



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

Case reference : **LON/0034/LAC/2014/0025**

Property : **Flat 232 Brangwyn Crescent,
Church Road, SW19 2UF**

Applicant : **Sinclair Gardens Investments
(Kensington) Ltd**

Representative : **W H Matthews and Co**

Respondent : **Mr Charles Lyn Clemo**

Representative : **In Person**

Type of application : **Sch 11 C&LRA 2002
County Court Transfer**

Tribunal members : **Judge S. Carrott**

**Date and venue of
hearing** : **11 February 2015 at 10 Alfred
Place, London WC1E 7LR (Paper
Determination)**

Date of decision : **11 February 2015**

DECISION

DECISION OF THE TRIBUNAL

1. The application for administration charges in the sum of £4,430.59 is dismissed.
2. The case is remitted to the county court for the determination of costs and any consequential application under section 20c of the Landlord and Tenant Act 1985.

Background

3. On 15 May 2014 the landlord issued a claim in the Northampton county court for 'arrears of ground rent and/or services charges.'
4. The short Particulars of Claim which accompanied the claim form detailed the claim as follows –

Excess Service Charge £461.11

Interest £9.16

Administrative Charge £4,430.59
5. By an order dated 30 October 2014, District Judge Gold, sitting at the Kingston-upon-Thames county court gave judgment for the excess service charge in the sum of £461.11 and referred the issue of the recoverability of the administration charge to the Tribunal.
6. The administration charge claimed comprised legal costs amounting to £2,850.00 (profit costs of £1,650.00 plus VAT of £330.00, Counsel's fees of £720.00 and a hearing fee of £150.00), a management fee totalling £1,434.25 (fees £1,154.75 plus VAT of £230.95, photocopy charges of £16.65 and travel expenses of £31.95) and a letter before action charged at £20.40. The administration charge however relates to previous county court proceedings which were also transferred to this tribunal.
7. In Claim No. 2YLB0160 the landlord sought service charges in the sum of £446.77 and an administration charge in the sum of £146.70. Those proceedings were transferred to the tribunal and a determination was obtained in the landlord's favour in LON/00BA/LSC/2013/0021. The tenant having lost the application, the tribunal declined to make an order under section 20C of the Landlord and Tenant Act 1985.
8. With regard to the administration charge claimed in that particular case, the tribunal held that the charge was incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 and was recoverable under the provisions of clause 2(15) of the Lease which provides that the tenant is "... to pay all expenses

including Solicitors costs and surveyors fees incurred by the Lessor incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 ... The tribunal stated in terms that the costs of preparation of notices and letters before action and the cost of instructing solicitors were all incidental to costs within the meaning of clause 2(15).

9. Further in concluding its decision the tribunal stated that it had no jurisdiction over county court costs and that the matter should be transferred back to the county court on this issue. The decision of the tribunal was 20 March 2013.
10. Armed with this decision in its favour the landlord did not in fact proceed to serve a section 146 notice. The proceedings had previously been stayed pending the determination of the tribunal. The landlord's solicitors applied for the stay to be lifted and sought costs of £811 together with the further costs occasioned by that application.
11. On 7 August 2013 the tenant paid to the landlord's solicitors a sum of £1472.12 and on the same date a consent order was entered into by the parties reflecting that sum with the costs element being set out at £811.
12. On 4 March 2014 the tenant received a letter from Wannops LLP requesting the ground rent, the excess service charge and the administration charge which is the subject of this determination. That letter did not particularise the administration charge.

The Evidence and Submissions of the Parties

13. The tribunal received three witness statements from Mr Mark Kelly on behalf of the landlord and one witness statement from the tenant.
14. Both parties referred to numerous authorities which owing to the basis of the decision of the tribunal below are unnecessary to refer to.
15. Mr Kelly, is employed by Hurst Management and has responsibility for managing the landlord's portfolio. It is possible to summarise his submissions quite briefly without doing any injustice to the substance of those submissions; first it is incumbent upon a landlord to seek a determination either as to reasonableness or breach before a section 146 notice can be served and secondly that the contractual liability entitlement to recover costs where a section 146 notice is served is on an indemnity basis for taxation. He accepts however that such costs should as a starting point be reasonable as should administration charges generally under the relevant legislation.
16. The tenant submitted in essence that since under the terms of the lease the service charges are to be recovered as further or additional rent, there is in any event no right to serve a section 146 notice, no notice was served in this case and in any event because of demands for current rent made by the landlord, the right to serve a 146 notice was waived by the landlord. Again, I stress that I am summarising the submissions of

both parties which relied on many authorities and went into considerable detail with the arguments and do not wish to do injustice to either party in summarising the submissions as I have done above.

Reasons for Decision

17. Where cases are transferred from the county court, the tribunal has no jurisdiction to deal with the issue of costs including for that matter section 20C of the Landlord and Tenant Act 1985. Once the tribunal has reached a determination, the case must be remitted to the county court for final orders including the question of costs.
18. In the present case the county court dealt with the question of costs. The costs were subsumed in the consent order dated 7 August 2013. The parties were not entitled to re-litigate that matter or indeed re-open the consent order in the instant case under the guise of administration charges whether before this tribunal or indeed the county court. Even the additional management fees claimed could be considered to fall under the rubric of costs although they had been separately itemised for the purposes of the present application before the tribunal.
19. If the tribunal did not have jurisdiction at the time to deal with the costs because those costs fell to be considered by the county court, it did not have jurisdiction now to deal with those same costs merely because they were described by the landlord as being administration charges or incidental to the preparation of a section 146 notice.
20. Where a case is remitted to the county court for the purposes of costs the parties should ensure that the costs are dealt with by the county court.
21. Accordingly this application is dismissed.

Name: Judge S Carrott

Date: 11 February 2015