

13014



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

Case Reference : **LON/00AE/LAC/2018/0017**

Property : **11 Jefferson Lodge, Sudbury Avenue, Middlesex HA0 3BL**

Applicant : **Mahant Patel**

Represented by : **Nainash Patel**

Respondent : **Jefferson Lodge Ltd**

Represented by : **Alliance Managing Agents**

Type of Application : **Application for a determination of the reasonableness and payability of Administration charges under Schedule 11 of the Commonhold and Leasehold Reform Act 2002**

Tribunal Members : **Judge Daley
Mr M Mathews FRICS**

Date of paper determination and venue : **22 October 2018 at 10 Alfred Place, London WC1E 7LR**

Date of Decision : **25 October 2018**

(ii) the preparation and service of a notice under Law of Property Act 1925 Section 146 or the taking of proceedings under the of the Law of Property Act 1925 Section 146 or 147 or any act or acts for the time being amending or replacing the same notwithstanding that forfeiture may be avoided otherwise than by relief granted by the court.”

(X) To be responsible for and to keep the Landlord fully indemnified against all damages losses costs expenses actions demands proceedings claims and liabilities made against suffered or incurred by the Landlord arising directly or indirectly out of

(i) any act omission or negligence of the Tenant or any persons at the Flat...

(ii) any breach or non observance by the Tenant of the covenants or conditions or other provisions of this Lease or any of the matters to which this demise is subject...

The Facts

10. In his supplementary statement dated 27 September 2018, Mr Patel stated that the LPE1 charge of £330.00 was above the industry standard. He also states that there is an obligation to provide Fire Risk and Asbestos reports. He also states that the landlord has not provided a copy of the invoice for the inspection fee.
11. In reply, the Respondent set out that the LPE1 report charges were communicated to the Applicant's conveyancing solicitor. The Respondent's property manager also stated that there was no obligation to provide the Fire Safety Inspection and the Asbestos report which had been commissioned pursuant to the landlord's compliance with Health and Safety Regulations. The Respondent in their statement of case, set out that the inspection which took place on 25 November 2016 was carried out as a result of the Applicant not providing access to their property as part of an inspection of the 15 flats which took place on 13 February 2016, further information is provided concerning the detail of this in the determination.

The Decision of the Tribunal

12. The Tribunal having considered the documents relied upon by the parties has determined the following:-
13. Having considered the terms of the lease in relation to LEP1 the tribunal considers that this charge is outside the scope of the administration charges and is not covered by Clause W of the Third Schedule of the lease, accordingly the Tribunal makes no finding on this charge. The

Tribunal considers that these charge is part of the conveyance process, and as such it was open to the Applicant to negotiate with the Respondent concerning what was considered to be a reasonable charge for this service. Accordingly the Tribunal consider that this cost is outside the Jurisdiction of the Tribunal

14. In relation to the Survey reports, as these are paid for by the leaseholder as a service charge item; nothing in the lease enables the landlord to charge for providing a copy of the report. The Tribunal also find that it is a reasonable requirement to provide a copy on request. Accordingly as the lease does not allow the landlord to charge for providing such a report, the Tribunal determines that the sum of £25.00 is payable as a photocopying charge and to cover the time taken by the Landlords' managing agent in providing copies. **We find that the sum of £25.00 is payable in respect of this item.**
15. The background to the inspect report was that there was a problem with damp in the communal part of the building and that prior to the landlord undertaking communal decorations and repairs, the landlord wished to inspect the flats to ensure that each leaseholder had made adequate provisions in their bathroom for the disposal and control of water in the bathroom, by adequate tiling and splash backs etc.
16. The landlord notified the leaseholders that they wished to inspect on 2 February 2016. The Applicant did not provide access on that date. On 17 May 2016. The landlord's agents wrote to the Applicant informing them that as they had failed to provide access, they should provide photographs to confirm the state of repair within the bathroom this was to be provided by 4 June 2016. This did not happen. The landlord subsequently inspected the premises on 25 November 2016, and noted in an addendum to the original report that the condition of the bathroom was compliant with what was required to resolve damp in the communal parts.
17. The Tribunal finds that pursuant to clause (d) of the second Schedule, of the lease, there is a right for the landlord to inspect the premises on reasonable notice. The Tribunal finds that notice was given, and that the Applicant's failure to provide access was a breach of the x(ii) of the Third Schedule of the lease. As a result of the failure to provide access or send the photographs referred to in the correspondence dated 17 May 2016, this resulted in an additional inspection having to be undertaken of the Applicant's premises. **The Tribunal finds the sum claimed for that inspection of £330.00 reasonable and payable.**
18. The Tribunal noted that no information had been provided by the landlord as to why the sum of £120.00 was considered to be payable by the Applicant, although it is not clear that this charge has been challenged. There is nothing in the lease which would on the

information before the Tribunal support this charge as being payable, Accordingly the Tribunal determines that as legal costs were incurred by the landlord engaging solicitors it is not appropriate for additional costs to be incurred by the managing agent in respect of this issue.

Application under s.20C and refund of fees

19. The Tribunal noted that the lease does not provide for the costs of this matter to be claimed as a service charge, for avoidance of doubt if the Tribunal is considered to be wrong concerning this, an order is granted under Section 20C of the Landlord and Tenant Act 1985 and 5A of the Commonhold and Leasehold Reform Act 2002.

20. In accordance with its findings the Tribunal makes no order for a re fund of the Application or hearing fees.

Name: Judge Daley

Date:25/10/18

Appendix of relevant legislation

SCHEDULE 11 ADMINISTRATION CHARGES PART 1

REASONABLENESS OF ADMINISTRATION CHARGES

Meaning of "administration charge"

Para 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

Para 2

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

Para 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

Para 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

Para 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).

Interpretation

Para 6

- (1) This paragraph applies for the purposes of this Part of this Schedule.
- (2) "Tenant" includes a statutory tenant.
- (3) "Dwelling" and "statutory tenant" (and "landlord" in relation to a statutory tenant) have the same meanings as in the 1985 Act.
- (4) "Post-dispute arbitration agreement", in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen.
- (5) "Arbitration agreement" and "arbitral tribunal" have the same meanings as in Part 1 of the Arbitration Act 1996 (c. 23). "(2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002."

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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(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.