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

Case Reference : BIR/00CW/LAC/2012/0018

Property : 155 Broad Gauge Way, Wolverhampton, WV10
0BA

Applicant : Dr Irshad Ali Shah

First Respondent : BDW Trading Limited (trading as Barratt West
Midlands)

Second Respondent : Fusion (Sun Street) Management Company
Limited

Type of Application : (1) To determine whether Administration
Charges are payable, and if so, as to their
reasonableness, under Paragraph 5 of
Schedule 11 to the Commonhold and Leasehold
Reform Act 2002 (2) For an Order under
section 20C of the Landlord and Tenant Act
1985

Tribunal Members : Mr W J Martin (Chairman)
Mrs S Tyrer F.R.I.C.S

Date and venue of Hearing : None – paper determination

Date of Decision :

DECISION

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DETERMINATION

No administration charges are payable in respect of late payment letters or solicitors referral fees, but that (if the First Respondent had not withdrawn the charge) a fee would have been payable in respect of the registration of the assured shorthold subletting which the Tribunal would have limited to £40 plus VAT. The section 20C application is granted.

Reasons For the Tribunal's Decision

Preliminary

1. The Decision recorded in this document was made by the First-tier Tribunal (Property Chamber) rather than the Leasehold Valuation Tribunal, to whom the application had been made, because by virtue of The Transfer of Tribunals Function Order (2013 No 1036) ('the Transfer Order') the functions of Leasehold Valuation Tribunals were, on 1st July 2013, transferred to the First-tier Tribunal (Property Chamber). By virtue of the transitional provisions, applications to Leasehold Valuation Tribunals in respect of which a decision had not been issued before the 1st July 2013, automatically became proceedings before the First-tier Tribunal (Property Chamber). The Transfer Order also amended the relevant legislation under which Leasehold Valuation Tribunals were referred to by substituting the words 'First-tier Tribunal' for 'Leasehold Valuation Tribunal' within the relevant parts of the legislation. The extracts from the legislation applicable to the present applications that appear below incorporate the changes made by the Transfer Order. In this Decision the expression 'the Tribunal' means the First-tier Tribunal (Property Chamber).
2. On 27th November 2012 Dr Irshad Ali Shah (the '**Applicant**') applied ('the Application') to the leasehold valuation tribunal (a) for a determination under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the Act') as to liability to pay and (if payable) the reasonableness of administration charges levied in respect of 155 Broad Gauge Way, Wolverhampton, WV10 0BA ('the **Property**') by Pinnacle Property Management the managing agents of BDW Trading Limited (trading as Barratt West Midlands) ('the **First Respondent**') and (b) under section 20C of the Landlord and Tenant Act 1985 ('the 1985 Act') for an Order that the Respondent's costs of the Application shall not be added to future service charges. At the request of the Applicant, the Application was amended twice, and was finally submitted in a form acceptable to the leasehold valuation tribunal on 9th April 2013.
3. The administration charges which are the subject of the Application are as follows (from a statement of account dated 6th December 2012):

10 th November 2011	Administration charge late payment	£60
22 nd November 2011	Preparation for instruction of solicitor	£180
13 th February 2012	AST sublet fee	£60
13 th March 2012	Follow up letter	£60
22 nd March 2012	Court Action letter	£180
4. The Lease under which the Property is held is dated 9th October 2009 and is made between the First Respondent (1) The Second Respondent (2) and the Applicant and Nagina Shah (3). Part 1 of the Eight Schedule to the Lease contains the following paragraphs, which may authorise administration charges (there being no other provisions in the Lease which do so):

4. To pay all costs charges and expenses (including legal costs and fees payable to a Surveyor) incurred by the Landlord in or in contemplation of any proceedings or service of any notice under Sections 146 and 147 of the Law of Property Act 1925 including the reasonable costs charges and expenses aforesaid of and incidental to the inspection of the Property the drawing up of schedules of dilapidations and notices and any inspection to ascertain whether any notice has been complied with and such costs charges and expenses shall be paid whether or not forfeiture for any breach shall be avoided otherwise than by relief granted by the Court
25. Not at any time during the Term
- 25.1 to sublet the whole or any part of the Property save that an under-letting of the whole of the Property is permitted in the case of an assured shorthold tenancy agreement...
27. Within one month after the date of any and every assignment transfer mortgage charge under-lease (including any immediate or derivative under-lease) of the Property for any term assignment of such under-lease or grant of probate or letters of administration order of court or other matter disposing of or affecting the Property or devolution or transfer of title to the same to give or procure to be given to the Manager notice in writing of such dealing together with a certified copy of the instrument effecting any such dealing AND ALSO to pay or cause to be paid at the same time to the Manager such reasonable fee appropriate at the time of registration in respect of any such notice examination of documents an registration affecting the Property PROVIDED always that in the case of a contemporaneous transfer and mortgage the fee shall only be payable on one of such matters

The legal provisions

5. Schedule 11 to the Act contains the following provisions:

Meaning of "administration charge"

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 a party to the lease otherwise than as landlord or tenant, or
- (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 a party to the 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 the lease, nor
- (b) calculated in accordance with a formula specified in his lease.

Reasonableness of administration charges

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

3.

Notice in connection with demands for administration charges

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.

(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.

Liability to pay administration charges

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 a payment has been made.

(3) - (5) not relevant to the Applications

Interpretation

6-(1) This paragraph applies for the purposes of this part of this Schedule

(2) "Tenant" includes a statutory tenant

(3) "Dwelling and "statutory tenant") and "landlord" in relation to a statutory tenant) have the same meanings as in the 1985 Act

(4) "Post-dispute arbitration agreement" in relation to any matter, means an arbitration agreement made after a dispute about matters has arisen.

(5) "Arbitration agreement" and "arbitral tribunal" have the same meaning as in Part 1 of the Arbitration Act 1996 (c23)

(6) "Appropriate tribunal: means-

- (a) in relation to premises in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
- (b) in relation to premises in Wales, a leasehold valuation tribunal

6. Section 20C of the Landlord and Tenant Act 1985 provides:

20C Limitation of service charges: costs of proceedings

(1) A tenant may make 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 leasehold valuation tribunal or the First-tier Tribunal... 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 person specified in the application.

Submissions

7. In the Application form the Applicant submitted:

- 01. That the imposition of administration charges as a penalty for alleged late payment was unfair because Pinnacle had submitted invoices to the wrong person.
- 02. Assured Shorthold letting is allowed by the Lease and no registration of the sub-tenancy is mentioned in the Lease.
- 03. The Applicant's attempts to resolve the issue have been ignored and dismissed as irrelevant.
- 04. The Respondents are in breach of the Lease by not responding to a request for certified accounts.

8. By letter sent to the leasehold valuation tribunal on 10th May 2013, the Applicant provided a bundle of copy correspondence in support of his contention that no payments were due for late payment. With regard to the assured shorthold tenancy ('AST') subletting fee the Applicant referred to paragraph 25.1 of the First Part of the Eighth Schedule to the Lease and made the following submissions in respect of this matter:
 01. The First Respondent has no relationship with the sub-tenant. It is a management ploy to increase revenue.
 02. Both the First Respondent and Pinnacle make it clear that the Applicant is responsible for the actions of the sub-tenant.
 03. The sub-tenant did not want to give her personal details to Pinnacle.
 04. All correspondence goes to the Applicant and he makes the sub-tenant aware of the tenant's obligations under the lease.
 05. Having taken legal advice, the Applicant does not consider that the lease requires registration of an AST. The charges levied are unfair and the fees paid by the Applicant should be refunded.
9. With regard to the section 20C application, the Applicant submitted that much of the problems arise because of mistakes by Pinnacle and it would be unfair for the Respondent's costs in connection with the Application to be charged for in the service charge.
10. The First Respondent made written submission as follows:
 01. Countrywide were the original managing agents but in March 2011 Pinnacle Property Management were appointed in Countrywide's place. Having researched the position, it is accepted that no ground rent has ever been outstanding.
 02. There was a delay in payment of a service charge invoice dated 30th June 2011. In order to avoid a build up of arrears it is normal practice to add an administration charge. A fee of £60 was applied to the account for a 'seven-day' letter, and as this did not produce a result a further £180 was added as a solicitors referral fee. These charges are as stated in Pinnacle's 'welcome pack' which all leaseholders would have received. The service charge was not paid until 24th November 2011, when the Applicant returned to the country.
 03. With regard to the AST the First Respondent agrees that permission is not required because of paragraph 25.1 of the First part of the eighth Schedule. However, the Lease does require registration. The sole reason for this is so that the Managing Agents are aware of who the residents are, in case of any problems.
 04. The First Respondent has in any case reversed all of the charges apart from the one made on 10th November 2011, amounting to £60. This relates to the late payment referred to in paragraph 02 above.
11. The Applicant acknowledges that the charges have all been reversed apart from the 10th November 2011 late payment letter. The Applicant maintains that, although the invoice in respect of this (10337) is correctly addressed on its face, the envelope containing it was addressed to the Applicant's son Ali Shah, who does not reside in the country, and whose post is kept for him until he returns. With regard to the section 20C Application, the Applicant points out that £18,449 is the anticipated managing agent's fee for 2013.

The Tribunal's determination

13. The Tribunal is satisfied that all of the five charges detailed in paragraph 3 above are variable administration charges within the statutory definition, and that

therefore the Tribunal has jurisdiction in respect of them. However, the only administration charge in respect of which the Tribunal is required to make a determination is that imposed on 10th November 2011 in respect of the late payment of the half yearly service charge invoiced on 30th June 2011.

14. By virtue of paragraph 5 (1) of Schedule 11 to the Act the Tribunal is required to be satisfied that the administration charge is 'payable', i.e. does the lease permit the First Respondent, or the Second respondent, to levy charges for alleged late payment of rent or service charges, or solicitor's referral letters? The Tribunal's determination is that there are no provisions in the Lease permitting the imposition of an administration charge in respect of these items. The only paragraph which clearly specifies that a 'reasonable fee' is payable, is in respect of the registration of dealings with the Lease as specified in paragraph 27 of the First Part of the Eighth Schedule. Paragraph 4 does refer to 'charges and expense (including legal fees)' but only those incurred 'in or in contemplation of any proceedings or service of any notice under Sections 146 and 147 of the Law of Property Act 1925.'. The Tribunal determines that paragraph 4 does not extend to debt recovery letters. Sections 146 and 147 of the Law of Property Act 1925 relate specifically to notices required to be served upon leaseholders as a precondition for forfeiture proceedings relating to breaches of covenant in the relevant lease other than for non-payment of rent. A notice under section 146 is not required as a precondition for debt recovery in the County Court. The Tribunal finds as a fact that the late payment letter of 10th November was made in contemplation of debt recovery in the County Court, and not in contemplation of proceedings under section 146 or 147 of the Law of Property Act 1925.
15. Additionally, no evidence was provided by the First Respondent that the notice required by paragraph (4) of Schedule 11 to the 2002 Act was in fact sent with the demand for payment of the administration charge.
16. Accordingly, it is the decision of the Tribunal that the administration charge imposed on 11th November 2011 is not payable, for the above reasons.
17. Although the remainder of the disputed charges have been waived by the First Respondent, the Tribunal considers that it would be helpful to indicate what its decision would have been if they had not been withdrawn.
18. The charges relating to alleged late payment of service charges, including the solicitor's referral letter, and Court Action letter would not have been found payable, for the same reasons as are set out in paragraph 14 above. Despite the fact that the charges are set out in the 'welcome pack' issued by Pinnacle management Limited, they are not legally payable unless the Lease contains provisions which authorise such payments. In this case they do not.
19. The position with regard to the AST fee, however, is that the Tribunal would have found that an administration charge is properly payable in respect of the registration of the AST. It falls within the definition of 'under-lease' contained in paragraph 27 of Part 1 of the Eighth Schedule to the Lease, and providing that the paragraph (4) statutory notice was served with the demand, the charge would be 'payable' for the purposes of paragraph 5(1) of Schedule 11 to the 2002 Act. The amount of £60 is, however, considered to be unreasonably high for such a charge and the Tribunal would have determined that a reasonable charge in respect of the registration would have been £40 plus VAT.
20. In view of the above findings, the Tribunal does not find that it would be just and equitable for any part of the First Respondent's costs in connection with these

proceedings to be included within future service charges, and accordingly the section 20C application is granted. **The Tribunal orders that all of the First Respondent's costs in connection with these 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 Applicant.**

21. In reaching its determination the Tribunal had regard to the relevant law, the submissions of the parties and its knowledge and experience as an expert tribunal, but not any special or secret knowledge.
22. If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013.

W.J. Martin – Chairman

Dated: 19 JUN 2013