



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

Case Reference	:	CAM/12UG/LSC/2015/0026
Property	:	64 Sweetpea Way, Cambridge, CB4 2ZA
Applicant	:	Duncan Simpson
Respondents	:	Homeground Management Ltd. and Abacus Land 4 Ltd.
Date of Application	:	24th March 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 variable administration fees of £145.00 and legal fees of £183.00 said to have been incurred by the Respondents are not payable or reasonable.
2. 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 is not payable until the correct statutory notice is served.
3. The Tribunal makes an order pursuant to Section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") preventing the Respondents from recovering their costs of representation before this Tribunal (if any) from the Applicant as part of any future service charge demand.

Reasons

Introduction

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

payability of variable administration charges, namely £145.00 for reminders to pay ground rent and £183 in legal costs claimed from the Applicant on behalf of the Respondents. Abacus Land 4 Ltd. is named as landlord and Homeground Management Ltd. appears to be its managing agent.

5. From the papers it seems clear that the ground rent is £100 per annum which has been paid. The Respondents say that it was not paid on time and that £45.00 is payable for one reminder letter and £100.00 for a second reminder letter. A further £183.00 has been claimed as legal fees. As there appear to be errors in the facts claimed by both parties, the precise wording of the application is that the Applicant explains that in the year 2015:-

“An additional £45 added to the ground rent.

Whether homeground is entitled to any payment given that I have paid the ground rent directly to the landlord, and offered to pay their solicitors the legal fees they are claiming.”

6. When asked what questions to Applicant wants the Tribunal to decide, he says:-

“Does any letter stating £245 ground rent, when the lease very clearly says the amount is £200, affects my rights to withhold payment until a proper invoice is received? Asking for £245 is a clear violation of section 5.4(g) of the consumer protection from unfair trading regulations 2008.

Are any terms of the lease which claim I am responsible for the landlord's legal costs unenforceable because they are unfair? OFT356 section 4.4 specifically mentions landlord's legal costs as a charge which are likely to be unfair.

Even the legal costs terms are enforceable I would allege that it would be reasonable to send me a reminder and give me a reasonable chance to pay before incurring legal costs. I would allege that the letter I did receive might be contrary to section 7 of the Consumer Protection from unfair trading regulations 2008.”

7. Under the heading of 'further comments', the Applicant adds:-

“I did not pay because I could either not find a cheque book or knew none of the detail, including the company name, required to make payment. I would allege that this does not constitute 'willful and voluntary' failure to pay.

It would be reasonable to take into account the fact that post does sometimes take months to arrive and sometimes never arrives at all. I have experienced both, especially in connection with correspondence with British Gas.

I have paid £200 directly to the landlord, which has not been returned, and therefore no ground rent is owed. I have also offered to pay the £183 legal fees but only under duress and without admitting liability. If this money was not due then I would request that the court order that the £183 payment be refunded."

8. A directions order was made by the Tribunal on the 27th March 2015 which ordered the parties to file and serve evidence. The Applicant was to file and serve the administration charge demands and correspondence he refers to in his application. He failed to do that. The Respondents were to file a statement in response setting out their justification in principle and in law for the disputed fees claimed. A letter has been written by solicitors dated 17th April 2015.
9. 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 12th May 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

10. 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 a breach (or alleged breach) of a covenant or condition in his lease."

11. 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"

12. Finally, 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 Lease

13. The Tribunal has been supplied with a certified copy of the lease in this case. It is a modern tri-partite lease with a landlord, a management company and the lessee who is in fact the Applicant. It is dated 2nd November 2011 and the term is 125 years from 29th September 2009 with a rising ground rent. For the first 10 year period, it is £100.00 per annum payable on the 1st January each year.
14. Clause 3.19 allows the landlord to claim "*...all expenses costs claims damages demands any other liabilities whatsoever resulting from any non-observance or*

non-performance by the Tenant of any covenants relating to the Demised Premises...".

Discussion

15. The Respondents claim that Homeground Management Ltd. sent a ground rent demand on the 14th November 2014 and a copy is in the bundle provided for the Tribunal. It was not provided by the Applicant and he now claims that he did not receive it. He claims to have paid £200 direct to the landlord but has provided no evidence to substantiate that. He does not explain why he paid £200 when the ground rent was only £100. However, in his application he accepts that he did not pay on time but the reason given is very vague i.e. either he had no cheque book or he did not have details of the company to whom the rent was payable.
16. The ground rent demand produced by the Respondents' solicitor is not in the form prescribed by section 166 of the 2002 Act and the **Landlord and Tenant (Notice of Rent) (England) Regulations 2004** because the information required to be given to tenants is mostly omitted.

Conclusions

17. As the ground rent demand is not in the proper form, section 166 of the 2002 Act makes it clear that such rent is not payable. In those circumstances all other matters raised by the parties become irrelevant. However, the Applicant should know, for future reference, that whilst the unfair contract terms regulations apply to leases, they would not apply to the relevant terms of this lease because the tenant is protected by the jurisdiction of this Tribunal.
18. Having said that, sums of £45 and then £100 respectively for just writing a letter are completely unrealistic and would have been deemed to be unreasonable. If the legal fees of £183 had been assessed, the complete lack of any information as to how these fees were calculated would also have meant a substantial reduction or possibly a determination that they were not reasonable at all.



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Bruce Edgington
Regional Judge
13th May 2015