First-tier Tribunal
Property Chamber
(Residential Property)

Case Reference	**:**	**CHI/OOHN/LAC/2021/0003**
Property	**:**	**19 Lansdown House, Bournemouth, Dorset BH1 3JR**
Applicant	**:**	**Ms. Raya Perez**
Respondent	**:**	**Scafell Properties Ltd.**
Date of Application	**:**	**3rd March 2021**
Type of Application	**:**	**To determine reasonableness and payability of a variable administration charge**
The Tribunal	**:**	**Bruce Edgington (lawyer chair)** **Bruce Bourne MRICS**
Date of determination on the papers	**:**	**5th July 2021**

DECISION

---

1. The Tribunal determines that reasonable administration charges incurred by the Respondent arising from the breaches of the lease and the licence for works dated 11th March 2019 are as follows:

	£
(a) BP Collins LLP	1,000.00
(b) House & Son Property Consultants Ltd.	240.00
(c) M & C Plan & Site Services	125.00
	1,365.00

2. It should be noted that apart from the re-inspection fees of House & Son, these figures are in addition to the fees set out and believed to have been paid in accordance with the licence of 11th March 2019. Further, if the Applicant paid M & C Plan & Site Services – as she says that she instructed them – then this decision is not suggesting that she has to pay this sum again.

3. As all of these services were provided to the Respondent, it will be able to recover the

VAT as an input if it is registered for VAT purposes and can make such deductions. If that is not the case, the Respondent's solicitors must provide a certificate to the Applicant and her co-owner confirming that VAT cannot be recovered in that way. Such VAT will then be payable by the Applicant and her co-owner.

4. These administration charges will only become payable when a revised demand is served on the Applicant and her co-owner with the required statutory information.

5. Subject to paragraph 37 below, the Tribunal makes an order pursuant to paragraph 5A of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") preventing the Respondent from including costs of representation in these proceedings in any future service charge demand or administration charge.

6. The Tribunal does not make an order requiring the Respondent to reimburse the fee paid to the Tribunal for this application.

Reasons

Introduction

7. The Tribunal has a bundle of documents in this case and it is presumed that the parties have a copy. Thus, any reference to a page number in this decision will be taken from the page numbers in that bundle.

8. Priyantha Jayatissa and Raisa Perez have been owners of the leasehold interest in the property from 17th June 2016 (page 285). The Applicant says that she is the owner and, again, it is therefore presumed that she is Raisa Perez. In many ways, this is a sad case in that the disputes between the parties arise from 2 alleged breaches in the terms of the lease and a subsequent licence granted by the Respondent. However, it seems from the correspondence that there was already a 'live' dispute between the parties over service charges. Legal and surveyors' costs have risen dramatically and the usual provision in the lease allowing the Respondent to claim those costs from Ms. Perez and her co-owner is being relied upon.

9. This Tribunal is of the view that the main reasons for this have been the failure of the Respondent to just get on and apply for an order under section 168 of the **Commonhold and Leasehold Reform Act 2002**. This would have been likely to have resolved the matter and kept the costs below what are now being claimed.

10. In essence, the dispute arises from the following matters. The Applicant is legally bound under the terms of the lease and the licence referred to above to "*…lay and maintain at all times in all parts of the Demised Premises (except the Kitchen Area and Bathroom) good quality carpeting and underlay*". If she undertakes work at the property then the licence granted to her for that purpose requires her to comply with Building Regulations and for the Respondent's surveyor to issue a Completion Certificate.

11. It will be helpful to set out a chronology:

		Page no.
1950	property built (estimate)	38
29/09/02	lease term commences	76
11/01/13	date of lease	33
January 2019	flat no longer sublet temporarily	277
11/03/2019	licence given to Applicant to remove wall between kitchen & lounge	220
18/03/2019	work having been completed, Respondent's surveyor inspects and finds no breach save for lack of fire door	176
01/05/2019	Respondent asks for Building Control Completion Certificate	176
June/July 2019	Applicant installs laminate flooring	278
12/08/2019	Respondent sees property on market with pictures showing no carpet	177
16/08/2019	Respondent instructs solicitors	178
12/11/2019	Respondent's surveyor inspects and notes that the carpeting is loosely laid over the top of the laminate flooring with no underlay	178
05/12/2019	Respondent's expert issues a Final Certificate for the works	179
07/02/2020	Applicant says that carpets now fitted	180

12. The Tribunal has no idea whether the Applicant was seeking professional advice after the improvement works had been completed. She took advice from a structural engineer called Carro Consult in February 2019 but it is not know whether she went back to them for further advice. She was certainly being encouraged to seek legal advice by the Respondent's representatives at the time. In respect of the 2 alleged breaches of the terms of the lease and/or the licence, the following is the position.

Flooring

13. The structure of the building is that the floors of the flats are concrete upon which is a wooden covering on which carpets are to be laid with underlay for all parts of the flat save for the kitchen area and bathroom where, presumably, tiles are fitted.

14. It seems clear that in early 2019 or thereabouts, a decision by the Applicant and her co-owner was made to improve the flat and then sell it. They applied to the Respondent for permission to undertake work to make the kitchen and lounge 'open plan'. A licence was granted and the Applicant paid the appropriate fees incurred by the Respondent. The Applicant says that she had seen other flats in the block for sale with laminate flooring which made them look better. It was decided by the Applicant to do the same at the property but she does not appear to have notified the Respondent at the time.

15. It seems clear that once the work had been done, the carpets which had been down were just put on top of the laminate flooring without wall to wall fitting. The Applicant says, at page 278 that the carpet was just to protect the new flooring from being damaged. She has also repeated within the large number of e-mails in the bundle that there is not provision with the lease or the licence for fitted carpets.

16. The Applicant has said on many occasions that the flooring was only visible in the sales advertising to help the sale, that the property has been properly carpeted throughout and will remain so. The Tribunal concludes that it would not be realistic to spend that sort of money on new laminate flooring just for a sale photograph. Save for the kitchen area and the bathroom, all the flat had to be carpeted from wall to wall and the sale photograph would be misleading to potential buyers. The Applicant should have been aware of that.

17. Two things are clear. Firstly that the wording of the lease and the licence were not as precise as they should have been and the Respondent does not seem to have understood that sufficiently to explain matters to the Applicant. Secondly, if the clauses say that the carpet must have an underlay and must cover 'all parts' of the property save for the kitchen area and bathroom, the only reasonable interpretation of those words is that it must be fitted to cover those parts.

18. The Applicant's comments in several parts of her evidence that (a) the only reason for the carpeting is to avoid noise disturbance to those above and below the flat and, thus, how they are fitted is irrelevant, and (b) that she should not be discriminated against because others in the building do not have carpeting are, with respect to her, entirely irrelevant to this dispute. The only question is whether she and her co-owner have complied with the lease and licence terms.

Fire door

19. Once again, the Applicant seems to have misunderstood the position. She points out that there were no fire doors there before. All she did was to remove a door between the lounge and the hallway. Be that as it may, the licence requires her to comply with Building Regulations i.e. those applying at the time the work was undertaken. The evidence before the Tribunal is that not only must there be a door in that place but it must be a fire door and fitted as such i.e. with an intumescent strip to the door and a self-closing arm (see page 97).

The Law

20. Paragraph 1 of Schedule 11 of the 2002 Act defines an administration charge as being:-

"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable… in connection with a breach (or alleged breach) of a covenant or condition in his lease…"

21. Paragraph 2 of this Schedule, which applies to amounts payable after 30th September 2003, then says:-

"a variable administration charge is payable only to the extent that the amount of the charge is reasonable"

22. The Applicant has asked for an order under paragraph 5A of Schedule 11 of the 2002 Act preventing the Respondent from recovering litigation costs from the Applicant as either a service charge or an administration charge. The Respondent's evidence at page 183 seems to be that the legal costs up until the 19th March 2020 were £3,535.20 inclusive of

VAT. It is clear that further costs will be claimed. Until they are claimed with the appropriate notice, they are not payable in any event.

23. However, the Tribunal does have jurisdiction to assess all costs because Paragraph 5A says that litigation costs includes costs "incurred or to be incurred".

Discussion

24. The Applicant is clearly aggrieved because she does not feel that the Respondent and/or its representatives have behaved properly. However, it must be said that she has decided, after a great deal of correspondence and discussion, to deal with both issues i.e. to have carpet fitted and a proper fire door fitted appropriately. Whether this was as a result of her taking advice or some other reason is not known.

25. On the other hand, the Tribunal members have seen much of the correspondence. It is appreciated that it is often easy to look at things in hindsight but the first inspection of the work was by the witness Annie Mackenzie BA Hons, who describes herself as a surveyor. From her letters in the bundle at pages 228 and 229 dated, respectively 18th March and 1st May 2019, she clearly appreciated the fire door problem and drew it to the Applicant's attention. She also required a copy of a certificate that the Building Regulations had been complied with.

26. The carpet issue was seen reasonably shortly thereafter. These matters should have been the subject of an immediate formal warning followed, if necessary, by an application, as has been said, under section 168 of **Commonhold and Leasehold Reform Act 2002** so that a forfeiture notice could have been served, if necessary. Allowing well over £2,000 in legal costs to have arisen over 2 serious but fairly straightforward matters does seem to this Tribunal to have been unreasonable.

27. It is also observed that some of the correspondence claimed for is to resolve a dispute over the amount of service charges claimed. The Tribunal has not investigated that in detail but it is noted that the agents gave credit for no less than £3,036.35 into the Applicant's service charge account on the 21st January 2021. One inference which could be drawn is that the Respondent was in breach of the lease terms to that extent.

Conclusions

28. Taking everything into account the Tribunal considers that the Applicant has been misguided. It is clear that she eventually realised she was wrong and ensured that carpet was laid and the fire door was installed.

29. Why the Respondent or its representatives did not take firm action earlier is not known. It may simply be that they were trying to avoid litigation. However, the plain fact is that by not taking earlier action, the legal and other costs have simply gone out of control.

30. The Tribunal considers that some administration charges are reasonable but not all of the amount claimed and/or anticipated. Ms. Mackenzie, at paragraph 56 in her statement on page 183 appears to say that the costs of B P Collins LLP were £3,535.20 inclusive of VAT on the 19th March 2020, That is not correct as this figure includes the fees of House & Son Property Consultants Ltd., namely £450.00 plus VAT.

31. If one looks at their invoice at page 153 it includes the 2 additional inspections of the property. These are, of course, covered by the licence, with each additional inspection chargeable at £120 plus VAT.

32. As far as legal costs are concerned, the Respondent has not given the Tribunal definitive information about what administration charges are actually being claimed. Invoices in the bundle claim the following:

	£	page no.
(a) 29/10/19	1,243.00 plus VAT	156
(b) 19/12/19	540.00 plus VAT	158
(c) 27/01/20	533.00 plus VAT	160
	2,316.00 plus VAT	

33. There are also indications in the bundle that further claims may have been made in statements and mini-statements. The position is far from clear. There are also certainly indications in the bundle that further costs are going to be claimed for the period after 27th January 2020, but these are not clearly quantified.

34. The only conclusion the Tribunal can draw is to conclude that there was no need for both a property consultant and solicitors to be involved in the lengthy 'negotiations'. It could be said, of course, that they achieved the desired result. That is certainly what a landlord with a comprehensive costs clause in the lease would say because he or she may consider that as the tenant will have to pay, does it matter? However, some regard must be had to the amount of costs and charges being run up.

35. As has been indicated, if Ms. Mackenzie had inspected and then either she or the solicitor had made a clear demand for the licence, granted under the terms of the lease, to be complied with or an application would have been issued, the preparatory work should have ended. An application under section 168 would have been made and the issue of the carpets would have been added to the breaches when that information came to hand.

36. In all the circumstances, the Tribunal considers that the legal costs incurred would have been around £1,000.00 if that had happened and that is what the Tribunal allows. This is a figure reached by the Tribunal members using their years of experience judging such matters. As far as the other claims are concerned, the Tribunal determines that only the cost of the 2 additional inspections by House & Son are reasonable as is the fee of M & C Plan & Site Services. These figures plus the position with regard to VAT are set out in the decision.

37. With regard to the Respondent's other litigation costs, the Tribunal decision is that the order under paragraph 5A, Schedule 11 of the 2002 Act should be made but this applies only to any charge proposed over and above the amounts allowed in the decision.

38. The Applicant has claimed that she should be reimbursed for the fee paid to this Tribunal in respect of this application. It has often been said that the work of this Tribunal is not what is sometimes described as a 'costs shifting' jurisdiction. In a court case, one would expect the 'winning' party to recover costs and fees. That does not

apply to the Tribunal where parties should expect to meet their own costs and expenses. No reimbursement order is made.

.....
Judge B Edgington
6th July 2021

ANNEX - RIGHTS OF APPEAL

I. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

II. 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.

III. 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.

IV. 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.