



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

Case reference : LON/OOAY/LAC/2016/0027

Property : Flat 4, 35 Poynders Road, London
SW4 8GA

Applicant : Mr Stephen Openshaw

Representative : In person

Respondent : Firstport – managing agents
The Compton Group - landlord

Representative : Firstport

Type of application : For the determination of the
reasonableness of and the liability
to pay a service charge

Tribunal members : Judge O’Sullivan
Mr K Cartwright FRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 28 September 2016

DECISION

The application

1. The Applicant seeks a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the amount of administration charges payable by the Applicant.
2. The relevant legal provisions are set out in the Appendix to this decision.
3. Directions were made dated 20 July 2016 which provided for the parties to lodge statements of case in support and to indicate whether they wished to have an oral hearing. Neither party having requested an oral hearing this matter was considered by way of a paper determination on 28 September 2016.

The background

4. The property which is the subject of this application is a flat contained in a purpose built block of 12 flats. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
5. The Applicant holds a long lease of the property dated 23 August 2002 (the “Lease”) which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The administration charges

6. The application relates to seven separate administration charges levied on him each in the sum of £60 in relation to late payments. Two of these charges are said to have been levied on the late payments themselves.
7. The charges are disputed on the basis that they are not reasonable and contain a significant profit element. The Applicant has disputed the charges in writing but has had no response and no justification of the charges has been provided. When the Applicant was seeking to remortgage his property the Respondent is said to have threatened to withhold consent and he was therefore forced to pay the sums demanded.
8. The Respondent managing agent filed a statement dated 13 September 2016 which provided a breakdown of the charges noting the relevant sums and the periods to which they related. Although it correctly made

reference to the relevant legislation it did not identify the provisions in the Lease upon which it relied. However it went on to say that it had credited those charges as a gesture of goodwill and attached a statement of account which it said confirmed the credits made. On that basis the Respondent says that there are no administration charges in dispute and that as result the tribunal does not have jurisdiction.

The tribunal's decision

9. The Applicant attached a statement of account to his application dated 14 April 2016 which showed the seven disputed amounts charge on 3 July 2013, 9 January 2014, 4 June 2014, 10 June 2015, 22 July 2015, 23 December 2015 and 19 January 2016. The Respondent relies on a statement of account dated 13 September 2016 which seems to show each administration charge being credited back on the original day of charge. It appears therefore that the charges in issue have been credited back to the Applicant. In such case the tribunal would have no further jurisdiction in this matter.
10. However from the Respondent's own evidence it appears that these charges have only been recently been credited back to the Applicant's account and it is unclear to the tribunal why they have been backdated on the account in this manner rather than being shown as a lump credit. The tribunal has not received any correspondence from the Applicant to confirm that he accepts that the charges have been refunded. The tribunal has therefore gone on to consider whether the charges are reasonable in principle as we consider this may be of assistance to the parties in the event that the Applicant does not accept he has received credit for the amounts in dispute.
11. The Respondent made no reference to the provisions of the Lease relied upon in connection with the charges. The tribunal has considered the terms of the lease and considers that the only clause potentially under which an administration charge of this nature could be levied is clause 4 of the Eighth Schedule pursuant to which the lessee covenants as follows;

"To pay all costs charges and expenses (including legal costs and fees payable to a Surveyor) incurred by the Lessor in or in contemplation of any proceedings or service of any notice under Section 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 Demised Premises the drawing up of schedules of dilapidations and notices and any inspection to ascertain which 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".

12. The tribunal has no evidence that the charges in question were levied in contemplation of any proceedings or any notice under section 146. In fact the charges seem to be rather levied as a standard late payment fee and would not in the view of this tribunal fall within the provisions of clause 4. The tribunal therefore finds that the charges are not recoverable as administration charges under the Lease.

Applications for costs

13. The tribunal had no applications for costs before it.

Name: S O'Sullivan

Date: 28 September 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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).