12453

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AU/LSC/2017/0265**
Property	:	**30A Jackson Road, London N7 6EJ**
Applicant	:	**David Evan Williams**
Representative	:	**In person**
Respondent	:	**Peter George Brand**
Representative	:	**In person**
Type of Application	:	**Application under s.27A of the Landlord and Tenant Act 1985 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002**
Tribunal Members	:	**Judge W Hansen (chairman)** **Mr John Barlow FRICS**
Date and venue of Hearing	:	**30 October 2017 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**31 October 2017**

DECISION

Decision of the Tribunal

(1) The Tribunal determines that the Applicant is liable to pay the Respondent £1,834.02 by way of service charge pursuant to Clauses 2.14 and 2.15 of the Lease dated 18 November 2011, such charges being in respect of the period from 29 September 2014 up to 29 September 2017 inclusive. Given that the Applicant has already paid £420.60 towards such charges, the balance outstanding is £1,413.42.

(2) The Tribunal determines that it has no jurisdiction in respect of the registration fees payable under Clause 2.12.2 of the Lease;

(3) The Tribunal determines that the legal costs claimed are administration charges under paragraph 1(1)(d) of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") and that the Applicant is liable to pay the Respondent £1,465.20 in respect thereof, being a reasonable sum for the work undertaken by the Respondent's solicitors;

(4) The Tribunal makes no Order under section 20C of the Landlord and Tenant Act 1985, there being no provision in the Lease which entitles the Respondent to add the costs incurred in connection with these proceedings to the service charge.

The Application(s)

1. The Applicant is the tenant of Flat A, 30 Jackson Road, London N7. This is one of three flats in a converted property. He holds under a lease dated 18 November 2011 ("the Lease"). The Respondent is the freehold owner and lives in Flat B. By two applications, both dated 11 July 2017, the Applicant seeks the Tribunal's determination of his liability to pay certain service charges and

administration charges allegedly due pursuant to a demand dated 22 April 2017 ("the Demand").

The Issues

2. The Demand (pp.108-111) comprises essentially three sets of different charges: (i) service charges alleged to be due under Clauses 2.14 and 2.15 of the Lease, covering the period from the September quarter day 2014 up to and inclusive of the September quarter day 2017, and totalling £1834.02; (ii) registration fees alleged to be due under Clause 2.12.2 of the Lease following the grant of various sub-tenancies by the Applicant and the registration of a charge, totalling £220.00; (iii) legal costs in the sum of £3663.60 incurred in 2016 following a determination dated 23 June 2015 by a previous Tribunal that the Applicant had breached Clauses 2.12.2 and 2.12.3 of the Lease by failing to pay registration fees due on the grant of a sub-tenancy and by failing to procure a Deed of Covenant whereby the sub-tenant covenanted with the Respondent to comply with the terms of the Lease.

Determination

3. The Applicant's challenge to the service charges claimed pursuant to Clauses 2.14 and 2.15 of the Lease was not pursued at the hearing. Following the directions hearing on 1 August 2017, at which Judge Donegan identified a number of issues relating to the payability and reasonableness of those charges, the Applicant served a Statement of Case dated 1 September 2017 in which he admitted his liability to pay those charges (see page 3 of his Statement of Case at p.58). He also completed his part of the Scott Schedule to the same effect (p.53). Those charges total £1834.02, of which the Applicant has already paid £420.60, leaving a balance payable of £1413.42.

4. As regards the various registration fees payable under Clause 2.12.2, we heard extensive argument from both parties as to whether such charges were payable under the terms of the Lease in the events which have happened, but the Respondent had previously, in his Statement of Case, drawn our attention

7. The Respondent sought to recoup these costs pursuant to Clause 2.16 of the Lease which contains a tenant's covenant as follows:

> *"To pay to the Lessor all proper and reasonable costs charges and expenses (including legal costs and surveyors' fees) which may be properly incurred by the Lessor in the preparation and service of a notice or in contemplation of any proceedings under section 146 and 147 of the Law of Property Act 1925"...*

8. Thus the first question is whether the legal costs claimed fall within the scope of Clause 2.16. In our view they clearly do. The position was as follows. The Respondent had sought and obtained a determination from the Tribunal that the Applicant had breached Clauses 2.12.2 and 2.12.3 of the Lease: see Determination dated 23 June 2015. This was a necessary precursor to forfeiture. He then served s.146 notices dated 17 July (pp.78-79) and 3 September 2015 (pp.81-82). On or about 27 October 2015 he instructed Pemberton Greenish ("PG") to recover possession of the Flat. We were handed a letter dated 28 October 2015 from PG, the first paragraph of which reads:

> *"Ground floor flat, 30 Jackson Road, London N7 6EJ*
>
> *Many thanks for your letter of 27 October with its enclosures and for your instructions to act on your behalf in recovering possession of the above premises following a breach of the terms of the lease by your tenant, David Evan Williams"*

9. The letter then set out the terms of the proposed retainer and the Respondent told us that he accepted those terms. It is to be noted that the solicitors estimated costs of £3,500 plus VAT if a possession order was made at the first hearing. The letter also set out charging rates for various potential fee-earners, including the partner's rate of £385+VAT per hour, her trainee solicitor's rate of £145 per hour, and rates of £220-£280 for a solicitor and £170-£205 for a legal assistant.

10. Although that letter was dated 28 October 2015, it would appear that PG did not begin work until 2016 because their only fee note, which is dated 31 March 2016, covers the period from 12 February 2016 until 30 March 2016 (p.112) and claims a total of £3663.60. In fact, following a complaint by the

Respondent to the Legal Ombudsman, to which further reference will be made below, PG agreed to reduce their costs by £500 to £3163.60 and the Respondent has paid the bill. Accordingly, the present claim is for recoupment of those costs in the sum of £3163.60.

11. Consistent with the fee note, the first evidence of PG undertaking any work on behalf of the Respondent is a letter dated 16 February 2016 written to the Applicant threatening forfeiture proceedings but giving the Applicant a further opportunity to remedy the outstanding breaches of covenant. It is apparent from the breakdown of the fee note which PG later provided that following that initial letter, PG corresponded with Applicant's solicitors and prepared draft proceedings but ultimately appear to have agreed with the Applicant's solicitors on 30 March 2016 that, for the future, sub-tenants would enter into a Deed of Covenant at the same time as they entered into any sub-tenancy (pp.90-92). However, it is clear that at least up to the point of that agreement forfeiture proceedings were clearly in contemplation and the legal costs were incurred in contemplation of such proceedings. Accordingly we are satisfied that the legal costs claimed fall within the scope of Clause 2.16.

12. The Respondent therefore has a contractual right of recovery but as the costs claimed are also administration charges within the meaning of paragraph 1 (1) of Schedule 11 to the 2002 Act (see e.g. *Christoforou v. Standard Apartments Ltd* [2013] UKUT 0586 (LC), the statutory restriction in paragraph 2 of Schedule 11 applies and we must consider the reasonableness of the sums claimed.

13. As to the reasonableness of the sums claimed, the Applicant contended that any breach was minor and/or technical, and that it was unreasonable to have set in motion forfeiture proceedings given the nature of the breach. We disagree. The provision for any sub-tenant to enter into a Deed of Covenant with the head landlord is an important additional safeguard for the freeholder in such circumstances. The Lease entitled the Respondent to insist on such a Deed and none was provided. Furthermore, the Applicant had taken no steps to remedy the breach. We accept that by the time of the correspondence in

February and March 2016, the original tenant, Sisojeviene, had left the Flat but the Applicant's solicitors did not inform PG of the position until 7 March 2016. We note that a further assured shorthold tenancy had been entered into with tenants by the name of Orton and O'Connor and no Deed had been procured from them. In the circumstances, we are satisfied that it was reasonable to instruct PG in relation to the proven breaches of covenant with a view to possible forfeiture proceedings

14. However, having considered the detailed breakdown of the bill that PG provided (p.132), and having regard to all the circumstances of the case, we consider that the charges levied are unreasonably high. The Respondent appears to have come to the same conclusion as he made a complaint to the Legal Ombudsman on 7 June 2016 and submitted that the total bill should be no more than £975.80 before the deduction of £500, based on 5.74 hours work by a legal assistant at the rate of £170 per hour.

15. Having carefully consider the bill and detailed breakdown of that bill prepared by PG, and having regard to all the circumstances of the case, we have concluded that this was a very straightforward matter that could have been readily attended to, in a relatively short amount of time, by a legal assistant with limited supervision by a solicitor.

16. We consider a reasonable sum for legal costs on the facts of this case would have been £1465.20 made up as follows: 2 hrs of a solicitor's time charged at £265+ VAT per hour = £636 + 4 hours of a legal assistant's time charged at £170 +VAT per hour = £816 + disbursements of £13.20. Thus the total is £636 + £816 + £13.20 = £1465.20. The Respondent submitted that we should assess costs on an indemnity basis by reference to the case of *Fairview Investments Ltd v. Sharma* [1999] Lexis Citation 1745. We have done so but that does not entitle the Respondent to recover costs which are unreasonable in amount and we consider any sum above £1465.20 to be unreasonable.

17. The Respondent also submitted that we should take into account the fact that PG had in fact continued to work on the job for some time after 30 March 2016 for no charge (see PG e-mail dated 9 August 2016) and that this

somehow made their bill more reasonable than might otherwise be the case. We are not persuaded that this is a relevant consideration but even if it is, it does not affect our overall assessment of what is a reasonable sum in the circumstances for the work undertaken.

18. The Applicant ticked the box on the form which indicated that he wished to seek an order under s.20C of the Landlord and Tenant Act 1985. However, it was common ground and we find that there is no provision in the Lease which entitles the Respondent to add the costs of these proceedings to the service charge. Accordingly, we make no order under s.20C.

19. No other costs or other applications were made by either party.

Name: Judge W Hansen **Date:** 31 October 2017