

12141



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

Case Reference : **LON/00AG/LAC/2017/0002**

Property : **Flat E, 8 Garlinge Road, London
NW2 3TR**

Applicant : **8 Garlinge Road Limited**

Represented by : **Debenhams Ottaway LLP**

Respondent : **Mrs Linda Rodrigues**

Represented by : **Stephensons Solicitors LLP**

Type of Application : **Application for a determination of
the reasonableness and payability
of Administration charges under
Schedule 11 of the Commonhold
and Leasehold Reform Act 2002**

Tribunal Members : **Judge Daley
Mr R Shaw FRICS**

**Date of paper
determination and
venue** : **12 April 2017 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **12 April 2017**

DECISION

Decisions of the Tribunal

- (1) The Tribunal makes the various determinations set out in paragraph 17- 19 of the decision below.
- (2) The Tribunal determines that the lease makes no provision for the payment of the cost of the Tribunal proceedings. Accordingly no order is made under section 20 C of the Landlord and Tenant Act 1985.

The application

1. By an application dated 19 January 2017, the applicant sought a determination, in respect of the reasonableness and payability of administration charges in the sum of £4,033.50, pursuant to a section 146 notice having been served on the respondent tenant, on 10 May 2016.
2. Directions were issued by the Tribunal on 1 February 2017, setting this application to be listed for a paper determination in the week beginning 10 April.
3. The relevant legal provisions are set out in the Appendix to this decision.

The background

4. The property, that is the subject of this application, is a 1 bedroom flat, in a converted premises, comprising four flats. The property was occupied by the respondent's tenant Mr Parsa, pursuant to a short hold assured tenancy agreement.
5. The Respondent, Mrs Rodrigues is the tenant pursuant to a lease dated 21 May 1987. Clause 2 (d) of the lease provides-: *"to pay all costs charges and expenses(including Solicitors costs and Surveyors fees) properly and reasonably incurred by the Lessor for the purpose of or incidental to the preparation and service of a Notice under Section 146 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the court."*

The Facts

6. The Applicant states that, following complaints from residents of the premises concerning the occupant of the respondent's flat, on 11 January 2016, the applicant's managing agents Playfield Management sent an email to the respondent. The email stated that complaints had been received concerning her tenant, Mr Parsa's behaviour, the allegations concerned nuisance in the common parts. The email alleged

that the occupier was in breach of clause 3 and the fifth schedule of the lease.

7. The email also stated that the respondent was liable for damage that had been caused to the common parts as a result of the actions of her tenant.
8. In the application dated 19 January 2017, the applicant alleges that following the email dated 10.01.2016, reassurances were received from the respondent and her husband, by email dated 18 January 2016 stating that action would be taken to prevent further nuisance. It is alleged that the nuisance continued, resulting in a applicant instructing their solicitors to service a section 146 notice dated 10 May 2016.
9. The respondent denies the applicant's entitlement to administration charges. In her statement of case dated 27 February 2017 the respondent states:- "Following further subsequent complaints about Mr Parsa from the Applicant, the Respondent took steps to evict Mr Parsa by issuing a notice of seeking possession of the property...on 27 March 2016. A copy of this notice was disclosed to the Applicant on 25 April 2016. As the complaints did not amount to breaches of the AST nor Covenants in the AST, the Respondent could only pursue possession by way of accelerated proceedings which requires the tenant to be given 2 months notice..."
10. The respondent also alleges that there had been no complaints made concerning Mr Parsa prior to the 11 January 2016, and that the applicant served the Section 146 notice without notice, and without seeking a determination that breaches had occurred, and that it was not accepted that the respondent was in breach of the terms of the lease.
11. The respondent alleges that she acted appropriately, and that possession was obtained on 17 October 2017.
12. The respondent also alleges that the applicant's costs are unreasonable and disproportionate. In particular she states that she received unnecessary request from the applicant for up dates, and that by letter dated 6 July, in which she informed the applicant that possession proceedings had been issued, she informed the applicant's solicitors that the request for updates were unnecessary and that any attempt to claim costs in relation to these requests would be challenged.
13. The respondent also alleges that the applicant is only entitled to legal costs arising out of preparation of the section 146 notice which was issued on 10 May, whereas the applicant is pursuing costs for the period from 19 January 2016 to 25 September 2016. The respondent states:- the Applicant is put to strict proof as to which charges relate to the drafting of the 146 Notice.

14. In the applicant's reply, the applicant states that requests were made for a copy of the notice seeking possession, and confirmation that possession, had been sought. By email dated 18 April 2016, the applicant stated that a copy of the notice was required and that should the request be ignored a 146 notice would be served. The applicant denies receiving a copy of the notice.
15. In reply to the respondent concerning the reasonableness of the costs, the applicant states:- "*...As per the Directions dated 1 February 2017 from the First Tier Property Tribunal, the Respondent was served with a breakdown of all costs on 6 February 2017. However, in contravention of those Directions, the Respondent has not set out what costs she objects to and why, just the general allegation that costs as a whole are unreasonable and disproportionate...*"
16. The applicant does not accept that its cost are limited to the preparation of the 146 notice and cites the case of 19-21 Rendezvous Street- Shepway: Midland: Birmingham(Service Charges0 (2012) EWLVT CHI/LV/SVC/29UL/0140, which the applicant relies upon as claiming that all costs incidental to the service of the notice are recoverable.

The Decision of the Tribunal

17. The Tribunal having considered the documents relied upon by the parties has determined that administration charges are not recoverable by the applicant.
18. The Tribunal refers to section 168 (1) of the Commonhold and Leasehold Reform Act 2002, that states (1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied. Subsection 2 is satisfied if (a) it has been determined on an application that a breach occurred or (b) the tenant has admitted the breach (paraphrased) or (c) a court or arbitration tribunal has determined that a breach has occurred.
19. The Tribunal noted that no determination was sought by the applicant prior to the Section 146 notice being served. As this is a strict requirement, the applicant was not entitled to serve a notice prior to proceedings being issued under section 168 (4) of the Commonhold and Leasehold Reform Act 2002("CLRA").
20. The Tribunal finds that notwithstanding that the lease provides for a 146 notice to be served, there is a requirement that such a notice be served in accordance with the Law of Property Act 1925 and the provisions in CLRA.

21. The Tribunal has not had sight of the notice, neither has it considered the reasonableness of the costs incurred, as the Tribunal's findings is that the costs cannot be claimed in accordance with clause 2(d), as the section 146 notice was not service in compliance with section 168 (4) of CLRA 2002, and as such the costs and expenses cannot be said to have been "properly and reasonably incurred" in accordance with the terms of the lease.

Application under s.20C and refund of fees

22. The Tribunal noted that there was no application under section 20C, however the Tribunal finds that the lease does not provide for the costs to be claimed as a service charge
23. In accordance with its findings the Tribunal makes no order for a refund of the Application or hearing fees.

Name: Judge Daley

Date: 12 April 2017

Appendix of relevant legislation

**SCHEDULE 11
ADMINISTRATION CHARGES
PART 1**

REASONABLENESS OF ADMINISTRATION CHARGES

Meaning of "administration charge"

Para 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.

Reasonableness of administration charges

Para 2

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

Para 3

- (1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—
 - (a) any administration charge specified in the lease is unreasonable, or
 - (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.
- (2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.
- (3) The variation specified in the order may be—
 - (a) the variation specified in the application, or

- (b) such other variation as the tribunal thinks fit.
- (4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.
- (5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.
- (6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

Notice in connection with demands for administration charges

Para 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.

Liability to pay administration charges

Para 5

- (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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).

Interpretation

Para 6

- (1) This paragraph applies for the purposes of this Part of this Schedule.
- (2) "Tenant" includes a statutory tenant.
- (3) "Dwelling" and "statutory tenant" (and "landlord" in relation to a statutory tenant) have the same meanings as in the 1985 Act.
- (4) "Post-dispute arbitration agreement", in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen.
- (5) "Arbitration agreement" and "arbitral tribunal" have the same meanings as in Part 1 of the Arbitration Act 1996 (c. 23). "(2B) In subsection (2)(aba) "variable administration charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002."

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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.