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**HM COURTS & TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

**Commonhold and Leasehold Reform Act 2002 - Schedule 11 Paragraph 5
Landlord and Tenant Act 1985 – Section 20C**

Properties: 5 & 9 Reiver Court, Wilson Street, Wallsend,
Newcastle upon Tyne NE28 8RB

Applicants: Nicola Allen and Mr Paul Whittaker

Respondent: UK Ground Rent Estates Limited

Date of determination: 11 May 2012

The Tribunal: Laurence Bennett
Alan Robertson

Application

1. Mr Paul Whittaker and Ms Nicola Allen apply for a determination under Paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 of his liability to pay and reasonableness of administration charges relating to 5 & 9 Reiver Court, Wilson Street, Wallsend, Newcastle upon Tyne NE28 8RB (the Properties).
2. Mr Paul Whittaker and Ms Nicola Allen seek an order under Section 20C of the Landlord and Tenant Act 1985 in respect of costs recoverable by UK Ground Rents Ltd, the Respondent.

Preliminary

3. The Applicants and the Respondent are the respective owners of the Lessors and Lessees interests in the Properties created by the leases mentioned below.
4. The application was received 18 July 2011.
5. Directions made 4 August 2011 by a Vice President of the Tribunal included: "It is considered that this matter is one that can be resolved by way of submissions of documentary and other written evidence leading to an early determination." The directions gave opportunity for the parties to request a hearing. No request was made.
6. Each party provided submissions and documentary evidence to the Tribunal.

7. The Tribunal convened on 11 May 2012 without the parties to make its determination.

The Law

8. Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the Act) provides that:-

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 application for such approvals,
- (b) for or in connection with the provisions 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.

1(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.

5(1) An application may be made to a leasehold valuation tribunal for 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

9. The operation of the Act was brought into effect by SI 2003 No 1986. Paragraph 8 of Schedule 2 of that instrument states:

Paragraphs 2-5 of Schedule 11 shall not apply to an administration charge that was payable before the first commencement date.

10. The first commencement date was 30 September 2003

The Lease

11. The evidence indicates that each property consists of a two bedroom flat in a block of nine held under a lease in similar form containing identical covenants. Only a draft lease was supplied but it is considered that it represents the contents of the

original completed leases. Relevant parts are set out in submissions and have not been disputed.

12. Paragraph 3.9 contains the Lessee's covenant "To pay to the Lessors all costs charges and expenses including solicitors' counsel's and surveyors' costs and fees and any VAT or other tax payable in respect of such costs and fees at any time during the said Term properly incurred by the Lessors in or in contemplation of (c) the recovery or attempted recovery of arrears of any rents or other sums due from the Tenant."

Evidence and submissions

13. The Applicants were in arrears of ground rent payments. The amount of the rent is not disputed and is a term of the lease. The reasons for accumulation of arrears include as stated by the Applicants "The solicitor we used did not go over the terms of the lease, leaving us somewhat uninformed of our obligations per the lease Some of the initial delays in payment were due to not understanding that the ground rent was due on 1 January as it is served."
14. The Respondent's agents Forte Freehold Managers Limited sent letters to the Applicants and their mortgagees giving notice of the arrears and seeking payment. There has been correspondence, email and direct contact between the parties. The Respondent has demanded its agents costs incurred in connection with the collection of the rents, interest calculated in accordance with a provision in the lease and latterly service charges.
15. The Applicants state that the charges disputed in respect of each of the Properties are identical. Items identified in the demands and statements submitted are entitled arrears letter, notice, letter to mortgagee, interest and administration fees initially amounting to £402.86 for each flat and a further £138 included at a later stage in the proceedings. It appears that some of this total may relate to the Respondent's agents disbursement of a Land Registry fee.
16. The Applicants' submissions give a relevant history of ownership and make comment that they feel other issues were raised by the Respondent's agents which they consider inappropriate.
17. The Respondent's submissions within statements of Mr Paul Hutton and Ms Rachel Blandford-Newson of Forte Freehold Management Ltd (Forte) refute any suggestion that administration charges are designed to make money and comment upon other issues relating to lease obligations which are not the subject of this determination.
18. The charges raised by Forte are addressed by Mr Hutton and Ms Blandford-Newson. Mr Hutton is a salaried solicitor, qualified for 12 years. His charge out rate is £217 per hour, a grade 1 fee earner rate. Ms Blandford-Newson, a legal executive has a charge out rate of £161 per hour (as a graduate member of the Institute of Legal Executives) and a paralegal has a suggested charge out rate of £118 per hour. Forte manages some 3,000 properties and has a small legal team. Forte has offered a lower recovery cost "applying standard charges in an attempt to avoid the administration associated with the recording of time becoming disproportionate to the amounts in dispute." Forte is only involved in collection of rents. Mr Hutton states that service charges are the responsibility of the landlord or

the landlord's managing agent. Ms Blandford-Newson details the procedural steps generally taken and legal authority for treating a bill of costs by a salaried solicitor as a bill of an independent solicitor.

19. Mr Hutton has referred to a Leasehold Valuation Tribunal decision LON/00AW/LAC/2007/0009 where a fee of £150 (plus disbursements and VAT) was found reasonable for a solicitor's letter.

Tribunal's conclusions with reasons

20. We find that the charges disputed are charges that fall within Paragraph 1 to Schedule 11 to the Act as they relate to the collection of the arrears of rent and possibly service charge and breach of covenant. The position is not clear as the parties have not specifically identified individual charges in a schedule.
21. Whilst Mr Hutton submits that Forte is not responsible for service charge administration, Forte is not the Respondent, the landlord is the appropriate Respondent and the Tribunal can properly include consideration of all administration charges where the Respondent has instructed multiple agents.
22. Mr Hutton and Ms Blandford-Newson's submissions rely on the fact that in-house solicitors' charges are recoverable as if they were billed by an independent firm of solicitors as was the case in the LVT decision quoted. We question this. Forte is not the Landlord, the legal team is not employed by the Respondent. We query the propriety of Forte which is not a firm of solicitors billing solicitors' charges to the Respondent. Mr Hutton may wish to refer to Rules 12 and 13 of the Solicitor's Code of Conduct in force at the relevant time.
23. The Applicants state plainly they misunderstood their obligations, however, arrears have arisen. We find it reasonable that action should have been taken to ensure payment. We are satisfied that the Lease at Paragraph 3.1 provides for interest on arrears at a specified rate. The rate is reasonable and any sums calculated under that rate on the amount outstanding as adjusted is reasonable and payable.
24. Noting that each of the relevant statement amounts is identical for each property, we have analysed them as far as possible.
25. Forte is not a firm of practising solicitors. They carry out a collection and leasehold management service on behalf of the Respondent and the Tribunal is of the view that charges should not be assessed as though this was a litigation claim being handled by a firm of solicitors in private practice. This is reinforced by our view stated at 21. Collection of arrears is routine and appropriate for administrative staff at lower cost or charge out rates than Mr Hutton and Ms Blandford-Newson.
26. We are surprised at the high level of activity on behalf of the Respondent particularly bearing in mind the contact between the parties but arrears were enduring and we conclude that although at the higher end of the range each of the items can be considered as reasonably incurred.
27. Following 24 and 25 and noting the routine nature we conclude that the appropriate charge for a letter is £15 to include routine research such as outstanding payment, name and address.

28. Should a formal notice have accompanied a letter the total charge of £25 is appropriate. This should also apply to a letter enclosing a copy of another letter to a mortgagee.
29. We conclude that the Land Registry charges requested are genuine disbursements and reasonable but do not accept that it would be necessary to carry out the detailed and over specified steps mentioned by Ms Blandford-Newson which appear over elaborate description of a straightforward administrative task.
30. The statements should be recalculated in the light of our determination and interest adjusted as set out in 22.

Section 20C

31. Section 20C Landlord and Tenant Act 1985 states:

- (1) A tenant may take an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (3) The Court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

32. We have considered The Applicants' request for an order under Section 20C of the Landlord and Tenant Act 1985. We make no finding whether the Lease permits recovery of the Lessor's costs incurred in this application by way of service charge. However, taking into account that the subject matter of this application relates to determination of charges payable, that both parties have been put to expense and that the application is partially successful, we do not find it appropriate that the Lessor should recover costs in addition. We make the order requested.

Order

33. The sums payable to UK Ground Rent Estates Ltd in respect of the administration charges referred shall be reduced in accordance with paragraphs 26-29 above.

34. The Lessor shall not treat costs in relation to the application as relevant costs to be taken into account in determining the amount of any service charge payable by the Lessee.



L J Bennett

Chairman

11 May 2012