



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

Case Reference : LON/OOBK/LAC/2015/0019

Property : Basement Flat No 1, 87 St Georges Square,
London SW1V 3QW

Applicant : 87 St Georges Square Management Limited

Representative : Nash & Company Solicitors LLP

Respondent : Mr Michael Henry Anthony Whiteside

Representative : In person

Type of Application : Application under Schedule 11 to the
Commonhold and Leasehold Reform Act 2002

Tribunal Members : Tribunal Judge Dutton

Date of Decision : 30th November 2015

DECISION

DECISION

The Tribunal determines that the Respondent is required to pay the Applicant the sum of £3,774 in respect of the application for determination as to the liability to pay an administration charge, such sum to be paid within 28 days.

BACKGROUND

1. This application was made by the Applicant management company for administration charges arising from a decision of this Tribunal dated 12th May 2015. After two days of hearing and a further meeting, the Tribunal determined that the Respondent had to pay the Applicant the sum of £20,830.68 and that the Respondent was, as a result of the non-payment of these service charges, in breach of the terms of his lease. In that decision as requested by the Applicant, the Tribunal made an award as to costs under Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 (the Rules). The Tribunal assessed that the costs payable by the Respondent should be 20% of the costs incurred by the Applicant under the provisions of the Rules.
2. Notwithstanding that order the Applicant has made an application to consider the remainder of the costs incurred and argue that they are recoverable as an administration charge. The total liability for costs that are claimed is £40,710 inclusive of VAT and disbursement. This information is set out in a letter dated 10th June 2015 sent to the Respondent and the Respondent sent payment of 20% of this amount.
3. By directions dated 8th September 2015 the matter was listed for a paper determination before me as soon as possible after 16th October 2015. I apologise for the delay in issuing this decision, of which part was as a result of me seeking clarification from the Applicant's solicitors on the total sum being claimed.
4. In considering this application I had before me the Applicant's statement of case, the Respondent's reply thereto, a detailed reply to that Respondent's statement and a recent letter dated 24th November 2015, which confirmed the sum being claimed. I have noted all that has been said and have taken into account the various submissions made in coming to my decision.
5. It does not seem necessary for me to recount in any detail the points made by the parties in their written statements of case as they are of course common to both and duplication of that information in this decision will not be of help.
6. I move straight on, therefore, to deal with my findings but confirm that I have considered the provisions of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 dealing with the reasonableness of an administration charge. I should say that I am satisfied that the lease, following amendment, now includes provision for the recovery of these costs. That is to be found at clause 3(e)(2), which is set out in full in the Applicant's statement of case at page 4.

FINDINGS

7. I have considered the Respondent's reply and in particular under the heading Administration Charge and the paragraphs 4-1 to 4-3 inclusive. I also bear in mind the detailed reply to the Respondent's document and in particular the comments under the administration charge heading at page 3 onwards of that document.
8. I propose to deal with the matter on this basis. It is my finding that the Tribunal having heard the case considered that Mr Whiteside had been unreasonable under the provisions of Rule 13(1)(b) in the conduct of the proceedings. The sum to be paid was assessed at 20% of the Applicant's costs. It is my finding therefore, that the Tribunal has already made a decision with regard to the Respondent's liability to pay costs incurred in connection with the proceedings and that a further attempt under the 2002 Act to recover costs is inappropriate. It seems to me it would be wrong to allow the Applicant to, in effect, have two bites at the cherry. It has the effect of rendering our decision under the Rules otiose.
9. If I am wrong in this regard then I must remind myself that the jurisdiction of the Tribunal to determine costs is generally one of no cost liability for the losing party. The question of reasonableness to be applied to the question of an administration charge requires me to consider the findings of the Tribunal made in May of this year when we determined Mr Whiteside's liability in connection with the proceedings. It is, therefore, my finding that the Applicant is not entitled to recover any further costs as an administration charge in respect of those incurred from the time that the application was issued, which is 27th October 2014.
10. I propose, therefore, to confine my consideration of the administration charge costs under the 2002 Act to those that have been incurred prior to that date. The provisions of clause 3(e)(2) of the amended lease include reasonable costs in contemplation of proceedings in connection with the enforcement of the lessee's covenants. My finding, therefore, the Applicants are entitled to recover the costs associated with the pre-application work. Doing the best I can from the documentation provided to me, I see that Counsel's fees prior to 27th October 2104, by reference to the fee note included with the papers, amount to £1,450 plus VAT. I find that is a reasonable sum given the experience of Mr Denehan and the fact that he acted throughout. It is perfectly reasonable for the Applicants to take advantage of Counsel with experience in these matters and I do not consider the fees that have been charged in respect of the works undertaken on 10th June 2014 and 21st October 2014 to be unreasonable.
11. Insofar as the solicitor's costs are concerned, although a breakdown is given in the original statement of case I am not able to determine from that the date that these items of work were undertaken. However, I can see from the fee notes rendered by Nash and Co that items of work were undertaken prior to 27th October 2014. The first is a bill numbered 023375 dated 20th May 2014 in the sum of £1,020 and the second is an invoice number 24667 dated 29th September 2014 in the sum of £1,014. I find that these are payable by the Respondent. The hourly rates for Mr Maddox of £185 per hour are perfectly reasonable and there is no indication from the Applicant's statement of costs including the schedule of work undertaken on documents, that an unreasonable amount of time was spent. I am of the view,

therefore, that these two fee notes should be settled by the Respondent. I find that the Respondent is liable to pay the Applicants the sum of £2,034 inclusive of VAT in respect of the fees of Nash and Co and £1,740 inclusive of VAT in respect of Counsel's involvement. This makes a grand total of £3,774 which should be paid within 28 days.

Judge: Andrew Dutton
A A Dutton

Date: 30th November 2015