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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00EU/LAC/2013/0006**
Property	:	**3, 4, 6, 9, 10, 12, 14, 15 Bevan View, Folly Lane, Warrington WA5 0LQ**
Applicants	:	**James Staveley, Matthew Silas, Liam McNally, James Clarke**
Respondent	:	**UK Ground Rent Estates (2) Limited (agent - Forte Freehold Managers Limited)**
Type of Application	:	**Application under Schedule 11 of the Commonhold and Leasehold Reform Act 2002; Application under section 20C of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Sarah Greenan, barrister; Elisabeth Scull, MRICS**
Date of Decision	:	**23rd September 2013**

DECISION

Decision:

1. **The administration charges which are the subject of this application are not payable by the Applicants to the Respondent**
2. **Pursuant to section 20C of the Landlord and Tenant Act 1985 the costs incurred by the Respondent in connection with this application are not relevant costs to be taken into account in calculating the service charge to be paid by the Applicants.**

Background

1. On 21st January 2013 the Applicants applied to the Leasehold Valuation Tribunal for a determination as to liability to pay and reasonableness in relation to administration charges claimed in relation to the above properties. The Applicants sought a determination as to reasonableness in respect of arrears letters, letters to the mortgage company, land registration fees, copy letters, consent to sublet and subletting registration fees.

2. The premises concerned consist of self-contained flats in a purpose-built development in Warrington.

3. On 14th March 2013 the Tribunal gave directions for the procedural steps to be taken following the application. Those included the filing of a detailed Scott Schedule by the Applicants in relation to the disputed charges, and a detailed response by the Respondents.

4. A detailed Scott Schedule was filed and served by the Applicants on 9th April 2013. At the same time the Applicant's filed a detailed Statement of Case. In support of its submissions it referred to the decision of the LVT in case no MAN/OCCJ/LAC/2009/0003.

5. The Respondent filed a response to the Applicants' statement of case on 26th April 2013. That response commented on the Applicants' Scott Schedule, but did not go through it item by item.

6. The Respondent referred to and relied on a decision of the LVT in case no MAN/30UK/LAC/2012/0016 in support of its submissions.

7. Neither party sought an oral determination of the application, and it was therefore listed for a paper determination only on 24th June 2013.

8. The Applicants are the leasehold owners of a number of flats situated within a purpose-built development. The Tribunal were provided with a copy of the lease for no 6 Bevan View. It is understood that the other properties were subject to leases in identical terms. The lease if for a period of 150 years (less 10 days) commencing 1st January 2006.

9. The Respondent is the owner of the freehold of the building. Forte Freehold Managers Limited are its agents.

The lease

10. The standard lease for the premises contains the following relevant provisions:
    a) In 4.1 a covenant by the lessee to "pay the rents reserved by this lease and the Annual Rent shall be paid in equal instalments in advance on the first days of January and July of each year."
    b) In 4.10 a covenant by the lessee to "pay all costs, charges and expenses (including solicitor's costs and surveyor's fees...) incurred by the Lessor incidental to the preparation and service of a notice under sections 146 and 147 of the Law of Property Act 1925).
    c) In 4.11.2 a covenant not to: "assign or underlet or part with or share possession of the Demised Premises without the prior written approval of the Lessor (such approval not to be unreasonably withheld or delayed) and to ensure that the assignee enters into a direct covenant in one of the appropriate forms set out in Schedule 7 with the Lessor...and pay the Lessor's reasonable administration and legal costs in connection therewith..."
    d) In 4.12 a covenant to "within 28 days after any assignment, mortgage, underlease or devolution relating to the Demised Premises to give a copy of the relevant document, together with the name and address of the person in whom any interest in the Demised Premises is vested, to the Lessor or its solicitors and pay a reasonable registration fee."
    e) In 4.16 a covenant to "pay all reasonable costs and expenses of the Lessor (including solicitor's and surveyor's costs and fees... incurred in granting any consent under this lease."
    f) By Schedule 4 The Service Charge the expression "total expenditure" for service charge purposes includes: "any fees (legal or otherwise) properly incurred by the Lessor in collecting the Annual Rent, the Service Charge and Interim Charge and any other sums from the Lessee or other resident."

The issues

11. The nature of the charges in issue, and the objections, can be summarised as follows:

Nature of charge	Amount of charge (& no of occasions charged)	Applicants' comment	Respondent's comment
7 day arrears letter	£67.20 (7)	7 day arrears letter issued within 7 days of	The rent is payable in advance on

		when the original demand was sent out (3 days after the original demand was sent out on 6 occasions; 5 days on the other occasion)	particular days. "If the rent is not paid on those days therefore, it is overdue."
Letter to mortgagee	£134.40 (6)	Mortgage company will not make payment of service charge arrears without either a judgment or a s146 notice. "Therefore it is superfluous to send a letter which will not initiate payment. The Applicant feels this is simply a costs exercise."	"The letters need to be sent to the mortgagee to notify it of the amount of the arrears."
Land Registry Search fee	£12 (6)	The correct fee is £4	"The landlord's agent incurs time to order the official copy and check it. This is so that the landlord's agent can verify the name of the current tenant and the details of the mortgagee."
Second letter - subletting	£78 (6)	The Applicant had already sent notification to the Respondent of his intention to sub-let, together with the appropriate administration fee	"The landlord's agent adds the relevant charges to the tenant's account if the tenant is in breach of any of the alienation provisions in the lease....Please also see clause 4.16 of the lease which

			states that the tenant covenants to pay all reasonable costs and expenses of the landlord incurred in granting any consent under the lease."

13. In relation to each of the properties the ground rent was £175 per annum and was payable by two equal instalments of £87.50 due on 1st January and 1st July.

The law

14. Paragraph 1 of Schedule 11 to the 2002 Act provides that:

> "(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 his 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 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 landlord or tenant, or
> (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease....
>
> (3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
> (a) specified in his lease, nor
> (b) calculated in accordance with a formula specified in his lease.

Paragraph 2 provides that:

> "A variable administration charge is payable only to the extent that the amount of the charge is reasonable."

Paragraph 5 provides that:

> "(1) An application may be made to [the appropriate tribunal] 1 for a determination whether an administration 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."

15. Section 166 of the Act provides that:

"(1) A tenant under a long lease of a dwelling is not liable to make a payment of rent under the lease unless the landlord has given him a notice relating to the payment. ..
(5) The notice –
(a) must be in the prescribed form, and
(c) may be sent by post.

The 7 day letter

16. In relation to the charge made for the sending out of a 7 day letter, the Tribunal considered whether the Respondent was entitled to make a charge for the sending out of the letter.

17. Surprisingly neither party had supplied the Tribunal with a copy of the 7 day arrears letter. The Tribunal understood it to be a letter stating that if payment was not received within 7 days further action would be taken, and also informing the lessee that a charge would be made for the sending of the letter.

18. Paragraph 1 of Schedule 1 of the 2002 Act defines "administration charges" as amounts which are "payable" by a tenant. It was the view of the Tribunal that this limits such charges to those which are payable under the lease or under some specific statutory provision. It was not the purpose of the 2002 Act to introduce new charges where none had been payable.

19. The standard lease, as summarised above, does not contain any provision permitting the lessor to charge for the costs of recovery of arrears of rent as an administration charge.

20. In the absence of a specific provision in the lease permitting the landlord a right to raise a charge for the sending of such a letter the Tribunal was of the view that the Respondent had no power to impose a charge directly on the Applicants for sending such a letter.

21. It may of course be open to the Respondent to include the a charge for the letters within the service charges for the development payable pursuant to Schedule 4 of the lease.

22. The Tribunal had regard to the decision of the Tribunal in case no MAN/OCCJ/LAC/2009/0003 in which charges for a 7 day arrears letter were considered. That decision was of course not binding on the Tribunal, which reached its own decision, but the Tribunal's interpretation of the relevant law is in line with the approach taken in that case.

23. Even if the charge for the 7 day arrears letter were a variable charge recoverable under the lease, the Tribunal would have concluded that the charge was not reasonable. By section 166 of the lease the rent is not payable until a notice had been served. In the case of each of the 7 day arrears letters for which a charge was levied, the original rent demand was not sent out until the day when it fell due. The rent would therefore not be due until the notice was received. If the lessee responded to the demand on receipt, it would be unlikely that cleared funds would be received by the lessor until after the 7 day arrears letter had been sent. If the lessor had simply been anxious to ensure that the rent was paid on time, it would have sent out the demands in advance rather than on the day the ground rent fell due. The Tribunal was of the view that the method adopted by the lessor was intended to give it the opportunity to raise a charge, rather than an attempt to collect rent efficiently.

The letters to the mortgagee

24. In relation to the letters to the mortgagee, the Tribunal was similarly of the view that there was no express provision in the lease which permitted the lessor to charge an administration charge for the sending of such letters. The letter was not a notice under section 146 of the Law of Property Act. There was no requirement on the lessor to notify the lessee's lenders of the position in relation to the service charge and no evidence that on receipt of such notification the lender would take, or in this case had taken, any particular action.

25. It was therefore the view of the Tribunal that the charge invoiced in relation to the letters to the mortgagee were not recoverable as administration charges. Even if a provision of the lease had made such charges recoverable, the Tribunal would have doubted that they were reasonably incurred, in the absence of any evidence that sending such a letter caused any action by the mortgagee which would cause the lender to pay the outstanding charges, or would, prior to service of a section 146 notice, pay them itself.

The Land Registry search

26. The Tribunal found that the Respondent would have been informed during the conveyancing process if any of the Applicant lessors had sold the remainder of the lease to a third party, or had remortgaged his property. If the Respondent had been sending notification of service of a section 146

notice to a lender, it would be expected that the Respondent would check the identity of the lender before doing so. That would involve a Land Registry search at a cost of £4. However to carry out such a search at this stage was not necessary because no section 146 was being served. If it such a notice was served, the Respondent would be entitled to the costs under clause 4.10 of the lease. No such notice having been served, the Respondent was not entitled to recover the costs of the Land Registry search.

The second sub-letting letter

27. Clause 4.11.2 contains a detailed covenant in relation to sub-letting which is summarized above. The lessor was properly entitled to charge a fee of £78 for its consent to a sub-letting, and did so. It also required the lessee to complete a form setting out details of the tenant, and a copy of the tenancy agreement. In the case of each of the letters for which a second fee was charged, the tenant had already paid the fee and sent in the relevant forms. It was not clear on what basis the Respondent had purported to send out a further letter and charge a further fee. For example, on 18th June 2012 the Respondent wrote to the lessee of no 10 Bevan View in relation to a sub-letting, and purported to charge £78 for that letter. The lessee had been notified prior to this date of a proposed sub-letting and the fee had been paid by a cheque dated 23rd May 2012.

28. The Tribunal was of the view that charging a further fee in circumstances where the lessee had followed the procedure in the lease and paid the appropriate fee was not reasonable within the meaning of Schedule 11. Nor was it a reasonable administration charge within the meaning of section 4.11.2 of the lease.

29. The Tribunal considered the decision in case no MAN/30UK/LAC/2012/0016 to which it was referred by the Respondent. It was of the view that this case did not assist greatly. The decision in that case related primarily to the reasonableness of charges being made, not on whether or not they were payable by the lessor as an administration charge either under the lease or under statute.

Section 20C

30. Section 20C of the Landlord and Tenant Act 1980 provides that:

> (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, [residential property tribunal] or leasehold valuation tribunal, or the [Upper Tribunal], or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge

payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

[(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;]

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(c) in the case of proceedings before the [Upper Tribunal], to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

31. The Applicants in this case had succeeded in their claim in its entirety. It was therefore the view of the Tribunal that it would be appropriate for an order to be made under section 20C.