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

Case Reference : **LON/00BB/LAC/2013/0022**

Property : **Flat 133 Adriatic Apartments, 20
Western Gateway, E16 1BU**

Applicant : **Ms Judith Wilson**

Representative : **None**

Respondents : **OM Property Management Limited
trading as Consort Property
Management (1)
Fairhold Properties No. 8 Limited
(2)**

Representative : **Both Respondents represented by
Consort Property Management**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay Administration Charges**

Tribunal Judge : **Mr M Martynski**

Date of Decision : **23 September 2013**

DECISION

Decision summary

- A. The Tribunal determines that the Administration Charges in question are payable as follows:-

	<i>Claimed</i>	<i>Payable</i>
Interest on unpaid Service Charges	£9.16	£9.16
Administration Charge (1)	£60.00	£24.00
Administration Charge (2)	£60.00	£24.00
Legal Review Fee (Consort)	£60.00	£42.00
Legal Review Fee (E&M)	£48.00	Nil
Legal fees	£225.00	Nil

- B. An order is made pursuant to section 20C of the Landlord and Tenant Act 1985.
- C. The Respondents must pay to the Applicant the issue fee of £65.00 within 28 days of the date of this decision.

Background

1. Flat 133 Adriatic Apartments ('the Property') the subject of this application is a flat in a block of flats.
2. The Applicant owns the long lease of the Property jointly with her husband.
3. The lease of the Property is a tripartite lease. The relevant parties to that lease are now, the Applicant and her husband and the Respondents.
4. The Application made by the Applicant challenges various Administration Charges as follows:-

Interest on unpaid Service Charges	£9.16
Administration Charge (1)	£60.00
Administration Charge (2)	£60.00
Legal Review Fee (Consort)	£60.00

Legal Review Fee (E&M)	£48.00
Legal fees	£225.00

- Neither party requested an oral hearing of the application and accordingly this application has been considered on the basis of the papers alone. Both parties submitted bundles of documents for the decision and this decision is made after considering both parties' Statement of Case and the documents contained in their respective bundles.

The lease

- As to the relevant specific provisions in the lease, these are summarised as follows:-

The leaseholder's Service Charge contribution is reserved as rent [clause 3]

Interest at the rate of 4% above Barclays Bank PLC's base rate is payable on all arrears from the date 14 days after the sum in question has become due [paragraph 3, Part One, Eighth Schedule]

The leaseholder is obliged to pay all costs charges and expenses incurred by the Lessor in or in contemplation of any proceedings or service of any notice under sections 146 or 147 Law of Property Act 1925 [paragraph 4, Part One, Eighth Schedule]

The leaseholder must keep the Manager and the Lessor indemnified in respect of charges for other services payable in respect of the Demised Premises which the Lessor or the Manager shall from time to time during the Term be called upon to pay such sums to be repaid to the Lessor or the Manager on demand [paragraph 8, Part One, Eighth Schedule]

The factual background specific to the dispute

- As stated above, the first Respondent (to be known as 'Consort') is a party to the lease (in its former name of Peverel OM Limited). The first Respondent continues to manage the block in question and to levy and collect Service Charges.
- The second Respondent employs a separate agent for the collection of ground rent, that is Estates and Management Limited ('E&M').
- There does not appear to be any dispute that when the Applicant purchased the lease in question, she gave her addresses as the Property

address and an address in Edinburgh (26 Clarence Street). These addresses are on the Land Registry entries for the Property.

10. Under the terms of the lease the Service Charge is payable in advance on 1st April and 1st October in each year.
11. By email dated 5 December 2012, the Applicant's agent, Mr Nigel Punter, informed Consort of the Applicant's correct address in Edinburgh, that being 8 Dick Place.
12. In response to this, Consort replied to Mr Punter by email dated 7 December stating that, due to 'data protection', the request for the change of address could not be processed. Mr Punter was told that the leaseholders had to notify Consort direct of the change of address in order for the matter to be actioned.
13. Unfortunately, no further action appears to have been taken by Mr Punter or the Applicant.
14. The Service Charge demands up to and including 1st April 2013 were sent to the Property address. These demands did not come to the attention of the Applicant until June 2013.
15. For reasons unknown, the Applicant's correct address at 8 Dick Place was known to E&M who sent the rent demand to that address.
16. In her Statement of Case, the Applicant stated that; '*...invoices have not been provided for all the disputed charges, in particular the charge of £48 from Estates and Management*'.
17. In the bundle received from the Respondent, there was no invoice for the Charge levied by E&M.

Decisions

The Applicant

18. A point is taken by the Respondents that the application has been made by the Applicant alone and that her co-leaseholder, Mr Dobson, is not named as an Applicant and did not sign the application form. Accordingly, the Respondent argues that no matter what decision is reached on this application, this does not affect Mr Dobson's liability to pay the charges in dispute.
19. I do not agree. Clearly, reasonably and sensibly, any decision made by this Tribunal should and will be determinative of both leaseholders' liability to pay the charges in question. There was no argument from

the Respondents that treating the application as one from and/or applying to both leaseholders would prejudice them in any way.

Interest on Service Charges - £9.16

20. The interest appears, from the demand (a copy of which is in the Respondents' bundle), to be for the period 5 October to 16 November 2012 and is interest on late paid Service Charges due before that date.
21. No issue was taken by the Applicant as to the amount of the interest per se; the issue taken was as to whether the interest was reasonably charged at all.
22. This interest was charged before the date on which the Applicant's agent, Mr Punter, emailed Consort with the up to date address for the Applicant.
23. It appears that the demand for the Service Charges upon which interest is claimed was sent to the Property address. The Applicant argues that had the demand been sent to her old Edinburgh address, that demand would have reached her. That, it seems to me, is speculation. It may or may not have reached her.
24. In my view the demand for Service Charges was, at least prior to December 2012, properly sent just to the Property address. The fact that another of the freeholder's agents had an up to date address is not relevant.
25. Interest is payable under the terms of the lease for unpaid Service Charges and that interest is payable in this case.

Administration Charges - £60 x 2

26. I consider that the terms of the lease allow Administration Charges of this nature.
27. According to the Respondents' explanation in their Statement of Case, this is a charge that is applied once the Service Charge is unpaid for 30 days and at the point when a second reminder letter is sent out.
28. Although nothing further was said regarding the generation of the letters by the Respondent, one can reasonably suppose that both are largely computer generated and that both are in a standard form.
29. One could go further and reasonably attribute a cost of £30 to each letter. These charges could be compared with the way that solicitors charge for routine letters. Solicitors almost invariably apply an hourly

rate to work. That rate is then charged out in six-minute units. A standard letter is commonly charged at the rate of one six-minute unit. If one applied that method of charging to these letters, this would amount to a charge of £300.00 per hour (including VAT) for the managing agents. No solicitor would easily justify such a high charge for such a routine matter. Managing agent's charges are generally less than solicitor's charges.

30. The first of these charges was levied on 9 November 2012 in respect of unpaid Service Charges. For the reasons given above, I consider that a charge of this nature is justified.
31. However, I do not consider that the amount of the charge is reasonable. I consider that a charge of £20.00 plus VAT (totalling £24.00) would be reasonable for these standard letters.
32. The second of these charges was levied on 29 April 2013. The first question in respect of this second charge is whether or not any charge at all was reasonable in the light of Mr Punter's email. In my view it was. Mr Punter's email was promptly answered in clear terms and the onus was clearly put on the Applicant to file a change of address. Why there was no further action taken in respect of that email is not clear.
33. I do not think, at this stage, that it was necessary for the first Respondent to make any further investigation or enquiry and to look at Mr Punter's history of making payments on behalf of the Applicant.
34. Accordingly therefore I find that a charge is payable. However, for the reason given above, that charge should be £24.00, not £60.00.

Legal review fee (Consort) £60.00

35. I consider that the terms of the lease allow Administration Charges of this nature.
36. According to the Respondents' explanation in their Statement of Case, this is a charge that is applied after a number investigations and checks are made with a view to passing the matter to solicitors. One of those checks is to ensure that no change of address requests have been made and to check diary and notes tabs. It seems to me that had these checks and investigations been properly made in this case, Mr Punter's email would have come to light, that should then have put at least a temporary hold on matters whilst further investigations were made.
37. I find that it was necessary and reasonable for the first Respondent to have carried out an exercise of this nature at this stage. However the checks and investigations that are made are entirely routine and would take a limited amount of time - in this case surely no more than 20-30

minutes. A generous hourly charge would be £100.00. Accordingly a fee of £35.00 plus VAT (total £42.00) is reasonable as opposed to the £60.00 charged.

Legal review fee (E&M) £48.00

38. This appears to be a charge incurred for non-payment of ground rent. There does not appear to be any attempt made by the Respondents to justify this charge. The Respondents have not included any demand for this sum in their bundle. According to the Applicant, the ground rent was paid in any event prior to the due date.
39. The sum of £48.00 is therefore not payable. There is no evidence that it was demanded or due under the terms of the lease or that even if it were demanded, that it was reasonable.

Legal fees £225.00

40. Had proper checks been made by the first Respondent at the stage of the Legal Review Fee (see above), it is likely that the matter would not have been referred to the solicitors without some further investigation. It follows therefore that this fee is not reasonable.
41. The matter should not have been referred to solicitors at this stage, accordingly no fee should have been incurred and therefore I do not have to consider the reasonableness of the fee itself.

Application under s.20C and refund of fees

42. In her application form, the Applicant applied for an order under section 20C of the 1985 Act.
43. I find 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 Applicant may not pass any of its costs incurred in connection with these proceedings before the Tribunal through the Service Charge.
44. I make this order because the Applicant has been very largely successful in these proceedings. I have found that of the total of £492.16 in dispute, only £99.16 is payable.
45. For the reasons given above, I direct that the Respondents (the Respondents are jointly and severally liable) to refund to the Applicant the application fee that she has paid to the Tribunal in the sum of £65.00 within 28 days of the date of this decision.

**Name: Mark Martynski,
Tribunal Judge**

Date: 23 September 2013

Appendix of relevant legislation

Section 20C Landlord and Tenant Act 1985

- (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).