FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BH/LAC/2019/0019**
Property	:	**32 Bridge Court, Lea Bridge Road, London E10 7JS**
Applicant	:	**Holly Bowles**
Respondent	:	**Triplerose Ltd**
Representative	:	**Scott Cohen solicitors**
Type of Application	:	**Reasonableness of administration charges**
Tribunal	:	**Judge Nicol** **Mr T Sennett FCIEH**
Date of Decision	:	**11th February 2020**

DECISION

Out of the administration charges totalling £22,170.24[1] challenged by the Applicant in these proceedings, the Applicant is liable to pay £300.

Relevant legislation is set out in an Appendix to this decision.

The Tribunal's reasons

1. The Applicant is the lessee of the subject property. The Respondent has been the freeholder since 2010.

2. In or about 2015 the Applicant received a service charge bill for £7,576.56 for major works to be conducted on the Respondent's behalf. The Applicant had difficulty paying such a large sum and, in due course,

[1] Excluding the subletting fee of £108 conceded in the Applicant's statement of case.

© CROWN COPYRIGHT

also had complaints about the progress and standard of the works. While continuing to pay towards her ground rent and other service charges, this debt remained outstanding.

3. In the meantime, the Applicant sought to extend her lease. On or about 31st August 2017 the Applicant found out that the Respondent would require payment of outstanding sums in order to complete the extension. Further, on 6th September 2017 the Respondent's solicitor sent the Applicant a letter before action which stated, in full:

> **Re: Flat 32 Bridge Court, 340-354 Lea Bridge Road, London, E10 7JS**
>
> We have been instructed by your Landlord, Triplerose Limited, in relation to your breach of the Lease of the above noted property by failing to pay sums due under the terms of the Lease. We note that letters have been sent to you from Y&Y Management Ltd in relation to this issue but this matter remains outstanding.
>
> We write to request that you pay the outstanding balance of £10,307.84 within 7 days. Please make payment by cheque payable to Scott Cohen Solicitors and return to these offices. Please note that if this matter remains unresolved our client intends to commence the necessary proceedings to obtain a determination with respect to your breaches of Lease pursuant to his intention to serve a notice under S.146 of the Law of Property Act 1925.
>
> We enclose the summary of rights and obligations for your attention.

4. The Applicant reluctantly agreed to pay and paid £10,307.84 on 5th October 2017. The lease extension was then granted.

5. However, on or about 19th October 2017 the Applicant received a county court claim (claim no: D57YM164) issued by the Respondent for £11,207.84, plus interest and costs. The actual date of issue is unknown but the Respondent's Particulars of Claim in the Claim Form bore the date 14th September 2017. On 1st November 2017 the Applicant filed an Admission in county court form N9A admitting £2,339.57 but disputing the balance and making a counterclaim challenging a charge of £150 received for using parking in a communal area outside the block containing her flat.

6. On 24th July 2018 there was apparently a hearing in this claim. The Tribunal has no idea what this hearing was for as no details have been provided, not even the order made at it.

7. At a second hearing, on 19th February 2019, District Judge England, sitting at the County Court at Telford made the following order:

AND UPON hearing counsel for the Claimant and the Defendant in person together with her husband Mr Roger Bowles

AND UPON the Defendant having paid the sums claimed together with interest, and the court fee of £590.97 and fixed legal costs of £100, by payments made on 05 October 2017, 23 October 2017 and 15 November 2017 ("the first recital")

AND UPON the court holding that in the absence of a determination under s27[A Landlord and Tenant Act] 1985 it had no basis on which it could order the return of monies paid

AND UPON the court finding that the Defendant had not provided sufficient evidence to establish that she has (or has had) a right to park because she is a leaseholder ("the second recital")

AND the court having made no determination under s19 [Landlord and Tenant Act] 1985

AND UPON the Claimant not having included or pleaded in its claim the contractual right under the lease to recover legal costs ("the third recital")

IT IS ORDERED THAT

1. The name of the Defendant is amended to Mrs Holly Bowles.
2. There is no order on the claim as a result of the payments set out in the first recital.
3. The Defendant's counterclaim is dismissed.

Any further proceedings brought between the parties shall be referred to DJ England or case management.

8. The Respondent has sought to impose administration charges on the Applicant arising from their costs in pursuing this county court claim. By letter dated 16th October 2019, in accordance with the Tribunal's directions of 9th October 2019, the Applicant set out a list of 19 charges which she challenges. Both parties have submitted written representations with supporting documentation and the Tribunal has proceeded to its determination based on this material.

9. The Respondent submits that the Applicant is liable for the disputed administration charges under the following clause in her lease:

> 2. THE Lessee for himself and his assigns to the intent that the obligations may continue throughout the term hereby created HEREBY COVENANTS with the Lessor as follows, that is to say:-
>
> > (6) To pay unto the Lessor all reasonable and proper costs charges and expenses (including legal costs and fees payable to a Surveyor) which may be incurred by the Lessor in or in contemplation of any proceedings under Sections 146 and 147 of the Law of Property Act 1925

10. The Respondent further relies on the Court of Appeal's judgment in *Freeholders of 69 Marina, St Leonards-on-Sea v Oram* [2011] EWCA Civ 1258. Section 81 of the Housing Act 1996 requires a landlord, in the absence of an admission from the tenant, to obtain a determination from a court or tribunal of the amount owed before taking the first step in forfeiture of issuing a notice under section 146 of the Law of Property Act 1925. The Court of Appeal held that the costs of obtaining that determination may fall within a lease clause which permits the recovery of costs which are incidental to the preparation of a section 146 notice.

11. The Applicant's first point is that the clause in her lease is more narrowly drawn than that in the *69 Marina* case, extending only to costs incurred in or in contemplation of proceedings under section 146 rather than to those incidental to the preparation of such a notice. In *Barrett v Robinson* [2014] UKUT 0206 (LC) Martin Rodger QC, Deputy President, stated that, with that wording, a landlord must in fact contemplate the service of a statutory notice in order to rely on such a clause.

12. The Respondent pointed to the statement in their letter before action dated 6th September 2017 (quoted in paragraph 3 above) and the Tribunal accepts this evidence that the court action was considered by the Respondent in contemplation of section 146 proceedings.

13. The Applicant argues that this cannot be so because it did not stop the Respondent demanding the service charges as part of the process of extending her lease. However, the Tribunal accepts the Respondent's submission that their participation in this mandatory process cannot be regarded as unequivocally inconsistent with the pursuit of forfeiture.

14. Having said this, there is the factual issue of when the Respondent formed the intention to pursue section 146 proceedings. The first costs were incurred by the agents, Y&Y Management Ltd, in sending out arrears letters to the Applicant (£144) and then collating the file to send to the solicitors for consideration (£300). The purpose of sending the file to the solicitors is so that they may consider and advise the client on whether to pursue section 146 proceedings or some other course of action. The agents' work cannot be in contemplation of such proceedings because the decision on whether to go down that route has yet to be made. Therefore, the Applicant is not liable under clause 2(6) of her lease for the agents' charges of £144 and £300.

15. The next costs challenged are those incurred on 6th September 2017 and 12th September 2017 by the Respondent's solicitors in the sums of £540 and £900 respectively. They were incurred in relation to the letter before action and the preparation of the court claim. In accordance with the law set out above, the Tribunal accepts that costs of this type come within clause 2(6) of the Applicant's lease. Further, the Tribunal accepts that Scott Cohen, being specialists in this area of the law, were an appropriate firm to use and that the hourly rates used are reasonable.

16. However, the Tribunal is concerned as to the chronology of this matter. The letter before action gave the Applicant a mere 7 days to respond. The court proceedings were prepared within that period. If the Respondent's solicitors had waited just a little longer, the proceedings would have become otiose with the payment of the relevant sum on 5th October 2017. The court were not even able to serve the proceedings on the Applicant until a couple of weeks later.

17. Having received payment, the Respondent then continued the proceedings. There is no evidence that the Respondent's solicitor or counsel considered the proportionality of continuing to chase sums which had already been paid. They can't have thought it was justified by the pursuit of contractual costs because none were claimed. They can't have thought it appropriate to incur thousands of pounds in fees to resist the Applicant's very modest counterclaim of £150. Somewhat inevitably, the proceedings ended nearly 17 months later with the judge ruling that there was nothing for him to give judgment on.

18. The Respondent's solicitors assert in their Breakdown & Explanation of Charges, exhibited to the Respondent's statement of case, that their initial work was carried out in order to comply with the pre-action protocol for debt recovery. The Pre-Action Protocol for Debt Claims is one of such protocols issued alongside the Civil Procedure Rules with the aim of encouraging early engagement and communication between the parties, enabling resolution without the need for court proceedings and encouraging the parties to act reasonably and proportionately. It seems to the Tribunal that it would have been entirely proper for the Respondent's solicitors to have had the Protocol in mind.

19. The steps under this Protocol start with the Letter of Claim which should contain certain information and provide a reply form to be returned within 30 days. The Respondent's solicitors assert that their letter of 6th September 2017 is the letter of claim (no other candidate has been suggested or provided). It does not remotely satisfy the provisions of the Protocol, most glaringly in giving only 7 days before proceedings start rather than 30 days before the reply form must be returned.

20. In claiming that at least some of the solicitors' work was about ensuring compliance, the only possible conclusion is either that they did not do that part of the work claimed or that they did it but did not apply it. Either way, the fees of £540 cannot be justified in full. The Tribunal concludes that the fees should be no more than £300.

21. Thereafter, the charges being challenged were incurred in pursuing the court claim:

- Additional solicitors' fee £900
- Court fee £590.97
- Fixed solicitors' costs £100

- Hearing fee £335
- Adjournment fee £100
- Counsel's fee for advice £300
- Counsel's fees for attendance on 24th July 2018 £2,880
- Counsel's fees for attendance on 19th February 2019 £3,397.20
- Solicitors' "Breach" fees £8,283

22. The costs of the agents, Y&Y Management Ltd, in attending the two court hearings are also claimed:

- Travel expenses for 24th July 2018 £162.96
- Hearing attendance for 24th July 2018 £1,200
- Preparation for both hearings £960
- Travel expenses for 19th February 2019 £162.96
- Hearing attendance for 19th February 2019 £1,200

23. In the Tribunal's opinion, none of these costs are reasonable, either within the meaning of clause 2(6) of the lease or under paragraph 2 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. If the Pre-Action Protocol had been complied with, the proceedings would never have been issued. Even if that were not the case, the proceedings having been issued should not have been continued after payment had been received. Both issue and continuation were a colossal waste of the time of both parties and of the court.

24. In relation to the counsel's fee for advice, it is not even clear that this was relevant, at least in part, to costs incurred in contemplation of section 146 proceedings because it is said to have addressed the Applicant's counterclaim and previous LVT proceedings.

25. In relation to the agent's fees, it is not clear to the Tribunal that their attendance was necessary at either hearing. The context of neither hearing has been described, let alone explained.

26. The list of charges also includes one for interest of £611.63. According to the Respondent's statement of case, this is interest claimed at 8% pursuant to section 69 of the County Courts Act 1984 and they query the Tribunal's jurisdiction. The Tribunal does not understand this submission. Such interest is only payable if and when a court rules that it is. There is no court judgment for this interest. Therefore, there is no basis for including it in a list of administration charges over which the Tribunal does have jurisdiction.

27. There is one other charge, namely a subletting fee of £108 but, in her statement of case, the Applicant concedes that she cannot challenge it and does not maintain her objection.

Name: NK Nicol **Date:** 11th February 2020

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).

Appendix of relevant legislation

Law of Property Act 1925

Section 146 Restrictions on and relief against forfeiture of leases and underleases.

(1) A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice—

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and

(c) in any case, requiring the lessee to make compensation in money for the breach;

and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

(2) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the court, in the circumstances of each case, thinks fit.

(3) A lessor shall be entitled to recover as a debt due to him from a lessee, and in addition to damages (if any), all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the lessee, is waived by the lessor, or from which the lessee is relieved, under the provisions of this Act.

(4) Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, or for non-payment of rent, the court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action (if any) or in any action brought by such person for that purpose, make an order vesting, for the whole term of the lease or any less term, the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in such property upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security, or otherwise, as the court in the circumstances of each case may think fit, but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease.

(5) For the purposes of this section—

(a) "Lease" includes an original or derivative under-lease; also an agreement for a lease where the lessee has become entitled to have his lease granted; also a grant at a fee farm rent, or securing a rent by condition;

(b) "Lessee" includes an original or derivative under-lessee, and the persons deriving title under a lessee; also a grantee under any such grant as aforesaid and the persons deriving title under him;

(c) "Lessor" includes an original or derivative under-lessor, and the persons deriving title under a lessor; also a person making such grant as aforesaid and the persons deriving title under him;

(d) "Under-lease" includes an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted;

(e) "Under-lessee" includes any person deriving title under an under-lessee.

(6) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

(7) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(8) This section does not extend—

(i) To a covenant or condition against assigning, underletting, parting with the possession, or disposing of the land leased where the breach occurred before the commencement of this Act; or

(ii) In the case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

(9) This section does not apply to a condition for forfeiture on the bankruptcy of the lessee or on taking in execution of the lessee's interest if contained in a lease of—

(a) Agricultural or pastoral land;

(b) Mines or minerals;

(c) A house used or intended to be used as a public-house or beershop;

(d) A house let as a dwelling-house, with the use of any furniture, books, works of art, or other chattels not being in the nature of fixtures;

(e) Any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the lessor, or to any person holding under him.

(10) Where a condition of forfeiture on the bankruptcy of the lessee or on taking in execution of the lessee's interest is contained in any lease, other than a lease of any of the classes mentioned in the last sub-section, then—

(a) if the lessee's interest is sold within one year from the bankruptcy or taking in execution, this section applies to the forfeiture condition aforesaid;

(b) if the lessee's interest is not sold before the expiration of that year, this section only applies to the forfeiture condition aforesaid during the first year from the date of the bankruptcy or taking in execution.

(11) This section does not, save as otherwise mentioned, affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(12) This section has effect notwithstanding any stipulation to the contrary.

(13) The county court has jurisdiction under this section

Housing Act 1996

Section 81 Restriction on termination of tenancy for failure to pay service charge

(1) A landlord may not, in relation to premises let as a dwelling, exercise a right of re-entry or forfeiture for failure by a tenant to pay a service charge or administration charge unless—

(a) it is finally determined by (or on appeal from) the appropriate tribunal or by a court, or by an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, that the amount of the service charge or administration charge is payable by him, or

(b) the tenant has admitted that it is so payable.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 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.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 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).