



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

Case reference	:	LON/00AZ/LSC/2014/0126 LON/00AZ/LSC/2014/0246
Property	:	First floor flat, 255 Hither Green Lane, London SE13 6JT
Applicant	:	Mrs A. Barnes (landlord)
Representative	:	DWF, LLP solicitors
Respondent	:	Ms D. Adeyemo (leaseholder)
Representative	:	-
Type of application	:	Application under section 27A of the Landlord and Tenant Act 1985 to determine the liability to pay a service charge
Tribunal members	:	Professor James Driscoll (Judge), Mr Frank Coffey FRICS
Date and venue of paper determination	:	None as the tribunal considered the application on the basis of the papers filed
Date of decision	:	18 June, 2015

DECISION

The Decisions summarised

1. We determine that the sum of £1,710 is payable as a service charge under the lease in respect of legal costs incurred in connection with preparation for a forfeiture claim.

Background

2. The parties to this application are Mrs Amanda Barnes who is the landlord under a lease of one of the flats in the subject premises. The lease is owned by Ms Debbie Adeyemo.
3. County Court proceedings were instigated by the landlord claiming the sum of £4,560.56 plus court fees and fixed costs of £80. The claim was for unpaid ground rent and service charges along with the charging of legal costs as a service charge said to be for the purpose of, or incidental to, the preparation of notice under section 146 of the Law of Property Act 1925 (usually known as a 'forfeiture' notice).
4. By order of the Dartford County Court on 14 February 2014 the claim was transferred to this tribunal. A case management conference was held at the tribunal on 25 March 2014 when directions were given. The hearing was set for 22 July 2014.

The hearing

5. Following an adjournment at the hearing, the parties informed us that they had reached agreement on various matters. At the hearing the landlord was represented by Mr S. Hackett of counsel. The leaseholder was not legally represented. Her sister Ms M. Olaninale attended the hearing with her.
6. We were handed a copy of a hand-written agreement signed by the parties dated 22 July 2014 (that is at the hearing). This provides for the sum of £1,331.75 to be paid and an additional sum of £358.70 within seven days of the landlord producing documentary evidence that the landlord has paid the costs of insuring the building. (It also referred to the landlord withdrawing the claim for the prospective costs of painting the exterior of the building though reserving the right to carry out redecorate and other works to the exterior of the building).
7. We were also informed that the amount payable for the legal costs incurred said by the landlord to be recoverable as a service charge under

the lease had not been agreed. When the tribunal was later informed that the costs had not been agreed a letter was sent to the parties directing the exchange of statements on costs.

Reasons for our decision

8. Those advising the landlord prepared a schedule of their costs. They informed the tribunal on 17 February 2015 that a copy had been sent to the leaseholder. A written submission on costs was also prepared and a copy was sent to the tribunal on 14 November 2014.
9. Paragraph 2 of the written submission states that the leaseholder has paid the arrears as agreed in the compromise order. However, the parties have not agreed on the costs to be paid.
10. Reliance is made on paragraph 3(o) of the lease which provides that the leaseholder will pay costs charges and expenses including solicitors costs for the purpose of or incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925. As section 81 of the Housing Act 1996 provides that a landlord may not forfeit for non-payment of service charge unless the charge has been agreed or determined by the court or the tribunal, the landlord submits that it had to bring proceedings to recover the arrears of the service charges. Accordingly as this involved legal costs these costs are recoverable under the lease as they were part of the costs of preparing a forfeiture notice.
11. The landlord's solicitors had also prepared a detailed statement of their costs (including counsel's fee) which is dated 21 July 2014. This totals £4,725.32 including VAT.
12. Following a reminder from the tribunal, the leaseholder sent an email dated 24 March 2015 with her comments. She claims that the legal costs are covered by the building's insurance and that in any event the costs are out of proportion to what is being claimed.
13. Unfortunately the leaseholder has not responded to the costs submissions made on behalf of the landlord (in particular the submission on the recovery of costs under the lease). As she is unrepresented and not in receipt of legal advice this is understandable (though not helpful to her case).

14. Having considered the submissions and the papers filed we consider that we have two related issues to determine. First, is the landlord entitled to recover costs as service charge? Second, if she is, are the charges reasonable as required by section 27A of the Landlord and Tenant Act 1985?
15. On the first point, we are satisfied that the landlord intended or contemplated preparing a forfeiture notice under section 146 of the 1925 Act. The legal costs involved are one of the matters referred to in the particulars of claim. It is also clear that the landlord has a contractual right to recover such costs under paragraph 3(o) of the lease. As the landlord is claiming these costs as a service charge from the leaseholder it is subject to the criteria in section 27A of the 1985 Act. In particular the costs claimed have to be reasonable. (There is no evidence that the building insurance covers the landlord's costs in recovering legal costs. In any event in our professional experience such insurance is arranged for damage and other risks to the building and not to cover the landlord's legal costs).
16. What is less clear is why the landlord chose to start proceedings in the county court when they could have made an application directly to the tribunal under section 27A of the Act and in this way satisfied the requirements of section 81 of the Housing Act 1996). It is very common, in our experience, for the courts to transfer disputed service charges to this tribunal for a determination. This is what occurred in this case. We conclude that a substantial part of the landlord's legal costs could have been avoided if they had applied directly to this tribunal rather than starting county court proceedings.
17. We accept that the landlord is entitled to claim, as a service charge, their reasonable costs in the proceedings before this tribunal. However, we are struck by the disparity between the service charge arrears which were agreed (and since paid by the leaseholder) which is the sum of £1,690.45 compared to the landlord's solicitors bill of £4,725.32 (including VAT).
18. In this regard, we agree with the leaseholder that the legal costs are out of proportion to the sums recovered. As we have already concluded that whatever the position on the court costs that may be claimed by the landlords, we do not consider it reasonable for the landlord to seek to recover, as a service charge, any legal costs relating to the court claim.

19. As to the proceedings in this tribunal we start by reminding ourselves that this is largely a 'cost-free' jurisdiction, that is to say that the tribunal does not have the power to award costs and this is subject to very limited exceptions. For example, we have the power to order under section 20C of the 1985 Act that any costs incurred by the landlord in proceedings before the tribunal may not be charged in future as a service charge. As the parties negotiated an agreement during an adjournment at the scheduled hearing we were not asked to make an order under section 20C. Nor were we asked to make an order seeking reimbursement of fees payable on an application to the tribunal.
20. Having considered the submissions made by the parties we conclude that we should determine what is a reasonable figure for the landlord to charge the leaseholder in relation to the proceedings in the tribunal on the assumption that they were incurred in contemplation of the preparation of a forfeiture notice.
21. On this point, we repeat that we accept that the landlord had to seek a determination of the recoverable charges because of the restrictions on forfeiture imposed by section 81 of the 1996 Act. Consequently, we must consider what is a reasonable figure.
22. Having examined the papers we do not consider that there are any particular complexities to the claim. In fact it is a relatively simple case.
23. Having already observed (in paragraph 18 above) the disparity between the sums agreed to be owing (and since paid) and the legal expenses (claimed as a service charge) we now consider the solicitors bill. This appears to have been completed in a form suitable for a summary assessment in the county court. On the basis of our professional knowledge and experience we consider that the hourly rate charge at £192 is reasonable, if on the high side, for this type of work. It is difficult to judge the amounts claimed, which appear largely of charges for telephone calls and letters (as opposed to personal attendances).
24. We have approached this by considering what are reasonable charges to make as a service charge in this case. We consider that it is reasonable to make charges for the preparation of the bundles but we do not consider that it is reasonable for a solicitor to charge 1.30 hours for what is largely a clerical task or an administrative job. It was clearly reasonable to charge for an attendance with the landlord. The solicitor did not attend the hearing and we conclude that it is reasonable to instruct counsel for what

was going to be a contested hearing. We consider counsel's fee of £750 to be reasonable, again on the basis of first, our professional experience and second, that it was probably cost-effective to instruct counsel.

25. Taking all of these points together and without the benefit of oral argument, and given the relative paucity of information which forms the basis for the costs claim, we consider that a reasonable figure for the solicitors element of the costs is the sum of £800 (exclusive of VAT) based on our estimate that it would have been reasonable for the solicitor to spend some four hours on the work, which together with counsel's fee (for which no VAT has been charged) is the sum of £1,710 (including VAT on the solicitors charges).

26. We determine that the reasonable costs of the landlord incurred under paragraph 3(0) of the lease in the preparation of a forfeiture notice is the sum of £1,710.

27. The leaseholder is to pay the sum of £1,710 to the landlord by the 30 July 2015.

James Driscoll and Frank Coffey, FRICS

18 June, 2015