



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

Case Reference	: CHI/00LC/LIS/2021/0019
Property	: 10 Findlay Close, Parkwood, Gillingham Kent ME8 9HA
Applicant	: Sunley (Findlay Close) Residents Limited
Representative	: -
Respondent	: James Arthur Webb and Louise Jane Webb
Representative	: -
Type of Application	: Determination of service charges: section 27A Landlord and Tenant Act 1985
Tribunal Member(s)	: D Banfield FRICS Regional Surveyor
Date of Decision	: 5 January 2022

DECISION

The Tribunal determines that;

- Service charges of £2,846.14 are payable.
- The demand for administration charges dated 28/09/2021 for £500 is not payable.
- The application for an order under S.20C of the Landlord and Tenant Act 1985 is refused

Background

1. The Applicant management company seeks a determination of the service charges payable by the Respondent former lessees of Flat 10 during their ownership of the flat between July 2016 and December 2020. The total value of the dispute is said to be £3,346.14 comprising unpaid service charges of £2,846.14 plus £500 described as capped interest.
2. Judge Morrison made Directions on 9 June 2021 for a case management hearing which was held on 21 July 2021. Following that hearing further directions were made ordering the production of documents by the former managing agents and staying proceedings until 1 October 2021 on which date further directions were issued for the exchange of cases leading to the preparation of a hearing bundle to facilitate a hearing on the papers.
3. On examination of the received bundle the Tribunal was satisfied that the matter remained suitable for determination on the papers under Rule 31 of the Tribunal Procedure Rules 2013.
4. References to pages in the bundle are indicated as [x].
5. The only issue between the parties appears to be whether the service charges have been properly demanded, no challenge is made to the cost or standard of services received.

The Law

See the Appendix to this decision for the relevant law.

The Lease

6. The lease [14] is dated 4 December 1992 and is between Sunley Estates Limited as Lessor, Sunley (Findlay Close) Residents Limited as “The Company” and PD Hunt and L Falconar as Lessees.
7. Clause 5 of the lease states;
THE Lessee covenants with the Lessor with the Company and with the Flat Owners:-
 - (i) To pay to the Lessor by way of further rent or with effect from completion of the Management Lease to pay to the Company (but without prejudice to the Lessor's rights to recover the service rent in arrear and to enforce the Lessors right to re-entry or any other right for the recovery of rent in arrear) the Lessee's share as specified in Paragraph 11 of the Particulars of the total expenditure made by the Lessor or Company in carrying out the obligations of repair maintenance renewal and Insurance of all parts of the Buildings and the provision of services therein and the other heads of expenditure as the same are mentioned in Clause 8

hereof such further and additional rent (hereinafter called "the service rent") being subject to the terms and conditions contained In the Sixth Schedule hereto

(viii) To pay to the Lessor all costs charges and expenses (including legal costs and fees payable to a Surveyor) which may be incurred by the "lessor in or in contemplation of any proceedings under Sections 146 and 147 of the Law of Property Act 1925 notwithstanding forfeiture Is avoided otherwise than by relief granted by the Court

(xv) To pay to the Company all costs charges and expenses which may be incurred by the Company in connection with the recovering from him of arrearsor for the purposes of or incidental to the preparation and service of any notices or proceedings under Section 146 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by the Order of the Court

8. The Sixth Schedule is in respect of the service charge and can be summarised as;
- Once the management lease has been completed it is the Company and not the Lessor who is the responsible party.
 - Advance payments of the estimated costs to be made half yearly.
 - The amount of the service rent is certified as soon after the financial year (1st April to 31st March) as may be practicable and a copy supplied to the lessor on request.
 - As soon as practicable after the signature of the Certificate the Company shall send an account to the lessee with an allowance for any overpayment.
9. Clause 2 requires interest at 15% to be paid on sums unpaid for 14 days.

The Evidence

10. Service charge demands;
- An undated demand addressed to Andrew Mynehan at 10 Findlay Close for the period 1 April 2016 to 31 March 2017 for £520 payable to AJP Maintenance Ltd (Findlay) with the Summaries and Rights and obligations on the reverse [213 &214]
 - The same, addressed to Mr & Mrs Webb also for the period 1 April 2016 to 31 March 2017 [215&216]
 - The same for the periods 1 April 2017 to 31 March 2018[217&218], 1 April 2018 to 31 March 2019 without the Summaries and Rights.[219], 1 April 2019 to 31 March 2020 [220&221]and 1 April 2020 to 31 March 2021 [222&223]
11. An email from A J Potter dated 10 August 2021 to which the above demands were attached confirming that a standing order mandate would have been included and that a note on the envelope would

have asked the tenant to pass it to the landlord where flats were rented.

12. Directors' Reports and Unaudited Financial Statements of Sunley (Findlay Close) Residents Limited for the years to 31 March 2020 [144-194]
13. Various invoices which have not been disputed. [47-143]

Statements of Case

14. In the Applicant's Statement of Case of 22 October 2021[42] it is said that the original contact was made with Mrs Webb on 2 December 2020 when the matter of unpaid service charges was raised. Mrs Webb made no further contact although service charge payments were made for January and February 2021. Following the signing of the lease extension the lease was sold on 12 February 2021.
15. Contrary to Clause 4 (ii) of the lease, when Mr and Mrs Webb purchased the flat no notice of transfer and contact details was given and hence service charge demands could not be sent direct to the Respondents.
16. In the Respondents' undated and unsigned reply, it is stated that they have never received service charge demands from anyone, have never been aware of Sunley and have never heard of Alan Potter or AJP Maintenance.
17. Ground Rent has been paid to Freehold Manager PLC who are aware of their home address.
18. They do not accept that demands were sent to the flat as;
 - They have never been chased for payment
 - An email from Miss Barton on December 3 stated "one third of the 34 flats are not currently paying their maintenance service charges. I would highlight this is not because they don't want to, but rather because they have not been contacted to pay the service charges."
 - Miss Barton acknowledged that they had not received service charge demands following their initial phone conversation.
 - An email from Miss Barton on February 2021 as to the reason for her taking over from Mr Potter stating "A lot of things, for example, this- collecting service charges from everyone"
 - At the hearing on 21 July 2021 Miss Barton confirmed that she had not received a demand herself.
 - Of the documents provided, none of the demands are dated or original, the documents were created on 10 August and modified on 22 October before sending to the tribunal and the

file name for attachment 7A has been changed and included as attachment 7.

- They have tried and failed to reach a settlement with Miss Barton.
- An application is made that the costs incurred or to be incurred in these proceedings before a court or the Upper Tribunal are not to be regarded as relevant costs.

19. In a response from the applicant dated 2 December 2021 [46] it is pointed out that Sunley are named on the front page of the lease as partly responsible for the maintenance of the flats and this would have been explained by any reputable solicitor.
20. Every leaseholder has paid their service charges between 2 December 2020 and February 2021 when the Respondents sold their flat. The Respondents had been contacted many times before the sale of the flat, but they avoided paying as they were planning to sell the flat. Mrs Webb is a director of the company who now own the flat.
21. The offer to settle part of the service charge was not acceptable to the other shareholders who will have to make up the deficit.
22. They are unaware why AJP didn't seek the Respondents' home address and "it cannot be stated that AJP Maintenance Ltd did not try to contact Freehold Managers plc and never received the information" "Mr Potter has stated that he forwarded the information to the flat in question which is acceptable if the owner does not provide their direct home or business address"
23. Miss Barton did not acknowledge that the Respondents had not received demands as she had no way of knowing.
24. Miss Barton has always paid her service charges and her personal experience cannot be relied on to be the same as everyone's in Findlay Close and has nothing to do with the case in question.
25. It is impossible to know how the demands were created electronically.

Decision

26. The issue for the Tribunal to determine is whether valid service charge demands were made for the period up to and including December 2020. No challenge has been made as to the form of those demands simply that they were not received.
27. I do not accept that it was reasonable for the Respondents to be unaware of "The Company" and its role in levying service charge demands. The lease is clear as to the respective positions of the Lessor, The Company and the Lessees and it should be obvious that

if services are being received and insurance maintained it is inevitable that a charge will be made. Nevertheless, whilst it may be unattractive for a Lessee to remain silent in such circumstances it is for the “landlord” to demonstrate that it has rendered compliant demands.

28. Copies of demands have been provided addressed to the Respondents at the property and I must first consider whether this comprises service given that the flat was tenanted. The Applicant says that the Respondents or their Solicitors should have advised them of a correspondence address in compliance with the lease whereas the Respondents say that as the Freeholder was aware of their correspondence address that was sufficient for demands to be properly addressed.
29. Given that the lessor and the Company are separate entities it is not reasonable to assume that they share such information and, in the absence of the written notice required by clause 4(ii) of the lease I find that it was sufficient for the demands to be served on the flat itself.
30. Turning now to whether the demands produced in the bundle were actually served on the property I can only rely on the evidence before me. The Respondents were not resident at the property and are therefore unable to provide convincing evidence one way or the other. The Applicant can only rely on what they have been told by Mr Potter of AJP Maintenance Ltd.
31. The Respondents refer to conversations with Miss Barton in which deficiencies in the service provided by AJP were said to be acknowledged. Whilst this may be the case, I do not accept that this provides good evidence that there was a failure to deliver demands to Flat 10.
32. The Respondents have raised doubts as to the veracity of the demands and refer to inconsistencies in the date of their production. Given the use of management software and the various electronic means of storing such information I am not persuaded that this provides convincing evidence that they cannot be relied upon.
33. Based on the above I am satisfied on the evidence before me that demands were properly made and that service charges of £2,846.14 are payable.

Costs

34. At page 226 of the bundle is a demand for administration charges dated 28/09/2021 for £500.

35. The demand is addressed to the current lessees, OJJ Property Ltd which is not a party to these proceedings and as such I have no jurisdiction to consider the matter.

S.20C

36. The Respondents have made an application that the costs incurred or to be incurred in these and any other proceedings are not to be regarded as relevant costs. Whilst the outcome of any proceedings is not a deciding factor in whether to make such an Order, given that they have been wholly unsuccessful it would be inappropriate of me to accede to the application.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. 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.
4. 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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.