

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property: 44 Yukon Road, Turnford, Broxbourne, Hertfordshire, EN10 6FN
Applicant: Tanwa Arewa, 7 Whymark, Avenue, Wood Green, London N22 6DJ

Respondents:

Management Company: Canada Fields Management Company Limited

Respondent's Current

Managing Agents: Warwick Estates Property Management Limited, 79 Greenway
Business Centre, Harlow Business Park, Harrow, Essex CM19 5QE

Respondent's Previous:

Managing Agents: RMG (formerly CPM), RMG House, Essex Road, Hoddesdon,
Hertfordshire EN11 0DR

**Respondent's
Solicitors:**

Maddersons Solicitors, Suites 4-5 Tower house, Tower Centre,
Hoddesdon, Hertfordshire EN11 8UR

Landlord: Rialto No 7 Limited, 50 Lancaster Road, Enfield EN2 0BY

Case number: CAM/26UB/LAC/2009/0006

Application: Application for a determination of the reasonableness and payability of
administration fees (section 158 and Schedule 11 of the Commonhold
and Leasehold Reform Act 2002)

An application by the Tenants for the limitation of service charge
arising from the landlord's costs of proceedings (Section 20C
Landlord and Tenant Act 1985)

Tribunal: Dr JR Morris (Lawyer Chairman)
Miss M Krisko BSc (Est Man), BA, FRICS
Mrs J Clark JP

Date of Hearing: 24th February 2010

Attendance:

Applicant: Ms Tanwa Arewa (Applicant)
Respondent: No Attendance

**DETERMINATION
AND
STATEMENT OF REASONS**

Determination

- The Tribunal determined that the following administration charges were unreasonable and not payable by the Applicant to the Respondent:

23rd February 2009 of
Administrative Charge £34.50
Debt Collection Fee £172.50

12th March 2009 of:
Administrative Charge £34.50
Debt Collection Fee £172.50
Land Registry Fee £15.28

Debt Recovery Charge, which was said to relate to Court Fees, which was shown in the Respondent's Agents accounts relating to the Applicant as £300 but was said should be £150.00

Solicitor's costs of £300 referred to in a letter from the Respondent's Current Managing Agents to the Applicant dated 18th June 2009 as these relate to the debt collection

- The Tribunal makes an Order pursuant to section 20C Landlord and Tenant Act 1985
- The Tribunal Order the Respondent pay the Applicant's Hearing Fee of £150.00.

Reasons

The Application

1. On the 1st October 2009 the Applicant applied pursuant to section 158 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 for a determination of the reasonableness and liability to pay administration fees in respect of the Property incurred for the accounting years ending 31st December 2008 and 2009.

The Law

3. Section 158

Schedule 11 (which makes provision about administration charge payable by the tenants of dwellings) has effect

Schedule 1, Part 1

1 (1) *In this part of this Schedule "administration charge" means 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 this 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 his lease otherwise than as a 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 his lease otherwise than as a landlord or tenant*
- (d) in connection with a breach (or alleged) breach of a covenant or condition of his lease*

- (2) *An administration charge is payable only to the extent that the amount of the charge is reasonable*
- (5) *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.*

The Lease

4. A copy of the Lease for the Property together with an Official Copy of the Register for HD414298 was provided. The Lease is dated 12th August 2004 between Rialto No.7 Limited (Landlord), Canada Fields Management Company Limited (the Company) and Tanwa Arewa (the Tenant). The Lease is for a term of 125 years for the 1st March 2003.
5. Clause 5.9 states as follows:

Landlord's and Company's costs

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

5.9.3 the necessary or attempted recovery of arrear of rent service charge or the sums due from the Tenant

Matters in Issue

6. The Application stated that the following matters, which appeared as items of cost on the Applicant's account held by the Respondent's Managing Agents were in issue:

23rd September 2008 for the period 1st January 2008 to 31st December 2008 of

- Land Registry Fee £13.00

23rd February 2009 for the period 1st January 2009 to 31st December 2009 of

- Administrative Costs £34.50
- Debt Collection Costs £172.50
- Land Registry Fee £15.28

12th March 2009 for the period 1st January 2009 to 31st December 2009 of:

- Administrative Costs £34.50
- Debt Collection Costs £172.50

26th May 2009

- Debt Recovery Costs £300.00

The Applicant stated that Administrative Charges and Debt Collection Fees were:

- a) unreasonable and
- b) duplicated there being only 3 weeks between them

The Applicant stated that the Debt Recovery Costs were unreasonable.

7. In an unsigned statement made a by a Jeremy Brooke referred to as a Property Manager with the Respondent's Current Managing Agent stated that the Debt Recovery Costs appeared to have been a duplication of a County Court Fee of £150.00 paid in relation to the commencement of proceedings for recovery of the outstanding service charges. However, also in correspondence to the Applicant dated 18th June 2009 (copy provided) the Current Respondent's Managing Agents referred to the Debt Recovery Costs as being in respect of solicitor's fees for the recovery of the outstanding service charges.
8. At the Hearing the Tribunal received a statement from the Respondent's Solicitors with attached e-mails. The letter stated that the parties had been unable to reach a settlement in this matter. However it added that in the Respondent's view the Applicant had admitted that she was liable for one set of charge namely £172.50, £34.50 and £13.00 and the Respondent has removed the other charge from Applicant's account. It was submitted that the only issue that remained was the dispute in relation to the £150.00 Hearing Fee for the Tribunal. The Respondent's Solicitors stated that the Respondent was entitled to request an oral hearing based upon the paper work that was provided. The Respondent's Solicitors added that they had not been instructed to attend as the costs would be disproportionate and unreasonable in the circumstances.
9. The Tribunal found that the e-mails of the 15th February 2009 showed an attempt by the parties to negotiate a settlement of the matter. However neither the e-mails nor earlier correspondence demonstrate an unequivocal agreement to the charges put in issue in the Application Form. The Tribunal therefore decided to hear all issues raised in the Application Form together with the issue of whether the hearing fee should be reimbursed to the Applicant under paragraph 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulation 2003.
10. The Tribunal noted the Respondent's instructions to their Solicitors

Applicant's Case

11. The Applicant made written representations confirmed orally at the Hearing. The Applicant stated that she was made redundant in 2007 and her income from subletting her flat has ceased as the sub-tenant had failed to pay the rent. This resulted in her being in financial difficulties and unable to pay the service charge demanded by the Respondent. The Applicant had previously paid the service charge by standing order. These regular payments ceased on the 17th February 2007. From the 17th February 2007 to February 2009 the Applicant had sought to agree a payment plan with the Respondent through their Previous Managing Agent. The Applicant stated that the Agent was initially not prepared to arrange a plan and merely demanded payment. She produced a letter from the Agents to her dated 20th March 2008.
12. The Applicant reproduced copies of the account held by the Respondent's Agent which showed that the following payments were made by the Applicant to the Respondent during the period 17th February 2007 to February 2009:
7th March 2007 £100.00
30th March 2007 £271.62

27th March 2008 £350.00

24th September 2008 £488.00

It also showed that debt recovery was instituted on the 17th September 2008 at a cost of £146.88 but these were waived on the 24th September 2008 following the payment of £488.00. A Land Registry Fee of £13.00 was also charged but not waived. £515.92 remained outstanding up to 31st December 2008 and as from the 1st January 2008 a further charge of £1,012.59 was payable as advance payment for Service Charges.

13. The Applicant produced a letter dated 30th January 2009 from the Respondent's Previous Managing Agent which confirmed that the Applicant had made an offer of payment by instalments which had been rejected and requiring payment of £515.92 arrears together with the disputed Administration and Debt Recovery Costs and the setting up of a standing order for the advance payment of Service Charges.
14. The Respondent instituted debt recovery on the 23rd February 2009 for the total £1,528.51 outstanding with an Administration Fee Costs of £34.50 and Debt Recovery Costs of £175.50. This Administration Costs and Debt Recovery Costs were charged again on 12th March 2009. A charge was also made for a Land Registry Fee of £15.28. The Applicant produced a letter from her to the Respondent's Previous Managing Agent dated the 24th March 2009 stating that she disputed the Administration and Debt Recovery Costs but was prepared for her mortgagee to pay the outstanding Service Charges and would re-pay them back by instalments.
15. The Applicant stated that the outstanding Service Charge was referred to Property Debt Collection Limited who contacted the Applicant's Mortgagee with a view to the outstanding Service Charge being paid by the Mortgagee. The Applicant stated in a letter to Property Debt Collection Limited dated 4th April 2009 that although she was prepared for her Mortgagee to pay the outstanding Service Charge she did not agree to the payment of the Administration and Debt recovery Costs as she disputed these.
16. The Applicant provided a letter dated 20th May 2009 from Property Debt Collection Limited to the Applicant stating that her Mortgagee was still waiting for authorisation for her to make payment on her behalf and that if payment was not received by 27th May 2009 a Judgement would be sought in the County Court against her. The Applicant stated that the reason she was not prepared to give authorisation was because they required the Administration and Debt Recovery Costs, which she disputed to be included in the payment, as evidenced by the letter from the Mortgagee to the Applicant dated 5th May 2009. The Applicant noted that on 26th May 2009 a Debt Collection Cost of £300.00 had been charged on her account with the Respondent's Agents (a copy of which was provided).
17. A letter was produced from the Respondent to the Tenants dated 31st March 2009 stating that on the 14th May 2009 the Respondent's Current Managing Agents took over the management of the Property. On the 8th May 2009 an Annual General Meeting of the Respondent was held at which it was agreed that the Respondent's Current Managing Agent would implement a payment plan for all Tenants in arrears with the first payment being on the 20th June 2009. The Applicant stated that she spoke to the representative of the Agent to say that she wished to undertake the plan and e mailed on the 19th May 2009 the Respondent's Current Managing Agent confirming her willingness to undertake the plan. She said that received a letter from the Respondent's Current Managing Agent dated 2nd June 2009 relating to the plan (copies provided) and returned the forms immediately.
18. A copy of a claim form issued at Hertford County Court on 9th June 2009 which instigated proceedings for payment of the outstanding Service Charge, which the

Applicant said she had already agreed to pay under a plan proposed by the Respondent's Current Managing Agent. In a letter to the Applicant dated 26th June 2009 the Respondent's Solicitors stated that as the first payment had been received of the agreed payment plan and therefore the court proceedings were discontinued.

Respondent's Case

19. No representative from the Respondent attended the Hearing. The Tribunal therefore relied upon the written representations provided.
20. As stated above the Respondent's Solicitors submitted that in the Respondent's view the Applicant had admitted that she was liable for one set of charge namely £172.50, £34.50 and £13.00 and the Respondent has removed the other charge from Applicant's account. It was submitted that the only issue that remained was the dispute in relation to the £150.00 Hearing Fee for the Tribunal. It was presumably a part of their case that, as stated in the unsigned witness statement by Jeremy Brooke, that the court fee of £150.00 was payable.

Determination

21. The Tribunal considered the evidence put forward in written representations and the oral evidence presented by the Applicant at the Hearing.

Administrative and Debt Recovery Costs

22. The Tribunal noted that the Applicant claimed the Administrative Costs of £34.50 and Debt Recovery Costs of £172.50 were duplicated. The Tribunal found that the two sets of charges were only 17 days apart and are both listed as being for the period 1st January 2009 to 31st December 2009 and no satisfactory explanation for the two charges made. Therefore it was found that the charges were duplicated and that only one set of charges were payable if reasonably incurred and reasonable in amount.
23. With regard to the reasonableness of the charge the Tribunal took into account that:
 - Until 16th August 2007 the Applicant had always paid in full,
 - Prior to that date for several months the Applicant was in credit, up to £485.00 as at 7th February 2007.
 - The Applicant had kept both the Respondent's Previous and Current Managing Agent informed of her situation.
 - The Applicant had attempted to arrange a payment plan which had been rejected in favour of payment in full by the Respondent's Previous Managing Agent and Debt Collection Company
 - The Applicant had attempted to pay the outstanding service charges and between 16th August 2007 and 24th September 2008 service charges £1,353.92 were payable and the Applicant had paid £838.00 leaving £515.92 outstanding.
 - The sum of £872.62 and £139.97 totalling £1,012.59 in respect of the advance payment of Service Charges for the period ending 31st December 2009 were not due until 1st January 2009.
 - The Applicant was prepared for her Mortgagee to pay the outstanding Service Charge sums subject to the disputed administration s charges not being included.
24. Balanced with this is the fact that the Applicant was in arrears and that the Lease provides under Clause 5.9 that the Respondent may claim *all costs fees charges and disbursements and expenses... incidental to 5.9.3 the necessary or attempted*

recovery of arrear of rent service charge or the sums due from the Tenant. However, such costs must be properly and reasonably incurred by the Respondent.

25. The Tribunal took an objective view and considered what the reasonable Management Company and its managing agent would do given:
- the Applicant's payment history,
 - her regular communication with the Agent,
 - her attempts to pay the outstanding Service Charge and her successful reduction of the outstanding Service Charge by a half,
 - the Respondent's refusal to accept the payment of the Service Charge by the Applicant's Mortgagee without the inclusion of the disputed Administrative charge
26. The Tribunal considered that in the experience of its members, a Management Company and/or its Agent would deal with the indebtedness of the Applicant in this particular situation within its role as part of its own management responsibilities and would not apply additional charges or employ a debt collection company. The Tribunal therefore determined that the Administrative and Debt Recovery Costs were not reasonably incurred and were not payable.
27. In addition the Respondent's had adduced no evidence that they had demanded the Service Charges correctly as required under Schedule 11 and no invoices were provided of the costs incurred in employing the debt collection company.

Land Registry Fees

28. The Tribunal noted that two Land registry Fees had been charged. All the correspondence provided which had been sent to the Applicant had been received and responded to and therefore there did not appear to be any doubt or concern as to who the Tenant of the Property was or the Tenant's liability. Therefore the only reason for obtaining a Land Registry Search would be to adduce whether the Property is mortgaged and to obtain the identity of the mortgagee to inform them of the debt so that the mortgagee could take such action as it considered appropriate. The Tribunal determined that this would only need to be done when it was apparent that the debtor would not be able to pay the outstanding sums. In this case the Applicant had informed the Respondent that she was having financial difficulties and was not able to pay the amount in full. The Tribunal therefore considered it reasonable for the Respondent or its Agent to undertake a search for this purpose and therefore the first Land Registry Fee of £13.00 was determined to be reasonable and payable by the Applicant to the Respondent. No evidence was adduced as to why a further research at a cost of £15.28 was found to be necessary and the Tribunal could not see why, in the present circumstances a further search was required. The second Land registry Fee was therefore determined to be unreasonable and not payable.

Debt Recovery Costs relating to the County Court Claim

29. The Tribunal found that following the meeting of the 8th April 2009 a payment plan was put in place for those leaseholders who had been in arrears, including the Applicant. The Applicant also spoke to a representative of the Respondent's Current Managing Agents at the meeting and subsequently e-mailed the Agents to confirm that she wished to be a party to the plan. She signed up to the plan, which as devised by the Agents did not draw the first payment until the 20th June 2009, on the 2nd June 2009. The Tribunal found that the County Court Claim was not made until the 9th June 2009. This was two months after the plan had been proposed on the 8th April 2009 when the Applicant declared her interest. By submitting the plan and accepting the

Applicant onto the plan the Respondent's claim was compromised and the Tribunal found that the County Court Claim was pre-emptive and unreasonable. The Tribunal therefore determined the County Court Fee of £150.00 to be unreasonable.

30. The Tribunal found that there appeared to be some confusion in relation to the fees as the Applicant's account held by the Agent recorded a fee of £300.00, which was stated in the unsigned witness statement of Jeremy Brooke to be duplication of fees. For the avoidance of doubt the Tribunal considered the fees of either £150.00 or £300.00 unreasonable and not payable. In addition there was a reference to solicitor's fees of a letter dated 18th June 2009 from the Respondent's Agent. As these costs appeared to relate to the County Court Claim, which has been found to be pre-emptive, these costs are determined to be unreasonable and not payable.

Application under Section 20C Landlord and Tenant Act 1985

31. The Applicant applied for an order under Section 20C of the Landlord and Tenant Act 1985 that the Landlord's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Tenants of the property at the Hearing.
32. The Tribunal do not interfere with the contractual right to costs lightly. In deciding whether an Order is justified the Tribunal considered:
- a) The determination of the Tribunal
 - b) The conduct of the Respondent in relation to the proceedings
33. In this case the Applicant has been successful in her Application. This alone is not necessarily a reason for making an order pursuant to section 20C. The Tribunal then considered the conduct of the Respondent and found that:
- It had not offered adequate explanations for what appeared to be a duplication of charges,
 - It had not adduced evidence following a reasonable request for an account and invoices of the Debt Recovery Charges of £172.50 and this was still not available at the Hearing for the Tribunal.
 - It had pursued a claim in the County Court after arrangements had been put in place by its agent for payment of the debt and yet had continued to claim its Court Fees after the case was discontinued.
 - Its attempt to settle the proceedings were belated considering the length of time over which the issues had been raised
34. The Tribunal therefore decided that an order would be made.

Application for Reimbursement of Fees

35. The Applicant submitted that she had asked for the matter to be dealt with by way of consideration of the documents only and without a Hearing in which case the hearing Fee of £150.00 would not have been payable. The Respondent's had specifically requested a Hearing but had not attended. The Applicant therefore stated that it was just that an order should be made and that the fees should be reimbursed under paragraph 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulation 2003.
36. The Respondent's Solicitor had stated on this point that the Respondent was entitled to request an oral hearing, which appeared to be justified based upon the evidence submitted at the time of the Application.

37. In addition notwithstanding that the Respondent's Solicitors stated in a letter to the Tribunal date 23rd February 2010 that the parties have been unable to reach a settlement it was submitted that the Respondent had removed from the Applicant's account those costs that she had not admitted leaving only one set of administrative charges and that the only matter in dispute was the application under paragraph 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulation 2003.
38. The Respondent's Solicitors also stated that no instructions had been received and that for the Solicitor to attend would incur disproportionate costs.
39. The Tribunal found that the Respondent was entitled to an oral hearing. The Tribunal did not consider that the email evidence of negotiations justified the Respondent's view that the matter was settled in so far that the disputed charges had been removed from the account and the Applicant had admitted all except the Tribunal Fee.
40. The Tribunal accepted that for the Solicitor to attend would incur disproportionate costs nevertheless having specifically requested an oral Hearing a Director from the Respondent should have attended. The Tribunal was of the opinion that a party having requested an oral hearing must either attend in person or delegate to its agent.
41. The Tribunal therefore order the Respondent pay the Applicant's Hearing Fee of £150.00.

JR Morris
Chairman

Date 9/3/2010