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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AJ/LSC/2016/0237**
Property	:	**4 Southall Court, Lady Margaret Road, Southall UB1 2RQ**
Applicant	:	**Southall Court (Lady Margaret Road) RTM Company**
Representative	:	**Ms Polimac, a barrister**
Respondent	:	**Mr Raghbinder Singh Guraya**
Representative	:	**In person**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Ruth Wayte (Tribunal Judge)** **Mrs E Flint FRICS** **Mr A D Ring**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**13 October 2016**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £1,450.41 is payable by the Respondent in respect of the service charges on account from December 2014 to June 2016.

(2) The tribunal further determines that the sum of £526 is payable in respect of administration charges incurred in respect the collection of those service charges.

(3) This matter should now be referred back to the Brentford County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Respondent in respect of the service charges due from December 2014 to June 2016.

2. Proceedings were originally issued in the County Court Money Claims Centre under claim no. B59YP344. The claim was transferred to the Brentford County Court and then in turn transferred to this tribunal.

3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Ms Polimac of counsel at the hearing and the Respondent appeared in person.

The background

5. The property which is the subject of this application is one of 48 similar flats in a block known as Southall Court. There is a long history of disputes involving the block which unfortunately appears to have continued even after the RTM Company took over the management in 2014.

6. The Respondent holds a long lease of the property. That lease was varied by order of this tribunal on 26 November 2009 (case reference: LON/00AJ/LSC/2008/0591) to make provision for service charges on account (and other changes) and it is those new terms that the

enable the Lessee to be registered in Her Majesty's Land Registry as Proprietor of the said interest with an Absolute Title."

He was unclear as to the meaning of that clause but reiterated that there was no mention of the "Deed of Variation" on his title and therefore he argued that the Applicant could only rely on his original lease which contained no provisions for payment of service charges on account.

The tribunal's decision

12. The Respondent appeared to be confused as to the nature of the proceedings in 2009 and in particular the basis of the variation to his original lease. The Respondent's lease was not varied by a "Deed of Variation" but by order of the Tribunal following an application under section 35 of the Landlord and Tenant Act 1987. The ability of the Tribunal to make such an order is contained in section 38(1) of the 1987 Act, the relevant part of which states:

"If, on application under section 35, the grounds on which the application was made are established to the satisfaction of the tribunal, the tribunal may ... make an order varying the lease specified in the application in such a manner as is specified in the order."

13. Section 39(1) of the 1987 Act sets out the effect of such an order as follows:

"Any variation effected by an order under section 38 shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title of those parties), whether or not they were parties to the proceedings in which the order was made or were served with a notice by virtue of section 35(5)."

14. The Respondent is the original leaseholder of the property and was a party to the proceedings in which the order was made. There can therefore be no dispute that the order and the varied terms are binding on him. In these circumstances there is no requirement for the varied lease to be executed by either party. The clause set out in paragraph 11 above is not relevant to the enforcement of the variation and in the view of the tribunal was included to ensure that the original leases were registered against the landlord's title. This appears to have been taken care of from the office copy entries of the register in the trial bundle.

15. The Respondent made a valid point in the proceedings that any purchaser may not be bound as there is no mention of the tribunal's order on the register for his title (or presumably any flat). It would be sensible for the Applicant to consider registration of the order, which

requires submission of Form AP1 and a copy of the order but its lack of registration is of no effect in this case for the reasons stated above.

16. In the circumstances the tribunal determines that the amount payable in respect of the service charges on account is £ 1,450.41.

Administration charges - £526

17. The Applicant again relied on the varied terms and in particular clause 3 (13) whereby the tenant covenanted:

"To pay all expenses (including solicitors' costs and surveyors' fees) incurred by the Lessor incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the Court."

In fact, this provision is a replica of clause 3(15) of the Respondent's original lease.

18. The expenses sought under this heading comprised a "reminder fee" of £25, Land Registry search fees of £21, "administration fees" of £96 (2x£48) and legal fees of £384 (2x£192). The Applicant stated that the reminder and administration fees were payable on top of the standard management fees where leaseholders had failed to make their contribution as demanded. The legal fees were incurred by the Applicant's debt collection agents.

19. The Respondent challenged the varied terms as before, he also argued that the clause only permitted recovery of the costs of the actual section 146 notice, which had not been served on him. His third argument was that the costs were unreasonable in amount.

The tribunal's decision

20. For the reasons stated above, the tribunal determines that the varied provisions are binding on the Respondent and notes that in any event the specific clause is in the original lease. That clause is drafted to include all expenses "incidental" to the preparation and service of a section 146 notice which cannot be served in respect of service charges without a determination (or court order) as set out in section 168 of the Commonhold and Leasehold Reform Act 2002. The tribunal considers that the costs incurred in respect of formal demands prior to legal proceedings are "incidental" within the meaning of the clause in the lease and therefore recoverable in principle.

21. The Applicant provided details of the work undertaken by its agent and other parties in its Statement of Case dated 6 September. Copies of the relevant documents were also provided in the trial bundle. The tribunal is satisfied that this work was over and above normal management and the costs are reasonable bearing in mind the need to comply with rules as to letters before claim and the sense in seeking to obtain payment prior to resorting to court proceedings.

22. In the circumstances the tribunal determines that the amount payable in respect of administration charges is £526.

23. This matter should now be returned to the Brentford County Court to deal with County Court costs and interest.

Name: Ruth Wayte **Date:** 13 October 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 27A

(1) An application may be made to the appropriate 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 the appropriate 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.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 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 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.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(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.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal 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.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).