



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

Case reference : **CHI/00HH/LSC/2021/0103**

Property : **53, 55a and 55b Parkfield Road
Torquay
Devon
TQ1 4AL**

Applicant : **Vision Residences (Phase Two) LLP**

Respondent : **Mr Lee Sanderson**

Type of application : **Transferred Proceedings from County
Court in relation to services charges**

**Tribunal
member(s)** : **Judge D Whitney
Mr P Turner-Powell FRICS**

Date of hearing : **10th February 2022**

Date of decision : **2nd March 2022**

Decision

Background

1. The original proceedings were issued in the County Court under Claim Number 226MC974 and were transferred to the Tribunal for administration by District Judge Taylor by order dated 2nd November 2021 and for allocation to Judge of the Tribunal.
2. The Applicant has also claimed the court fee and interest. These are matters within the jurisdiction of the Court.
3. The Tribunal issued directions dated 11th November 2021 which were followed by the parties. A bundle of documents was supplied by the Applicant and references in [] are to pages within that bundle.

The Law

4. The relevant law is contained in sections 19 and 27A of the Landlord and Tenant Act 1985 which is set out in the annex to this lease.

Hearing

5. The parties attended the hearing remotely by video. The Tribunal checked at the conclusion that each party had made all submissions they wished to make.
6. The Applicant was represented by Mr Winham, a chartered surveyor. At the start of the hearing the tribunal noted that no authority had been received by the tribunal from a member of the LLP authorising him to represent the same. A Mr Reid, a member of the LLP, emailed the Tribunal providing such authority.
7. Mr Sanderson represented himself.
8. Mr Sanderson had the previous day sent certain additional documents he wished to rely upon. The Tribunal had not read the same. Mr Winham objected and the Tribunal declined to consider the same given the extremely late inclusion.
9. Mr Winham explained the Claimant purchased the whole of the property which consisted a commercial garage, offices and 5 houses in or about Summer 2018. Subsequently Mr Sanderson purchased at auction numbers 53, 55a and 55b. This dispute concerned the lease of 55a and 55b [16-36].
10. It was common ground that a single supply and water meter served the commercial garage, 55a and 55b. the commercial garage was predominantly to the rear of the site but also occupied the basement underneath 55. The garage was empty and unoccupied

until December 2020 and Mr Winham explained on the garage being occupied and sublet a check meter had been installed to the garage supply. The Claimant sought to recover charges for use and supply of water and sewage for the period June 2019 until September 2020.

11. Mr Sanderson looked to defend on the basis that at no point prior to bills being issued had he been made aware when he was purchasing the property that he might be billed by the Claimant for use and supply of water and that the costs were unreasonably high.
12. Mr Winham relies on clause 6 of the lease and particularly clauses 6.1 and 6.3 [25]. Mr Sanderson conceded that this clause of the lease allowed recovery of water rates charged to the Applicant landlord for the communal supply.
13. Mr Winham relied upon the invoice issued on 4th December 2020 to Mr Sanderson and the supporting documents [37-48]. The supporting documents included the calculation adopted by the Applicant and the invoices received from South West Water. He explained the Applicant had charged 100% of the usage costs for the period 1st June 2019 until 21st September 2020 but only 50% of the standing charges. Mr Winham explained he believed it was fair for 50% of the standing charge to be paid by the Applicant given the garage did have a water and sewage supply. Equally given the garage was unoccupied in his submission none of the usage should be charged for the garage.
14. Mr Winham accepted that the water had not been billed timely. He confirmed that now the garage was occupied there was a check meter in place so the garage could be billed for their usage.
15. Mr Sanderson explained he purchased the units at auction with tenants in situ. He did not have a survey but had visited the property and spoke to the tenants. The tenancy agreements referred to the tenants being responsible for utilities and Mr Sanderson said he had spoken to the tenants who indicated they had their own utility supplies. It appears in hindsight they were referring to electric and gas.
16. Mr Sanderson understood the only charge he would make to the Applicant would be for the cost of insurance. He explained given his tenants were reliant on benefits he felt it would be difficult for him to reclaim amounts from them. If he had been aware previously he would have been able to. Also when he received the bills he realised the amounts for usage were high. He investigated and discovered that there was a leaking ball valve and cistern in one flat leading to excessive water use. Further Mr Sanderson challenged whether or not the garage had no water usage over this period of time.

Decision

17. The Tribunal thanks both parties for their submissions. In reaching our decision we considered everything said and also all those documents within the bundle.
18. We are satisfied that the Applicant is entitled to recover the costs of water and sewage charges from the Defendant. We accept that clause 6 allows such charges, if levied to the Applicant, as they are here to be recovered.
19. As an aside as we mentioned to the parties it must be in both of their interest to see if the situation in respect of the water supply can be regularised so that Mr Sanderson has his own separate supply. This will avoid further disputes arising.
20. We are satisfied that the Claimant has been billed for the sums set out in the invoices from South West Water [39-48]. We note the Applicant determined that the standing charges should be apportioned 50% to the Respondent with, we assume, the Applicant paying the remaining 50% whilst the garage remained unlet. We note however that the garage did benefit from the supply for all of this period of time and that no check meter was in place for the period of time covered by this dispute.
21. Whilst we accept the actual water usage by the garage may be very low we have no way of calculating what, if any, usage took place. We heard evidence that contractors and representatives of the landlord would from time to time visits the premises. It seems likely that they may make use of the water and sewage supply.
22. Looking at matters in the round we adopt the split the Applicant applied to the standing charges and determine that for the period of the invoices claimed the Respondent is liable to pay 50% of the costs incurred by the landlord for water and sewage charges. We determine that the sum of £1,151.88 is due and payable using the figures provided by the landlord [38].
23. The Tribunal announced its decision to the parties at the conclusion of the hearing. This is the written reasons for the same.

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
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.