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

Case Reference : **LON/00AE/LSC/2013/0763**

Property : **Flat 17 Bramerton, 210-215
Willesden Lane, London NW6 7YT**

Applicant : **Bramerton Management Company
Limited**

Representative : **Crabtree Law LLP**

Respondent : **Hassan Ferdousara**

Representative : **Foulds Solicitors Limited**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay an administration charge**

Tribunal Members : **Ms N Hawkes
Ms S Coughlin MCIEH**

**Date and venue of
Paper Determination** : **10 Alfred Place, London WC1E 7LR
27.1.14**

Date of Decision : **27.1.14**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that of the sums claimed in Case Number 3YM15795 no administration charge is payable.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the Respondent through any service charge.
- (3) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Willesden County Court.

The application

1. The Applicant seeks a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of administration charges payable by the Applicant in respect of the period 25th December 2012 to 25th March 2013.
2. Proceedings were originally issued in the Northampton County Court under claim no. 3YM15795. The claim was transferred to the Willesden County Court and then in turn transferred to the Leasehold Valuation Tribunal (now the First-Tier Tribunal Property Chamber), by order of 29th October 2013.

The determination

3. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.
4. At Paragraph 3 of the Particulars of Claim, the Applicant pleads:

The Defendant has breached the terms of the Lease in that there has been a failure to pay the Claimant service charges and the Defendant is in arrears with the same:-

PARTICULARS

(a) the said service charges are £1893.56 in arrears at the date of the commencement of proceedings;

(b) the history of the payments, which have been missed and are outstanding, is detailed in the Schedule of Arrears attached hereto;

(c) the following steps have already been taken to recover the arrears:

i. The Claimant, its employees and/or agents have written to the Defendant demanding that payment of the service charges be made but the Defendant has failed to make payment in full.

5. The tribunal notes that there is no reference to “administration charge” in the Applicant’s pleading. At Paragraph 3 of the Defence, the Defendant admits Paragraph 3 of the Particulars of Claim insofar as the claim is for service charges but denies that he is liable to pay an additional sum of £240 which is said to be an “Additional Management Fee”. The admitted service charges amount to £1,653.56.
6. It is common ground that the additional sum of £240 relates to an administrative fee claimed for the recovery of the service charge and that the claim insofar as it relates to service charges has been admitted. Accordingly, by section 27A(4)(a) of the Landlord and Tenant Act 1985, the tribunal has no jurisdiction to determine the service charge claim.
7. In relation to any claim in respect of administration charges, the Applicant submits that the Respondent is liable to pay these by virtue of clause 2(14) of the lease which requires the Respondent:

To pay all costs charges and expenses (including solicitors costs and surveyors fees) incurred by the Lessor in or in contemplation of any proceedings under Section 146 and 147 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the Court.

8. The Respondent notes that the present claim is in respect of demands issued on 25th December 2012 and 25th March 2013. The Respondent states that the Applicant has subsequently issued demands dated 25th June 2013 and 25th December 2013 and that it has therefore waived the right to forfeit the lease. The Respondent submits that the Applicant cannot therefore rely upon clause 2(14) because the Applicant’s actions are not in contemplation of serving a section 146 notice as a pre-condition of forfeiture.
9. The statement of account supports the Respondent’s assertions regarding the issuing of further service charge demands. The Tribunal is not satisfied on the evidence, and in particular in light of these further service charge demands, that any costs incurred by the Applicant which may amount to an administration charge were incurred in contemplation of proceedings under Section 146 or 147 of the Law of Property Act 1925.

10. Accordingly, the Tribunal is not satisfied that the sums claimed fall within clause 2(14) of the lease and the tribunal determines that of the sums claimed in Case Number 3YM15795 no administration charge is payable. The Applicant refers at Paragraph 4 of the Particulars of Claim to a claim for contractual costs. If and insofar as there is any claim for contractual costs which do not amount to an administration charge, the tribunal has no jurisdiction to determine the matter.

Application under s.20C of the Landlord and Tenant Act 1985

11. The Respondent has applied for an order under section 20C of the 1985 Act. The admission in respect of the service charge was made in the Respondent's Defence dated 19th July 2013, that is prior to the referral of this case to the tribunal by order dated 29th October 2013. Taking into account the date of the admission and the determination above on the sole remaining issue, the tribunal finds that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

The next steps

12. The tribunal has no jurisdiction over county court costs or interest or any contractual costs not amounting to an administration charge. This matter should now be returned to the Willesden County Court.

Tribunal Judge: Naomi Hawkes

13. **Appendix of relevant legislation**

Landlord and Tenant Act 1985 (as amended)

Section 20C

- (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 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 that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.

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).