



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

Case reference : **CHI/24UP/LIS/2022/0028**

Property : **9a Andover Road, Winchester SO23
7BS**

Applicant : **Mr David Lloyd Parry**

Representative : **PDC Law**

Respondent : **Martyn Anthony Forse**

Representative :

Type of application : **Transferred Proceedings from
County Court**

Tribunal member(s) : **Judge D Whitney**

Date of hearing : **19th December 2022**

Written Reasons

Background

1. The Applicant seeks, and following a transfer from the County Court the Tribunal is required to make, a determination in respect of the Defendants liability to pay and the reasonableness of service and administration charges. These are matters within the jurisdiction of the Tribunal.
2. The original proceedings were issued in the County Court under Claim No. G44YY046 and were transferred to the Tribunal by District Judge Stewart by order dated 20th May 2022.
3. The Applicant has also claimed costs. These are matters within the jurisdiction of the Court. For the purposes of the County Court issues, the proceedings have been allocated to the small claims track.
4. The Respondent has filed a Defence in the court proceedings.
5. Directions were issued on 20th July 2022. On 11th October 2022 further directions were issued adjourning the hearing and providing for the re-listing of the same.
6. A hearing bundle had been prepared by the Applicants and filed with the court. This was used by the Tribunal together with a statement filed by Mr Forse dated 20th June 2022. References in [] are to pages within the bundle.

Hearing

7. The hearing was attended by Mr Concannon of counsel for the Applicant together with Mr Liam O'Sullivan of GH Property Management Services Limited. Mr Forse appeared in person. The proceedings were recorded.
8. Mr O'Sullivan gave evidence and was questioned by the Respondent. Mr Forse presented his case and was questioned by Mr Concannon.
9. Both parties were given opportunity to make any and all submissions they wished to make.
10. At the conclusion I gave a short oral judgment of matters as determined by the Tribunal. These are my written reasons.

Reasons

11. I was invited to determine the Respondents liability to pay and the reasonableness of certain service charges and administration fees [48]. The sums claimed total £2,027.50. Copies of the various demands were in the bundle [83-92]. A copy of the budget relied upon by the Applicant was also included [82].

12. A copy of the lease relied upon by the Applicant was in the bundle [14-30]. Mr Forse was the original lessee. He agreed the lease required him to pay 25% of the service charge costs. Mr Concannon for the Applicant also agreed the lease provided the Respondent was to pay 25% of the costs and he submitted this included all of the costs claimed.
13. I pause to explain the building has a fish and chip shop on the ground floor with 2 flats above. The fish and chip shop is let on a long lease (I did not have a copy). One flat belongs to the Respondent and I am told the other is retained by Mr Parry.
14. Mr Forse explained that when he first purchased his flat Mr Parry used his own management company known as DPPM Ltd to manage. Essentially he was only charged for insurance. In 2019 he was told that GH Property Management Limited were to take over management.
15. Mr O'Sullivan explained his company was appointed. The initial contract was for a term of one year less a day and the appointment has continued. His fee including vat for the disputed years was £1200 of which the Respondent is liable to pay £300.
16. Mr Forse suggests that there should be a consultation and that there is no need for a manager to be appointed. He accepted Mr Sullivans evidence as to the length of the contract and that Section 20 consultation was not engaged, he suggested however under the RICS Management Code consultation should take place.
17. I find that the Applicant is entitled under the terms of the lease to appoint a managing agent. The appointment of a managing agent is a matter for the Applicant. The Applicant did notify the Respondent and I am satisfied on the evidence I heard there was no need to undertake a statutory consultation. I am satisfied that the fee charged being £1000 plus vat for the building as a whole is reasonable.
18. Mr Forse in his statement makes various references to the RICS Management Code. This is an approved code and so all property managers should adhere to the same. On the evidence before me and in respect of the matters I was required to determine I am not satisfied that I have identified any particular breach which affects my determination.
19. The budget at [82] is said to be for the year 2019 to 2020. Mr Forse indicates he paid for the insurance for the year June 2019 to May 2020. He challenges as to why there is any further claim for insurance. He accepted on questioning that an interim charge could be levied under the lease.
20. I note the budget refers to the insurance premium sought being for the year 2020/2021. I find that an interim charge may be levied

under the lease. I am satisfied that the budget can include a claim for the premium for the forthcoming year. Once final accounts for each of the service charge years are produced any balancing credits or debits may be applied.

21. Mr Forse looked to challenge the need for various risk assessments. He suggested these would only benefit the Applicant and in his opinion were not required. He objecting to paying unless there was a clear benefit to himself.
22. I am satisfied that a prudent landlord would undertake such assessments as are included within the budget. I note that the commercial parts are operated as a fish and chip shop and this seems to me to be highly relevant to the question of any asbestos and fire risk assessment for the building as a whole. It is for the landlord to determine what services such as this it provides and I am satisfied that such costs fall within the lease.
23. The amounts budgeted are in the order of £450 in total and I am satisfied that such is a reasonable sum to budget.
24. Other items in the budget Mr Forse suggests should only be included if there has been consultation. The impression I gained was that Mr Forse only wanted to be charged amounts he agreed with. It is in my judgment for the Applicant to determine what if any repairs or other services are provided. I am satisfied that all the items listed are reasonable in scope and amount to be included in an estimate for service charges.
25. I do whoever find that Mr Forse is only liable to pay 25% of the sums. The budget appears to indicate that certain sums of expenditure are only charged to the two flats with each paying 50%. This is not in accordance with the lease and I find Mr Forse is only liable for 25% of the estimated costs being £1,302.50 payable in two tranches as demanded of £651.25.
26. In a similar fashion I determine that Mr Forse is only liable to pay 25% of the intercom system costs [85] and so liable for £111.25. Whilst it may be only the flats benefit from this and other items the lease provides for a percentage of 25% as accepted by Mr Concannon. I do not know what arrangements exist between the Applicant and his commercial tenant and simply because all costs cannot be recovered by him this does not entitled him to claim them from the Respondent.
27. Turning now to the administration costs I am satisfied that the lease allows recovery of such costs from Mr Forse and demands have been sent. A sum of £90 is sought for late payment. In my judgment this is not reasonable and using my expertise I substitute a fee of £50.

28. A sum of £150 is claimed being the managing agents fee for preparing the account for referral to a debt company. I am satisfied that this is a sum which the Respondent is liable to pay and the amount claimed is reasonable.
29. The sums claimed, save for administration fees and the cost of the intercom, are estimated service charges. In due course accounts should be prepared with supporting invoices and any credit or debit adjustments shall be made.
30. In conclusion I determined that the Respondent was liable to pay charges totalling £1,613.75.