



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

Case Reference : CHI/23UB/LSC/2023/0026/AW

Property : Flat 3 127 St George's Road, Cheltenham,
Gloucestershire GL50 3EQ

Applicant : Ian Keith Pugsley

Representative :

Respondent : Fromefield Management Company Ltd

Representative : Sarah Ross

Type of Application : Determination of Service Charges section 27A
of Landlord and Tenant Act 1985
Breach of Covenant section 168 of
Commonhold and Leasehold Reform Act 2002

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

Date of Decision : Determination on the Papers
28 July 2023

DECISION

Background

1. The Applicant seeks a determination of service charges for the years 2020 to 2021.
2. The property 127 St George's Road is a converted house comprising three flats. The Applicant is the leaseholder of Flat 3. The Respondent, Fromefield Management Company Limited, owns the freehold of 127 St George's Road. The three leaseholders are the shareholders and the directors of the freehold company.
3. This Application has been prompted by the dispute between the freeholder and its managing agent, Fraser Allen Limited, which managed the property in 2020 and 2021.
4. In February 2022 the Applicant made a complaint on behalf of the freeholder with the support of the two other shareholders about the Managing Agent to The Property Ombudsman.
5. At around the same time February 2022 Dependable Limited, the contractor, used exclusively by the Managing Agent for all works at the property sued the Respondent for non payment of its charges for carrying works at the property. The Tribunal understands the amount claimed by Dependable Limited is £9,436.20.
6. On 18 November 2022 the Property Ombudsman published its findings in respect of the complaint. The report is thorough and gives a detailed analysis of the facts and the issues involved.
7. The Property Ombudsman found in favour of the Respondent and made a total award of £2,050.00. The Property Ombudsman explained that it could not make a finding on service charge expenditure. The Property Ombudsman said as follows:

“I must make it clear that , in line with legislation, only a court can make a determination on the reasonableness of the managing agent's (FAL) service charge expenditure. Therefore, in order for the Complainant company to receive a conclusive determination on the reasonableness of expenditure, and attempt to recoup financial losses from FAL, there are two options available to the Complainant:

- One of Lessees could make an application to the First-tier Tribunal (Property Chamber) against the Freehold Management Company (FMC) for a determination on the reasonableness of expenditure. Following the conclusion of the FTT determination, further action could be taken against FAL to recoup financial losses that were deemed unreasonable by the FTT. FMC would still be liable for costs before any attempt is made to recover these from FAL.
- Legal action could be taken against FAL for breach of contract.

If the Complainant accepts the Ombudsman's Proposed or Final Decision it will be in full and final settlement of the dispute between it and FAL. Even if one or all of the Directors later seek a decision from the FTT, acting in their capacity as lessees only, the FTT are likely to consider TPO's decision to be final and binding.

Therefore, before accepting the decision from TPO, I would suggest the Complainants seek legal advice regarding their options as outlined above. A decision from the FTT would arguably place them in a stronger position in terms of claiming the funds they feel are owed from FAL. Like the Property Ombudsman's Review, it is entirely the Complainant's decision whether to act on the FTT's findings: an adverse result would not, therefore, be detrimental to them overall".

8. The Tribunal understands that the Applicant made further representations on the report following which the Property Ombudsman advised that it was unable to produce a final report and thereby a determination because it was unable to establish the reasonableness of the costs. According to the Applicant, after taking advice from a FTT judge the Property Ombudsman advised the Applicant to make an application to the FTT and that an application should be made to Bath County Court to transfer the case from there to the FTT so that everything could be dealt with together.
9. The Applicant has supplied a copy of the Court Order made by Deputy District Judge Evans sitting at the County Court at Bath on 31 August 2022. Deputy District Judge Evans ordered that the Managing Agent be joined as the second defendant to the proceedings, and adjourned the proceedings generally with liberty to restore following the publication of the report of the Property Ombudsman.
10. The Tribunal further understands that on 14 June 2023 a hearing was held at Bath County Court regarding the request to transfer the Claim to the Tribunal. The Court did not agree and issued an Order for Dependable Limited to file an amended Claim.

Consideration

11. The Tribunal has jurisdiction to determine a dispute on service charges between a Landlord and Tenant. Where the Landlord and Tenant are in agreement the Tribunal has no jurisdiction.
12. This case concerns a dispute between the Freeholder and the Managing Agent and its contractor. It is not a Landlord and Tenant dispute.
13. The Property Ombudsman in its report made the telling observation

“Individually, the Directors of the Complainant company are also Lessees with legal rights under the Lease and legislation. This means that the Directors also have a responsibility to each other as Lessees when carrying out their duties held as Directors of the Complainant company.

There are no other Lessees that could challenge the action taken by the three Directors in their capacity as the Complainant company. For example, Lessees have a legal right to challenge service charge expenditure against a resident's management company where any cost is considered unreasonable or unjustified.

It would, therefore, appear that any challenge from a Lessee against the Complainant company's actions in these circumstances would result in a dispute against the Lessees' own actions in their capacity as a Director. Legally, I cannot comment how this would work in practice as it would involve a legal determination".

14. The Applicant included in the hearing bundle a witness statement from Sarah Ross one of the other directors of the Freeholder and a leaseholder for the Respondent. Ms Ross unsurprisingly is in agreement with the Applicant that it is the managing agent which is responsible for the poor service.
15. Although the Tribunal is an expert Tribunal, it is not entitled to bring its own evidence on the question of reasonableness. The Tribunal applies its expertise to decide whose evidence it prefers on the question of reasonableness. The Tribunal has a duty to act fairly and justly. The Tribunal would contravene its duty if it found the managing agent responsible for the poor service which is not a party to the Tribunal proceedings and has no right to be heard. The remedy for the Applicant and the Respondent is to sue the managing agent for breach of contract.
16. The Tribunal notes the Applicant's observation that the Property Ombudsman took the advice of an FTT Judge. The Tribunal is unable to comment. This Tribunal is required to act independently and form its own view on the facts before it.

Decision

17. The Tribunal dismisses the Application on the ground that there is no dispute between the Applicant and the Respondent.

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 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.