

12158



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

Case Reference : **LON/OOAU/LAC/2017/0006**

Property : **Flat 2 157 Hornsey Road London N7
6DU**

Applicant : **Catherine Walker (nee Wingate)**

Representatives : **In person**

Respondent : **Assethold Limited**

Representative : **Eagerstates Limited**

Type of Application : **Reasonableness of and liability for
service charges and/or
administration charges under the
Landlord and Tenant Act 1985 and
Schedule 11 of the Commonhold
and Leasehold Reform Act 2002**

Tribunal Members : **Professor Robert M. Abbey
(Solicitor)
Hugh Geddes (Professional
Member)**

**Date and venue of
Paper Based Decision** : **24th April 2017 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **24th April 2017**

DECISION

Decisions of the tribunal

1. The Tribunal determines that £60 per notice fee is reasonable.
2. The reasons for our decision are set out below.

The application and procedural background

3. The applicant has made an application for a determination as to liability to pay an administration charge or for the variation of a fixed administration charge pursuant to the terms of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
4. The applicant is a leaseholder of the property under a long lease where the freeholder is the respondent and the managing agents for the respondent are Eagerstates Limited (the agents). The lease of the property is dated 31 January 2007 and is for a term of 125 years from the date of the lease and the applicant is the original lessee.
5. The applicant's claim covers letting fees charged by the agents on 5 September 2014 of £120 inclusive of vat. The agents subsequently made the same charge in 2015 and 2016. In 2016 the agents also added £210 as late fees.
6. The relevant legal provisions relating to this matter are set out in the Appendix to this decision and rights of appeal made available to parties to this dispute are set out in an Annex.

The decision

7. With the approval of the parties to this dispute there was a written decision on the date shown above based upon all the papers, documents and statements of case submitted to the tribunal.
8. In the respondent's statement of case the respondent contends that the fee is payable as a consequence of the provisions of clause 9.4 of the fourth schedule of the lease. This is a clause commonly seen in long leases of residential property whereby within one month after the completion of an underlease the tenant is required to give notice to the landlord's solicitors and to produce a copy of the deed and to pay (in this case) to the landlord or his solicitors a registration fee of forty pounds with VAT thereon or such higher fee as shall reasonably be determined by the landlord from time to time.
9. The agents then stated that the fee for a notice under 9.4 is now £60 plus vat. On top of that they seek to charge an administration work fee of £40 plus vat. In summary they therefore say "That is how the total of £100 plus vat has been achieved. There are 3 sets of this fee outstanding, one for each

year. This fee needs to be paid annually, or upon re-letting. Each renewal is considered a new tenancy....”.

10. The late fee is apparently charged in relation to late paid ground rent and if so is not part of this application. The applicant says that there is no authority in the lease to make the “letting charge” on an annual basis as the agents have done and there is no authority to charge a “letting fee”.
11. Clause 9.4 is a standard straight forward lease provision requiring a tenant to give notice of dealings with a leasehold property. In this case sub-lettings would be covered by the clause. As such, each time the property is lawfully sublet the tenant/applicant should give notice to the respondent and pay a fee.
12. The tribunal have considered the fee charged by the agents at £100 plus vat but consider this amount unreasonable. The lease made in 2007 set an original level of £40 plus vat. Allowing for inflation from 2007 to 2017 this fee would amount to just short of £51. In the circumstances and allowing for other possible administration costs the tribunal believes that £60 plus vat is the appropriate and reasonable charge to comply with the requirements of clause 9.4 of the lease.
13. There is no provision in the lease to allow this charge to be made annually. The charge is payable each time a notice is given to the landlord or the landlord’s solicitors. The fact that this is called a “letting fee” does not change the basis of the charge. This comes from the provisions of clause 9.4 of the lease as described above. The tribunal noted that in an email dated 7 October 2015 to the respondent the applicant stated that “I have not re-let my property this year” and so no fee would be payable at that time.
14. Accordingly, a charge is only payable if a notice is given. The applicant is required by her lease to give such a notice each time the property is sublet. If there is a renewal on the basis of a new tenancy document then another fee is payable as there is a new letting albeit by way of a renewal. If the renewal is from a provision in an existing agreement (e.g. an option to renew) then there is no fee or notice required as the same letting agreement normally prevails.

Application for a S.20c order

15. It is the tribunal’s view that it is both just and equitable to make an order pursuant to S. 20c of the Landlord and Tenant Act 1985. The tribunal therefore determines that the costs incurred by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable, if any, by the tenant. Having considered the conduct of the parties and taking into account the determination set out above the tribunal determines that

it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act that the costs incurred by the respondent in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenant.

Name: Judge Professor Robert
M. Abbey

Date: 24 April 2017

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

Administration charges

Part 1 Reasonableness of administration charges

Meaning of “administration charge”

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.

Reasonableness of administration charges

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

3(1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

- (a) any administration charge specified in the lease is unreasonable, or
- (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3) The variation specified in the order may be—

- (a) the variation specified in the application, or
- (b) such other variation as the tribunal thinks fit.

(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6) Any such variation of a lease 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), whether or not they were parties to the proceedings in which the order was made.

Notice in connection with demands for administration charges

4(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

Liability to pay administration charges

5(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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).

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.