



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

**IN THE COUNTY COURT at Barnstaple
sitting at Havant Justice Centre
Elmleigh Road Havant PO9 2AL**

Tribunal Reference : CHI/18UK/LSC/2022/0108

Claim Number : J45YX725

Property : 2 Cairn Cross, Kingsley Road, Westward
Ho, Bideford, Devon, EX39 1JA

Applicant/Claimant : The Gayeanne Management Company
Limited

Representative : PDC Law Ltd

Respondent/Defendant : Matthew Robert Clarke

Representative :

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

Tribunal member(s) : Judge Tildesley OBE

In the County Court : Judge Tildesley OBE

**Date and Place of
Hearing** : 23 January 2023
Havant Justice Centre

Date of Decision : Oral Reasons and Judgment given 23
January 2023
Written Reasons for Tribunal Decision
20 February 2023

DECISION

Summary of the decisions made by the Tribunal

1. The Tribunal determines that the Respondent is liable to pay the Applicant the balancing charge of £112.50 for the year ended 30 June 2020, the service charge on account in the sum of £850 for the year ended 30 June 2021 and the service charge on account in the sum of £1,200 for the year ended 30 June 2022 making a total of £2,162.50.
2. The Tribunal determines that the amounts of administration charges of £120 (11 November 2021), £60 (16 February 2021), £60 (30 September 2021) and £60 (6 September 2021) are reasonable but not payable until the correct Notice of Tenants Rights and Obligations (Administration Charges) is served.

Summary of the decisions made by the Court

3. The following sums are payable by the Respondent to the Applicant by 6 March 2023:
 - (i) Service charges: £2,162.50
 - (ii) Legal costs under clause 3.22 of the lease and summarily assessed at £6,600 including VAT.

The Proceedings

4. Proceedings were originally issued against the Respondent on the 29 April 2022 in the County Court Money Claims Centre under claim number J45YX725. The Respondent filed a Defence dated 12 May 2022. The proceedings were then transferred on 31 August 2022 to the County Court at Barnstaple and then to this Tribunal by the order of District Judge Griffiths dated 21 September 2022.
5. District Judge Griffiths ordered that the Tribunal Judge sitting as a Judge of the County should decide those matters that fell within the jurisdiction of the Court.
6. On 10 October 2022 Judge Dobson directed the parties to exchange their statements of case and that a hearing at Havant Justice Centre by video would be held on 23 January 2023.
7. On 14 October 2022 the Respondent emailed the Tribunal to say that he did not want a video hearing. On the 18 October 2022 the Tribunal requested the Respondent to complete a case management application form in order for the Tribunal to decide what form the hearing should take. On 20 October 2022 the Respondent emailed the Tribunal stating he could not fill out the form. A Tribunal case officer spoke to him to ascertain the Respondent's reason for not completing the form. The Respondent stated that he wanted mediation instead. The Tribunal decided that after receiving representations from the parties that mediation was not a viable option. The Tribunal communicated this on 1 November 2022 and informed the parties that the existing directions remain. On 15 December 2022 the case officer sent a reminder to the parties about the hearing, and advised that the Video Hearing Service would be contacting them about the hearing. On 19 January 2023 the Tribunal sent a final reminder about

the hearing on 23 January 2023. On 20 January 2023 Mr Clarke informed the Tribunal that he was suffering from depression and anxiety and that he takes three different medications to try and help with this. Mr Clarke said that he seemed to be suffering more than usual and that he felt he was not in the right frame of mind to attend the hearing.

8. The Respondent did not provide his statement of case by 12 December 2022 as directed. The Applicant said that it had agreed with the Respondent to extend time for him to send a statement of case. Despite sending the Respondent reminders the Applicant had not heard from the Respondent since the 8 December 2022 when he had asked for an extension of time for sending his case.
9. The Applicant was unable to include a statement of case from the Respondent in the hearing bundle or agree the contents of the bundle with him. The Applicant pointed out that the bundle included the Respondent's defence filed for the County Court proceedings and that the Defendant had seen all the documents in the bundle apart from a short statement. In the decision the page references in the bundle are in [].

The Hearing

10. Jonathan Wragg of Counsel appeared for the Applicant. Mr James Lethaby, Director of Peninsula Management SW Ltd, the managing agents was in attendance to speak to his witness statement. The Respondent did not appear.
11. The Applicant applied for the hearing to proceed in the absence of the Respondent. The Tribunal granted the Application. The Tribunal was satisfied that the Respondent had been duly notified of the hearing. The Tribunal considered that the Respondent had been given every opportunity to participate in the proceedings but he chose not to do so. The Respondent had not applied to adjourn the hearing. The Tribunal concluded that it was in the interests of justice to proceed with the hearing. At the time the Tribunal made its decision it was not aware of the Respondent's email of 20 January 2023. The Tribunal has subsequently considered it and decided it would make no difference to its decision to proceed with the hearing.
12. Judge Tildesley sat first as a Tribunal Judge to determine the reasonableness and payability of the service charges and administration charges. After he concluded those matters that fell within the Tribunal's jurisdiction, Judge Tildesley sat as Judge of the County Court to give judgment on the Claim and make orders on costs.

The Property and the Lease

13. The subject property is a terraced building of four storeys high and constructed of stone with a slate roof. The property was built late 19th century and converted into four flats around 2006.
14. The Respondent holds a long lease of the subject property, which was made between The Gayeane Management Company Limited of the one part and Shirley Gaye King of the other and dated 31 May 2006. The lease was granted

for a term of 999 years from 31 May 2006 on payment of rent of £75 per annum.

15. Under clause 2.2 the Tenant is liable to pay by way of further rent the Insurance Rent payable on demand in accordance with clause 5.3 and the Service Charge payable in accordance with the second schedule. The Tenant's proportion of the service charge is one quarter.
16. Clause 5.3 provides that The Tenant shall pay the Insurance Rent on the date of this lease for the period from the commencement date of the Term to the day before the next policy renewal date and subsequently the Tenant shall pay the Insurance Rent on demand and (if so demanded) in advance but not more than three months in advance of the policy renewal date.
17. The Second Schedule sets out the service charge machinery. Paragraph 4 requires the Tenant to pay a service charge on account which can either be a provisional sum equal to the Service charge payable for the previous financial year or an estimate by the Surveyor of what the Annual Expenditure is likely to be for that financial year by 4 equal quarterly payments on the usual quarter days. Paragraph 5 requires the payment of a balancing charge if the service charge for any financial year exceeds the provisional sum or a credit to the Tenant against the next quarterly payment of the Rent and Service Charge if the service charge is less than the provisional sum.

The issues

18. The sums claimed in service charges by the Applicant were as follows:
 - Balancing Charge of £112.50 for the year ended 30 June 2020.
 - Service Charges on account in the sum of £850 for the year 1 July 2020 – 30 June 2021.
 - Service Charge on account in the sum of £1,200 for the year 01 July 2021-30 June 2022.
19. The sums claimed in administration charges by the Applicant were as follows
 - 16 February 2021 Administration Fee of £60 for Late Payment.
 - 6 September 2021 Administration Fee of £60 for Late Payment.
 - 30 September 2021 Administration Fee of £60 for Late Payment.
 - 11 November 2021 Administration Fee of £120 for Late Payment.

Balancing Charge of £112.50 for the year ended 30 June 2020

20. The Applicant demanded the sum of £112.50 in respect of a balancing charge of £112.50 for the year ended 30 June 2020 [106]. The Applicant supplied a copy of the Financial History Service Charge which showed an outstanding balance of £112.50 as at 26 August 2020 [88].
21. The Tribunal finds that the sum of £112.50 was outstanding at the end of the financial year on 30 June 2020. The Applicant has demanded the sum in accordance with the requirements of the lease and of statute. The Tribunal is satisfied that the Respondent is liable to pay the sum of £112.50.

Service Charges on Account of £850 and £1,200 for the years ended 30 June 2021 and 2022

22. The Tribunal is required to address two questions: (1) Whether there is authority under the lease to recover the costs as on account service charges, and (2) whether the charges are reasonable.
23. Paragraph 4 of the Second Schedule of the lease gives the Applicant two options for demanding service charges on account. The Applicant opted for the second option, namely, an estimate by the Surveyor of what the Annual Expenditure is likely to be for that financial year. In this case the Applicant prepared a budget for each of the two years exhibited at [73] and [75].
24. In regard to the second question section 19(2) of the 1985 Act provides that

“Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise”.
25. The effect of section 19(2) is to modify the contractual obligation so that no greater amount than is reasonable is payable before the relevant costs are incurred. The language of the subsection suggests that the statutory ceiling applies at the time the leaseholder’s liability arises. If, at that date, the on-account payment is greater than a reasonable sum, the leaseholder’s contractual obligation is to pay only the lesser reasonable sum.
26. In the Upper Tribunal decision of *Charles Knapper and others v Martin Francis and Rebekah Francis* [2017] UKUT 3 LC Para 30. Martin Rodger QC Deputy Chamber President indicated:

“In principle it seems to me that the FTT was correct in disregarding matters which became known only after the appellants’ contractual liability arose. Those facts did not turn what had been a reasonable sum into an unreasonable sum. The question of what sum ought reasonably to be paid on a particular date, or ought reasonably to have been paid at an earlier date, necessarily depends on circumstances in existence at that date, and should not vary depending on the point in time at which the question is asked”.
27. The decision in “*Knapper*” established the principle that the question of the reasonableness of the proposed amount should be assessed against the circumstances known at the time of the demand.
28. Martin Rodger QC, however, in the later decision of *Avon Ground Rents Limited v Mrs Rosemary Cowley and Others* [2018] UKUT 92(LC) emphasised that whether an amount is reasonable as a payment in advance is not generally to be determined by the application of rigid rules, but must be assessed in the light of the specific facts of the particular case. In this regard Martin Rodger QC at [51] referred to the Lands Tribunal decision in *Parker and Beckett v Parham* LRX/35/2002:

“It is not inconsistent with the Tribunal’s decision in Knapper for the likelihood of a particular event occurring during the period covered by an advance payment to be taken into account in determining the reasonableness of the amount of the payment. In Parker the Tribunal mentioned at several points that the certainty that works would be carried out, and thus the certainty of the anticipated costs, were matters which it was permissible to take into account in considering the reasonableness of the advance payment: “if the cost of the works is uncertain, so that there is a wide range of possible outcomes around the amount that the LVT has found to be reasonable, that could well be something that could affect the reasonableness of an advance payment” .

29. Under section 19(2) the Tribunal is not concerned with the reasonableness of the contractual obligation but only with the reasonableness of the proposed amount.
30. The Applicant adduced the budgets for the two years in question as evidence of the reasonableness of the amounts demanded.
31. The budget for the year ended 30 June 2021 was £3,400 with the Respondent’s contribution of £850 [73]. The two main expenditure items were building insurance (£750) and managing agents fees (£1,440). The budget was largely based on previous year expenditure. The estimated costs of £100 for utilities was included for a new communal supply. The amount allowed for repairs/maintenance was £38.60.
32. The budget for the year ended 30 June 2022 was £4,800 with the Respondent’s contribution of £1,200 [75]. The budget was derived from the previous year’s budget and accounts. The principal change was the increase in the estimated costs of repair and maintenance to £1,393.
33. The Applicant’s demands for the service charges in question complied with the requirements of the lease and of statute and were exhibited at [85] and [91].
34. The Respondent in his defence filed for the County Court proceedings made the following points:
 - He would pay insurance but not maintenance.
 - The managing agents don’t do anything: (1) His roof was still leaking after 16 years of living [at the property] (2) The agents have asked me to clear the guttering because he was in the roof space but with a100 feet fall from his windows.
 - The agents have the wrong address.
 - He wished to be treated fairly and the amount of money they ask is too much
 - The Respondent had no outside space and the outside of the block is maintenance free.
 - The Agents all have flash cars they drive and wear designer clothes.
35. Mr Lethaby disputed the Respondent’s allegations about the poor service received. Mr Lethaby said that the Respondent had a history of failing to co-operate with the managing agents which included the previous agents. Mr Lethaby asserted that he had requested access on several occasions to the Respondent’s flat which had been denied. Mr Lethaby pointed out that the Agent

could not authorise repairs to remedy the alleged water ingress unless the Agent has had opportunity to inspect the damage in the flat.

36. The Tribunal reminds itself that it is dealing with service charges on account rather than actual expenditure. The Tribunal is satisfied from the terms of the lease that the Applicant has the authority to collect service charges on account. The Tribunal finds that the Applicant has provided a budget for the two years in question. The Respondent in his defence raised no challenge to specific items of expenditure included in the budget. The Tribunal accepts Mr Lethaby's evidence that the amounts included in the budget were principally derived from previous years expenditure. The Tribunal observes that the majority of the expenditure was on recurring items such as building insurance and managing agents fees. The Tribunal considers that the costs for the individual items of expenditure were in the bounds of reasonableness. The Tribunal is satisfied that the amounts demanded for the years ended 30 June 2021 and 30 June 2022 are not greater amount than is reasonable.
37. The Tribunal determines that the Respondent is liable to pay the contribution of £850 and £1,200 respectively for the service charges on account for the years ended 30 June 2021 and 30 June 2022.

Administration Charges

38. The Tribunal is required to determine whether the three charges of £60 each issued on 16 February 2021, 6 September 2021 and 30 September 2021 respectively for arrears letters, and a charge of £120 imposed on 11 November 2021 for referring the file to a solicitor are administration charges and if they are whether the amounts of the charges are reasonable.
39. The statement of the sums claimed included £250 for the instruction fee of the Applicant's representative PDC Law. The Tribunal understands that the file was passed to a Debt Collection Agency, Property Debt Collection Limited, which is connected with PDC Law. There was no demand for the £250 included within the bundle. The Tribunal treated the £250 as part of the Claim for contractual costs which fell within the Court's jurisdiction.
40. Paragraph 1(1) of schedule 11 of the Commonhold and Leasehold Reform Act 2002 defines an administration charge as an
 - “...an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly:
 - (a) for or in connection with the grant of approvals under a lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to the lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to the lease otherwise than as landlord or tenant,or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in the lease.”
41. The amounts claimed by the Applicant related to costs incurred for sending chasing letters to recover arrears of service charges due under the lease, and fall

within the definition of administration charges as set out in paragraph 1(1)(c) of schedule 11 of the 2002 Act.

42. Under paragraph 2 of schedule 11 of the 2002 Act a variable administration charge is only payable to the extent that the amount of the charge is reasonable.
43. Mr Lethaby said in evidence that the Applicant's managing agent had sent the Respondent first reminder letters if the service charge had not been paid within the 30 days stipulated by the demand. These were sent to the Respondent on 19 January 2021 [106], and 12 August 2021 [108]. The first reminder letter stated *'This is the first reminder that your service charge has not yet been paid. It is essential for you to pay the service charge within 14 days of this notice to avoid administration charges being applied to your account. An administration fee of £50 plus VAT (£60) will be applied to your account in the event that the service charge has not been paid within 14 days of this notice'*. The agent made no charge for the first reminder letter.
44. A second reminder letter [111] was sent on 6 September 2022 warning that another charge of £50 plus VAT would be imposed if the debt was not paid within 14 days [111]. On 30 September 2022 a final reminder was sent warning that the account should be brought up to date within seven days to prevent legal action from being taken and that a £100 plus £20 VAT would be added to the account if the amount was not paid [114].
45. Mr Lethaby stated that the charges reflected the costs to the Agent in preparing the default letters and compiling the file for the solicitors. The Respondent made no observations on the costs of the charges.
46. The demands for the administration charges were sent on 16 February 2021 (£60) [97], 6 September 2021 [103], 30 September 2021 (£60) [100] and 11 November 2021 (£120) [94]. The Agent, however, had not included with the demand the correct Notice of Tenants Rights and Obligations.
47. The Tribunal is satisfied that the amounts of the charges totaling £300 were within the bounds of reasonableness. The Tribunal, however, finds that the charges were not payable until the Applicant has sent the correct Notice of Tenants' Rights and Obligations.
48. The Tribunal announced its decision on the Respondent's liability to pay the service charges and the administration charges. After which Judge Tildesley sat as Judge of the County Court exercising the jurisdiction of a District Judge.

County Court issues

49. Judge Tildesley confirmed the decision of the Tribunal and gave judgment in the sum of £2,162.50 to the Claimant.

Costs

50. The Claim had been allocated to the small claims track. Under CPR 27.14 the Court may not order a party to pay the other party's costs and expenses except

for fixed costs and the Courts fee. Where there is a claim for contractual costs they will be recoverable in accordance with CPR 44.5 regardless of any allocation to the small claims track.

51. The Claimant relied on Clause 3.22 to support its Claim for contractual costs. Clause 3.22 provides as follows:

“To pay to the Landlord on an indemnity basis all costs fees charges disbursements and expenses (including without prejudice to the generality of the above those payable to counsel solicitors and surveyors) properly and reasonably incurred by the Landlord in relation to or contemplation of or incidental to:

3.22.1 every application made by the Tenant for a consent or licence required by the provisions of this lease whether such consent or licence is granted or refused or proffered subject to any qualification or condition or whether the application is withdrawn

and

3.22.2 the preparation and service of a notice under the Law of Property Act 1925 Section 146 or the taking or proceedings under the Law of Property Act 1925 Sections 146 or 147 notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court”.

52. The Court is satisfied that the Claimant is entitled to rely on Clause 3.22 and sub-clause 3.22.2 to substantiate a claim for costs. The Court finds that the Claimant had in its contemplation forfeiture of the lease when it sent its Letter of Claim dated 17 November 2021. The letter included the sentence “You can risk losing your home by failing to make payment and our client is considering its options which may extend to seeking possession of the premises”.

53. The directions issued by Judge Dobson dated 10 October 2022 required that

“Any application for costs must be supported by a Statement of Costs which includes a breakdown of work done and time spent. Where contractual costs are claimed, the statement must be served no later than 7 days before the hearing. In other cases, the statement must be served no later than 48 hours before the hearing”.

54. The Court has, therefore, limited its consideration of costs to those costs claimed in the Statement of Costs which comprised £6,490 plus £1,298 VAT (solicitors costs), £1,250 plus £250 (Counsel’s fee) and £300 Court Fees making a total of £9,588.

55. The Court summarily assessed the costs at £4,000 plus £800 VAT (solicitors’ costs) £1,250 plus £250 (Counsel’s fee) and £300 Court Fees making a total of £6,600. In reaching its assessment the Court took into account that the Claimant had been largely successful with its Claim, the presumption of reasonableness in CPR44.5 is rebuttable, and the nature of proceedings which were straightforward and did not merit the wholesale engagement of a Grade A fee earning solicitor.

RIGHTS OF APPEAL

Appealing against the Tribunal's decision

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 to the First-tier Tribunal at the Regional office which has been dealing with the case.
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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court

5. 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.
6. 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.
7. 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

8. 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.