

12455



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

**Case reference** : **LON/00BB/LAC/2017/0015**

**Property** : **Apt 52, Westgate apartments, 14  
Western Gateway, London E16 1BJ**

**Applicant** : **Christopher Paul Clacken**

**Representative** : **N/A**

**Respondent** : **MG GR Limited**

**Representative** : **Scott Cohen Solicitors**

**Type of application** : **Administration Charges**

**Tribunal member(s)** : **Judge Tagliavini  
Mrs H Gyselynck MRICS**

**Date and venue of  
hearing (paper)** : **25/10/17 at 10 Alfred Place, London  
WC1E 7LR**

**Date of decision** : **25 October 2017**

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**DECISION**

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### **Decisions of the tribunal**

1. The tribunal finds that clause 14(a) of the Fourth Schedule makes provision for the Applicant's payment of legal costs (administration charges) incurred by the Respondent landlord
2. The tribunal determines that the Applicant is to pay to the Respondent the sum of £4983.00 (including VAT) in respect of administration charges reasonably incurred.
3. The tribunal declines to make an order pursuant to section 20C of the Landlord and Tenant Act 1985 (as requested by the Applicant) or of its own motion, an order under paragraph 5a of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").

### **The application**

4. This is an application made pursuant to schedule 11 of The Commonhold and Leasehold Reform Act 2002 (as amended), seeking the tribunal's determination of the payability of legal costs incurred and in relation to the service of a section 146 Law of Property Act 1925 notice, after a determination by the tribunal of a breach by the Applicant in the terms of his lease dated 21 May 200 pursuant to section 168(4) of the 2002 Act; *LON/00BB/LBC/2016/0115*.
5. The Respondent seeks costs in the sum of £8913.00 as set out in the section 146 notice dated 8 May 2017 and served on the Applicant. The Applicant asserts that these costs are unreasonable and excessive and offers to pay £3000 in respect of the Respondent's solicitors and counsel's legal costs and £500 for the Managing Agent's costs – both sums inclusive of VAT.
6. The tribunal was provided with a "Scott Schedule" detailing the Respondent's costs and the Applicant's objections to them. The Respondent's costs were made up of:

£3873.00 (inc. VAT) for solicitors costs\* as set out in the itemised bill;  
\*Grade B fee earner at £250 per hour

£1800 (inc. Vat) for counsel, who attended at the earlier substantive hearing;

£1200 fixed solicitor's fees for service of the section 146 notice;

£1740 (inc. VAT) for costs incurred by the Managing Agent both in respect of the substantive hearing and the service of the s.146 notice.

£300 tribunal costs

£3.00 in respect of Land Registry fees.

### **The Applicant's case**

7. The Applicant asserted that the legal costs incurred by the Respondent had been unnecessary as the breaches of covenant claimed had been remedied before the substantive tribunal hearing held on 2 March 2017 and therefore, the hearing had been unnecessary. The Applicant also asserted that the hourly rate of £250 was excessive for an Oxfordshire based solicitor, and the hourly rate of £192 as per the Solicitors' guidelines hourly rates as published by Gov.UK (2010) was more appropriate. The Applicant asserted the Managing Agents fees were also unnecessary and excessive, both in respect of the substantive hearing and in relation to any involvement of the service of the section 146 notice.

### **The Respondent's case**

8. The Respondent asserted that the hourly rate and hours expended were both reasonable and necessary. It was asserted that the Applicant had been given several opportunities to admit the breaches of covenant and had failed to do so, thereby necessitating the issue of proceedings. These had been contested by the Applicant and therefore the use of counsel and the oral evidence of the Managing Agents had been necessary, as the burden of proof fell on the landlord to prove the alleged breaches.

### **The tribunal's decision and reasons**

9. The tribunal finds that the Applicant was provided with numerous opportunities by the Respondent to admit the breaches of the lease and avoid the need for proceedings and the accumulation of costs. However, the Applicant failed to make the admissions required by the Respondent, thereby necessitating the earlier tribunal proceedings.
10. The tribunal finds that the use of a solicitor for the preparation of the substantive application and the use of counsel was appropriate and reasonable, as has been the gathering of evidence and the production of witness statements for use at the substantive hearing. The tribunal finds that the time taken and charged for by the Respondent's solicitor is also reasonable (subject to a minor adjustment) as are counsel's fees.

10. However, the tribunal finds that the hourly rate of £250 is excessive when applied to all of the work carried out and is of the opinion, that a proportion of this work could have reasonably been carried out by a lower grade fee earner or a trainee. Therefore, the tribunal prefers for clarity and convenience to apply the hourly rate of £200 to 12 hours as representing the time reasonably spent by the Respondent's solicitor. The tribunal reduces the solicitor's hours claimed from 12.9 hours to 12 hours as it determines that on balance the time spent overall should be adjusted slightly to accommodate the use of a Grade B fee earner throughout. The tribunal notes the hourly rate of £192 suggested by the Applicant as the appropriate rate, but finds this was the published rate in 2010 and therefore makes an adjustment for 2017.
11. The tribunal finds counsel's fees of £1800 (inc.VAT) are reasonable and allows these in full together with the tribunal costs of £300 and £3 for the Land Registry.
12. The tribunal finds that the costs of the Managing Agent both in respect of the assistance provided in gathering evidence for and attendance at the tribunal hearing, to be unreasonable and excessive. The tribunal was not provided with a copy of the Managing Agent's contract with the landlord but finds that part of the Managing Agent's usual role and fee is to carry out the tasks now claimed for. Further, there was no evidence provided or relied upon by the Respondent showing that the witnesses' attendance at court generated extra fees due to other (agency) staff having to be specifically employed for that day. Therefore, the tribunal disallows the sum of £1560 (inc. of VAT).
13. The tribunal also finds both the solicitor's "fixed fee" of £1200 claimed for 4 hours of work, service and related correspondence and the Managing Agent's fee of £180 in connection with the preparation and the service of the s.146 notice to be both excessive and unreasonable. The tribunal is of the view that the notice required minimal preparation and was served by recorded delivery to the Applicant's Wolverhampton address from the Respondent's solicitors. The tribunal therefore fails to understand how these costs have been incurred either at all by the Managing Agent or to the extent claimed by the solicitor.

### **Conclusion**

14. In conclusion the tribunal allows the following sums including VAT:

£2880 solicitor's cost  
£1800.00 (counsel's fees)  
£3.00 Land Registry  
£300 Tribunal costs

Total: £4983.00 (including VAT)

**Name:** Judge Tagliavini

**Date:** 25/10/2017