



**First-tier Tribunal
Property Chamber
(Residential Property)**

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| Case Reference | : | CAM/00MG/LAC/2015/0005 |
| Property | : | 23 Wooton Court, New Bradwell, Milton Keynes, MK13 0AX |
| Applicants | : | Janet Reina Charles and Derek Michael Charles |
| Respondent | : | Shoredome Ltd. |
| Date of Application | : | 7th September 2015 |
| Type of Application | : | To determine reasonableness and payability of variable administration charges |
| The Tribunal | : | Bruce Edgington (lawyer chair) Mr. David Brown FRICS |

DECISION

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1. The administration charge of £36 for registration of an assured shorthold tenancy is reasonable.
2. The variable administration charges for non payment of ground rent and service charges are not payable or reasonable.
3. The Tribunal normally has no jurisdiction to determine matters relating to ground rent. However, as such a determination is required because the administration charges relate to the alleged non-payment of ground rent on time, it is determined that the ground rent was not payable because the correct statutory notices had not been served.
4. For the avoidance of doubt the Tribunal does not vary the terms of the lease.

Reasons

Introduction

5. The Application is for the Tribunal to determine the reasonableness and

payability of variable administration charges. As seems to be the case with almost every fact in this unfortunate series of events, the parties do not seem to be able to agree anything. In the application, the Applicants say that the original freeholder went into liquidation in about 2010/11 and the freehold was purchased in 2013 by Broburn Ltd. as trustee for the Respondent. They say that they knew nothing about this until mid August 2015 by which time the Respondent had purportedly served a section 146 (of the **Law of Property Act 1925**) Notice ("section 146 Notice") as a precursor to forfeiture for unpaid service charges and ground rent.

6. The Applicants say that part of the section 146 Notice was for £475 'admin charge'. There is also reference to a fee of £150 for registration of an assured shorthold tenancy. Finally, the Applicants ask the Tribunal to vary the provision for payment for the fee for registration of the assured shorthold tenancy by deleting the words 'not less than' or to provide that the fee shall be a reasonable fixed fee to be determined by this Tribunal. As to that matter, the Tribunal has no jurisdiction. The existing fee is not fixed and it is only a fixed fee that can be varied.
7. From the papers it seems clear that the ground rent is £200 per annum and 3 years had not been paid. An insurance premium was also due and all those outstanding amounts were paid when the Applicants received a letter from their mortgage company who had been contacted by the Respondent. The Respondent says that these amounts were not paid on time and the administration fees were incurred and included the work undertaken in respect of the section 146 Notice or Notices.
8. A directions order was made by the Tribunal on the 15th September 2015 which ordered the parties to file and serve evidence. The order said that the Tribunal would not inspect the property and would be prepared to deal with the determination on the basis of the papers and written representations made. It pointed out that a determination would not be made before 4th November 2015 and either party had the opportunity to both ask for an inspection of the property and have an oral hearing if they so requested. No request was made for either an inspection or an oral hearing.

The Law

9. Paragraph 1 of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") defines an administration charge as being:-

"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable... in connection with the grant of approvals...or a breach (or alleged breach) of a covenant or condition in his lease."

10. Paragraph 2 of this Schedule, which applies to amounts payable after 30th September 2003, then says:-

"a variable administration charge is payable only to the extent that the amount of the charge is reasonable"

11. Paragraph 5 of the Schedule provides that an application may be made to this Tribunal, as successor to the LVT, for a determination as to whether an administration charge is payable which includes, by definition, a determination as to whether it is reasonable. The Tribunal also has the power to vary a fixed administration charge.
12. Two other relevant matters of law are in the 2002 Act. Section 166 provides that before a ground rent becomes payable, a demand must be sent which complies with the regulations. The Applicants have produced a copy of the regulations relevant at the time which provide that any such demand must include "*the name of the leaseholder to whom the notice is given*". The section also says that a demand must be "*addressed to the tenant at the dwelling unless he has notified the landlord in writing of a different address*".
13. Finally, section 168 of the 2002 Act provides that before a landlord can serve a section 146 Notice, the tenant must admit the breach or a determination must be obtained from a court, an arbitral tribunal or this Tribunal that such a breach has occurred.

The Lease

14. The Tribunal has been supplied with a copy of the lease in this case. The landlord is said to be M3 Development Ltd. and the tenants are the Applicants. It is dated 15th December 2006 and the term is 125 years from 24th June 2006 with a rising ground rent. For the first 25 year period, it is £200.00 per annum payable on the 24th June each year.
15. Clause 2(9) of the lease enables the landlord to claim "*all costs charges and expenses (including solicitors costs and surveyors fees) incurred by the lessor for the purpose of or incidental to or in contemplation of the preparation and service of any...*" section 146 Notice.
16. Clause 2(7)(c) is the clause providing that the tenant must register an assured shorthold tenancy and the fee is said to be "*not less than Thirty Pounds (£30) plus VAT*". In other words it can be more than that figure but is always subject to scrutiny by this Tribunal.

Discussion

17. The problem in this case started with the demands being sent to the Applicants at the property address. The first question to be determined is whether the ground rent demands were compliant with the regulations. They are in the bundle produced for the Tribunal and none contain the name of the leaseholders i.e. the Applicants. Accordingly, the ground rent was not payable when the section 146 Notice or Notices was or were served.
18. As to whether they should have been sent to the property, the Respondent's evidence is provided by Ross Lowman Laney, a director. His statement dated 21st October 2015 says that his company completed the purchase of the freehold on the 27th June 2013. He says that he telephoned CS2 on the 11th July 2013. He

believed, as was the case, that they were the managing agents. He wanted information about the insurance arrangements.

19. Significantly, CS2 wrote to him on the same date sending a print out of their database for the flats. That is also in the bundle and it is quite clear that alongside 23 Wooton Court, the address for the Applicants is set out as “*Woodlands, Whaddon Hall, High Street, Whaddon, Milton Keynes MK17 0NA*” which is the Applicants’ current address according to the application form.
20. Thus, it seems clear that the Applicants had given another address for service and yet the Respondent chose to ignore that. It is also significant that a number of the envelopes sent to the address were simply marked “The Leaseholder (owner)” at the property. Despite what the Respondents suggests, it seems reasonable to infer that such letters would have been seen to be general advertising material by a sub-tenant and disposed of as such.

Conclusions

21. As the ground rent demand is not in the proper form, section 166 of the 2002 Act makes it clear that such rent was not actually payable, even though it has recently been paid. In those circumstances all other matters raised by the parties become irrelevant as the Applicants say, in effect, that the £36 for the registration of the assured shorthold tenancy is agreed. Having said that, the sums subsequently claimed as administration charges do seem somewhat excessive bearing in mind that the legal advice taken would presumably have been that (a) the ground rent was not payable and (b) that a section 146 Notice was not relevant because of that fact and, in any event, as the pre-requisites in section 168 of the 2002 Act had not been complied with.
22. The Tribunal would also like to make it clear that the behaviour of the Applicants is not without criticism. It seems that Mrs. Charles was a director of the residents’ management company whose managing agent was CS2. As we know that there was contact between the Respondent and CS2 in 2013, and we also know that the Applicants are experienced long leaseholders – they have other properties nearby – one could have expected some more activity on their part to find out who the freeholder was before mid August 2015. They must have understood that ground rent and insurance premiums were building up and would be needed and could have, no doubt, with a little effort, found out the name and address of the freeholder.
23. If they had, no doubt much of this time, effort, bad feeling and money could have been avoided.

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Bruce Edgington
Regional Judge
20th November 2015

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.