2018

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AL/LAC/2017/0023**
Property	:	**3 Champion House, 209 Charlton Road, London SE7 7FD**
Applicant	:	**Katya Costanza**
Respondent	:	**Wallace Estates Ltd**
Representative	:	**Stevensons Solicitors**
Type of application	:	**Liability to pay administration charge**
Tribunal	:	**Judge Nicol**
Date of decision	:	**5th February 2018**

DECISION

The Tribunal has determined:

(1) An amount of £60 is reasonable and payable by the Applicant to the Respondent as an administration charge for two chasing letters after late payment of ground rent.

(2) The Respondent may not recover their costs of these proceedings through the service charge.

Relevant legislative provisions are set out in the Appendix to this decision.

Reasons

1. The Applicant is the lessee of the subject property. The Respondent is the freeholder. The property is managed on their behalf by Simarc Property Management Ltd.

2. The Applicant's lease includes the following terms:

- Clause 1 defines "Rent" "**for a two bed flat** for the first 25 years of the Term the sum of £250 per annum ... payable half yearly in advance on the Payment Days".
- Clause 1 further defines "Payment Days" as "1 June and 1 December in each year of the Term".
- Under clause 4, the Tenant's covenants are specified as those set out in the Third Schedule.
- Paragraph 1 of the Third Schedule sets out the covenant "To pay the Rent in the manner aforesaid".

3. Simarc sent the Applicant a demand on 22nd April 2017 for the rent of £125 due on 1st June 2017. The Applicant did not pay on time, in breach of the lease terms set out above. Simarc sent standard form chaser letters on 15th and 30th June 2017. The second letter purported to notify the Applicant that costs of £132 had been added to her account. When she attempted to pay the rent by postal order on 6th July 2017, Simarc purported to return it (in fact, they only returned a photocopy) and stated that they would only accept payment of the whole amount, inclusive of the costs of £132.

4. The Applicant objects to the costs and both the Respondent's refusal to accept payment of the rent and to retain the postal order. Therefore, she applied to this Tribunal for a determination as to the reasonableness and payability of the costs as an administration charge under Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

5. The Tribunal issued directions on 8th December 2017, in accordance with which the Respondent submitted a bundle of documents. The Applicant later confirmed that she wished to rely on the documents enclosed with her application and had nothing to add.

6. According to their statement of case, the Respondent's sum of £132 was made up of four elements:

(a) *Perusing computer and paper records and verifying that the rent had not been paid and there was no particular point to consider and also checking the correct address: £50.* This is waffle. An employee of Simarc checked the one record where payment of rent is recorded and checked there was nothing else on file, taking a few minutes at most.

(b) *Thereupon obtaining from the Land Registry office copy entries to check that the Lessee had not changed and there had been no recent notification of change of address (to include £3.00 Land Registry fee): £25.* This is an entirely unnecessary and disproportionate exercise when there is no reason to think that there had been any change and all that was in question was payment of £125 which was late by either 2 or 4 weeks (the

Respondent has not stated whether the search was done at the time of their first or second latter).

(c) *Preparing notices of 15 June 2017 and 30 June 2017 and having notices and file counter checked by another executive manager at the agents: £35.* The "notices" were in fact in standard form and would simply have required printing off. It is entirely unclear why standard actions of this nature would require someone else to check them – agents and their principal may organise their affairs as they wish but the reasonableness of the charges arising may be subject to scrutiny if a third party such as the Applicant is required to pay them.

(d) *VAT at 20% thereon: £22.* It would appear that VAT was added inappropriately to the Land Registry fee. This reinforces the suspicion that additional costs may be being generated deliberately unnecessarily.

7. The Applicant sought to pay her ground rent late and may expect to have to pay the reasonable costs incurred by her landlord's agents in chasing her for payment. However, in the Tribunal's opinion, the reasonable cost of sending out two standard chaser letters should be no more than £60, inclusive of VAT.

8. The Tribunal does not understand why the Respondent has refused to accept payment of the ground rent without prejudice to their entitlement to the chasing costs. The retention of the postal order appears to have been a mistake. In any event, neither issue comes within the Tribunal's jurisdiction in the current application.

9. The Applicant also applied for an order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs incurred in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge. The Respondent argued that such an order would be inappropriate given that this is not a service charge dispute but section 20C is not limited to service charge disputes. This application has substantially succeeded on the basis that the Respondent has incurred unnecessary and disproportionate expenditure and thereby sought to levy unreasonable charges. In the circumstances, the Tribunal is satisfied that it would be just and equitable to make the order sought.

Name: NK Nicol **Date:** 5th February 2018

Appendix of relevant legislation

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11

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.

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

4 (1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

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).