

RESIDENTIAL PROPERTY TRIBUNAL SERVICE**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL****COMMONHOLD AND LEASEHOLD REFORM ACT 2002 Schedule 11
LANDLORD AND TENANT ACT 1985 Sections 20C**

LON/00AG/LAC/2008/0002

Property: Flat 31 Wordsworth Place, Kentish Town, London NW5 4HG

Applicants: Mrs C Patnaik and Dr SN Patnaik

Respondent: Wordsworth Place (Kentish Town) Limited

Tribunal: Mr P Korn
Mr I Thompson
Mr D Wills

PRELIMINARY

1. This is an application for a determination of the Applicants' liability to pay an administration charge under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("**Schedule 11 CLARA**"). The Applicants have also applied under Section 20C of the Landlord and Tenant Act 1985 for an order limiting the recovery through the service charge of the Respondent's costs incurred in these proceedings and for reimbursement of their application fee by the Respondent.
2. The Tribunal issued Directions on 16 January 2008 and decided that the case could be dealt on the basis of the written documentation alone, albeit that either party was entitled subsequently to request a hearing. No such request has been received and therefore this is a **paper determination** and the Tribunal has to decide whether there have been breaches of the covenants referred to below solely on the basis of the evidence produced to it.
3. Although the amount in dispute was stated in the Directions to be solicitors' costs of £295 plus VAT, in fact it would seem from the application and the copy invoice with the papers that the amount of the solicitors' costs is £1,213.19 inclusive of VAT and that the Applicants dispute the payability of the whole of this amount.
4. The solicitors' costs referred to above relate to the fees of CKFT Solicitors as set out in an invoice dated 6 March 2007. CKFT act for the Respondent and the invoice relates to work carried out by CKFT in connection with a dispute between the Respondent and the Applicants concerning alleged breaches of covenant by the Applicants at the Property. The alleged breaches concern the activities of the Applicants' subtenant and the basis of the subtenant's occupation of the Property.

BACKGROUND

5. The Respondent granted permission in January 2006 for the Applicants to sublet the Property, but it appears that this permission was conditional on the Applicants providing a copy of the completed sublease and the subtenant's full name. CKFT wrote to the Applicants on 18 December 2006 stating that these conditions had still not been fulfilled, but it appears that a copy of the sublease was then sent to the Respondent's managing agent the next day (presumably containing the subtenant's full name as CKFT's confirmation of receipt of a copy of the sublease did not indicate that details of the subtenant's full name were still awaited).
6. In their letter of 18 December 2006 CKFT also stated that they had been instructed to raise "an extremely disturbing complaint" with the Applicants about the behaviour of the subtenant. The full nature of the complaint is summarised in the papers and does not need to be repeated. In the course of referring to the subtenant's alleged behaviour CKFT stated that to remedy the breaches of covenant allegedly caused by the subtenant's behaviour the Applicants were required to fit a frosted film over the glass in the windows of the Property by 5.30pm on 20 December 2006.
7. It appears that the Respondent first complained about the subtenant's behaviour on 2 December 2006 and then made two further complaints prior to CKFT writing to the Applicants on 18 December 2006. The Applicants did arrange for a frosted film to be fitted and this work took place on 21 December 2006.
8. In that same letter of 18 December 2006 CKFT stated that the Respondent required the Applicants to take immediate steps to recover possession of the Property from the subtenant although it is unclear from that letter on what ground they were relying and why they should simultaneously be demanding (a) the frosting of the glass (presumably to conceal the activities of the subtenant) and (b) the removal of the same subtenant.
9. In the letter of 18 December 2006 CKFT advised the Applicants that their charges for dealing with the matter to date were £295 plus VAT. CKFT and the Applicants then had further dealings, which according to the Applicants were very limited, and then on 27 March 2007 the Applicants were sent an invoice for CKFT's costs of £1213.19 inclusive of VAT. Although the point is not absolutely clear, it appears that this formal invoice **includes** the sum of £295 plus VAT demanded less formally (i.e. without a formal invoice) on 18 December 2006 and that therefore £1213.19 is the total amount in dispute.
10. In their submissions the Applicants have advanced a number of reasons as to why they do not believe the above sum to be payable, all of which have been noted by the Tribunal and some of which will be referred to later on in this determination.

THE LAW

11. Under paragraph 1(1) of Part 1 of Schedule 11 CLARA, an administration charge is defined as "an amount payable by a tenant of a dwelling ... in addition to the rent which is payable, directly or indirectly - ... in connection with a breach (or alleged breach) of a covenant or condition in his lease".

12. Under paragraph 5(1) of Part 1 of Schedule 11 CLARA, "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 – ... the amount which is payable ...".
13. Under paragraph 2 of Part 1 of Schedule 11 CLARA, "a variable administration charge is payable only to the extent that the amount of the charge is reasonable".
14. Under paragraph 4(1) of Part 1 of Schedule 11 CLARA, "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." Under paragraph 4(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".
15. The solicitors' fees which are the subject of this application relate to legal costs incurred in connection with alleged breaches of covenant in the Applicants' lease and are sought from the Applicants in addition to the rent payable under their lease. In the Tribunal's view, therefore, the fees constitute an administration charge for the purposes of Schedule 11 CLARA.

APPLICATION OF LAW TO FACTS

16. It appears that the demands for payment of the solicitors' costs addressed to the Applicants were not accompanied by the information referred to in paragraph 4(1) of Part 1 of Schedule 11 CLARA. Paragraph 4(3) of Part 1 of Schedule 11 CLARA therefore applies and the Applicants may withhold payment until paragraph 4(1) has been complied with.
17. In addition, in order to be payable, the fees need to be properly recoverable under the Lease. Clause 4.1(a) of the Lease contains a tenant's covenant "to observe and perform the obligations on the part of the Lessee set out in Parts One and Two of the Eighth Schedule ... and to indemnify the Lessor against all actions proceedings costs claims and demands in respect of any breach non-observance or non-performance thereof". Paragraph 4 of Part One of the Eighth Schedule contains a tenant's covenant "to pay all costs charges and expenses (including legal costs and fees payable to a Surveyor) reasonably incurred by the Lessor in or in contemplation of any proceedings or service of any notice under Sections 146 and 147 of the Law of Property Act 1925 ...". In the Tribunal's view it is arguable that in respect of contemplated proceedings this provision limits the recovery of costs to proceedings contemplated in connection with Sections 146 and 147 of the Law of Property Act 1925 rather than any other breach of covenant. However, on balance the Tribunal's view is that the intention was probably for this provision to extend to proceedings contemplated in connection with any breach of covenant and that therefore, on balance, the Lease does contain a mechanism for the recovery of such fees.
18. Is the amount of the fees "reasonable" under paragraph 2 of Part 1 of Schedule 11 CLARA? The Applicants have argued strongly that the solicitors were instructed too quickly, have dealt with matters that should have been dealt with by managing agents and then continued to be instructed beyond the point at which the Applicants were demonstrably in breach of covenant.

19. In the Tribunal's view some of the original allegations concerning the subtenant were of a serious nature. Whilst CKFT did indeed get involved fairly quickly – their letter to the Applicants was just over two weeks after the original complaint – the complaint had been repeated in the interim and, in the Tribunal's view, it was not unreasonable to involve solicitors to a limited extent at this stage to underline the seriousness of the alleged events. It was also reasonable, in the Tribunal's view, to instruct an experienced solicitor to deal with the matter, and 1 hour of that solicitor's time at £295 plus VAT does not seem an unreasonable amount in the circumstances.

20. However, in the Tribunal's view, it is less justifiable for CKFT to have continued to be instructed after their initial letter and follow-up. The frosted film was fitted on 21 December 2006 and a copy of the sublease was supplied on 19 December 2006. Whilst there did then remain some continuing issues with the alleged behaviour of the subtenant, the Respondent has not provided any evidence to show that these issues warranted the continuing involvement of CKFT, who appear to have ended up taking on the role of managing agents. Accordingly, the Tribunal's view is that only the initial £295 plus VAT constitutes a reasonable charge.

DECISION

21. The Tribunal determines that of the £1213.19 invoiced by CKFT **only** £295 plus VAT is reasonably chargeable. **However**, in order to be entitled to recover even the amount of £295 plus VAT the Respondent must first comply with paragraph 4(1) of Part 1 of Schedule 11 CLARA and re-issue the demand for payment of the sum of £295 plus VAT accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

22. The Applicants have applied for an order under Section 20C of the Landlord and Tenant Act 1985 that the Respondent should not be entitled to recover any of its costs in connection with these proceedings through the service charge under the Lease. In the light of the Tribunal's determination on the main issue which is the subject of the application, the Tribunal is satisfied that it is just and equitable to make such order and therefore hereby orders that none of the costs incurred by the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

23. The Applicants have also applied for an order that the Respondent reimburse the fees incurred by the Applicants in connection with this application. However, whilst the Applicants have largely been successful in their application this was not a completely straightforward case and in the Tribunal's view the Respondent has not conducted itself in such a manner as to make it appropriate to require the Respondent to reimburse the cost of the application.

Tribunal: Mr P Korn (Chairman): 

Date: 27 March 2008