



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

Case Reference : **CHI/21UD/LIS/2020/0012**

Property : **Flats 1 & 5, 42 George Street
Hastings, East Sussex TN34**

Applicant : **Allenfare Limited**

Representative : **Mike De Souza**

Respondent : **Roger Ayrton**

Type of Application : **Transferred from County Court,
s.27A**

Tribunal Members : **Judge D Dovar**

**Date and venue of
Hearing** : **7th May 2020, Remote (telephone)**

Date of Decision : **13th May 2020**

DECISION

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Introduction

1. This claim for unpaid services charges and ground rent was issued in County Court on 12th September 2019 and on 21st January 2020 the determination of the payability of the service charges claimed was transferred to this Tribunal.
2. On 9th March 2020, the Tribunal gave directions, which included a direction that the Tribunal Judge hearing the transferred application should also sit as a County Court Judge to determine all matters in issue. The Applicant was also given permission to include additional services charges, in the sum of £1,170.47, which were said to have recently fallen due.
3. Further directions were given on 29th April 2020, which provided for the matter to be dealt with by way of a remote telephone hearing. An electronic bundle was circulated prior to the hearing containing the parties' submissions and supporting documentation. Both parties attended the telephone hearing and made oral submissions.

Background

4. The Respondent owns two flats at 42 St George Street and pays a contribution to the costs of the administration and maintenance of the same.
5. The Tribunal was provided with a copy of the leases for both flats. The manner in which the service charge has been levied over the years did not tally with the lease terms, however, as was clarified during the course

of the hearing by the Respondent, the real issue was whether the sums claimed were based on reasonable estimates or expenditure, the Respondent contending that they were excessive.

6. The contribution claimed from the residential units, including the Respondent's two units, altered depending on the type of cost incurred and whether an additional contribution was made by the ground floor retail unit. The Respondent raised no issue at the hearing with this approach. Further, although the Applicant was not in fact a party to the lease, no issue was taken on this point. It had been appointed and authorised by the lessor to demand and collect the payments.
7. Therefore the issue that the parties have asked the tribunal to determine is whether for each of the years in question, the estimated service charge amount is a reasonable one; a question which falls within s.19(2) of the Landlord and Tenant Act 1985, which imposes a statutory cap on residential service charges by providing that 'Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable'.

Sums disputed

8. The Respondent disputes the sums claimed by way of on account service charges for the years 2018, 2019 and 2020. The sums claimed are:
 - a. £1,337.28 for the period 1 July 2018 to 24 June 2019;
 - b. £615, for the period 24th June 2019 to 24 December 2019;
 - c. £290.12 for a deposit for maintenance work; and

d. £1,170.47 for the period from 25th December 2019.

9. Mr DeSouza for the Applicant set out the manner in which the estimates had been arrived at. The Applicant aimed to set a figure which covered the monthly outgoings as well as provide for a modest balance in hand.
10. For the initial period, to June 2019, £111.44 had been charged per month; being £668.64 for 6 months or £1,337.28 per annum. The Applicant justified that by the fact that the total expenditure for that year was in fact £5,394, of which the Respondent's share would have been £1,348.50. Although there was some query whether this included insurance and whether that been charged separately. £100 of this sum related to ground rent, which is outside the jurisdiction of this Tribunal and so is not dealt with in this determination.
11. For the next period, a similar approach had been taken, albeit that in respect of the Respondent's contribution, the demand had reduced from £668.64 for the half year on account, to £615; i.e. £102.50 per month. The basis for that is set out in the letter from the Applicant to the Respondent dated 12th December 2019, in which it was said that the sum demanded was 'calculated per residence using the past 12 months outgoings, cost and expenses.' £100 of this sum related to ground rent, which is outside the jurisdiction of this Tribunal and so is not dealt with in this determination.
12. An ad hoc demand had been made for major works in the sum of £290.12.

13. Finally, £1,170.47 was claimed for the period from 25th December 2019. This comprised, £615 for 6 months service charge, being the second half of the yearly sum set out above. £505.47 for insurance, and £50 for ground rent. The latter does not fall within this Tribunal's jurisdiction and so is not included in this determination.
14. The Tribunal was provided with a monthly breakdown of actual expenditure from July 2018, which was not far off the sums claimed by way of estimate. Although it was not provided with the actual expenditure pre-dating July 2018, there was a strong inference from the nature of the later costs, that the actual costs in the year up to July 2018 were of a similar level.
15. The Respondent confirmed that his objection was that the sums demanded were a huge overestimate and that instead of £111.44 per month for the first period, he should only have paid £73.69. He said he was prepared to meet the Applicant halfway; i.e. pay a figure representing around £93 per month.
16. He said he had no objection to paying the additional sum demanded as a deposit for maintenance costs; albeit that there was around £2 difference between the parties on this point.

Whether sums claimed in advance were a reasonable estimate

17. The Tribunal is faced with a challenge to the level of on account demands. By their nature, they are estimated amounts and in that regard some latitude must be given to the landlord.

18. The difference in amount between that suggested by the parties are not so significant (even less when ground rent is removed) and are certainly not so excessive as to bring them outside what could be considered to be within the range of a reasonable on account demand. Further, the current process, which appears to have been instigated by the Respondent, is for any surplus to be held on trust for future expenditure and so a little over estimation is not only prudent but has at least in the past been endorsed by the Respondent.
19. There was a minor difference between the parties on the deposit payable for the major works. The Tribunal prefers the Applicant's case that it is 25% of the total sum of £1,160.48.
20. Therefore the Tribunal finds that the sums claimed for each of the periods in question is reasonable and is therefore payable.

Conclusion

21. The service charge sums claimed by the Applicant are payable, deducting the ground rent claimed, they are: £1,237.28 for the period 1 July 2019 to 24th December 2019; £515 for the period 24 June 2019 to 24 December 2019; £290.12 for the deposit; and £1,120.47 for the period from 25th December 2019. A total of £3,162.87.

Judge D Dovar

Appeals

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.

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.

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.