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

Case reference : **LON/00AD/LSC/2014/0551**

Property : **Flat 23 Beavers Lodge, 28 Carlton Road, Sidcup, Kent DA14 6TU**

Applicant : **Mrs E J Knight**

Representative : **Cook Taylor Woodhouse Solicitors**

Respondent : **Sinclair Garden Investments (Kensington) Limited**

Representative : **First Management Limited T/A Hurst Managements (Hurst)**

Type of application : **For the determination of the reasonableness of and the liability to pay an administration charge**

Tribunal member(s) : **Mr Jeremy Donegan (Tribunal Judge)**

Date and venue of paper hearing : **21 January 2015
10 Alfred Place, London WC1E 7LR**

Date of decision : **21 January 2015**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the Applicant is liable to pay an administration charge of £230 plus VAT (total £284.40) to the Respondent, for providing replies to leasehold property enquiries (“the Enquiries”).
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”).
- (3) The application for reimbursement of the tribunal fee/s paid by the Applicant is refused.

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 to the Respondent. The Applicant also seeks an order under section 20C of the 1985 Act.
2. The application was received by the tribunal on 30 October 2014 and directions were issued on 10 November 2014. The directions included provision that the case be allocated to the paper track, to be determined upon the basis of written representations. Neither of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 21 January 2015.
3. The Respondent filed a statement of case in accordance with the directions. This consisted of a witness statement from Mr Mark Kelly dated 03 December 2014 and a bundle of supporting documents.
4. The Applicant did not file any statement of case or bundles as required by the directions, notwithstanding email and telephone reminders from the tribunal on 13 and 14 January 2015. Accordingly the tribunal determined the matter based on the application form and accompanying documents and the Respondent’s statement of case.
5. The relevant legal provisions are set out in the Appendix to this decision.

The background

6. The Applicant is the former leaseholder of 23 Beavers Lodge, 28 Carlton Road, Sidcup, Kent DA14 6TU (“the Flat”). The Respondent is the freeholder of Beavers Lodge (“the Block”). The lease is tripartite and includes obligations for the management company, Beavers House

Management Limited (“BHML”) to maintain and decorate the Block, to clean the common-ways and to keep service charge accounts.

7. On 26 August 2014 the Applicant’s solicitors sent the Enquiries to the Respondent, in connection with the proposed sale of the Flat. These were in standard form and ran to 7 pages. The Respondent’s agents, Hurst Managements (“Hurst”) responded on 29 August 2014. The first paragraph of their letter read:

“We refer to your recent request via the Landlord for information about the present Lessee and the current record of payments/keeping of covenants/insurance details, etc. We are prepared to provide you with information in the form of a Landlords Certificate upon receipt of an advance administration fee of £291.67 plus VAT @ 20% (£350.00). The certificate will include, where appropriate, copies of the last three years audited service charge statements and copy Insurance Certificate. Please note that where we do not manage the property in question we are generally unable to deal with any enquiries relating to the management of the property or service charges”

8. The Applicant paid the administration charge of £350 and Hurst provided replies to the Enquiries in the form of a “Landlords Certificate & Reference”, dated 11 September 2014. The Applicant subsequently sold the Flat in November 2014 and now seeks a determination of her liability to pay the administration charge.

Evidence and submissions

9. The Applicant’s case, as set out in grounds of her application can be summarised as follows:

(a) She paid the administration charge for replies to the Enquiries; otherwise there would have been considerable difficulties and delays in proceeding with the sale of the Flat.

(b) The charge is excessive, as the maintenance of the Block and the service charges are dealt with by BHML.

(c) The only service provided by the Respondent is to insure the Block and collect ground rents.

(d) Hurst referred many of the Enquiries to BHML.

(e) The fee charged by Hurst “..for this scanty information is outrageously high and the majority of which should be refunded”.

10. The Respondent's case was set out in some detail in Mr Kelly's statement. He is director of Hurst, which collect the ground rents at the Block.
11. In his statement, Mr Kelly makes the point that Hurst informed the Applicant's solicitors that they did not deal with the day to day management of the Block in their letter of 29 August 2014. The Applicant was aware of this when she paid the administration charge.
12. Mr Kelly provided a breakdown of Hurst's time spent in dealing with the Enquiries, which is summarised below:
 - Considering initial request from Applicant's solicitors and responding – 10 minutes
 - Retrieving lease from distant archive – 15 minutes
 - Confirming ground rent position – 10 minutes
 - Confirming insurance position – 10 minutes
 - Dealing with other Enquiries -75 minutes
13. The total time spent by Hurst in dealing with the Enquiries was approximately 2 hours. They currently charge the Respondent £158 per hour plus VAT for dealing with this work, so if they had charged for all of their time then the administration charge would have been a higher figure of £316 plus VAT (£379.20).

The tribunal's decision

14. The tribunal determines that the administration charge payable by the Applicant is £237 plus VAT.

Reasons for the tribunal's decision

15. In the absence of any challenge from the Applicant and based on its own knowledge and experience, the tribunal allows the charging rate of £158 per hour. This is within a reasonable range of the rates charged by professional managing agents on the South Coast. This rate takes account of the overheads incurred by Hurst in running their business.
16. The tribunal disallows the time claimed for retrieving the lease from distant archives, as this is an administrative task and should be part of Hurst's overheads.

17. The time spent in dealing with the other Enquiries is slightly on the high side and the tribunal reduces this item from 75 minutes to 1 hour. The tribunal appreciates that the Enquiries ran to 7 pages but most of the questions were for BHML, rather than Hurst, to answer. Although Hurst had to consider and answer each of the questions, this would have been a relatively straightforward task.
18. The tribunal allows all of the other time claimed by Hurst, which was reasonable. It follows that the total time allowed is 1 hour 30 minutes, which charged at £158 per hour amounts to £237. Hurst is VAT registered, as evidenced by their notepaper. Accordingly they are obliged to charge VAT on their fees and administration charge payable by the Applicant is £237 plus VAT (total £284.40). She has already paid £350 and is therefore entitled to a refund of the amount of her overpayment (£65.60).

Application under s.20C and refund of fees

19. The directions identified that one of the issues to be determined is whether an order for reimbursement of application/hearing fees¹ should be made. Taking into account the determination above, the tribunal does not order the Respondent to refund any fees paid by the Applicant.
20. In the application form, the Applicant requested an order under section 20C of the 1985 Act. Taking into account the determination above, the tribunal determines that it is not just and equitable in the circumstances to make such an order.

Reasons for the tribunal's decision

21. The Application has been largely unsuccessful in that the tribunal has allowed the bulk of the administration charge (approximately 81%). Further the Applicant's solicitors must bear some responsibility, as it should have been clear to them that Hurst would be unable to deal with most of the Enquiries. They were advised of the level of the administration charge and the fact that Hurst did not deal with the day to day management of the Block, before the fee was paid. The Applicant's solicitors could and should have confined its enquiries to matters that Hurst could deal with, namely the ground rent and insurance position, in which case a much lower fee would have been appropriate.

Name: Tribunal Judge
Donegan

Date: 21 January 2015

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

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).