



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)

Case Reference	:	CHI/00HY/LSC/2023/0154
Property	:	6 River House St Marys Street Chippenham Wiltshire SN15 3SD
Applicant	:	Mr Shane Andrews
Representative	:	None
Respondent	:	GreenSquareAccord Limited ("GSA")
Representative	:	None
Type of Application	:	Determination of liability to pay and reasonableness of service charges Section 27A Landlord and Tenant Act 1985. Orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002
Tribunal Members	:	Mr I R Perry FRICS
Date of Hearing	:	None. Decided on papers
Date of Decision	:	9 th December 2024

DECISION

Summary of Decision

1. The Tribunal determines that the Respondent shall repay the overpayment of £411.85 for the year 2023/2024 to the Applicant within 14 days of the receipt of this decision.
2. The Tribunal has considered the applications for orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 and, finding that the Respondent has failed to engage with the proceedings, confirms that the costs incurred in this matter are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants.

Background

3. On 24th November 2023 Mr Shane Andrews, the Tenant of 6 River House, applied to the Tribunal for a determination of the reasonableness and payability of the Service charges for his property for the year 2022/2023 in the sum of £411.85. Mr Andrews requested that the matter be dealt with on the Fast Track, he also made an application under Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform act 2002.
4. The Applicant stated that he is an assured Tenant and that "GreenSquareAccord are holding me hostage for 'unpaid rent' which includes the £411.85 surplus paid for the 2022/23 period, they won't let me move despite being assaulted twice by other residents 'until the matter is sorted out'."
5. On 5th July 2024 the Tribunal issued directions for a remote conciliation hearing which took place on 21st August 2024. The Applicant was present at the hearing, but the Respondent did not attend. The Applicant stated that he had not had any contact with the Respondent for 18 months. Those directions included a requirement for the Respondent to reply to several questions and provide clarity regarding the Applicant's tenancy, namely:
 - a. How the Respondent has demanded the service charges in compliance with the tenancy and its statutory obligations.
 - b. To explain the basis upon which the service charges are calculated and upon what terms of the tenancy agreement they rely upon.
 - c. Why the amounts are reasonable.
 - d. Why the Respondent is entitled to retain any surpluses.
6. Further directions issued on 21st August 2024 set a timetable for the exchange of documents preparatory to a determination on the papers. Paragraph 15 required the Respondent to submit a statement of case in reply to the Applicant and the Tribunal by 13th September 2024.

7. The Tribunal received no response from the Respondent and as such no reply to the Respondent's case could be made by the Applicant.
8. The Tribunal gave notice dated 17th October 2024 that it was minded to bar the Respondent from taking further part in the proceedings in accordance with Rule 9 (7) of the Tribunal procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the ground that it had failed to comply with the Tribunal's Directions.
9. The Respondent failed to reply to the notice dated 17th October 2024 and issued directions on 19th November 2024 barring the Respondent from taking any further part in the proceedings pursuant to Rule 9 of the Tribunal procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The directions informed the parties that the Tribunal would proceed to decide the matter on the papers provided.

Submissions

10. The Tribunal was provided with a copy of an Assured Shorthold Starter Tenancy Agreement commencing 17th May 2022 between the parties which provided for a rent of £79.57 per week, a Service Charge of £50.81 per week and other charges of £6.33 per week, a total of £136.71 per week.
11. The Agreement states that the tenancy is an assured shorthold tenancy within the meaning of the Housing Act 1988 and would automatically become an assured non shorthold periodic tenancy after 12 months from the commencement date. Schedule 1 of the agreement specifies what services are provided. The service charge year runs from 1st April to 31st March.
12. Section A 2) of the Agreement provides that "changes in rent (including service charges) will be within the legislation or guidance of the social housing regulator".
13. GSA is a registered society under the Co-Operative and Community benefits Societies Act 2104 which "provides affordable homes and services that create a foundation from which people in our communities can thrive".
14. The Tribunal was provided with an explanatory document written by GSA which states that an annual statement of service costs will be provided and that if there has been a surplus the balance will be shown "as a minus (-)".
15. The Tribunal was also supplied with a service charge certificate by the Applicant for the year 2022/2023 with a surplus/deficit of -£411.85 and a note to the Applicant from GSA dated 3rd January 2024 which states that the Applicant wrote to GSA on 28th September 2023 asking for the overpayment to be refunded, that GSA had replied on 10th October 2023 explaining that any surplus would be offset against the following financial year (2023/2024) in accordance with their terms and conditions, and informing the Applicant that if he was unhappy with this arrangement he could refer the matter to the First-Tier (Property Chamber).

16. The Applicant was concerned that he might not be living at the property for the whole of the following year and would not therefore receive the benefit of the surplus. In their letter of 3rd January 2024 GSA state that the Applicant would pay less in the year 2024/2025.
17. GSA also state that they will make a goodwill payment of £150 to the Applicant comprising £50 for any confusion caused by the initial service charge letter and £100 for the delays in replying to the Applicant's complaint.

The Law

27A Liability to pay service charges: Jurisdiction

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.

Determination

18. The Respondent has failed to engage with the Tribunal or to comply with Directions. Given the status of the Respondent this is most disturbing.
19. The correspondence submitted clearly states that there was an overpayment or surplus for the year in question, 2022/2023 in the sum of £411.85 and the

Respondent has failed to argue why this should be retained and set against the Service Charge for the following year.

20. Accordingly, the Tribunal determines that the Respondent shall repay the overpayment of £411.85 for the year 2023/2024 to the Applicant within 14 days of the receipt of this decision.
21. The Tribunal has considered the applications for orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 and, finding that the Respondent has failed to engage with the proceedings, confirms that the costs incurred in this matter are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants.

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 to the First-tier Tribunal at the Regional office which has been dealing with the case. Where possible you should send your application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal Regional office to deal with it more efficiently.
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.