



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

Case Reference : **MAN/OOBY/LAC/2012/0041**

Property : **Apartment 314 The X Building, 30
Bixteth Street, Liverpool L3 9BA**

Applicant : **David Crease**

Representative : **None**

Respondent : **Pemberstone Reversions (3) Limited**

Representative : **J.B. Leitch Solicitors**

Type of Application : **Application for a determination as to
liability to pay and reasonableness of
a variable administration charge
under Schedule 11 of the
Commonhold and Leasehold reform
Act 2002 ("the Act")**

Tribunal Members : **Mr G. C. Freeman
Mr J Faulkner FRICS**

**Date and venue of
Hearing** : **1 May 2013
The Tribunal Service, 36 Dale
Street, Liverpool L2 5UZ**

Date of Decision : **19th August 2013**

DECISION

1. Administration charges of £294.25 applied to the Applicant's service charge account in the period 11th July 2008 to 12th June 2009 are unreasonable and are not payable by the Applicant to the Respondent.

2. No part of the Applicant's costs incurred in connection with the Application are to be included in the service charge payable by the Applicant for the period which is the subject of the application.

The Application

- 1 By an application dated 16th December 2012, David Crease, the Applicant, applied to the Leasehold Valuation Tribunal ("the Tribunal") under paragraph 5(1) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") for a determination of his liability to pay administration charges in connection with his tenancy of Apartment 314 The X Building, 30 Bixteth Street, Liverpool L3 9BA ("the Property"). The Applicant also applies for an order under section 20C of the Landlord and Tenant Act 1985.
- 2 Directions were issued by a Procedural Chairman on 3rd January 2013. A hearing took place at the Tribunal Service, 36, Dale Street, Liverpool L2 5UZ on 1st May 2013. The Applicant attended in person. The Respondent was represented by Mr C Buckingham of Counsel. The hearing was adjourned until 9th August 2013, but prior to this date the Applicant indicated he could not attend and it was agreed that the case could be dealt with by the Tribunal without further attendance by the parties.

Background

- 3 The case arises from the Tribunal's decision in an earlier case involving the same parties and the Property. The case reference is **MAN/OOBY/LIS/2011/0025**. From time to time the Respondent has applied administration charges to the Applicant's service charge account, as a result of the Applicant failing to pay for the replacement of the front door to the apartment which was damaged by Merseyside Police. The Respondent paid for the door to be replaced and sought to recover the cost from the Applicant by way of service charge.

The Applicant's Case

4. At the hearing Mr Crease contested the following administration fees applied to his account on the following dates:

<u>Date</u>	<u>Amount</u>
11 July 2008	£35.00
22 July 2008	£35.00
10 October 2008	£35.00

21 October 2008	£35.00
3 December 2008	£79.25
12 June 2009	£75.00

Of these, the first four amounts are “late payment fees” applied to the account by virtue of non-payment of the balance of service charge. The fifth amount is shown as “solicitor referral fee” and the sixth amount is shown as “SLC Court Fee”. The Respondent explained that “solicitor’s referral fee” represented the cost of the Respondent’s agents providing a statement of case to the Respondent’s solicitors.

5. The Applicant also contested the sum of £879.61 paid in settlement of costs apparently ordered to be paid by the Cambridge County Court (Claim No 9CB01270) in proceedings for non-payment of service charge and ordered to be paid by the Applicant to the Respondent. The judgement in default obtained by the Respondent in these proceedings was set aside and the case discontinued by order of the Court on 16th September 2009.

The Respondent’s Case

6. Counsel for the Respondent referred to Clause 6.7 of the Lease which entitles the Landlord to inspect the property, serve notice of any defects found and to carry out repairs of which notice is given to the tenant. Clause 6.8 entitles the landlord to recover the cost of those repairs from the tenant. Counsel argued that the Respondent was entitled to carry out the repairs to the front door and recover the cost despite the Respondent having failed to serve the notice on the Applicant required by clause 6.7. He suggested that the need for the repairs was an emergency and it was not therefore necessary for notice to be given. He argued that it therefore followed that any charges levied for non-payment of the cost of repairs were reasonable.

The Law

7. An “administration charge” is defined in paragraph 1(1) of Schedule 11 to the 2002 Act as:

“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.”

8. Paragraph 2 states that “A variable administration charge is payable only to the extent that the amount of the charge is reasonable. A “variable administration charge” means “an administration charge payable by a tenant which is neither – (a) specified in his lease, nor (b) calculated by reference to a formula in his lease” (paragraph 1(3)).
9. Paragraph 5(1) provides that “An application may be made to a [First Tier Tribunal Property Chamber] 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 matter in which it is payable.”
10. Sub-paragraphs (2) and (4) make it clear that the Tribunal has jurisdiction in this regard whether or not any payment has been made unless, inter alia, the matter has been agreed or admitted by the tenant.

Determination

11. The Tribunal determined that the Property is a dwelling for the purposes of the 2002 Act. At the hearing it was not disputed that the lease provides for administration charges to be levied.
12. The Tribunal noted that no evidence was adduced by the Respondent showing that it or its managing agents had attempted to contact the Applicant to advise him of the damage to the front door. The Tribunal decided that, given the door entry system at the property, the damage to the front door was an urgent repair but not an emergency, warranting the carrying out of repairs without notice to the tenant.
13. The Tribunal proceeded to consider the sums referred to at paragraph 4 above. It is useful here to include a paragraph from the original decision as follows:-

“25. The Tribunal then considered the legal and other costs which had been applied to the Applicant’s account from time to time. These charges are administrative charges within the meaning of paragraph 1(1) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. They are not service charges as defined in paragraph 18 above. There is no application before this Tribunal for a determination as to the reasonableness of such charges. Had there been, the Tribunal consider that in the light of its finding at paragraph 20 above, such administrative charges would be unreasonable and not payable by the Applicant, always assuming that the Respondent was entitled to charge under the Lease”

The Tribunal decided that no evidence had been adduced which would alter the Tribunal's opinion expressed as above.

14. Of the sums referred to at paragraph 4 above, looking at the service charge statement provided by the Respondent's managing agents to the Tribunal dated 17th September 2009, it is clear to the Tribunal that they relate directly to the non-payment of the cost of repairs to the front door. The Tribunal decided in the earlier case that these costs were not a reasonable service charge item. It follows that any administrative charges arising out of non-payment must therefore not be reasonable. The Tribunal makes no decision on the costs of £879.61 referred to in paragraph 5. These costs were presumably ordered to be paid by the Court and are not payable by virtue of the lease. Thus they are not administration charges which the Tribunal may consider under the Act.

Section 20C Application

15. Some leases allow a landlord to recover costs incurred in connection with proceedings before the LVT as part of the service charge. The Applicant has made an application under s20C of the Act to disallow the costs incurred by the Respondent of the application in calculating service charge payable for the Property, subject, of course, to such costs being properly recoverable under the provisions of the Lease.
16. The Tribunal determines that, as the Applicant has largely succeeded in his application, it would be reasonable to make such an order, and they therefore have done so.