

10507



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

Case reference : **LON/00AD/LAC/2014/0023**

Property : **35 Fairway Drive Thamesmead
London SE28 8QT**

Applicant : **Mrs J Farinto**

Representative : **Mr Solomon-Soul Farinto**

Respondent : **OM Property Services (1)
Thamesview Management (Plots 67
– 74) Limited (2)**

Representative : **JB Leitch Solicitors (1)**

Type of application : **For the determination of the
reasonableness of administration
charges**

Tribunal members : **Judge Carr**

Date of decision : **22nd December 2014**

DECISION

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 administration charges payable by the Applicant in respect of the service charge years
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

1. The Tribunal held a pre-trial review of this matter on 24th October 2014 and issued directions the following date. In those directions it was decided that the matter should be determined on the basis of written representations and without an oral hearing.
2. The Directions gave an opportunity for any party to request an oral hearing. No request for an oral hearing has been received by the Tribunal.
3. This matter is therefore being determined on the basis of the papers alone.
4. Further directions issued 7th November 2014 joined Thamesview Management (Plots 67 – 74) as 2nd Respondent.

The background

3. The property which is the subject of this application is a two bedroom flat in a purpose built block which comprises eight flats. All but one of the flats (including the subject property) are not owner-occupied but rented out on short term tenancies.
4. 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.
5. The Applicant 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 and will be referred to below, where appropriate.

The issues

6. The relevant issues for determination as follows:

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The issues

6. The relevant issues for determination as follows:

- (i) The reasonableness of administration charges totalling £945 relating to 'late payment' charges demanded from 15th August 2013 to 10th October 2014.
 - (ii) The reasonableness of all administration charges relating to arrears
 - (iii) Application under s.20 C of the Landlord and Tenant Act 1985.
7. Having considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Reasonableness of administration charges arising from late payment of service charges

- 8. At the beginning of 2014 the Applicant was in arrears with her service charge payments. She set up a direct debit in January 2014 and payments of £120 are recorded as having been received on 21st of January 2014 and on 21st February 2014.
- 9. The First Respondent states that it has no record of the Applicant requesting a direct debit to be set up.
- 10. The Applicant argues in summary that the Respondent charged unduly in circumstances where it ought not to charge, and also it engaged the services of a solicitor when this was not required.
- 11. Set out below is a schedule of the administration charges demanded in connection with late payment of service charges together with a summary of the parties' arguments in connection with these charges.

Date	Amount and description	Applicant submissions	1st Respondent submissions
15 th August 2013	Administrative fee £60	Too high a charge for the work involved	A reasonable charge for the work carried out
26 th September 2014	Legal review fee £60	Unnecessary charge simply to produce income. No need for a solicitor to be involved	This charge is for collating the papers for submission to solicitors, together with ongoing discussions with those

			solicitors. Reasonable charge for the work carried out.
17 th December 2013	Arrears recovery fees £255	At this time only £67.82 was outstanding on the account. The fees are disproportionate to the outstanding sum.	Fees incurred following instructions dated 2 nd October 2013 when arrears totalled £667.82. The solicitors received £600. The sum of £255 is a reasonable charge for the work carried out.
27 th February 2014	Administration fees £60	Not reasonable as subsequent to direct debit If payable then unreasonably high The Applicant suggests that £25 would be a reasonable charge	A final notice letter was issued on 27 th February following the service charge invoice issued in January 2014 and a reminder sent on 12 th February 2014.
12 th March 2014	Legal Review Fee £60	Unnecessary charge simply to produce income and not reasonable as subsequent to direct debit. No need for a solicitor to be involved	This charge is for collating the papers for submission to solicitors, together with ongoing discussions with those solicitors. Reasonable charge for the work carried out.
6 th August 2014	Solicitors charges £255	These costs were unreasonably incurred as the standing order had been agreed and was being paid, thus reducing the service	These charges have not been added to the account
10 th October 2014	Solicitors Charges	These costs were unreasonably incurred as the standing order had been agreed and was being paid, thus reducing the service	These charges have not been added to the account.

	£255	charge arrears.	
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The tribunal's decision

12. The Tribunal determines that only those amounts set out in the Schedule below are reasonable and payable. The reasons for the decision are set out in the final column of the Schedule.

Date	Amount and description	Decision of Tribunal with reasons
15 th August 2013	Administrative fee £60	These charges are reasonable as they relate to a period when the Applicant's account was in substantial arrears. Whilst there is limited information provided by the First Respondent in connection with the particulars of work involved in the administration fee, it is clear that additional work is generated by an account in arrears. More particularly the solicitors fees, although charged on 17 th December 2013 related to work in connection with the recovery of arrears.
26 th September 2014	Legal review fee £60	
17 th December 2013	Arrears recovery fees £255	

27 th February 2014	Administration fees £60	These charges are not reasonable. If work had been carried out on the account it would have become apparent that a direct debit had been set up and the arrears were being cleared.
12 th March 2014	Legal Review Fee £60	
6 th August 2014	Solicitors charges £255	These charges are not payable as it is not reasonable to refer the matter to a solicitor when the debt is very small and reducing.
10 th October 2014	Solicitors Charges £255	

The reasonableness of the administration charges for late payments in general

13. The applicant's argument is that a £60 administration charge in connection with arrears is too high and suggests that a £25 fee would be more appropriate.
14. The First Respondent argues that a £60 administration fee is reasonable for the work carried out.

The tribunal's decision

15. The tribunal determines that the amount payable in respect of an administration fee for late payment of service charges is £60

Reasons for the tribunal's decision

16. A charge of £60 when this involves a review of the account and the production of a reminder letter and a final notice. The Tribunal has no information before it to suggest that this work was not carried out. Nor has the Applicant provided evidence in connection with charges levied by other management agents in connection with administrative charges for arrears.

Other arguments from the Applicant

17. The Applicant raises a number of issues in connection with the quality of services provided by the First Respondent and the failure to respond appropriately to reasonable queries. The application before the Tribunal is limited to the reasonableness of administration charges and the decision is restricted to this and related issues. The Applicant and Respondent are encouraged to communicate further to resolve these issues.

Application under s.20C and refund of fees

18. In the application form the Applicant applied for an order under section 20C of the 1985 Act. The First Respondent states that there is no provision in the lease to recover its costs as part of the service charge. However it also indicates that it considers that it has the power to charge for costs of the hearing under clause 1 (c) of the lease. This Tribunal does not make a determination in connection with the payability of the costs of this application under that clause of the lease, nor does it determine what a reasonable charge would be, if such costs were payable under the terms of the lease. It reminds the parties that an application can be made by either of them to determine the payability and reasonableness of any costs that the First Respondent seeks in connection with this Application.

Name: Judge Carr

Date: 22nd December 2014

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).