

13021



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

Case Reference : **LON/00AP/LAC/2018/0015**

Property : **30 Butterfly Court, London
N15 4FA**

Applicant : **Helen Dibblin**

Representative : **N/A**

Respondent : **Adriatic Land 6 (GRI) Ltd**

Representative : **SLC Solicitors**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay administration charges**

Tribunal Members : **PMJ Casey MRICS**

**Date and venue of
Hearing** : **4 October 2018
10 Alfred Place, London WC1E 7LR**

Date of Decision : **18 October 2018**

DECISION

Decisions of the tribunal

- (1) The tribunal determines none of the administration charges whether for reminder letters, referrals to solicitors or solicitors' costs demanded by the respondent are payable by the applicant.
- (2) The tribunal makes orders under both section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge nor to the applicant as administration charges.
- (3) The tribunal determines that the respondent shall pay the applicant £100 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 Act") as to the amount of administration charges payable by the applicant.
2. The relevant legal provisions are set out in the Appendix to this decision.
3. Directions for dealing with the application were issued by the tribunal on 24 July 2018 which provided for it to be dealt with on the documents which the directions required to be produced (a paper hearing) in the week commencing 1st October 2018 unless either party requested an oral hearing; neither did.
4. The tribunal considered the matter on the basis of the hearing bundle provided by the parties on 4 October 2018.

The background

5. The property which is the subject of this application is a 3 bedroomed flat in a purpose built block.
6. 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.
7. The applicant holds a long lease of the property which requires the landlord to provide insurance cover for the building and the tenant to

contribute towards the costs by way of a variable service charge. Other services are provided by a management company to which the applicant also pays service charges but these are not in dispute. The specific provisions of the lease will be referred to below, where appropriate.

The issues

8. The relevant issue identified in the application is the payability and/or reasonableness of administration charges raised by the respondent in 2018 relating to final reminder letter of £45, notice of legal action £100, legal costs £145.75 plus £29.15 VAT and interest £9.61
9. Having considered the evidence and submissions from the parties and all of the documents provided, the tribunal has made its determination on the issue as follows.

The evidence

10. From the evidence provided the applicant completed her purchase of this new flat from Bellway Homes Limited on 26 January 2016. The interest she acquired is a lease for a term of 125 years from 1st August 2013 at an initially reserved rent of £300 pa. The completion statement shows that on acquisition she paid, in addition to the purchase price and other sums, £279.45 in respect of ground rent being an apportionment of the yearly rent for the period 26 January 2016 to 31 December 2016 and £186.14 being an apportioned part of the annual cost of insurance (£363.32) for the period 26 January 2016 to 31 July 2016. Whilst the tribunal has no jurisdiction in relation to ground rents it is necessary to show the sums involved in order to consider the reasonableness and/or payability of the disputed administration charges. At paragraph 4 of Schedule Two to the lease it states "The Tenant shall pay the Rent in advance without any deduction whatsoever on 1st August in each year (the first such payment being a proportionate sum being due on and from the date hereof until 31 July next)". Paragraph 19.1 of Schedule Three of the lease contains the requirement to pay the insurance contribution in advance on 1st August in every year.
11. The applicant made a further payment of £690.33 on 31 January 2017 to LPM Limited. This presumably is Lawrence Square Management Company Limited, the management company under the terms of the lease who it seems were collecting ground rent and insurance contributions on Bellway's behalf (£300 ground rent plus £390.33 insurance). No copy of any demand appears in the bundle but this sum does feature in the respondent's claims on the applicant. Thus the applicant had paid insurance to 31 July 2017 and ground rent to 31 December 2017.

12. On 1st February 2017 the respondent acquired the freehold and with it certain debts including so the Statement in Reply says "ground rent and insurance arrears for the Applicant's account". On 14 November 2017 the respondent, through its managing agents Home Ground sent the applicant a demand for payment on the same day of £300 in respect of the ground rent for the period 1st January 2018 to 31 December 2018. Though not demanded the invoice noted an outstanding balance of £990.33 though without explanation of the amount. On 8 February a further demand was sent for £455.87 in respect of insurance for the period 1st August 2017 to 31 August 2018 payable by 22 February 2018.
13. On 26 February 2018 the applicant paid Home Ground £300 said at the time in an e-mail she sent to them querying the arrears to be the ground rent and on 26 March she made a further payment of £155.87 which when added to the £300 equals the insurance demand. The exchange of e-mails did not contain any explanations of the sums sought despite the applicant pointing out sums she had paid. A final reminder which incurred a £45 administration charge was apparently sent to her on 22 June though she says she never received this nor is it exhibited in the bundle. Home Ground wrote to her on 22 June regarding "your Ground rent account and the outstanding balance of £500.87 which included the later payment fee of £45 ..." but this would seem to relate to the insurance demand at least part of which had been paid. They also included a further sum for late payment and referral fee of £100 which was not invoiced but was said to be posted to her account. A further letter on 2 July advised that the matter had been passed to SLC Solicitors. However on 27 June payment of £690.33 had been received from Bellway after which arrears were said to be £417.08. SLC took over correspondence saying arrears of £629.51 including now legal costs of £145.75 plus VAT of £29.15 and interest (£9.61) and threatening forfeiture. A similar arrears schedule to 20 July increased the total to £632.14 with interest now at £12.24. Ms Dibben says she has paid this sum because of the forfeiture threat but still disputes the amount owing and the justification for the administration charges.

The tribunal's decision

14. From the evidence it is clear that the respondent through its agents has pursued the applicant for sums of money she did not owe, have failed to read the lease properly and makes demands in accordance with its provisions, have issued demands and statements containing errors and have failed to ever provide her with clear explanations. It is not for the applicant to prove she does not owe money but for the respondent to carry out due diligence to ensure it claims only what is owed especially when as in this case it can threaten forfeiture. The applicant did owe £300 either as ground rent or as the balance of the insurance contribution but her confusion and lack of trust in the respondent's agents is hardly surprising given the incompetent manner in which they have dealt with her account. The tribunal is satisfied that it is that incompetence which is at the roof of the dispute and the administration

charges whether for letters, referral to solicitors or legal costs have been unreasonably incurred and are not recoverable from the applicant, nor should the interest be. Any sums Ms Dibben has paid since March 2018 in excess of £300 should be repaid to her without delay save for the 2018/19 insurance contribution.

Application under s.20C and refund of fees

15. In the light of the determination above, the tribunal orders the respondent to refund any fees paid by the applicant within 28 days of the date of this decision.
16. In the application form, the applicant applied for an order under section 20C of the Landlord and Tenant Act 1985. Whilst it is unlikely that the respondent can recover any costs in this way the tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.
17. The tribunal also makes an order under Paragraph 5A of Schedule 11 to the Act that none of the landlord's costs of the tribunal proceedings may be passed to the applicant as administration charges.

Name: PMJ Casey

Date: 18 October 2018

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.

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).