



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) & IN THE
COUNTY COURT at GUILDFORD**

Case Reference : **BIR/00CQ/LIS/2020/0021P**
Court Claim Number : **G1CW252E**
Property : **8 Thornton Court, Coventry, CV4 9DS**
Applicant : **Samnas Limited**
Applicant's Representative : **JB Leitch Solicitors**

Respondent : **Juniper Property Company Limited**
Respondent's Representative : **None**

Type of Application : **(1) Liability to pay and reasonableness of service charges and administration charges**
(2) Liability to pay ground rent
(3) Liability to pay interest
(4) Liability to pay contractual costs
On transfer from the County Court At Guildford

Paper Hearing : **16 September 2020**

Tribunal : **Tribunal Judge Mr.P. J. Ellis**
Tribunal Member Mr G.S. Freckelton FRICS
County Court : **Tribunal Judge P.J. Ellis (sitting as a Judge of the County Court District Judge)**
Date of Decision : **2 October 2020**

DECISION

Decisions by the First-tier Tribunal

- 1. The service charges of £1098.18 and 1049.33 for service charge years 2018-19 & 2019-20 respectively are reasonable and payable although the Respondent has paid all sums due for service charge years 2018-9 and 2019-20.***
- 2. Administration charges in the sum of £125.00 are reasonable and payable being five charges of £25.00 each but no further sum is payable***
- 3. The Respondent is susceptible to an order to pay costs on a contractual basis but the Tribunal makes no order for costs in this case as all sums due from the Respondent were paid before the issue of proceedings.***

Decisions made by the County Court

Judgment for the Applicant for the sum of £162.50 unpaid ground rent and associated administration charges

Defendant's counterclaim is dismissed.

Interest at 4.00% as provided for in the lease from the date of demands for service charges to the date of judgment in the sum of £7.05 and continuing at £0.02 per day

Fixed costs of £185.00.

Introduction

1. This is a claim for unpaid ground rent, service and administration charges and associated claims for interest and costs on a contractual basis. There is defence and a counterclaim for an unpaid invoice claiming administration and management expenses.
2. Samnas Limited (the Applicant) of Marlborough House, Wigmore Place, Wigmore Lane, Luton, LU2 9EX is the freehold proprietor of a residential development known as Thornton Court 320 Tile Hill Lane, Tile Hill Coventry (the Development). Juniper Property Group is the leasehold owner of 8 Thornton Court (the Property). Samnas Limited commenced proceedings on 30 January 2020 with a money claim in the County Court. The particulars of claim alleged failure to pay ground rent, service and administration charges

due in the sum of £1,192.81. In addition, interest of 8% was claimed in the sum of £254.98 at the date of issue and continuing at the daily rate of £0.27. There was a further claim of legal costs incurred to the date of issue in the sum of £1,014.00. The total claim at the date of issue of proceedings was £2,461.79 and court fees of £105.00 and fixed costs of £80.00. The sum of £1192.81 comprised £237.50 ground rent and £955.31 unpaid service and administrative charges.

3. On 17 February 2020 Juniper Property Company Limited (the Respondent) issued a defence and counterclaim. The defence alleged the claim was an abuse of the court process and counterclaimed the sum of £1,439.00 which it described as “fake administration and legal fees plus costs interest and expenses incurred in defending this false claim”.
4. On 18 February 2020 the matter was transferred to the County Court at Guildford.
5. On 3 March 2020 the Applicant served its reply to the defence and defence to the counterclaim.
6. On 17 April 2020 District Judge McCulloch sitting at the County Court at Guildford referred the matter to the First-tier Tribunal. On 23 June 2020 the Tribunal issued directions for determination of the service and administration charges and a further direction that a Tribunal Judge sitting alone will determine all outstanding matters before the County Court including the counterclaim, ground rent, contractual entitlement to costs and interest.
7. The Tribunal’s Directions included a direction that the Respondent should decide by 5 July 2020 whether to initiate applications relating to the cost of proceedings under s20C of the Landlord and Tenant Act 1985 and paragraph 5A Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Appropriate application forms were sent to the Respondent on 25 June 2020, but they were not returned.

The Issues

8. There is no dispute that services were provided or that the charges were reasonable. The claim relates to the allegation that money is due from the Respondent to the Applicant in respect of the services and ground rent. The claim for service charges includes administration charges levied from time to time by the Applicant as and when it appeared to it that the Respondent was in arrears.
9. In the parties Statements of Case, filed in accordance with the Tribunal's directions, bank statements and ledgers were produced setting out payments made and received. The Tribunal has had regard to the records adduced in order to reconcile the differing positions.
10. In summary the Respondent alleges the Applicant has failed to manage the account properly and describes the Applicant as being guilty of false accounting. It contends there was no money due at the time of issue of proceedings. It further contends that the Applicant has not complied with the direct debit arrangements made by it to discharge payments due. The sum counterclaimed is not fully particularised nor is it explained how the charge was incurred.

The Lease and its management

11. The Property is held pursuant to a lease made 16 January 2006 between Barteak Developments Limited and Fairfield Investments Limited for a term

of 125 years from 1 January 2005. The Respondent acquired the lease on 15 July 2014. The Applicant acquired Thornton Court on 16 September 2009.

12. The Applicant has appointed FirstPort Property Services as its managing agent with responsibility for the provision of services and demands for and collection of service charges.
13. The Applicant appointed Estate and Management Services Limited as an agent with responsibility for the demand and collection of ground rent.
14. As the issue in this case relate to the account between the parties it is not necessary to recite the terms of all clauses in the lease relating to the services provided by the landlord or the calculation of the service charges other than to note that the lease contains appropriate terms regulating the respective obligations.
15. Clauses relevant to the dispute are:
 - a. At clause 3.1.1 the tenant covenants to pay the annual rent by half yearly payments in advance on the first day of March and September in each year.
 - b. By clause 3.1.2 the tenant is liable to pay interest at 4% above base lending rate in respect of any sums due from the tenant and unpaid for fourteen days whether formally demanded or not.
 - c. Clause 7.12 prohibits the tenant making any counterclaim or set-off against any payments due to the landlord.
 - d. Paragraph 1 of the Fifth Schedule requires payment for service charges by equal quarterly payments in advance.
 - e. Clause 3.8 is the tenants covenant to pay all costs charges and expenses including solicitors, counsel and surveyors costs and fees at any time during the term incurred by the landlords in or reasonable

contemplation of any proceedings in respect of the lease under sections 146 and 147 of the Law of Property Act 1925.

The Parties Submissions

16. The Applicant's Statement of Case is supported by a witness statement of Mr Daniel Blakeman a Property Manager employed by FirstPort Property Services. He avers he has read the document and all annexes. The Respondent's evidence is given by its managing director Mr Adrian Michael Standing.

A. Service Charges

17. The Applicant's claim in relation to the service charges is that the statement of account annexed to the statement and verified by Mr Blakeman demonstrates that at the date of issue of these proceedings the sum due and unpaid was £955.31. The account shows the last payment made by the Respondent was the sum of £91.25 by BACS on 1 August 2019. On that date

there was a balance due of £374.88. thereafter the following sums were debited to the account:

Date	Item	Sum	Balance
14 August	Legal Review Fee	60.00	434.88
11 September	Service charge year		
	End adjustment	-10.87	424.21
1 October	Quarterly Service		
	Charge	265.55	689.76
1 January	Quarterly Service		
	Charge	265.55	955.31

18. The statement of account was prepared by FirstPort on behalf of the Applicant. The sum includes five debits each of £60.00 as administration or legal review fees.

19. In its Statement of Case the Applicant states the Respondent has made the following payments

28 February 2020	£547.50
30 April 2020	£182.50
01 May 2020	£91.25
01 June 2020	£91.25
01 July 2020	£91.25
Total	£1003.75

20. The Applicant has placed the sum in the holding account. As it exceeds the amount of claim, the Applicant has invited the Respondent to give instructions that the sum may be applied in the discharge of the debt.

21. By its evidence the Respondent exhibited copies of bank statements from NatWest bank. The statements are summaries of movements on the business account of the Respondent. Each page of the statement shows payments to the

account of FirstPort in calendar years 2017 to 2019 with two payments in November and December 2016 and payments to 27 July 2020.

22. The Tribunal examined the bank statements itself. As the hearing was based on the papers submitted by the parties, witnesses were not examined on the Tribunal's observations of the statements. The Tribunal noted that in addition to the payments described by the Applicant there were further movements on the Respondent's bank account with FirstPort as follows:

i.	02 September 2019	Paid Out	91.25
ii.	26 September 2019	Paid In	-91.25
iii.	26 September 2019	Paid Out	91.25
iv.	01 October 2019	Paid Out	91.25
v.	15 October 2019	Paid Out	91.25
vi.	21 October 2019	Paid Out	91.25
vii.	01 November 2019	Paid Out	91.25
viii.	14 November 2019	Paid In	-91.25
ix.	14 November 2019	Paid Out	91.25
x.	02 December 2019	Paid Out	91.25
xi.	02 January 2020	Paid Out	91.25
xii.	03 February 2020	Paid Out	91.25
xiii.	02 March 2020	Paid Out	91.25
xiv.	17 March 2020	Paid Out	91.25
xv.	30 March 2020	Paid In	-91.25
xvi.	01 April 2020	Paid Out	91.25
xvii.	17 April 2020	Paid Out	91.25
xviii.	21 April 2020	Paid Out	91.25
Total Additional Payments			£1368.75

Of that sum nine payments of £91.25 were not accounted for in calculating the sum due at the date of issue of proceedings. There is no explanation from the Respondent why so many payments were made or what they are for. However,

as each payment was made to FirstPort they must have been made on account of service charges.

23. The Respondent's submissions include claims that the Applicant had mismanaged the account earlier than the service charge years 2018 and 2019 being the basis of the Applicant's claims. It referred to a failure to manage direct debits established between the parties and averred some payments were wrongly applied to a third party. However, the statement of account presented by the Applicant shows that a payment of £1686.04 was made to clear arrears accumulated to that date.
24. With effect from 1 February 2017 the account between the parties ran with the Respondent making monthly payments against quarterly service charges. From reviewing the statement adduced by the Applicant it is apparent that the sums paid by the Respondent were not sufficient to fully discharge the service charge accounts and arrears had accumulated as described above in paragraph 17.
25. By that date the Applicant had debited to the account four payments of £60.00 for administration charges related to notifying arrears on the account. The Applicant produced correspondence from FirstPort to the Respondent relating to the arrears on the service charge account.

B. Ground Rent

26. The position with regard to payment of ground rent is separate from the service charge account because it is dealt with by a different agent namely Estates & Management Services Limited. Its statement of account shows no payment by the Respondent from September 2018 to the date of issue of these proceedings.
27. Mr Standing, on behalf of the Respondent, states that the Respondent has paid the ground rent. He produced rent account statement dated 13 October 2016 which showed payments were overdue and substantially settled by a

payment that month. The Tribunal were not shown any other documents relating to the claim the subject of the proceedings.

28. On 30 September 2019 Estates & Management Services returned a cheque dated 24 June 2019, of the Respondent. The cheque was for the sum of £37.50. It was not accepted because the sum due at that time was £237.50. The letter notified the Respondent that the account had been referred to solicitors. The Applicant by its Statement of Case stated that no payment had been made in respect of rent since issue of the proceedings and invited the Respondent to make a payment in order to narrow the issues.

The Decision

Service and Administration Charges

29. This case has taken the Tribunal some time to consider. There is no issue regarding the payability and reasonableness of the service charges themselves nor is there any difference between the parties that ground rent is payable. The difficulty is in resolving the account between the parties.

30. The Respondent's case is that it has paid everything it owes. The Applicant thinks otherwise. Having spent time considering the bank statements and the service account the Tribunal is satisfied the Respondent has paid all that and more than it owes on the service account. However, it has failed to make payments of ground rent and it has not accepted the Applicant's invitation to pay the sum due.

31. S27A of the Landlord and Tenant Act 1985 entitles a party to apply for an order determining the reasonableness and payability of service charges. By subsection (2) it is possible to make an application whether or not any payment was made.

32. Accordingly as far as the service charges are concerned the Tribunal finds that the service charges for years 2018-9 and 2019-20 in the sum of £1098.18 and £1049.33 are reasonable and payable. The service charges in year 2018-9 were

£255.07 each quarter with a balancing extra payment of £77.90 in September 2018. In 2019-20 the charges were £265.00 per quarter with a balancing year end (2018-9) deduction of £10.67.

33. There was confusion over payment of service charges after August 2019 but the documents show that until the larger payments described above were made in 2020 the account was in arrears. Between October 2018 and August 2019 there were five debits on the account each of £60 administration fees arising from the arrears. Those claims are high bearing in mind the action taken was a straightforward letter. The claims are reduced to £25.00 each.
34. The Applicant seeks an order for its costs to be summarily assessed and relies on the terms of the lease to justify its claim to contractual costs notwithstanding that this case was allocated to the small claims track where costs are not ordinarily payable. The Tribunal is satisfied that the terms of the lease entitle the Applicant to make a claim for contractual costs but it retains a discretion as to the amount of the costs payable and the court has discretion as to the amount of costs payable by virtue of s51 Senior Courts Act 1981.
35. At the time of issue of these proceedings the Applicant had not accounted for nine payments of £91.25 made between 2 September 2019 and 2 January 2020 being £821.25 not accounted for in the claim for unpaid service charges including administration charges. After debiting a further sum for quarterly service charges of £265.55 the sum due at the date of issue was £225.31 not £955.31 as claimed. On 2 February 2020, the Respondent made a further payment of £91.25 thereby reducing the balance further to the sum of £134.06.
36. The parties' respective positions are summarised in the Appendix. The opening balance includes four alleged administration charges of £60.00 each. As appears from the Appendix a further charge was levied on 14 August 2019.

37. The Tribunal considers that sum excessive and unreasonable and reduced the claim to the sum of £25.00 for each reminder. Therefore, the sum in dispute is reduced by a further £100.00 leaving the unpaid balance the sum of £125.31 on the service charge account. That sum was discharged by the payments described by the Applicant. As appears in the Appendix, the sum due was paid within 28 days of the issue of proceedings.

38. There are additional claims for administration charges associated with the unpaid ground rent. Although the ground rent claim is a matter for the County Court the administration charges can be considered by the Tribunal. It considers the sums claimed are unreasonable and adjusts the sums claimed to the same sum as the service charge administration claims

Ground Rent and the Respondent's Counterclaim

39. As far as ground rent is concerned the decision of Tribunal Judge Ellis sitting alone as a District Judge of the County Court, is that the ground rent is due and not paid. The bank statements exhibited by the Respondent records payments to FirstPort who collect service charges. There are no payments to Estates and Management Limited who collect ground rent.

40. On 24 June 2019 the Respondent tendered a payment by cheque in the sum of £37.50 to Estates and Management limited but the payment was rejected as it did not discharge the total sum due for ground rent and it was not appropriated by the Respondent to any particular payment due.

41. The onus is on the Respondent as debtor and in accordance with the terms of the lease to make payment of ground rent without any deduction and without any right of set-off whether legal or equitable. Moreover by clause 3.1.2 of the lease the Respondent is liable to pay on demand interest accruing in respect of any sums due under the terms of the lease (whether lawfully demanded or not) which "*remain unpaid for more than 14 days after becoming due*

whether or not any such sums have been refused by the Landlord so as not to waive any breach of covenant.”

42. The Applicant has claimed the sum of £237.50 unpaid ground rent but the sum claimed includes £125.00 for administration charge or legal fees debt recovery. The unpaid ground rent is £112.50. The Tribunal has decided the administration charge and legal fee claim is unreasonable and reduced the sums due to £50.00 making the claim £162.50.
43. As the Respondent has not paid ground rent and the Applicant is entitled to judgment for the sum of £162.50 and interest.
44. When proceedings were issued the Respondent filed and served a defence denying the debt claim and added a counterclaim for its own management and administration charges. Previously and before issue of proceedings the Respondent had raised invoices for administration charges of amounts comparable to sums claimed for the administration charges by the Applicant. These invoices were raised as a tit for tat claim. They were not supported by any evidence of work done to support the invoice. The counterclaim is similarly lacking in particulars of loss justifying the claim.
45. By its counterclaim the Respondent pleads:
- “The Claim is an abuse of the court process. The Defendant requests that the Claim is immediately set aside and counterclaims £1,439.00 in fake administration and legal fees plus costs, interest and expenses incurred in defending this false claim”*
46. The Respondent’s Statement of Case asserted that it has tried to resolve the payment dispute for the last four years. It claims to have incurred costs and management time corresponding with the Applicant. The statement goes on to refer to alleged failure by the Applicant in managing direct debits it had set up to deal with payments which were set by the Applicant. Eventually the Respondent set up standing orders itself because the Applicant was unable to operate the direct debit scheme correctly. It is apparent that the claim was

made out of frustration with the Applicant. Unfortunately the Respondent has not justified the sum claimed other than by reference to invoices which it rendered to the Applicant but the invoices did not explain how the sum was calculated. At the time of filing the Defence and Counterclaim the Respondent had not drawn an account to explain how the payments it had made were reconciled against the Applicant's claim. Also the Defence and Counterclaim is concerned with the service charge claims. The answer to the ground rent claim is wrapped up in the contention that it does not owe the money claimed. As it stands the Statement of Case has not corrected the inadequacy of the pleading. Accordingly, the counterclaim is dismissed.

Costs

47. This case involved a substantial dispute over the facts relating to payment and receipt of money in respect of service charges which the parties ought to have resolved themselves, especially as the sum involved was not substantial.
48. The Applicant's solicitors JB Leitch who are recognised specialists with cases of this sort have submitted a costs schedule for summary assessment. The total sum of the claim including VAT and disbursements is £4,784.04. The solicitors have referred to *Chaplain Limited v Kumari* [2015] EWCA Civ 798 and *Church Commissioners for England v Ibrahim and Another* [1997] 1 EGLR 13CA in support of the applicants entitlement to contractual costs.
49. Although the lease contains provisions which entitle the landlord to claim costs of litigation thereby displacing the normal costs provisions of the small claims court, Part 44.4 Civil Procedure Rules still applies to the Applicants claim.
50. Part 44.4 identifies in the head note "*Factors to be taken into account in deciding the amount of costs*" and provides:
“(1) The court will have regard to all the circumstances in deciding whether costs were—
(a) if it is assessing costs on the standard basis—
(i) proportionately and reasonably incurred; or

- (ii) proportionate and reasonable in amount, or
- (b) if it is assessing costs on the indemnity basis—
 - (i) unreasonably incurred; or
 - (ii) unreasonable in amount.
- (2) In particular, the court will give effect to any orders which have already been made.
- (3) The court will also have regard to—
 - (a) the conduct of all the parties, including in particular—
 - (i) conduct before, as well as during, the proceedings; and
 - (ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;
 - (b) the amount or value of any money or property involved;
 - (c) the importance of the matter to all the parties;
 - (d) the particular complexity of the matter or the difficulty or novelty of the questions raised;
 - (e) the skill, effort, specialised knowledge and responsibility involved;
 - (f) the time spent on the case;
 - (g)

51. Part 44.5 provides in relation to entitlement to costs under a contract:

“(1) Subject to paragraphs (2) and (3), where the court assesses (whether by summary or detailed assessment) costs which are payable by the paying party to the receiving party under the terms of a contract, the costs payable under those terms are, unless the contract expressly provides otherwise, to be presumed to be costs which—

- (a) have been reasonably incurred; and*
 - (b) are reasonable in amount,*
- and the court will assess them accordingly.*

(2) The presumptions in paragraph (1) are rebuttable. Practice Direction 44—General rules about costs sets out circumstances where the court may order otherwise.” Also s51(3) Senior Court Act 1981 provides *“The court shall have full power to determine by whom and to what extent the costs are to be paid”*.

52. The editorial note to Part 44 rule 5 in the White Book 2020 refers to the Chaplair decision and summarises its principal findings relating to both landlord and tenant cases and mortgage possession cases as follows:

“The Court of Appeal reviewed the law and set out principles which emerge:

- (i) an order for the payment of costs of proceedings by one party to another party is always a discretionary order: s.51 of the Senior Courts Act 1981.*
- (ii) where there is a contractual right to the costs the discretion should ordinarily be exercised, so as to reflect that contractual right.”*

53. It is apparent that the service charge claim was overstated at the date of issue of the proceedings for whatever reason. The account between the parties was

confused. In August 2019 the Respondent was in arrears but by January 2020 it had made payments to reduce its arrears to a very small sum. However, it had neglected the ground rent payments.

54. Although the sum due for ground rent represented three payments at the time of issue of proceedings the Applicant is entitled to take action but within 28 days of commencement of the action the Respondent paid the Applicant £547.50, a sum more than enough to meet the claims. In the circumstances of this case it is right to exercise discretion. The Applicant is entitled to the fixed costs only. The sum allowed is £105 court fee and £80 solicitors costs.

Interest

55. Interest is due at the contractual rate of 4% from 1 September 2019 to 30 September 2020 and continuing at £0.02 per diem until payment.

Appeal

Appeals in respect of decisions made by the FTT

56. 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 (Rule 52 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013).

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).

Appeals in respect of decisions made by the Tribunal Judge in his capacity as a Judge of the County Court

57. An application for permission to appeal may be made to the Tribunal Judge who dealt with your case or to an appeal Judge in the County Court.

Please note: you must in any event lodge your appeal notice within 21 days of the date of the decision against which you wish to appeal.

Further information can be found at the County Court offices (not the Tribunal offices) or on-line.

Appeals in respect of decisions made by the Tribunal Judge in his capacity as a Judge of the County Court and in respect the decisions made by the FTT

58. An applicant must follow both routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues with either the Tribunal Judge or proceeding directly to the County Court.

Tribunal Judge PJ Ellis