



9658

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

Case Reference : **BIR/00GG/LIS/2013/0012
& BIR/00GG/LAC/2013/0002**

Property : **22 The Grove, Shifnal, Shropshire,
TF11 9EH**

Applicant : **Housemans Management
Company Limited**

Representative : **Countrywide Estate Management**

Respondent : **Mr D R Gough**

Type of Application : **Application under Section 27A (and
19) of the Landlord & Tenant Act 1985
for determination of the liability and
reasonableness in respect of service
charges and an Application under
Schedule 11 to the Commonhold &
Leasehold Reform Act 2002 for a
determination as to a liability to pay
an administration charge.**

Tribunal Members : **Mr G S Freckelton FRICS (Chairman)
Mr P Hawksworth LLB**

Date and venue of : **23rd January 2014. The matter was
dealt with as a paper determination.**

Date of Decision : **05th February 2014**

DECISION

1. DECISION

- 1.1 The Tribunal do not make a determination in respect of the service charge as this is agreed between the parties.
- 1.2 The Tribunal determine that the legal and administration charges payable by the Respondent is the sum of £424.00 including VAT and disbursements.

2. THE APPLICATION AND THE DISPUTE

- 2.1 The Respondent is the lessee of a flat, which forms part of a development of purpose built flats situated at The Grove, Shifnal, Shropshire, TF11 9EH.
- 2.2 On 2nd August 2013, the Applicant submitted an application to the First Tier Property Chamber (Residential Property). The Application was received by the Tribunal on 6th August 2013.
- 2.3 The Application was for determination of service charges demanded from the Respondent by the Applicant for the service charge year 1st January 2012 – 31st December 2012 and for the determination as to liability to pay administration charges totalling £637.35. The Application arose following an order from District Judge Brown sitting at Telford County Court, Telford, TF3 4JP dated 22nd February 2013 transferring the claim to the Leasehold Valuation Tribunal.
- 2.4 The Tribunal issued Directions on 18th October 2013 in respect of both the Application under Section 27A of the Landlord & Tenant Act 1985 and the Application under Schedule 11 to the Commonhold & Leasehold Reform Act 2002.

3. THE LEASE

- 3.1 The property is held under a Lease dated 27th April 2007 between Westbury Homes (Holdings) Ltd and David Richard Gough.
- 3.2 Schedule 5 of the Lease details the lessee's covenants, Schedule 6 details the lessor's covenants and Schedule 7 gives details of the service charge and services provided.

4. THE LEGAL FRAMEWORK

- 4.1 Given that the parties have agreed the service charge liability, there is no need to set out in this decision the legal framework relating to service charges under the Landlord and Tenant Act 1985
- 4.5 Administration charges are dealt with under Schedule 11 of the Commonhold & Leasehold Reform Act 2002.

- 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.*
- (2) *But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.*
- (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.*
- (4) *An order amending sub-paragraph (1) may be made by the appropriate national authority.*

Reasonableness of administration charges

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

- 3(1) *Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—*
- (a) *any administration charge specified in the lease is unreasonable, or*

- (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.
- (2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.
- (3) The variation specified in the order may be—
 - (a) the variation specified in the application, or
 - (b) such other variation as the tribunal thinks fit.
- (4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.
- (5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.
- (6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

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 a leasehold valuation 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 any payment has been made.*
- (3) *The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.*
- (4) *No application under sub-paragraph (1) may be made in respect of a matter which—*
- (a) *has been agreed or admitted by the tenant,*
 - (b) *has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*
 - (c) *has been the subject of determination by a court, or*
 - (d) *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*
- (5) *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*
- (6) *An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—*
- (a) *in a particular manner, or*
 - (b) *on particular evidence, of any question which may be the subject matter of an application under sub-paragraph (1).*

5. THE PARTIES' EVIDENCE & SUBMISSIONS

- 5.1 The parties made various submissions in respect of both the service charges and administration charge and in a letter dated 1st December 2013 sent to the Tribunal by the Respondent; the Respondent confirmed that he agreed with the sum of £811.35 for service charges made by HLM Property Management for the year ending 31st December 2012. The Tribunal, therefore, determined to proceed no further with the application under Section 27A (and 19) of the Landlord & Tenant Act 1985 for determination of the liability and reasonableness in respect of service charges. The Application under Schedule 11 of the Commonhold & Leasehold Act 2002 remains to be determined.
- 5.2 The Tribunal attended at the property on 22nd January 2014 and met with the Respondent, Mr D R Gough and Mr J Ward of Countrywide Property Management, representative of the Applicant.
- 5.3 It is clear to the Tribunal that there are three items of Administration Charge in dispute.
- (a) Invoice from HLM Property Management for £144.00 dated 17th August 2012 for administration charge for raising letters before action.
 - (b) Invoice from HLM Property Management for £150.00 dated 4th September 2012 for administration charge for 'instructing solicitors'.
 - (c) Invoice from HLM Property Management for £343.25 dated 4th May 2012 for administration charge for re-charged expenditure for legal costs. A copy of the invoice from SLC Solicitors was provided to the Tribunal. This confirmed that the invoice was made up of £295.00 being professional fees, £44.25 Value Added Tax and £4.00 disbursement for HM Land Registry fee.
- 5.4 Mr Gough confirmed to the Tribunal that he had received the various invoices but no explanation was made as to how the administration charges of £144.00 and £150.00 were made up. Mr Gough also confirmed that the invoice for £343.25 in respect of legal fees had been paid by his mortgage provider.
- 5.5 The Respondent further submitted that he had endeavoured to contact Countrywide to arrange a direct debit to be set up but that he had been unable to obtain a response from them. Eventually, he did set up a direct debit without the agreement of Countrywide, following which he had received invoices for the administration charges. The Respondent accepted that a charge of £30.00 per annum was reasonable to cover the additional costs of him making monthly payments.

- 5.6 Mr Ward, for the Applicant, confirmed that the administration charge of £144.00 was a standard charge for providing an initial letter and a further reminder letter before action. The administration charge of £150.00 was his company's standard fee for providing a pack and instructing solicitors.

6. DETERMINATION IN RESPECT OF THE ADMINISTRATION CHARGES

- 6.1 Following the Hearing, the Tribunal reviewed the evidence submitted by the parties.

Legal Charges of £343.25

- 6.2 The Tribunal determine that an application to the court could be dealt with by a paralegal whose fees would be in the region of £100.00 - £125.00 per hour. Allowing for the letters of correspondence and completing particulars of claim, the Tribunal determine that the sum of £200.00 plus VAT (£240.00 in total) was an appropriate fee to which the sum of £4.00 for disbursements should be added.

- 6.3 This resulted in a charge of £244.00.

Administration Charge of £144.00

- 6.4 The Tribunal determine that the charge of £144.00 was unreasonable as, on the evidence of the Applicant, two letters before action would have been sent to the Respondent. The Tribunal therefore determine that the sum of £50.00 plus VAT would be reasonable.

- 6.5 The Tribunal therefore determine that the sum of £60.00 was an appropriate fee.

Administration Charge of £150.00

- 6.6 The Tribunal determine that the administration charge of £150.00 was unreasonable and that many managing agents would instruct solicitors without making any additional charge. However, the Tribunal acknowledge that there is a considerable amount of work involved in providing the necessary copy correspondence to solicitors and determine that an administration fee of £100.00 plus Value Added Tax is appropriate.

- 6.7 The Tribunal therefore determine that the sum of £120.00 was an appropriate fee.

- 6.8 The Tribunal therefore determine that the total administration and legal charges should be £424.00 including disbursements and VAT.

7. APPEAL

- 7.1 If either party is dissatisfied with this Decision, they may apply for permission to appeal to the Upper Tribunal (Lands Chambers). 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.

Graham Freckelton FRICS
Chairman
First-Tier Tribunal Property Chamber (Residential Property)