



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

**Case Reference : CAM/12UD/MNR/2022/0037 and
CAM/12UD/LSC/2022/0022**

**Property : 34 Willow Court , 2 Sorrel Road, Whittlesey,
Peterborough, PE72FN**

**Applicants : Peter William Cook, Gail Patricia
Cook and Neil James Callum Cook**

Representative : Peter William Cook

Respondent : The Longhurst Group

Representative : Did not attend

**Type of Application : Determination of payability of service charge
and challenge to rent increase.**

Tribunal Members : Judge Shepherd

**Date and venue : 24th November 2022 at Peterborough
Magistrates Court**

Date of Decision : 24th November 2022

DECISION

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1. In this case the Applicants, Peter William Cook, Gail Patricia Cook and Neil James Callum Cook (“The Applicants”) have made two applications in relation to premises at 34 Willow Court, 2 Sorrel Rd, Whittlesey, Peterborough, PE7 2FN (“The premises”). The Respondent to the applications is the Longhurst Group (“The Respondent”). The Applicants challenge a rent increase dated the 4th of April 2022 and service charges relating to the payability of charges for meals.
2. The hearing in this case took place on the 24th of November 2022. Remarkably the Respondent failed to attend the hearing and notified the Tribunal approximately 45 minutes before the hearing was due to take place to say they would not be attending. No apology or reason for non - attendance was offered. This was a considerable discourtesy to the Tribunal. The Respondent had previously written to the Tribunal notifying it that because of an offer it had made to the Applicants it wanted the hearing adjourned. It is not for the Respondent to call for the case to be adjourned simply because they have made an offer. In any event the Applicants attended the hearing and the hearing went ahead in the absence of the Respondent.

3. As indicated already there were two matters under consideration. The first matter that of the challenge to the rent increase can be dealt with in short order.

The rent increase

4. The Applicants' tenancy at the premises is an assured tenancy which began on the 14th of December 2021. On the 14th of February 2022 the Respondent sought to increase the rent significantly with effect from the 4th of April 2022. The total rent in the notice was going to increase to £469.61 per week. This included amounts for *rent, service charge*, personal heating, personal water, personal electricity, and personal food. The latter was to cost £58.35 per week. Aside from the fact that the notice was not addressed to all of the tenants there was a more fundamental defect in it which the Respondent should have been aware of. Section 13 of the Housing Act 1988 protects tenants from landlords randomly increasing rent during the first year of the tenancy. Indeed, at the back of the notice are guidance notes for tenants which confirmed that the starting date for the proposed new rent must not be earlier than 52 weeks after the date on which the rent was last increased using the statutory notice procedure or *if the tenancy is new the date on which it started*. Self - evidently the notice was served within the 52 weeks and is therefore invalid.
5. In directions issued by Regional Surveyor Hardman it was stated that it was not clear what elements of the rent of £469 -61 set out in the section 13 notice related to actual rent and what related to service charge particularly given the substantial nature of the service charge. The directions then went on to state that the parties will need as part of their submission to explain why they believe the tribunal may have jurisdiction in respect of the rent. The submissions made by the Respondent failed to address this issue and no explanation has been given as to the amounts of the various charges that fall within the rent and the amounts that fall within the service charges although the Respondent did concede in correspondence that the amounts in the notice were wrong in any event. As indicated the Respondent failed to attend the hearing and therefore clarity could not be sought from them. In light of this the Tribunal considers that the way forward is to simply determine that the rent increase notice, i.e. all aspects of that notice are defective and therefore the Applicants do not owe any increased sums from the 4th of April 2022 onwards. The Respondent will need to make the relevant adjustments to the Applicant's rent account to ensure that they are not charged any of the increased sums in the rent increase notice.

The meal charge

6. The Applicants were represented by Peter Cook. He told me that when the tenancy started he was told that meals were available in the restaurant which is located on site at the scheme in which the premises is located. He said he was clear that he was not told that the charge for meals was a mandatory charge, on the contrary he was led to believe that it was optional whether to use the restaurant and pay for the meals. The tenancy agreement does not breakdown how the rent is arrived at and there is no reference to meal charges in the agreement. In his written submissions Mr Cook says the first indication of what was being charged for food was in the rent review dated 14th February 2022. This review suggested that the charge for the food would be £22.06 per day for the three members of the household.
7. It is difficult to see how it can be said that a sum is payable when it is not properly charged. The food charge is an unusual charge and should have been explained to the Applicants at the start of their tenancy. As indicated the Tribunal were not able to question the Respondent about this area of the challenge because they failed to attend the hearing. In the circumstances the tribunal is left with no real alternative other than to determine that the food charge from the start of the tenancy to date are not payable. Again, the Respondent will need to make relevant adjustments to the Applicants' rent account in order to reflect the deduction of the food charges since the start of the tenancy.
8. It is clearly unreasonable to require somebody to pay for something which they have no intention of using. It is surprising that a social landlord would adopt such a position. Some people may want to use the restaurant facilities, the Applicants don't. Apparently their flat has space for a cooker so that they are able to cook in their own premises. The Respondent has demonstrated considerable inflexibility with regard to the food charge and the Applicants have had real difficulty in contacting them and speaking to them about this.
9. In my estimation each of the Applicants have been badly affected by this experience. They appeared very distressed and upset about their time at the premises. This needs to be addressed by the Respondent urgently and they need to consider the welfare of these tenants carefully. They are not running a commercial enterprise they are social landlords.

Summary

10. The rent increase dated 14th of February 2022 is defective and invalid. No point was taken by the Respondent in relation to the timing of the Applicants' application challenging the rent increase notice and even if it had been the

Tribunal would have decided that the notice was still defective on its face. The meal charge is not payable and should be deducted from the Applicants' rent.

Paragraph 5A of Sched 11 of the 2002 Act and s 20C of the LTA 1985

11. The Respondent should pay to the Applicants £300 reimbursing them the cost of their applications and hearing fee. The Respondent is precluded from pursuing any costs they have incurred in these matters from the service charge.

Judge Shepherd

24th November 2022

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.