



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

Case Reference : CHI/00MW/LAC/2022/0004

Property : 4 Shepherd Mews, Church Lane, Ryde, Isle of Wight, PO33 2QA

Applicant : John Kerr

Representative :

Respondent : Darlington House Hotels Limited

Representative : Barnstaple Estate Properties Limited

Type of Application : Determination of liability to pay and reasonableness of administration charge

Tribunal Member(s) : D Banfield FRICS
Regional Surveyor

Date of Decision : 13 July 2022

DECISION

The Tribunal determines that any part of the alleged arrears that may be in respect of Administration Charges is not payable.

Background

1. The Applicant seeks a determination of his liability to pay and the reasonableness of two administration charges levied by the Respondent in relation to assigning the lease without a Notice of Assignment and in respect of an alleged breach concerning the construction of a wall in approximately 2001.
2. The Tribunal has identified the following issues to be determined:
 - Can the Respondent levy the charges under the lease? If so which clauses?
 - How are the charges calculated and are the same reasonable?
 - Have the demands been validly issued in accordance with the lease and statute?
3. On 28 March 2022 the Tribunal made Directions indicating that it considered that the application was suitable for determination on the papers alone without an oral hearing and will be so determined in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected. No objections have been received and the application is therefore determined on the papers.
4. The Tribunal's Directions set out a timetable for the parties to make their submissions the Respondent being required to do so by 14 April 2022. Despite a reminder email and letter from the Tribunal no submission has been made.
5. The Tribunal will therefore determine the Application on the unchallenged evidence submitted by the Applicant.

The Lease

6. The lease dated 22 November 1999 is between Darlington House Hotels Limited and Matthew Lawson Smith and is for a Term of 250 years from 1 January 1995. The Fourth Schedule contains the Covenants by the Purchaser a full copy of which is attached as an appendix. Paragraph 2 requires the purchaser to obtain written consent to make any external or structural alterations to the Property without written consent.
7. The invoices referred to are;
 - Dated 11/10/2018 for a total of £494.88 of which the charges disputed are Failure to deliver notice assign £100.00 and Administration Costs breach £125.00 a total of £270.00 inclusive of VAT at 20%.
 - Dated 11/12/2018 which includes an amount for "Arrears B/F of £270.00
 - Dated 8/12/2020 which includes an amount for "Arrears B/F" of £320.00

The Law

8. The Tribunal's jurisdiction to deal with this application is in Schedule 11 of CLARA. Paragraphs 1, 2 and 4 are set out below. Paragraph 5 refers to liability to pay and refers to the ambit of any application and the jurisdiction of this Tribunal to determine it.

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.

(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.

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

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. Commonhold and Leasehold Reform Act 2002 Page 211

(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.

The Evidence

9. The Applicant states that the lease does not require him to provide a Notice to Assign and as such no charge for failure to do so can be levied.
10. With regard to the charge for the alleged breach the Applicant states;

- a) There is no provision in the Lease entitling the Respondent to charge administration costs in respect of any breaches nor is there any provision setting out how such costs are to be calculated.
- b) The alleged breach in question appears to have occurred in or shortly after 2001 when the first leaseholder applied for and obtained planning permission to erect an enclosure to incorporate the Property's adjacent dedicated parking space. This planning permission was granted by the Isle of Wight Council on 22/05/2001.
- c) Since 2001 there have been two assignments of the Lease, including to the Applicant.
- d) It is the Applicant's position that it was not reasonable for the Respondent to charge an administration charge for an alleged breach of the lease committed by an earlier leaseholder in or shortly after 2001. The alteration of the exterior of the property would have been noticeable to the Respondent and/or its agents and/or employees soon after the alleged breach was committed, and therefore the Respondent should have taken action at that time.

- e) On 08/12/2020 the Applicant received an invoice for the ground rent in respect of the year 2021. That invoice shows that the total of the disputed charges including VAT have increased to £320, without any further explanation.

The Decision

- 11. It is clear from the lease that there is no requirement on the Lessee to submit a Notice to Assign and as such the charge of £120 inclusive of VAT cannot be levied for failing to do so.
- 12. With regard to the charge in respect of a breach the Tribunal has no information as to the alleged breach and how and on what authority a charge of £150.00 inclusive of VAT has been made. In the absence of any explanation from the Respondent the Tribunal finds that this sum is not payable.
- 13. No explanation has been provided to justify the increase in the arrears by £50 to £320 and the Tribunal therefore determines that if any of the addition £50 is in respect of administration fees it is not payable.
- 14. In summary **the Tribunal determines that any part of the alleged arrears that may be in respect of Administration Charges is not payable.**

Appendix

Fourth Schedule to the lease

1. Not to use any part of the Property for any purpose other than as or incidental to a private dwelling
2. Not to make any external or structural alterations to the Property without the consent in writing of the Vendor which consent shall not be unreasonably withheld
3. To pay and contribute a fair proportion of any expense necessarily incurred in inspecting maintaining repairing cleansing and renewing any common or party Service Installations
4. Not to contravene any of the provisions of Town and Country Planning legislation
5. To pay and contribute a fair proportion of any expense necessarily incurred in inspecting maintaining repairing cleansing and renewing the Estate Road and the Landscaped Areas
6. To pay the yearly ground rent referred to above
7. To indemnify the Vendor against all outgoing payments payable in respect of the Property
8. To keep the Property in good repair
9. To ensure that nothing shall at any time be done on the Property that shall be a nuisance annoyance or injury to the Vendor or any of the occupiers of any other part of the Estate

RIGHTS OF APPEAL

1. 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.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.