1475

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AX/LAC.2016/0019**
Property	:	**22 York Court, Albany Park Road Kingston Upon Thames KT2 5ST.**
Applicant	:	**Mr I Donnell**
Representative	:	**None**
Respondent	:	**Albany Riverside Company Ltd.**
Representative	:	**Bartholomews (property managers)**
Type of application	:	**For the determination of the reasonableness of and the liability to pay an administration charge**
Tribunal members	:	**Mr Neil Martindale FRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**29 June 2016**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £150 is payable by the Respondent to the Applicant; being the costs incurred by the Applicant in case preparation, in compliance with the directions.

(2) The tribunal makes the determinations as set out under the various headings in this Decision.

(3) 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 lessees through any service charge.

(4) The tribunal determines that the Respondent shall also pay the Applicant £65 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

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 payability and amount of administration charges payable by the Applicant to Respondent in respect of an application for fee levied for consent for alleged alterations to be carried the Applicant's demised flat.

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

The directions and correspondence

3. The application was dated 29 April 2016. Directions were issued to the parties by Judge Korn, on 5 May 2016.

4. The directions provided; that there be no oral hearing unless one was requested by either party: It was not.

5. They provided for the Respondent to provide to the Applicant by 19 May 2016 a clear statement of the basis of the charge, with reasons, with lease clause references, a justification of the amount and copies of supporting documents. A letter dated 16 May 2016 was sent by the Respondents solicitors Russell Cooke to the Applicant, setting these out, but it included an agreement to waive the fee of £100 plus VAT on this occasion.

6. An email dated 24 May 2016 was sent by the Respondent to the Tribunal with a copy of the letter of 16 May 2016. A further letter of 17 May 2016 addressed by the Respondent to the Tribunal was also attached asking for the matter to be vacated on the basis that it had now been settled between the parties. The email of 24 May 2016 renewed the request regarding vacation or asked for a time extension.

7. The directions further provided for the for the Applicant to provide to the Respondent by 2 June 2016 a copy of his agreement to the charge, or his arguments as to why it was not due in whole or part, with copies of supporting documentation. A case statement dated 24 May 2016 contesting the charge was prepared by the Applicant. A copy was received by the Tribunal on 25 May 2016.

8. In a letter dated 31 May 2016 from the Tribunal to the Applicant, with the earlier correspondence from the Respondent. He was invited to withdraw his application. On 6 June 2016 the Applicant wrote to the Tribunal stating that he had not received the letter dated 24 May 2016 from the Respondent to the Tribunal and that he had sent to the Respondent alternative settlement terms in a letter dated 25 May 2016. He declined to withdraw.

9. In a letter dated 8 June 2016 the Respondent confirmed their response first set out in their dated 16 May 2016 to the Applicant. A copy was received on 10 June 2016 by the Tribunal.

10. In a letter dated 10 June 2016 the Tribunal asked the Applicant to forward a copy of his alternative settlement proposal in the letter of 25 May 2016 to the Respondent. In it the Applicant sought re-imbursement of the consent fee £100 (plus VAT), the Tribunal fee of £65 and £50 for copying and printing. The Tribunal did not receive a copy of any reply from the Respondent to this offer.

11. The directions provided for the Applicant to complete and send two copies his bundle and another to the Respondent by 13 June 2016. The Applicant completed his bundle on 10 June 2016 and the Tribunal received two copies.

12. In a letter dated 17 June 2016 the Applicant sought of the Tribunal the re-imbursement of the application fee of £65 together with a £150 for the costs of the application, preparation of his case, copy documents and phone calls. These sums were in addition to the re-imbursement of the original consent fee of £100 (plus VAT) by the Respondent to the Applicant.

The background

13. The property which is the subject of this application is in a post war, purpose built block of flats, situated in Kingston.

14. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

15. The Applicant holds a long lease of the property which requires the tenant to seek consent where he wishes to carry out works under tenant's clause 2(e). *"That the Lessee will not make or permit to be made any alteration in the construction or arrangement of the Demised Premises not cut alter or injure any of the walls timbers ceilings floors doors or windows thereof without in any such case the prior written approval of the Lessor (such approval not to be unreasonably withheld), and then only in compliance with the rules set out in the Second Schedule hereto (including any addition to or variation of or substitution for the said rules.....).*

The issues

16. The parties identified the relevant issues for determination as follows: The payability and/or reasonableness of an administration fee for the landlord's consent to the tenant to alter the demised premises.

17. The Applicant sought to install a replacement awning immediately outside of the demise. He contended that as he was not making any alterations to the demise, no consent from the Respondent landlord was required. He stated instead the works were acts of repair referred to clause 2c of the lease: *"That the Lessee will at all times during the said term keep in good and substantial repair and condition the following parts of the Flat namely all....landlord's fixtures and fittings equipment and apparatus whatsoever for the time being in or upon the Flat...."*

18. The Applicant further states that despite his view that the works were a repair, adopting a precautionary approach and following the 'Handbook' issued by the landlord to all tenants, he sought consent The Applicant states, that despite several requests, including the completion and submission of an 'application form' the Respondent did not reply, set out any other requirements or issue consent. Instead the landlord apparently contacted the Applicants proposed contractors direct seeking information on the proposal. After some negotiation on the specification, the proposal for a new awning was finally approved and a work permit issued on 5 May 2016.

19. Although the Respondent then sent a note of the charge for the consent, it was alleged by the Applicant to have failed to attach the statement of statutory rights. There is no indication from either party that these have since been provided.

20. The application not having been withdrawn by the parties, the case was considered based on the papers received in accord with such papers as were in compliance with the directions. The tribunal has made determinations on the various issues as follows.

The tribunal's decision

21. The Applicants original consent fee of £100 (plus VAT) be re-imbursed by the Respondent.

22. The Applicants costs of preparation of the case £150 be re-imbursed by the Respondent.

23. Both matters to be actions to be completed within 28 days of the date of this decision.

Reasons for the tribunal's decision

24. That consent for the proposed works or repair was not required as they were not alterations and therefore not covered by the lease clause requiring the landlords consent by the tenant, for alterations to the demise: That even if it was, the request was not accompanied by a copy of the tenants rights to challenge that fee.

25. These matters having been identified with the Respondent and challenged by the Applicant at an early stage, the matter should not have required a referral to the Tribunal.

26. That the proposed late settlement of the matter by the Respondent came after the date when the Applicant had already complied with the directions.

Refund of fees

27. The Applicant having made an application for a refund of the fees that he had paid in respect of the application. Having read the submissions from the parties and taking into account the determinations above, the tribunal orders that the Respondent refund any fees paid by the Applicant (£65) within 28 days of the date of this decision.

Name: **Neil Martindale** **Date:** **29 May 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 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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).