FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AM/LAC/2020/0013V:CVP**
Property	**:**	**Flat 7, The Merchant Building, 38 Wharf Road, London, N1 7GS**
Applicant	**:**	**Dr N P Mudondo**
Respondent	**:**	**Mr J Cronje**
Type of application	**:**	**Reasonability and payability of administration charges, pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002.**
Tribunal	**:**	**Ms H C Bowers BSc MSc MRICS** **Mr R Waterhouse FRICS**
Date of Decision	**:**	**23 March 2021**

DECISION

The Tribunal determines that its does not have jurisdiction to consider this case and as such this case is struck out under Rule 9 (2) (a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Remote Hearing Arrangements:

(A) This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:CVP. A face-to-face hearing was not held because it was not practicable, and no request was made for a face-to-face hearing. The documents that the Tribunal was referred to amounting to 161 pages from the Applicant and 25 pages from the Respondent. All documents have been noted by the Tribunal.

(B) The remote video hearing took place on 3 February 2021. In attendance were the Applicant, Dr Mudondo and the Respondent Mr Cronje.

The Application

(1) By an application dated 24 March 2020, the Applicant, Dr Mudondo, seeks a determination under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) as to whether a variable administration charge is reasonable and therefore payable. This matter relates to Flat 7, The Merchant Building, 38 Wharf Road, London, N1 7GS (the subject property). This matter was reviewed by a Procedural Chair and a potential issue of the Tribunal's jurisdiction was identified. Therefore, it was considered appropriate to hold a preliminary hearing on the issue as to whether the Tribunal has jurisdiction.

The Background:

(2) The relevant tenancy agreement is an Assured Shorthold Tenancy (an AST) dated 8 October 2018. The term was for a period of five years from 1 November 2018 and was due to expire on 31 October 2023. On 23 October 2019 the Applicant wrote to the Respondent's agent giving two months' notice of the intention to end the AST with effect from 31 January 2020. The following day the Respondent's agents emailed "*Your contract runs until November 2023 and there is no break clause, so your notice can not be accepted. If you want to pay the cancellation fee to discuss an early departure we can look into this but this will be a large amount of money due to the time left on the agreement*".

The Terms of the Assured Shorthold Tenancy:

(3) Under the terms of the AST it states "*Notice in Writing - Notice from the Tenant to end the tenancy must be given in writing in duplicate, one copy to the landlord at the address given in 1.3, one copy to London Residential, 103 Parkway, London, NW1 7PP. If written confirmation of receipt of notice is not received within 5 working days, please contact London Residential immediately. If the tenant intends to vacate at the end of the fixed term or any later date, he agrees to give the Landlord or the Landlord's agent at least two months prior Notice in writing. If the Landlord intends to regain the possession of the property at the end of the fixed term or at any later date, he agrees to give the tenant at least two months prior Notice in writing. At the end of such notice the tenancy shall end and all obligations and*

responsibilities shall cease; subject nevertheless to any claim by either party against the other in respect of any breach of any of the terms and conditions of the agreement."

(4) Clauses 2.60 to 2.68 deals with the arrangements at the end of the tenancy and in particular clause 2.62 states: "*To return all keys to the premises (including any new or additional or duplicate keys cut during the tenancy) to the landlord or his agent promptly on the last day of the tenancy. Any keys to window locks padlocks etc., to be left in a prominent position in the property*".

(5) Section 4 of the AST deals with the arrangements in respect of the Deposit and clause 4.7 states "*The tenant and the landlord will be expected to agree any deductions within 14 days of the end of the tenancy and sign a form consenting to the release of the deposit to be sent to mydeposits*".

(6) A further relevant clause is as follows, "*Surrender of the tenancy by the tenant 5.5 Strictly with the landlord's or his agents prior written consent and subject to certain conditions that may include the landlord's reasonable costs associated with the reletting of the premises, the tenant might be allowed to surrender or give up this tenancy before it could otherwise lawfully be ended.*"

The Law:

(7) Paragraph 1 of Schedule 11 to the 2002 Act states:

> "*(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) .....*
> *(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) .....*"

The Hearing, Evidence and Submissions:

(8) The hearing took place on 3 February 2021 by the CVP video platform. In attendance were the Applicant, Dr Mudondo and Mr Cronje.

Applicant's Case:

(9) Dr Mudondo's position is that the clause set out in paragraph 3 above, allowed the AST to be terminated early and that the provisions in clause 5.5 that stated that an early termination was at the landlord's discretion, does not mention the paying of the remainder of the rent.

10) Dr Mudondo explained that she had taken on the tenancy of the subject property to facilitate a rent to rent arrangement, whereby she paid the passing rent under the AST and proceeded to let out the property as an Airbnb. After some time, Dr Mudondo realised that she was not making a profit and sought to terminate the tenancy. She handed back the keys to the agent on 31 January 2020. It is claimed that the Respondent was aware of her Airbnb business. She had never occupied the property, but her sister had stayed there as a guest. Dr Mudondo had paid the council tax on the advice of her solicitors, but she anticipated recovering these payments.

11.) Dr Mudondo explained that following her notice to terminate the AST, the Landlord's agent replied with permission from the landlord, with the initial stipulation "*to have the balance of the letting fess that he paid, returned to him for the period that you wish to vacate, in order to allow you to be released from the contract*". Dr Mudondo accepted that the parties had failed to agree any sum prior to 31 January 2020 and indeed there had been no subsequent agreement between them. The Respondent has not issued an invoice for payment nor accepted any payment.

12.) In the course of negotiations, Dr Mondondo summarises the changing sums claimed on behalf of the Respondent as:

- 25 October 2019 via agent - £18,083.52 (mathematical miscalculation);
- 5 December 2019 via agent - £15,330.90 plus rent;
- 31 January 2020 via agent £17,690.40 plus rent;
- 31 July 2020 via lawyer – £21,260 as rent arrears and

An offer was also made on 14 August 2020. However, that offer was a without prejudice offer and therefore is not detailed in this decision.

13.) Dr Mudondo stated that there was no reason for the Respondent not to accept 31 January 2020 as the end of the tenancy as this was acknowledged by the Respondent's agent. There was mail confirmation from the letting agent that they had received the keys. It was also stated that the Respondent had

requested a return of the tenancy deposit and this indicated that the Respondent considered the tenancy to be at an end. Included in the papers is correspondence dated 13 January 2021 relating to the return of the deposit.

14.) In her statement, Dr Mudondo indicated that she is also seeking a refund of the Council Tax payments she made for the period from 1 February 2020 to 3 February 2021. She had been advised to make the payments and then seek recovery of these sums. She stated that the tenancy deposit has not been returned. In total Dr Mudondo is seeking £4,633.68 from the Respondent (being the Council Tax payments and the tenancy deposit net of the £360 she considers payable as the reasonable costs for terminating the tenancy).

15.) In addition, Dr Mudondo is seeking £100 from the Respondent as a reimbursement of the application fee and £2,280.00 from the Respondent as legal costs. She submitted that she had done everything to resolve this case, but that as the parties could not agree, she had been obliged to bring the case to the Tribunal. At the hearing, Dr Mudondo did accept that the Respondent has not acted unreasonably during this application and she confirmed that she was not making an application for costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 [the 2013 Rules].

Respondent's Case:

16.) Mr Cronje's position is that the AST did not give the Applicant a unilateral right to terminate the tenancy. It could only be ended with the landlord's written consent and that he had never provided such consent. It is his position that the Applicant had not validly terminated the AST, that the tenancy still subsists and that there are current rental arrears. Mr Cronje confirmed that there had been no other tenant of the subject property from January 2020 to the date of the hearing. He stated that no administration fees were ever demanded or invoiced and he is not seeking an administration fee from the Applicant.

17.) In respect of the return of the keys, the email correspondence from Mr Cronje's agent indicated they had received the keys, but that they were held for the Applicant, that the tenancy had not ended and that she would remain liable for the rent. The email correspondence from Mr Cronje's agents seems to indicate that any agreement for an early termination was conditional on an agreement on a sum to be paid. Negotiations had not been concluded and a without prejudice proposal for the mutual termination of the AST had not been accepted.

18.) In response to the application for the reimbursement of the £100 application fee, Mr Cronje considered that as the tenancy was continuing and

there were rent arrears, the application was unnecessary. He has made several offers to resolve this problem, but they have been refused and there have been no counter offers.

The Tribunal's Deliberations and Decision:

19.) The Tribunal has very limited jurisdiction and whether or not an AST has ended should be determined in another forum and in this case that would appear to be a matter for the County Court.

20.) However, in making its decision on jurisdiction, the Tribunal needs to consider whether in its opinion the AST has ended. In the opinion of the Tribunal the clause detailed in paragraph 3 above, is not a clause that gives the tenant the right to terminate the lease, it purely describes what is to be done if there was such a right. Clause 5.5 seems to make provision for the early termination of the lease, but this is not a unilateral right to terminate. For an early termination of the lease the landlord's written consent or that of the landlord's agent is required. The clause then goes on to state that the consent would be subject to conditions. One of those conditions may be the payment of fees, but in the opinion of the Tribunal the conditional element of that clause is not restricted to fees.

21.) The Applicant was unable to show the Tribunal any correspondence that gave a clear indication that the landlord or his agent had given any final or unconditional consent to the AST ending. It is clear that there were negotiations, but no agreement was reached. For the purposes of what the Tribunal needs to consider, we find that the tenancy did not terminate on 31 January 2020 and it seems that it did not end on a later date. If the tenancy had ended and charges were sought under clause 5.5, then it would appear that those charges may be subject to the Tribunal's jurisdiction under the 2002 Act.

22.) Both parties agree that there has been no invoice for any administration charges. It is the Respondent's position that any sums outstanding from the Applicant are rent arrears and not administration charges. Given our finding that the AST has not ended and no negotiations under clause 5.5 have been concluded and that there is no administration charge being sought, we find that there is nothing that this Tribunal has to preside over and as such we have no jurisdiction.

23.) Any issues relating to a claim against the Respondent in respect of Council Tax and the return of the tenancy deposit are not issues for this Tribunal.

24.) In respect of legal costs, the parties should note that this Tribunal is a no cost jurisdiction, meaning that we have no power to award costs between parties except if there is an application for costs under Rule 13 of the 2013 Rules. However, it is helpful that Dr Mudondo has confirmed that she is not making an application under Rule 13.

25.) The final point for the Tribunal to consider is whether the Respondent should reimburse the application fee of £100 to the Applicant. As we have found that there is no jurisdiction, it is our opinion that there is no justification that the Respondent bears the costs of making the application and as such we make no order for the application fee to be reimbursed.

Name: Helen Bowers **Date:** 23 March 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).