binding in the strict sense, the principle of judicial comity applies. Furthermore, those decisions were not appealed or challenged. The Tribunal therefore finds in favour of the Applicants as follows. These sums are on account demands.
 - (a) In respect of the basement flat 1, the Tribunal finds that Claire Blackwell has no liability to pay service charge for the period 1st January 2019 to 31st December 2019 having already paid £360 to the Respondent's representative. Her liability for service charge for this period, following Judge Dovar's decision, is £353.91 and this has been paid by Claire Blackwell.
 - (b) In respect of flat 3, the Tribunal finds that David and Susan Homewood's liability to pay service charge for the period 1st January 2019 to 31st December 2019 is £353.91. The Respondent is ordered to repay Mr and Mrs Homewood the amount overpaid by them in respect of service charge. In addition, applying Judge Agnew's decision of 13th January 2014, only 30% of the administration charge should be payable by Mr and Mrs Homewood and the Respondent is not entitled under the Lease to charge for arrears letters so these amounts should also be refunded to Mr and Mrs Homewood.
 - (c) In respect of flat 4, the Tribunal finds that Dr Fiona Sheriff's liability in respect of service charge for the period 1st January 2019 to 31st December 2019 is £353.91 plus 30% of the administration charge. The Respondent is not entitled under the Lease to charge for arrears letters.

12. The Tribunal makes a further section 20C order prohibiting the Respondent from seeking any costs of this application through the service charge. The Respondent has failed to engage and the making of such an order is consistent with the Tribunal's decision. The Tribunal also makes an order for the reimbursement of the Applicant's fee in this matter.
13. 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. 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.
14. If the person wishing to appeal does not comply with the 28-day time limit, the 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.
15. 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.

Judge S. Lal