



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

Case reference : **LON/00BE/LAC/2019/0009**

Property : **First Floor Flat 3 Elcot Avenue
London SE15 1QB**

Applicant : **Primeview Developments Limited**

Representative : **Mr S Newman Solicitor of D&S
Property Management**

Respondent : **Charanjeet Singh**

Representative : **-**

Type of application : **For the determination of the
liability to pay an administration
charge pursuant to Schedule 11 to
the Commonhold and Leasehold
Reform Act 2002**

Tribunal members : **Judge Professor Robert Abbey**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **1 July 2019**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £8598.33 is payable by the Respondent in respect of the administration charge claimed

The application

1. The Applicant seeks a determination pursuant Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the amount of an administration charge payable by the Respondent
2. The relevant legal provisions are set out in the Appendix to this decision.

The decision

3. The matter was dealt with on the papers. In his Directions dated 4 April 2019 Judge Korn directed that the application be determined without a hearing but if either party wanted an oral hearing this needed to be requested by 9 May 2019. No such request was received and hence this paper based decision.
4. Immediately prior to the making of this decision the applicant submitted a trial bundle containing copy deeds documents and correspondence.

The background

5. The property which is the subject of this application is a flat within a converted building containing two self-contained flats. There are also internal common parts shared between the flats.
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 Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease relevant to this application are contained within clause 2 (r) (ii). In essence this provides that the tenant must pay on demand all costs charges and expenses including legal costs surveyor’s fees and managing agent’s fees incurred by the landlord in connection with the recovery of the rents and other monies reserved by the lease and that are outstanding because of non-payment.

8. By a decision of Judge Hansen in this Tribunal dated 19 November 2018, (under reference LON/00BE/LSC/2018/0283), the tribunal determined that the respondent was liable to pay services charges totalling £26,514.48 in regard to the property.

The issues

9. At the start of this determination the tribunal identified the relevant issues for determination as follows:
- (i) The payability of an administration charge, the details of which are set out below.
10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The amount of the administration charge claimed

11. The applicant seeks an administration charge amounting to £8,873.88 being the total amount of costs and expenses the landlord is seeking pursuant to clause 2 (r) (ii) of the lease. The claim represents costs that arose as a result of the claim mentioned above. The amounts making the total claimed are
- (i) The application and hearing fee from the previous case in the sum of £300
- (ii) Managing agents in house solicitor's fees incurred in connection with the previous case in the sum of £6000
- (iii) Surveyors fees with regard to the preparation of an experts report and attending the hearing in the sum of £2198.88
- (iv) Managing agents in house solicitor's fees with regard to preparation and service of a s146 Notice in the sum of £375

The tribunal's decision

12. The tribunal determines that the amount payable in respect of the administration charge is £8598.33 and Orders that this sum be payable by the respondent to the applicant within 28 days of the date of this decision.

Reasons for the tribunal's decision

13. In his Directions dated 4 April 2019 Tribunal Judge Korn directed that by the 25 April 2019 the tenant needed to send to the landlord a full response to the landlord's claim. The respondent failed to provide such a response. Accordingly, this decision has been made on the written information before it. So, I have had to proceed in the absence of any relevant evidence or response from the respondent/tenant who has failed to comply with Directions.
14. I will deal with each item of claim, starting with the application and hearing fee from the previous case in the sum of £300. This will be disallowed as it is a payment that could and should have been dealt with by an application for a fees refund within the previous case concluded in 2018.
15. Under the terms of Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8) the Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor. This was not done in the previous case and as such the claim is disallowed.
16. The second item is for Managing agents in house solicitor's fees incurred in connection with the previous case in the sum of £6000. A full explanation for the breakdown of these charges was supplied by the applicant and in the absence of any objection by the respondent I am prepared to allow these as claimed. These legal fees are plainly covered by the provisions of covenant 2 (r) (ii).
17. The third item was for Surveyors fees with regard to the preparation of an experts report and attending the hearing in the sum of £2198.88. Again, a full explanation was provided by the applicant for the amount of these fees. The applicant confirmed that in the previous case there was a Direction allowing the appointment and use of experts and as such this is an allowable expense and one that is contemplated by covenant 2 (r) (ii) of the lease. Accordingly, in the absence of any objection by the respondent I am prepared to allow these as claimed.
18. The fourth and final item was for managing agents in house solicitor's fees with regard to preparation and service of a s146 Notice in the sum of £375. The work undertaken in this regard included reviewing all relevant documents, including the lease and the decision in the previous case and the drafting of the specific notice required by s.146 of the Law of Property Act 1925.
19. Accordingly, the applicant says that this is a reasonable fee for the work undertaken and which has not been disputed by the respondent.

Therefore, in the absence of any objection by the respondent I am prepared to allow these as claimed. These legal fees are plainly covered by the provisions of covenant 2 (r) (ii).

Name: Judge Professor Robert Abbey **Date:** 1 July 2019

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

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).