



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

Case Reference	MAN/00CA/LSC/2023/0094
Property	37 The Sailings Alexandra Road Southport PR9 9AU
Applicants	Jeffrey Stuart Cunningham
Representative	Not represented
Respondent	Gladman Retirement Living Limited
Representative	Adlington Management Services
Type of Application	Application for determination of liability to pay and reasonableness of service charges (S.27A Landlord and Tenant Act 1985)
Tribunal Members	Judge Rachel Watkin Surveyor Member – Amin Hossain MRICS
Date of Hearing	5 September 2024
Date of Decision	5 September 2024

DECISION

Decision

The Tribunal determines that the Applicant is liable to pay the service charge in the sum of £996.65 in respect of the Balancing Charge claimed by the Respondents. (s.27A considered)

The Tribunal does not consider that Respondent's costs of the Application should be regarded as relevant costs to be taken into account in determining the amount of service charge to be paid by the tenant. (s.20C considered)

Background

1. This is the decision of the Tribunal in the Application by Mr Cunningham (the **"Applicant"**) dated six November 2023 for service charges for the years 2022 to 2023 to be considered.
2. The Applicant resides at and is the leasehold owner of the property known as 37 The Sailings, Alexandra Road, Southport PR9 9AU (the **"Property"**).
3. On 19 September 2023, the applicant states that he received an invoice from the Respondent for the amount of £996.65 to cover a balancing charge from 1 April 2022 to 31 March 2023. He considers that he only liable for 50% of the sum claimed as he states that he moved into the Property on 6 October 2022.

Brevity

4. In the interests of brevity and the Senior President of Tribunals practice direction dated 4 June 2024, the Tribunal does not repeat the full background chronology, the parties' submissions, or the legal framework within this decision, save where it is relevant or necessary to explain the Tribunals reasons for its decision.

The Applicant's Position

5. The applicant contends that he is not liable for the charge prior to him moving in for the following reasons:
 - a. the English law of contract forbids a party to a contract from assigning a "burden" to the other party.
 - b. clause 2.5 of the lease states:

"the tenant shall on demand pay to the landlord the service charge (or in case of a period of less than a year a due proportion thereof)"

- c. The Applicant considers that the liability to pay service charges was known to the Respondent but did not inform him that he would be liable to pay for the previous tenant's shortfall. He considers the lack of transparency to come under the Unfair Contract Terms Act. He states he would not have purchased the apartment if he had known.
 - d. A number of homeowners who purchased their apartments during the year 2022/3 were only charged from the date they moved in.
- 6. The Applicant does not contend that the sum in dispute is not payable under the terms of the Lease.
- 7. The applicant states at paragraph 12 of the application that that he only considers the application to be urgent due to the landlord having threatened to charge him interest on the unpaid bill.
- 8. The Applicant also claims an order under s.20C to provide that the Respondent must not include the costs incurred in relation to these proceedings within any service charge claimed from the Applicant.

The Respondent's Position

- 9. The Respondent's Statement of Case is set out in a letter dated 10 April 2024 and specifies:
 - a. The Applicant accepts that he is liable to pay the balancing charge.
 - b. The Applicant's purchase of the Lease took place prior to the balancing charge falling due and, therefore, is due from the Applicant.
 - c. The Applicant should have raised any concerns in relation to payments that would fall due after his purchase with his solicitor.
 - d. All homeowners are responsible for their service charge payments from the day they complete their purchase, not the day they move in.

Decision

- 10. The Lease contains covenants for the payment of charges by the tenant under the Lease to the landlord.
- 11. The Lease is dated 27 January 2020. The parties to the Lease were the Respondent (as landlord) and Jeffrey Leon Canter (as tenant). The term of the Lease is stated to be from 1 January 2019 for 125 years (the "Term"). During the entire term, both the landlord and tenant have obligations to comply with the terms of the Lease. There is no provision in the Lease for those obligations to end where there is an assignment of either party's interest.

12. Therefore, the tenant's obligations to pay sums which fall due under the Lease continue throughout the 125-year period. The only way by which the tenant could cease to be liable for any such sums is by way of assigning that obligation to a third party.
13. Whilst the transfer of the leasehold interest from Mr Canton to the Applicant has not been provided, it is understood that Mr Canton assigned his interest under the Lease to the Applicant on or around 6 October 2022 and that the parties entered into a Deed of Covenant and Licence to Assign on 29 September 2022. By this document, the Respondent gives consent to the assignment of the Lease to the Applicant and the Applicant directly covenants with the Respondent to observe and perform the tenant's covenants and the agreements and provisions contained in the Lease.
14. Therefore, in response to the reasons set out by the Applicant within the Application (and set out at paragraph 5 above):
 - a. the Applicant has committed to the burden of the Lease by direct covenant with the Respondent.
 - b. the obligation of the tenant as referred to at paragraph 5.2 of the Lease became an obligation by the Applicant following the completion of the Deed of Covenant. The period was not a period of less than a year as the Lease continued throughout and the sum fell due at the end of the year.
 - c. The disputed sum did not fall due until after the assignment and the Deed of Covenant. Therefore, the sum claimed fell due from the Applicant and was not a shortfall of the assignor.
 - d. The charges are only raised from the date the term under any lease commenced or from the date of the Lease. If other leases commenced later then then the period for which payments are due will also commence later.
15. Any agreement between Mr Canton and the Applicant as to any apportionment of the charges which fell due during the financial year in which the purchase by the Applicant took place are not relevant to the Applicant.
16. Therefore, for the reasons set out above, the Application is dismissed as the Applicant had contracted by the Deed of Covenant to pay all sums due under the Lease. Therefore, as the balancing payment fell due after the date of the assignment/Deed of Covenant, he is liable to pay the full amount of that charge to the Respondent.
17. It is noted that no challenge has been raised in relation to whether the charge was reasonable in amount or would have been payable if it were not for the assignment. Therefore, the Respondent has not set out the full basis of payability and the Tribunal has not considered it necessary to consider those matters. In fact, it is noted that the Applicant does accept that he is liable for 50% of the charge.

Costs

18. The Applicant also claims an order under s.20C to provide that the Respondent must not include the costs incurred in relation to these proceedings within any service charge claimed from the Applicant.

19. The Applicant has brought this claim within the Application. However, the Respondent does not respond to it within its statement of case (letter of 10 April 2024).
20. On a review of the Lease, there is no obvious entry within the Lease that would allow the Respondent to recover the costs as a service charge. Schedules 4 and 5 have been considered.
21. Furthermore, the Respondent does not appear to have incurred a significant amount of fees. Attendance has not been necessary, and the only statement of case provided is set out in a short letter.
22. On balance, whilst it may not be necessary for it to do so, the Tribunal considers it appropriate for it to make an order specifying that the Respondent is not permitted to recover any charges incurred in relation to its costs in dealing with the Application from the Applicant by way of service charges.

Appeal

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge R Watkin

Tribunal Member A Hossain MRICS