



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

**Case Reference** : **BIR/00FN/LIS/2020/0012**  
**HMCTS Code** : **P:PAPERREMOTE**  
**Subject Property** : **Apartment 101  
St Georges Mill  
11 Humberstone Road  
Leicester LE5 3GW**  
**Applicant** : **Catrina Clulow**  
**Respondent** : **Blue Property Investment UK Ltd**  
**Representative** : **Blue Property Management UK Ltd**  
**Type of Application** : **(1) Application under section 27A of  
the Landlord and Tenant Act 1985 for  
the determination of the reasonableness  
and payability of service charges in respect  
of the subject property**  
**(2) Application under section 20C of the  
Landlord and Tenant Act 1985 for an order  
for the limitation of costs**  
**(3) Application under paragraph 5A of  
Schedule 11 to the Commonhold and  
Leasehold Reform Act 2002 for an order  
reducing or extinguishing liability to pay  
administration charges in respect of  
litigation costs**  
**Tribunal Members** : **Deputy Regional Judge Nigel Gravells  
Graham Freckelton FRICS**  
**Date of Decision** : **7 December 2020**

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**DECISION (2)**

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## **Introduction**

- 1 On 17 November 2020 the Tribunal issued its Decision on the section 27A application.
- 2 This is the Decision on various costs applications by the Applicant, Ms Catrina Clulow, the leaseholder of Apartment 101, St Georges Mill, 11 Humberstone Road, Leicester LE5 3GW ('the subject property').
- 3 The Respondent is Blue Property Investment UK Ltd, the freeholder of the subject property, for whom Blue Property Management UK Ltd acts as agent.
- 4 The first two applications are under section 20C of the Landlord and Tenant Act 1985 for an order for the limitation of costs ('the section 20C application') and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for an order reducing or extinguishing the Applicant's liability to pay an administration charge in respect of the Respondent's litigation costs ('the paragraph 5A application').
- 5 On 17 November 2020 the Tribunal invited the parties to make representations on the section 20C and paragraph 5A applications.
- 6 Although both parties submitted representations, neither party directly addressed the issues raised by the section 20C and paragraph 5A applications.
- 7 However, in her representations the Applicant included what the Tribunal interpreted as an application for costs under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the 2013 Rules') and an application for the reimbursement of fees under rule 13(2).
- 8 Since the applications under rule 13 were new, the Tribunal gave the Respondent the opportunity to make further representations.

## **Determination**

- 9 In determining the various costs applications the Tribunal attached significant weight to the following factors –
  - (a) the Applicant succeeded (in whole or substantial part) on most of her challenges to the service charges for 2018 and 2019, specifically those relating to cleaning, electricity, management fees, repairs and maintenance, car park electricity, car park maintenance, insurance excess and professional fees;
  - (b) in monetary terms the Tribunal determined that the Applicant was entitled to a reduction in her service charges for 2018 and 2019 totalling £590.89 (compared with her claim of £668.76);
  - (c) many of the Tribunal's findings were readily foreseeable in the light of the Tribunal's 2019 Decision but (i) the Respondent failed to make adjustments to the Applicant's service charges for 2018 and 2019 to reflect many aspects of the 2019 Decision and (ii) in the view of the Tribunal, the Respondent declined to engage in meaningful negotiations with the Applicant to settle the dispute between the parties without recourse to litigation;
  - (d) the Applicant therefore had no option but to make an application to the Tribunal.

### Paragraph 5A application

- 10 If the Respondent is minded to claim from the Applicant any costs for work carried out by the Respondent in connection with the present applications, the sums claimed would be properly characterised as administration charges in respect of litigation costs. As such those charges would have to be formally demanded from the Applicant.
- 11 In anticipation of such a demand, the Applicant made an application under paragraph 5A of Schedule 11 to the 2002 Act, which (so far as material) provides –
- 5A(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
- 12 As noted above (paragraph 6) neither party directly addressed the criteria of what is just and equitable set out in paragraph 5A(2).
- 13 Exercising its discretion under paragraph 5A(2), and applying the criteria of what is just and equitable, the Tribunal orders that, in the light of the matters set out in paragraph 9 above, the liability of the Applicant to pay an administration charge in respect of the Respondent's litigation costs should be extinguished.
- 14 The Tribunal recognises that this order effects an alteration in the parties' contractual position as set out in the lease; but, as Holgate J commented in *Avon Ground Rents Limited v Child* [2018] UKUT 0204 (at paragraph 58), that is the very purpose of the paragraph 5A jurisdiction.

### Section 20C application

- 15 Section 20C of the 1985 Act (so far as material) provides –
- (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 ... the First-tier Tribunal ... 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.
- ...
- (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.
- 16 Again, neither party directly addressed the criteria of what is just and equitable.
- 17 In *Conway v Jam Factory Freehold Ltd* [2013] UKUT 0592 the Upper Tribunal underlined the importance of considering the overall financial consequences of any order. In the light of the decision of the Tribunal in relation to the paragraph 5A application, the Tribunal is of the view that it would not be just and equitable if the Respondent sought to recover through the service charge costs that the Tribunal has determined that it cannot recover in a claim for administration charges in respect of litigation costs.

18 In order to give effect to that view, the Court makes an order under section 20C that any costs incurred by the Respondent in connection with the present proceedings shall not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

### Rule 13 applications

#### *Costs*

19 In her representations the Applicant requested that the Tribunal award her costs of £180.00 in respect of time spent in dealing with email correspondence from the Respondent. The Tribunal interprets that request as an application for an order under rule 13(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the 2013 Rules').

20 Rule 13(1) provides (so far as material) –

(1) The Tribunal may make an order in respect of costs only—

...

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—

...

(ii) a residential property case ...

21 The Tribunal determines that rule 13(1)(b) is not engaged since the claim relates to a time before the Applicant made her section 27A application and therefore before there were relevant 'proceedings' within the meaning of that rule.

22 For the avoidance of doubt, the Applicant's argument - that there was a contract between the Applicant and the Respondent for the payment of the sum of £180.00 - is misconceived. The Applicant had argued that, if the Respondent failed to respond to her statement that she would charge the Respondent for time spent in dealing with email correspondence, she would treat that silence as acceptance that the sum was payable. Contrary to the Appellant's argument, a contract cannot be imposed on another person simply on the basis of that other person's silence.

#### *Reimbursement of fees*

23 The Applicant also applied for the reimbursement of the application fee of £100.00 and the hearing fee of £200.00.

24 Rule 13(2) of the 2013 Rules provides –

(2) 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.

25 In the light of the matters set out in paragraph 9 above, the Tribunal orders that the Respondent reimburse to the Applicant the sum of £300.00 in respect of the application and hearing fees.

### Other matters

26 In its representations the Respondent raised three matters.

27 First, the Respondent requested that its claim in respect of debt recovery fees be allowed. If, as seems to be the only interpretation, those fees (in the sum of £300.00) were charged in relation to the attempted recovery of

unpaid service charges for the years 2012 to 2017, as the Respondent observed at the hearing on 3 November 2020, the Tribunal allowed those charges as part of the 2019 Decision: see paragraph 114 of the decision dated 17 November 2020.

- 28 Second, the Respondent requested that its claim in respect of an administration charge for non-payment or late payment of service charges for the years 2018 and 2019 be allowed. Again, the Tribunal addressed that claim in paragraph 115 of its decision dated 17 November 2020. It determined that the charge (in the sum of £50.00) was payable by the Applicant under the terms of her lease; but the Tribunal merely invited the Respondent to consider waiving the charge in the circumstances outlined in that paragraph.
- 29 Third, the Respondent raised the question of interest on unpaid services charges for the years 2018 and 2019. The Tribunal notes that the Respondent made no reference to such interest either in the Scott Schedule or in its oral representations at the hearing. The Tribunal has no basis on which to make a determination on the matter in the context of the present proceedings.

7 December 2020

Professor Nigel P Gravells  
Deputy Regional Judge