

**HM COURTS & TRIBUNALS SERVICE****DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION  
UNDER COMMONHOLD and LEASEHOLD REFORM ACT 2002, Schedule 11**

<b><u>The Applicant:</u></b>	Echo Buildings Management Company Limited
<b><u>The Property:</u></b>	Apartment 155, Echo Buildings, Wear Street West, Sunderland, SR1 1XH
<b><u>The Respondent:</u></b>	Ms Anneka Dhugga
<b><u>The Application:</u></b>	By transfer from the North Shields County Court by an order made 3 January 2013 (the Order)
<b><u>Date of Decision:</u></b>	28 March 2013
<b><u>Members of the Leasehold Valuation Tribunal:</u></b>	Mr. P. W. J. Millward LL.B. (Chairman) Mr. D Bailey FRICS.

**The Application**

1. By a claim issued in Northampton County Court the Applicant seeks to recover unpaid ground rent and insurance rent due from the Respondent relating to the Property. The proceedings were firstly transferred to the North Shields County Court and by the Order to the Leasehold Valuation Tribunal. The Residential Property Tribunal Service (RPTS) notified the parties that it had received the papers from the Court pursuant to the Order on 17 January 2013 and thereafter the Applicant paid the appropriate fee and an Order for Directions (the Directions) was made by a Chairman of the Leasehold Valuation Tribunal on 6 February 2013 and sent to the parties on that date.
2. Pursuant to the Directions both parties provided written submissions with supporting documentation to enable the Tribunal to proceed to a determination under the Commonhold and Leasehold Reform Act 2002 (the Act), as to the payability of the ground rent, insurance rent and associated administration fees in respect of the Property.
3. The Application relates to demands for ground rent and insurance rent due in respect of the years 2011 and 2012. The total outstanding including administration fees which have been added was in the sum of £1,050.03 at the date of issue of the County Court proceedings. A statement of account provided by the Applicant by email on 26 February 2013 confirmed the amount then outstanding according to the Applicant as £906.52, including Court fees, Solicitors' costs and administration fees.

**The lease**

4. The Respondent is the original lessee of the Property under a lease made 19 November 2007 between Echo Buildings Limited (1) the Applicant (2) and the Respondent (3) (the Lease). The

FSP8

term granted by the Lease is 125 years (less one day) from 1 February 2004. The ground rent payable under the Lease is £100.00 per annum, subject to upward variation after each period of 25 years.

5. Clause 4.1 of the Lease includes a covenant by the lessee to pay to the landlord and the management company (as the case may require) the "rents" without any deduction and in clause 3 the "rent" is stated to include the ground rent (3.1) and "all expenses which the Landlord may from time to time incur in connection with or in procuring the remedying of any breach of the Tenant's covenants" therein. The "service charge" is defined in clause 2.1 of the Lease as "the sums payable by the tenant in respect of the provision of services ascertained in accordance with schedule 4" thereof. Schedule 4 of the Lease set out an extensive definition of services to be provided by the management company including (inter alia) insurance cover and the reasonable fees of managing agents retained by the Landlord in relation to collection of the rents – that is administration charges.
6. The Applicant is the management company under the terms of the Lease.

### **The Law**

7. Paragraph 1(1)(d) of Schedule 11 of the Act provides that "administration charge" means an amount payable by the tenant of a dwelling as part of or in addition to the rent which is payable in connection with a breach (or alleged breach) of a covenant or condition in the lease.
8. Paragraph 1(3) of Schedule 11 of the Act provides that a "variable administration charge" means an administration charge which is neither specified in the lease nor calculated in accordance with a formula specified in the lease.
9. Paragraph 5 of Schedule 11 of the Act provides that an application may be made to a Leasehold Valuation Tribunal for determination whether an administration charge is payable, and if it is, as to the person by whom it is payable, the person to whom it is payable, the amount which is payable, the date at or by which it is payable and the manner in which it is payable.

### **The inspection**

10. The Leasehold Valuation Tribunal (the Tribunal) did not inspect the Property.
11. The Property is a modern purpose built flat in a development of similar flats.

### **The submissions of the parties**

12. The Applicant's submissions includes (inter alia) the following:-
  - 12.1 Forte Freehold Managers have been appointed by the Applicant to carry out the management obligations of the Applicant in relation to the Property.
  - 12.2 the claim relates to unpaid ground rent and insurance rent for 2011 and 2012.
  - 12.3 the Tribunal were specifically referred to clause 3.3 of the Lease which states that the tenant is to pay all expenses of the landlord/management company incurred in relation to any breach of the tenant's covenants or in procuring the remedy of any such breach.
  - 12.4 The Applicant provided an up to date statement of account on 26 February 2013.
13. The Respondent's submissions include (inter alia) the following:-
  - 13.1 The ground rent and insurance rent for the Property have been paid up to date and in advance.
  - 13.2 The amount which was due for ground rent from 25 March 2012 to 28 September 2012 was £50 and insurance for 25 March 2012 to 25 March 2013 was £164.27. A cheque for £214.27 was sent to the Applicant 3 times – on 26 April, 10 May and 29 May 2012. On

- each occasion the cheque was returned. The Respondent provided copies of the cheques.
- 13.3 At the Respondent's request a copy invoice dated 25 March 2012 was sent to her. The copy was requested as she had not received the original. Although the Respondent had explained to the Applicant the reason for sending the payment on 26 April 2012 she found the Applicant had added an extra charge of £67.20 on 2 April 2012 and further charges of £213.60 on 16 April 2012.
  - 13.4 Only by returning the aforementioned cheques did the Applicant put the Respondent in default and the Court proceedings were received without any warning.
  - 13.5 The Respondent sent another cheque in the sum of £211.05 to the Applicant on 5 May 2012. The reduced sum was due to a miscalculation on the Respondent's part. That cheque cleared from the Respondent's account on 28 September 2012. A copy of the relevant bank statement was provided by the Respondent.
  - 13.6 The Respondent sent a further cheque to the Applicant on 29 September 2012. This cheque represented the ground rent of £50.00 due on 29 September 2012 and the sum of £3.22 to cover the underpayment made on 5 May 2012. This cheque cleared through the Respondent's bank account on 5 October 2012. A copy of the relevant bank statement was again provided by the Respondent.
  - 13.7 The ground rent and insurance are paid in advance and the Respondent has always paid them. The Respondent has questioned the additional charges on many occasions and has asked the Applicant to justify them. She refused to pay them as no response was received by her. She has also made requests to meet with a representative of the Applicant to discuss the additional charges. On one occasion the Respondent was told that such a meeting would cost her money.
  - 13.8 The Respondent disputes the additional charges.

### **The Hearing**

14. Neither party requested a hearing and the Application proceeded for determination on the papers provided to the Tribunal.

### **The Tribunal's determination**

15. The Tribunal considered very carefully the written submissions of the parties. It is not disputed that the Applicant was entitled to submit the ground rent and insurance rent demands – only whether or not the Applicant was able to add the additional administration fees and the reasonableness thereof.
16. The issues to be determined therefore are (a) if the demands submitted are valid and if so (b) to what extent are the demands reasonable and if so (c) to what extent (if any) the Respondent should pay towards the same.
17. The Tribunal determined that the requests for the ground rent, insurance rent and administration charges are fully in accordance with the terms of the Lease and the items of expenditure referred to therein are all payable by the Respondent under the terms of the Lease.
18. However, the Tribunal determined to reduce the administration charges as set out in the statement sent to it on 26 February 2013, which showed the amount outstanding and due from the Respondent was in the sum of £906.52. Firstly, the Tribunal removed from the statement the Solicitors' fixed costs of £70.00 and the Court fee of £70.00, as well as the Solicitors' charges of £154.56, all dated 16 April (a total of £294.56). These charges are a matter for the Court to decide on at final hearing. Until the Court has determined that they may be payable they cannot be part of the outstanding demand.
19. Furthermore the Tribunal determined that the charges levied for letters sent to the Respondent

and her mortgagee were grossly excessive. This was particularly so in relation to later letters sent after the Applicant had refused to accept payments made by the Respondent in 2012, when it returned 3 cheques sent to it, a matter not disputed by the Applicant. The cost of such letters are payable by the Respondent, but the costs must be reasonable. The Tribunal determined that a reasonable charge for sending a letter to the Respondent or her mortgagee would be £20.00 plus VAT – a total of £24.00 – and for sending a copy letter to the Respondent would be £10.00 plus VAT – a total of £12.00. The Applicant had sent 7 letters to the Respondent or her mortgagees for which they had charged a total of £599.20. The Tribunal determined to reduce this sum to the more reasonable amount of £144.00 (5 x £24.00, plus 2 x £12.00), thereby reducing the outstanding sum by a further £455.20.

20. There is no mention in the statement of account provided on 26 February to the payments made by the Respondent. These payments were in total £264.27 (£211.05 plus £53.22). The Applicant had not made any submission that these sums had not been paid. The cheques were sent after the first date on the said statement and should therefore have been referred to. The Tribunal determined to reduce the balance outstanding by the additional sum of £264.27.

21. The sum outstanding according to the statement will therefore be reduced by deducting from it the said sums of £294.56 (paragraph 18), £455.20 (paragraph 19) and £264.27 (paragraph 20). After doing so the Respondent's account is in credit to the sum of £107.51, calculated as follows:-

Administration Charges requested by the Applicant	£906.52
Less the Tribunal's amendments	
As in paragraph 18 as Court fees to be assessed by County Court	£294.56
As in paragraph 19 – reduction in charges for Correspondence	£455.20
As in paragraph 20 – payments made by Respondent	<u>£264.27</u>
	<u>£1,014.03</u> <u>£1,014.03</u>
Balance due to Respondent	£107.51

As stated previously, it is a matter for the Court as to whether any additional sums by way of costs are to be added to the statement of account

10<sup>th</sup> June 2013

P W J Millward – Chairman