

9619



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

Case Reference : **LON/00AG/LAC/2013/0029**

Property : **Flat 2, 113 Broadhurst Gardens,
London NW6 3BJ**

Applicant : **Mr D Abrahams and Mr C Tinker**

Representative : **None**

Respondent : **Mr Rabinder Sharma**

Representative : **London Land Securities Ltd**

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

Tribunal Members : **Judge O'Sullivan**

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

Date of Decision : **19 March 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that no sums are payable in respect of the administration charges in issue as the Lease makes no provision for the recovery of such charges.
- (2) The tribunal is minded to make an order under section 20C, for reimbursement of fees paid and for reimbursement of photocopying charges but invites submissions from the Respondent before doing so.

The application

1. The Applicants seeks a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”)] as to the amount of administration charges payable by the Applicants.
2. The charge in issue is the sum of £1410 that was charged principally for work said to have arisen from their delay in contributing to the cost of a major works project.
3. The Applicants say that the disputed cost cannot be recovered as an administration charge as there is no provision in the lease but could be recovered as a service charge.
4. Directions were made dated 8 January 2014 pursuant to which the parties agreed that this matter should be considered by way of a paper determination that is without an oral hearing. In accordance with those directions both parties lodged a bundle of documents. The Respondent also made a further statement dated 28 February 2014 to which the Applicants made submissions in reply by letter dated 11 March 2014. The application was considered on the papers on 19 March 2014.
5. The relevant legal provisions are set out in the Appendix to this decision.

The background

6. The property which is the subject of this application is describe din the application as a 2 bedroomed flat in a period conversion.
7. Neither party requested an inspection and the tribunal did not consider that one was necessary given the issues in dispute.
8. The Applicants hold 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 lease is dated 15 October 1971 and is made between Fortyburg Limited (1) and Mr and Mrs Mason (the "Lease") and a Supplemental Lease dated 4 December 2003 (the "Supplemental Lease").

The issues

9. The tribunal has identified the relevant issues for determination as follows:
 - (i) Whether the Lease provides for the payment of an administration charge
 - (ii) Whether if there is such a provision the amount of the relevant charges is reasonable

The Applicants' case

10. The charges in issue are described as follows:

Charges in relation to raising funds for major works	£720
Time spent dealing 30/08/13-1/10/13	£150
Time spent dealing 2/10/13-8/10/13	£180
Time spent dealing 11/10/13-31/10/13	£180
Time spent dealing 1/11/13 – 13/11/13	£180

11. The Applicants' case, simply put, is that there is no provision in the Lease to allow recovery of these charges.
12. In the alternative if the charges are recoverable they say that they are unreasonable in amount.
13. The sum of £720 for arranging funding is said to be unreasonable as no breakdown has ever been provided, it is not clear that any funding arrangements were ever put in place or bank charges paid. The Applicants say that they have repeatedly asked for a breakdown but have not been given one.
14. The Lease was assigned to the Applicants' purchasers on 29 August 2013. However after that date the Respondent has continued to raise charges purportedly pursuant to the Lease for additional time spent. The Applicants say that there can be no liability as the Respondent has

done nothing to try and resolve the dispute, provide any breakdown and there is no proper basis for the charges.

15. The Applicants also make comments in relation to the time said to have spent by the Respondent in dealing with this matter and how it has been calculated and the basis for such charges.

The Respondent's case

16. The Respondent is represented in this matter by London Land Securities Limited.
17. A statement dated 30 January 2014 is included in the bundle together with a further statement dated 28 February 2014 described as a "*statement of truth*".
18. The Respondents' stance is that the terms of the Lease are "*open to wide interpretation*" and refer to "*annual service charge and charges payable by the tenant as individuals or to be included in the general service charge account*". No specific reference is made to any clauses in either the Lease or Supplemental Lease upon which reliance is placed despite the directions providing that the Respondent should identify the provisions relied upon.
19. As far as the reasonableness of the charges is concerned the Respondent says that the Applicants acted unreasonably throughout and that the Respondent had to deal with the matter as a matter of necessity. It says it was forced into a corner by the unreasonable conduct of the Applicants. It says that it arranged funding for Flat 2's contribution to the planned major works.
20. In relation to the sum of £720 the Respondent relies on a breakdown of charges dated 31 August 2013. This refers to London Land Securities arranging funding and contains a breakdown of communications between "*the Applicant and the Respondent*". The time appears to be time spent by London Land Securities with 4 hours being charged at a rate of £150 per hour making a total of £600 plus Vat. There is no evidence of the funding arranged and the tribunal has no copy of the management agreement between the managing agents and the landlord by which the rates are agreed.
21. In relation to all other charges these relate to further time spent and all relate to the period post assignment of the Lease from 30 August 2013 to 13 November 2013.

The tribunal's decision

22. The tribunal finds that there is no provision for the recoverability of an administration charge pursuant to either the Lease or the Supplemental Lease. It does not agree that the Lease is open to wide interpretation. In the tribunal's view the provisions of the Lease and Supplemental Lease are quite clear in relation to the payability of general service charges and the payment of charges in or in contemplation of proceedings under section 146 of the Law of Property Act 1925. The Respondent does not seek to rely on the section 146 provision and the tribunal considers that the costs in question could in no way be said to have been incurred in or in contemplation of such proceedings.
23. In any event the tribunal considers the costs incurred to be wholly unreasonable and would not have been recoverable in any event. The evidence in support of the charge for £720 in arranging funding was unsupported by any evidence and although it is dated 31 August 2013 appears to have been drafted with these proceedings in mind as it refers to the Applicant and Respondent. All other charges postdate the assignment of the Lease and would not be recoverable in law and in any event appear to the tribunal as unreasonable. There is no management agreement provided and so the tribunal would be unable to assess whether those charges were properly payable pursuant to such an agreement and the charges themselves appear misconceived.
24. It is noted that the Respondent may well seek to recover those fees as part of the service charge. Should it do so such charges may be the subject of a challenge by any leaseholder at the property pursuant to section 27A of the Landlord and Tenant Act 1985.

Application under s.20C and refund of fees

25. The Applicants applied for an order under section 20C of the 1985 Act and this is recorded in the directions. However neither party has included submissions on this point in their statements of case.
26. The directions likewise specified that the tribunal would consider whether the Respondent should reimburse the Applicants with the fees paid but again no submissions on this point have been received.
27. The Applicants ask for a refund of their photocopying charges in the sum of £30.96.
28. Taking into account the determinations above, the tribunal is minded to make the following determinations in respect of costs;

- i. An order under section 20C so that the Respondent may not pass any of its costs incurred in these proceedings before the tribunal through the service charge
 - ii. An order that the Respondent do reimburse the Applicants with the sum of £125 paid in respect of the application fee
 - iii. An order that the Respondent do reimburse the Applicants the sum of £30.96 paid in respect of photocopying charges.
29. If the Respondent wishes to object to such orders being made it shall send submissions to the tribunal by 2 April 2014 whereupon the tribunal will consider the costs applications on paper. If no such submissions are received by 2 April 2014 an order will be made in the above terms.

Name: S O'Sullivan

Date: 19 March 2014

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).

Landlord and Tenant Act 1985 (as amended)

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.