

12068



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

Case reference : **LON/00AK/LAC/2016/0022**

Property : **23b Tewkesbury Terrace, new
Southgate, London N11 2LT**

Applicant : **Mr Paramanantharajah Shivarajan
and Mrs Shivarajan**

Representative : **Self**

Respondent : **Mr Richard Wall**

Representative : **Self**

Type of application : **For the determination of the
reasonableness of administration
charges**

Tribunal members : **Judge Hargreaves**

**Date and venue of
hearing** : **10 Alfred Place, London WC1E 7LR
19th April 2016**

Date of decision : **28th November 2016**

DECISION

The Tribunal determines that the administration charge of £6,345 is reasonable and payable by the First Applicant to the Respondent.

REASONS

1. By a decision of this Tribunal dated 15th June 2014 (after a hearing on 30th April 2014), it was determined that Mr Shivarajan, the long leaseholder of a flat at 23 Tewkesbury Terrace, was in breach of the covenants contained in paragraphs 3, 4 and 5 of the schedule to the lease dated 23rd September 1987. That decision was made pursuant to s168(4) Commonhold and Leasehold Reform Act 2002. The breaches were related to unlawful sub-letting on a room by room basis to a series of occupiers with no connection to each other. The Tribunal's decision recorded that Mr Shivarajan did not contest the application, and it accepted Mr Wall's evidence. Since the Tribunal found that the breaches were continuing, it warned Mr Shivarajan that he ran the risk of service of a notice prior to and the possibility of forfeiture proceedings pursuant to s146 Law of Property Act 1925.
2. On 21st October 2014 Mr Wall's solicitors served a demand for fees pursuant to clause 3(18) of the lease, together with the requisite summary of tenants' rights and obligations, on the First Applicant. The amount claimed in respect of solicitor's and counsel's fees is supported by a detailed schedule and amounts to £6,354. The demand is described as being in respect of the following: *"Legal costs and expenses incurred by the Landlord for the purpose of or incidental to the preparation and service of a notice under section 146 of the Law of property Act 1925 requiring the Tenant to remedy breaches of covenant contained in the lease, to include preparation of letter before action, an application to the Property tribunal under section 168(4) of the Commonhold and Leasehold Reform Act 2002 to obtain a determination of a breach of lease, and the preparation and service of a notice under section 146 of the Law of Property Act 1925."* An original demand is on the court file and it is clearly signed by Mr Wall's solicitors.
3. Clause 3(18) of the lease provides that the leaseholder should *"pay all costs charges and expenses including Solicitors costs and Surveyors fees incurred by the landlord for the purpose of or incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 requiring the Tenant to remedy the breach of any of the covenants herein contained notwithstanding that forfeiture for such breach may be avoided otherwise than by relief granted by the Court."*
4. The Tribunal issued directions on 19th October 2016 requiring Mr Wall to send copies of other relevant documents to the Applicants by 4th November, with a requirement for the Applicants to reply by 11th November 2016. The application itself was accompanied by a witness statement (though unsigned, with no statement of truth) prepared by Sarah Shivarajan, which is largely irrelevant. It does however contain an admission that Mr Wall sent a letter to the leaseholder's mortgagee threatening forfeiture proceedings.

5. Mr Wall has filed a brief statement dated 1st November 2016. The Applicants have not replied. He exhibits clear evidence relating to the subject matter of the demand (ie a letter before action, a reference to the Tribunal proceedings, a s146 notice and a letter before action dated 19th August 2014), and those exhibits relate to the solicitor's costs schedule in terms of items and relevant dates. Mr Wall has demonstrated his entitlement to these costs pursuant to the terms of the lease and discharged his evidential burden.
6. The Applicants have failed to show any reason why the charges are not reasonable, despite the Tribunal indicating that this aspect of the application is their responsibility.
7. Not only have the Applicants failed to make out any case on reasonableness of charges, given the scope of the work carried out by Mr Wall's solicitors and their hourly rates, including instructing counsel at the hearing, the overall charge is reasonable. It is therefore payable in full by the First Applicant.

Judge Hargreaves
25th November 2016

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 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.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 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 any payment has been made.
- (3) The jurisdiction conferred on the appropriate 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).