



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

Case Reference : **MAN/30UH/LSC/2020/0093 p**

Property : **Flat 49, Lakeland House, Marine Road,
Morecambe LA4 6AY**

Applicant : **Mr. Callum Savage**

Respondent : **Lakeland House (Morecambe)
Maintenance Co. Limited**

Type of Application : **Landlord and Tenant Act 1985 – section 27A**

Tribunal Members : **Tribunal Judge C.Wood
Tribunal Member J.Faulkner**

Date of Decision : **21 February 2022**

DECISION

Order

1. The Tribunal determines as follows:
 - (1) that, as at the date of the Application, the Applicant was entitled to make an application under section 27A of the Landlord and Tenant Act 1985 for a determination as to his liability to pay, inter alia, service charges in the sum of £775, (the disputed charges”);
 - (2) that, by reason of the payment of the disputed charges by an unrelated 3rd party, as acknowledged by the Respondent, after the issue of the Application, there was no liability on the Applicant in respect of the disputed charges;
 - (3) that, in accordance with Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, (“the Rules”), the Respondent acted unreasonably in its defence of the Application, and that a costs order is made, in an amount to be determined by the Tribunal by way of summary assessment, subject to the parties’ compliance with the directions set out in paragraph 3;
 - (4) that, in accordance with Rule 13(2) of Rules, the Respondent is ordered to reimburse the Applicant the application fee of £100 within 14 days of the date of this Order;
 - (5) that there are no grounds for the making of an order for costs against the Applicant under Rule 13(1)(b) of the Rules; and,
 - (6) that the administration costs, interest charges and legal fees referred to in the parties’ submissions are outside the jurisdiction of an application under s27A Landlord and Tenant Act 1985.

Directions

2. Having regard to the Applicant’s claim for costs in the sum of £182, in accordance with Rule 6 of the Rules and acting on its own initiative, the Tribunal issues the following directions:
 - (1) the Applicant may, within 14 days from the date of receipt of this Order, submit to the Tribunal, (with a copy to the Respondent), a schedule detailing the costs claimed;
 - (2) within 14 days following receipt of the Applicant’s schedule of costs, the Respondent may submit to the Tribunal, (with a copy to the Applicant), written submissions limited to the amount and/or type of costs detailed in the schedule;
 - (3) at a date to be determined, (such date to be notified to the parties), the Tribunal will make a summary assessment on the papers of the amount of costs (if any) payable by the Respondent.

Background

3. By an application dated 16 December 2020, (“the Application”), the Applicant sought a determination under s27A of the Act of his liability to pay service charges of £775 for the period 30 March - 28 August 2019.
4. Directions dated 1 September 2021, (“the Directions”), were issued which provided, inter alia, that the Application be determined by way of a paper determination, subject to the parties’ right to request a hearing.
5. Pursuant to the Directions, both parties made written representations.
6. In accordance with the Directions the Tribunal did not inspect the Property.
7. Having regard to the matter for determination and the parties’ written submissions, the Tribunal considered that the Application was suitable for determination on the papers. Accordingly, it was determined on the papers on Tuesday 2 November 2021.

Law

8. Section 27A(1) of the Landlord and Tenant Act 1985 provides:

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.*
9. The Tribunal is “the appropriate tribunal” for this purpose, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.
10. The meaning of the expression “service charge” is set out in section 18(1) of the 1985 Act. It means:

... an amount payable by a tenant of a dwelling as part of or in addition to the rent-

 - (a) *which is payable, directly or indirectly, for services, repairs, maintenance, improvements, or insurance or the landlord’s costs of management, and*
 - (b) *the whole or part of which varies or may vary according to the relevant costs.*

11. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-

- (a) *only to the extent that they are reasonably incurred, and*
- (b) *where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;*

and the amount payable shall be limited accordingly.

12. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

13. There is no presumption for or against the reasonableness of the standard of works or services, or of the reasonableness of the amount of costs as regards service charges. If a tenant argues that the standard or the costs of the service are unreasonable, he will need to specify the item complained of and the general nature of his case. However, the tenant need only put forward sufficient evidence to show that the question of reasonableness is arguable. Then it is for the landlord to meet the tenant's case with evidence of its own. The Tribunal then decides on the basis of the evidence put before it.

Evidence

14. The Applicant's written submissions are summarised as follows:

- (1) the service charges of £775 are for a period prior to his ownership of the Property; the former owner's solicitors were in possession of a retention to cover this liability and the Respondent's request for payment should be made to them, and not to the Applicant;
- (2) the Applicant has incurred £182 in costs in relation to the Application;
- (3) the Respondent has also charged the Applicant administration costs, interest charges and legal fees totalling £957.21, and has required a payment of £1500 as a contingency against liability for service charge subsequently determined to be payable by the Applicant;
- (4) the Applicant is seeking a determination of the reasonableness and/or liability of the Applicant to pay the costs/charges set out in (3).

15. The Respondent's written submissions are summarised as follows:

- (1) the disputed service charges of £775 were paid by the previous leaseholder's solicitors on or around 16 September 2021;

- (2) a revised arrears schedule, (Annex A to the Respondent's Statement of Case), was sent to the Applicant accordingly from which these disputed charges had been deleted;
- (3) as such, there are no charges remaining in dispute for determination by the Tribunal, and the Respondent requests that the Applicant withdraws the Application or, in the event of his failure to do so, that the Tribunal strike out the Application;
- (4) in the event of the Applicant's failure to withdraw the Application, the Respondent seeks an order for costs against the Applicant pursuant to Rule 13(1)(b) of the Rules;
- (5) the legal costs of £743 were paid by the Applicant on or around 22 September 2021 which the Respondent regards as an agreement and/or admission by the Applicant of his liability to pay them in accordance with s27A(4) of the 1985 Act. As such the Tribunal has no jurisdiction to make a determination in respect of them.

Reasons

16. Disputed service charge arrears - £775

- (1) The Tribunal noted that, as at the date of the Application, the Respondent was seeking payment from the Applicant of the sum of £775 for service charges incurred in respect of periods prior to the Applicant's ownership of the Property and for which the Tribunal considered it was difficult to see how any liability to pay them could attach to the Applicant.
- (2) The Tribunal further noted that, in his written submissions, the Applicant stated that he had pointed this out to the Respondent on repeated occasions but to no avail, (although it was subsequently acknowledged by the Respondent).
- (3) The Tribunal is satisfied that, in these circumstances, it was reasonable for the Applicant to issue the Application.
- (4) The Tribunal further notes that it was not until receipt of the Respondent's Statement of Case dated 24 September 2021 that it appears that the Applicant (and the Tribunal) were made aware by the Respondent of payment of the disputed amounts from the 3rd party unrelated to the Applicant.
- (5) The Tribunal is satisfied that there was no requirement on the Applicant to withdraw the Application at this stage, nor did the Tribunal consider it appropriate as at the date of its determination to strike out the Application as, although the disputed charges had been paid, issues regarding costs and the other costs/charges referred to in the Applicant's submissions remained to be determined.

- (6) Further, the Tribunal noted that the Respondent had raised issues regarding the Tribunal's jurisdiction in respect of the legal costs having regard to s27A(4) of the 1985 Act, and also the possibility of a costs order against the Applicant under Rule 13.

17. Rule 13 orders

- (1) The Tribunal was satisfied that the Applicant had made an application for an order for costs against the Respondent in his Statement of Case on Application for Strike Out dated 7 October 2020.
- (2) The Tribunal noted that the Respondent had not taken the opportunity to make any written representations in response to this costs application.
- (3) The Tribunal was satisfied that the Respondent had acted unreasonably in its defence of the Application insofar as it related to the service charges of £775 entitling the Tribunal to make an order for costs under Rule 13(1)(b) of the Rules. Specifically, the Tribunal is satisfied that:
- (i) the evidence presented to the Tribunal supported the Applicant's position that he was not liable for these service charges but that the Respondent's refusal to acknowledge this had both resulted in the issue of the Application by the Applicant and the Respondent's defence of it until its receipt of payment of the charges from an unrelated 3rd party in or around 16 September 2020; and,
- (ii) further, the Tribunal noted that the Respondent had not considered it appropriate to separately notify the Applicant and/or the Tribunal of the payment but chose to include its acknowledgment of receipt within the terms of its Statement of Case.
- (4) The Tribunal noted that the Applicant had not provided a schedule of costs with its application as required under Rule 13(4)(b). In exercise of its case management powers under Rule 6 of the Rules, the Tribunal determined to issue further directions permitting the Applicant to submit such schedule to the Tribunal, and to allow the Respondent to make written submissions on the costs claimed (but not on the costs application itself).
- (5) The Tribunal was also satisfied that it was appropriate in the circumstances to make an order under Rule 13(2) requiring the Respondent to reimburse the Applicant with the application fee of £100.

18. Legal fees, (£743), administration charge, (£60), referral administration fee, (£96) and interest charges, (£58.21)

- (1) From the available evidence, it appeared that none of the above are chargeable as service charge and are not therefore within the Tribunal's

jurisdiction within the context of the Application, and no determination regarding the reasonableness of, and/or the Applicant's liability to pay them, is made. The Tribunal's jurisdiction to determine the reasonableness and/or liability to pay administration charges, (which some or all of these charges may constitute) is under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 and would require a separate application in order for a determination to be made.

- (2) For that reason, the Respondent's submissions regarding s27A(4) of the 1985 Act have no relevance in respect of these costs/charges.

19. Payment of £1500

There is insufficient evidence before the Tribunal regarding this payment to enable it to make any determination on its reasonableness and/or the Applicant's liability to pay it within the Application and no determination is made accordingly.

Mrs C Wood
Tribunal Judge
21 February 2022