



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &
IN THE COUNTY COURT at
Worthing sitting at Havant Justice
Centre, Elmleigh Road, Havant,
PO9 2AL**

Case reference : **CHI/45UC/LSC/2022/0060
H32YY924**

Property : **Flat 20 Regis Gate, 12-28 Longford
Road Bognor Regis West Sussex
PO21 1AQ**

Applicant : **Freehold Managers (Nominees)
Limited**

Representative : **Womble Bond Dickenson (UK) LLP**

Respondent : **Jonathan Francis Suffolk
Rebecca Louise Suffolk**

Representative : **Jonathan Francis Suffolk**

Type of application : **Transferred Proceedings from
County Court in relation to service
charges and administration
charges**

Tribunal member(s) : **Judge Tildesley OBE**

Venue : **Havant Justice Centre
25 July 2022**

Date of Decision : **27 July 2022**

DECISION

Summary of the decisions made by the FTT

1. The Tribunal determined that
 - (i) The Respondents were not liable to pay the administration charge for sub-let notice fees of £95 and £48 imposed on 20 March 2019 and 5 August 2020 respectively.
 - (ii) The Respondents were not liable to pay the administration charge for an arrears letter of £36 dated 15 October 2020.
 - (iii) The Respondents were not liable to pay the administration charge for preparing a file for solicitors of £180 dated 6 November 2020.
 - (iv) The Respondents were liable to pay service charge demand for £607.72 dated 8 July 2019.
 - (v) The Respondents were liable to pay administration charge for an arrears letter of £30 dated 13 October 2020.
 - (vi) The Respondents were liable to pay administration charge for preparing a file for solicitors of £288 dated 18 November 2020.

Summary of the decisions made by the County Court

- (i) The Defendants shall pay the sum of £3,861.68 service charges and ground rent, interest of £258.02, and legal costs and fees of £1,017.02 to the Claimants.
- (ii) Interest at 4 per cent calculated in the case of service charge and administration charge demands identified in the Claimant's prayer at 5.5, 5.7, 5.8, 5.9, and 5.10 from the dates the payments were due to the date of judgment.

Background

1. The Applicant sought and following a transfer from the County Court the Tribunal was required to make, a determination under section 27A of the Landlord and Tenant Act 1985 and the Paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. These are matters within the jurisdiction of the Tribunal.
2. The original proceedings were issued in the County Court under Claim No. H32YY924 and were transferred to the Tribunal by District Judge Clarke by order dated 14 March 2022
3. The Applicant also claimed ground rent, interest and contractual costs. These were matters within the jurisdiction of the Court.
4. As a result of amendments made to the County Courts Act 1984, First-tier Tribunal judges are now also judges of the County Court. This means that, in a suitable case, the Tribunal Judge sitting as a County Court Judge can decide the issues that would otherwise have to be separately decided in the County Court.

5. In this case, the District Judge ordered that the Tribunal Judge should determine all matters arising from the claim. Therefore, in determining these proceedings, the Tribunal Judge will also decide those issues falling outside the Tribunal's jurisdiction sitting as a County Court Judge after concluding the matters heard by the Tribunal.
6. For the purposes of the County Court issues, the proceedings have been allocated to the small claims track
7. The Respondents filed a Defence. The Respondents admitted the sum of £3,417.29
8. The hearing was held in person on 25 July 2022 at Havant Justice Centre. Mr Morris Seifert, a solicitor's agent appeared for the Applicant. Mr Ryan Ashurst attended as witness for the Applicant. Mr Jonathan Suffolk appeared for the Respondents.
9. Accordingly, Judge Tildesley presided over both parts of the hearing, which resolved all matters before both the Tribunal and the Court. Judge Tildesley proceeded to sit as a Tribunal Judge and once the Tribunal decision was made to sit as a County Court Judge.
10. Judge Tildesley clarified at the beginning of the hearing the sums claimed under the Claim. Judge Tildesley established that arrears of £374 in respect of the Ground Rent statement [142] which was the sum owing at 7 November 2020, and £4,424.88 [146] in respect of service charges which was the sum owing at 18 November 2020. Judge Tildesley explained that he would not be considering further arrears falling due under the lease prior to entry of judgment, and urged the parties to reach an agreement over the sums due since 18 November 2020.
11. This decision acts as both the summary of the reasons for the Tribunal decision and the reasoned judgment of the County Court. Judge Tildesley explained that he reserved the right to expand upon the reasons for the Tribunal decision.
12. The numbers in the [] refers to electronic page numbers in the witness statement of Mr Ashurst dated 11 July 2022.

The Tribunal Decision

13. The Tribunal established that it had jurisdiction to deal with the administration charges under the Ground Rent account of £95 and £48 imposed on 20 March 2019 and 5 August 2020 respectively for sub-let notices, of £36 dated 15 October 2020 for an arrears letter and of £180 dated 6 November 2020 for preparing a file for solicitors.
14. The Tribunal is satisfied that under paragraph 7.3 of the Third Schedule of the lease consent of the landlord is not required for letting of the property on an assured shorthold tenancy. The Applicant could point to no authority under the lease which enabled it to charge for

notice of a letting of an assured shorthold tenancy. The Tribunal finds that the Applicant had no authority under the lease to make these charges.

15. The effect of the decision in paragraph 14 above was that there were no arrears outstanding of ground rent as at 15 October 2020 to justify the costs of arrears letter and preparing a file for solicitors. In addition the Applicant adduced no evidence of what the charges were for and no evidence of the demands and statement of Tenant's rights and obligations. Given these facts the Tribunal finds that the Respondents were not liable to pay the administration charges of £36 and £180 respectively.
16. The Tribunal then proceeded to deal with the Service Charge Account [145]. The Tribunal noted that in November 2018 the Applicant had agreed to the Defendants paying off the arrears of £6,452.81 as at that date at £150 per month plus any current charges. The Defendants kept to the agreement until the end of 2019 when they stopped paying the additional charges because of their dispute with sub-letting fees and other costs. The Defendants throughout the dispute continued to make their monthly payment of £150.
17. The matters that fell within the Tribunal's jurisdiction were the service and administration charges for the years 2019 and 2020 which included the half yearly charge in advance for 2019 dated 3 December 2018. Mr Ashurst in his witness statement at paragraphs 7 to 14 set out the service charge clauses in the lease.
18. The Respondents accepted liability to pay the following service charge invoices: 1453, 1497, 1536, 1616, 1714 and 1715 which represented the service charges for the half yearly payments and balancing charges at the end of the year. The Applicant accepted that invoice 1658 dated 24 April 2020 in the sum of £578.20 for works to the second lift was no longer due, and in fact a credit had been given in the Respondents' service charge account for the following year. This left three invoices in dispute: 1570 dated 8 July 2019 for an amount of £607.72; 1755 dated 13 October 2020 for an amount of £30, and 1760 dated 10 November 2020 for an amount of £288.
19. Invoice 1570 concerned costs of works to the lift, the Tribunal determined that the costs of £607.72 were reasonable and payable. The Tribunal found that (1) the works were necessary, (2) the Applicant had complied with the section 20 consultation procedures and had chosen the contractor with the lowest tender (3) the Respondents had made no observations on the consultation and had adduced no evidence of alternative quotations, and (4) the charge had been properly demanded.
20. Invoices 1755 and 1760 related to the Applicant's costs for issuing an arrears letter and preparing a file for solicitors, the Tribunal determined that the costs of £30 and £288 were reasonable and

payable. The Tribunal found that (1) there were arrears owing under the service charge account at the time action was taken, (2) the costs were reasonable having regard to Mr Ashurst's evidence on the work done, and (3) the charges were properly demanded.

21. As a result of the Tribunal's determination, the amount owing under the ground charge account was £15, and the amount owing under the Service charge account was £3,846.68.

The County Court

22. The Court confirmed the decision of the Tribunal and gave judgment in favour of the Claimant in the sum of £3,861.68.
23. The Court observed that the Claimant had not pleaded contractual interest. The Court accepted Mr Siefert's proposition that the Court had a discretion on the amount of interest but in exercising discretion it should give weight to the contractual rate of interest. The Court determined to award at the rate of 4 per cent in respect of the five invoices from 2 December 2019 (1616, 1714, 1715, 1755 and 1760) which totalled £258.02.
24. The Claimant produced a schedule of costs amounting to £4,556.40.
25. The Claimant relied on paragraph 1.3 to the Third Schedule of the lease which, it said, entitled it to claim the costs of proceedings in respect of ground rent and service charges on an indemnity basis.
26. The Court referred to *Forcelux v Martyn Ewan Binnie* [2009 ECWA Civ 1077] as authority for the proposition that although the contractual costs are a factor they do not override the general discretion of the Court under section 51 of the Senior Courts Act 1981.
27. The Court decided that the Claimant had "won" the Claim and was entitled to an Order for costs. The Court, however, decided to reduce any order for costs by 75 per cent in accordance with the factors identified in CPR 44.2. These factors outweighed the Claimant's contractual entitlement for costs. The Court found:
 - The Claimant's conduct in connection with last hearing was unacceptable. There was a failure to comply with directions and to respond to the enquiries of the Court. Also the involvement of the freeholder acting separately from the managing agent at the beginning of the dispute caused significant confusion and was the principal reason why the Defendants had withheld payment.
 - The Defendants had admitted a substantial part of the Claim which had reduced significantly the amount in dispute to £1,3819. The Defendants were successful in reducing the amount in dispute by £937.20 leaving an outstanding sum of £444.70.

- The Defendants had offered to settle the outstanding arrears. The Claimant did not explain why the offer was not accepted. The Court at the least hearing indicating that it expected the parties to settle the dispute.
28. The Court assessed that eight hours of solicitor's time in attendance and preparation was reasonable. The Court considered that the nature of the claim could be adequately dealt with by a solicitor of Grade C. The hourly rate for a grade C solicitor in National 1 is £178. The amount of costs assessed with VAT was £2,248.08 (£1,424 solicitors' costs, agents fee of £450, VAT of £374.08). The Claimant did not pursue the agent's costs for the last hearing. The costs assessed was reduced by 75 per cent giving an order of costs of £562.02 plus court fees of £455 which equalled £1,017.02.
29. The Court understands that after the hearing the parties intended to reach a settlement on how the order would be paid and on payment of the arrears that have accrued since the date of Claim.

Rights of appeal

Appeals in respect of decisions made by the Tribunal

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 must be made as an attachment to an email addressed to rpsouthern@justice.gov.uk.

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.

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/her capacity as a Judge of the County Court

An application for permission to appeal may be made to an appeal judge in the County Court since No application was made to the Judge at the hearing.

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/her capacity as a Judge of the County Court and in respect the decisions made by the FTT

You must follow **both** routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues by proceeding directly to the County Court.