11929

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

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| **Case Reference** | : | **LON/OOAH/LVA/2016/0001** |
| **Property** | : | **19 Canterbury Court, 33 St Augustine's Avenue, Croydon CR2 6JP** |
| **Applicant** | : | **Miss Rae Grillo-Abuah** |
| **Representative** | : | **Miss Grillo-Abuah in person accompanied by her sister Miss Bennett** |
| **Respondent** | : | **Canterbury Court Residents Association Limited** |
| **Representative** | : | **Mr Perring of Counsel, instructed by McMillan Williams Solicitors**<br>**Mr J McConway, Company Secretary of the Respondent** |
| **Type of Application** | : | **Application under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 for the reasonableness and pay ability of administration charges** |
| **Tribunal Members** | : | **Tribunal Judge Dutton**<br>**Mrs S F Redmond BSc Econ MRICS** |
| **Date and venue of Hearing** | : | **10 Alfred Place, London WC1E 7LR on 1st June 2016** |
| **Date of Decision** | : | **23rd June 2016** |

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**DECISION**

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## DECISION

1. **The Tribunal determines that the Applicant should pay the Respondent the sum of £25 in settlement of the demand dated 21st January 2015 in the sum of £356.36 once a proper demand has been sent to the Applicant complying with Section 21B of the Landlord and Tenant Act 1985 (the Act).**
2. **That no further sums are due from the Applicant to the Respondent at this moment in time as set out in the findings section below.**
3. **The Tribunal determines that it is just and equitable to make an order under Section 20C of the Act preventing the Respondent from recovering any costs of these proceedings as a service charge.**

## BACKGROUND

1. This application was made by the Applicant to the Tribunal on 22nd March 2016. It is said by the Applicant that the grounds for the application are that the Respondent, Canterbury Court Residents Association Limited, sought to recover from the Applicant administration charges as follows:-

   - The costs of £356.36 being the fee charged for the writing of six letters at a price of £40 per letter, an additional charge in respect of a call-out to deal with a damaged door release of £55, £60 a fee said to be incurred for briefing solicitors and a photocopying charge of £1.36. This is set out on an invoice 2/19/2015 dated 21st January 2015.
   - There are three additional sums which are not the subject of any demand or invoice but which can be found in a letter sent by solicitors acting for the Respondent dated 18th January 2016 to Anne Cuthbert Solicitors, those advising the Applicant. It is said in that letter that there are a number of charges to be settled including a service charge of £842.64 although this has now been paid. The other charges are as follows: (1) interest on unpaid service charges of £4.64, (2) the costs set out in the invoice referred to above of £356.36, (3) an additional cost of communicating service charge arrears in the sum of £200 and (4) legal fees of £691.20 with 'approximate' further legal fees, since 16th October 2015, of £1,471.60.

2. It is said in the application that the Respondents make application to the County Court "for frivolous reasons" and further relies on a document headed 'Variation or Order sought by the Applicant'. This is attached to the application and includes a request for an order under Section 20C of the Act and the removal of the other costs referred to above. The Applicant seeks an order as to the reasonableness of these charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002.

3. In an Applicant's bundle there was included a witness statement dated 23rd February 2016; a copy of the lease to the flat; the Respondent's statement completed by the solicitors for the Respondent dated 21st April 2016; a second statement from the Applicant dated 11th May 2016; various items of correspondence including a letter from Solicitors instructed by the Respondent dated 9th October 2015; correspondence from the Applicant to her tenants purportedly including a notice to quit in February of 2015; the invoice referred to

above and a breakdown of the estimated service charge costs for the year ending 28th February 2016 dated 15th April 2015.

4. In the Respondent's bundle which was afflicted by a degree of repetition, we also had the Respondent's statement and a list of documents which included another copy of the lease, HM Registry entries and witness statements from Mr John McConway, the Company Secretary of the Respondent and an owner of 23 Canterbury Court, a Mr William Brooks of Flat 24, Mr Girish Raval of Flat 14 and a Mr Duncan Stuart Munn the owner of Flat 20. Copies of correspondence passing between the Respondents and the Applicant were also included, a number of which were in fact within the bundle that the Applicant had produced. Of particular relevance was the letter of 18th January 2016 from McMillan Williams referred to above and what purported to be a notice under Section 146 of the Law of Property Act 1925 which is unsigned and undated and was to be found at the end of the bundle. One other letter in the bundle was of assistance, that being from the Metropolitan Police, Croydon Police Station dated 14th November 2014 from PC Filmer to the Applicant which we will return to in due course.

5. The issues were set out in the letter from McMillan Williams Solicitors Limited (MW) dated 18th January to the Applicant's solicitors Anne Cuthbert. It is no doubt the case that there is some animosity between the Applicant and Mr McConway of the Respondent Company. Putting that to one side for the moment, however, the allegations raised for which these costs were incurred is that the Applicant had somehow allowed the tenants occupying her flat to (a) smoke cannabis, the smell apparently being noticeable outside the confines of the flat, (b) had kept a dog on the premises in breach of the terms of the lease, (c) caused damage to an external door and (d) had inappropriately used motor vehicles, in fact motor bikes, by wheeling them along common pathways and parking adjacent to the flat.

6. It is said that a warrant was executed by the Police on 8th December 2014 alleging misuse of drugs, which upon execution of same found a small amount of herbal cannabis for which a Mr Berhane was arrested. There was apparently also equipment found for the growth and cultivation of herbal cannabis. A letter from the Police of 14th December 2014 recites the circumstances but does not indicate that any further action was taken against the tenants or indeed against the Applicant.

7. It is said that in respect of the demand for £356.36 Mr McConway on behalf of the Respondent had written a number of letters all of which were charged at £40 per letter and that the demand included recovery of costs for a damaged door release but which we were told at the Hearing was not being pursued. There was a further fee of £60 apparently for briefing solicitors and a photocopying charge. This so far as we were aware from the papers and indeed from submissions made, was the only invoice which was provided to us.

8. In her documentation the Applicant denied these allegations and raised the possibility of some form of counter claim which was not put to us but alleged that the Respondents employed "bullying tactics" and that there was no love lost between the Applicant and Mr McConway. All this is apparent from the papers

before us and it does not seem to us that the matter is assisted by going into detail in respect of the various allegations that are contained within the papers.

## HEARING

9. At the hearing the Applicant represented herself and was accompanied by her sister Miss Bennett. Mr Perring of Counsel represented the Respondent and was accompanied by Mr McConway the Company Secretary of the Respondent.

10. Mr Perring told us as a preliminary issue that he could not advance a positive case that paragraph 4 of schedule 11 of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) had been complied with nor had Section 21B of the Landlord and Tenant Act 1985 (the 1985 Act) been complied with. He confirmed that there was no breakdown of the solicitors costs of MW, although we were to hear from Mr McConway as to how he assessed his own costs set out in the demand referred to above.

11. As to the solicitors' costs he said we could perhaps look at the number of letters written and estimate the time spent by the solicitors to take a broad view and therefore reach some form of assessment of the costs incurred.

12. In response, the Applicant told us the tenants were still in the property. The local authority had apparently intervened and were looking for suitable alternative accommodation, as Mr Berhane being the only tenant left, was suffering from post-traumatic stress disorder, we understand he being a former serviceman. She formally confirmed that no criminal charges had arisen as a result of the Police raid, that no dog was being kept at the property and denied that there was an issue with regard to the motor bikes. We subsequently discovered that the front door which had been damaged by the Police in their raid had been repaired by the Applicant but did not match other doors in the development. We will return to that in our findings section.

13. Mr Perring told us that no application had been made to the Tribunal alleging that there had been a breach of condition or covenant of the lease by the Applicant notwithstanding that a Section 146 notice referred to above appeared to have been served.

14. The Applicant told us that she had never got on well with Mr McConway. She had met the tenants whom she considered were law abiding and she wanted to know why they could not enjoy their home without harassment from Mr McConway. She said the property was in good order, that as far as she was concerned there had been no breaches but if there were problems and she accepted that there had been with regard to the drug use, she had written to the tenants to seek to resolve this.

15. Mr Perring told us no County Court proceedings were presently afoot.

16. The Applicant considered that the costs sought by Mr McConway of £40 per letter were excessive, although she did accept that costs could be recovered provided they were not incurred as a result of abuse or harassment by the Respondent. As to the solicitors' cost, there was no breakdown provided notwithstanding that this had been requested by her and by her solicitors.

17. Mr Perring asked us to consider the witness statements within the Respondent's bundle (see paragraph 4 above) which we will cover in the findings section of this decision.

18. Mr McConway in elaboration of his statement explained some of the background to the letters that had been written and that his cost of £40 per letter included time spent by him both in preparing and posting the letter. He thought that this was the going rate comparable to the cost for example charged by a medical GP in preparing and issuing a letter. He told us that he had degrees in science but nothing in property management or legal issues. No notification was given to leaseholders as to the basis of any charges made by the company in these circumstances. He told us that money recovered went into the Respondent's bank account to pay off other charges both relating to the company and as a contribution in effect to service charges. Sometimes, however, he said he retained an element of the costs to recompense himself.

19. When asked about the additional charges set out in MW's letter of 18th January, he told us that a charge of £200 had been made for the delivery of two letters which he said had had to be hand delivered to a number of addresses, which appeared from searches of the Land Registry to be owned by the Applicant. As to the question of the solicitors' cost, he told us that he had received two bills for the amounts but there was no detail set out in those bills and no full breakdown. He was not able to produce copies of the bills at the hearing. He said he had signed terms of business but did not remember those terms and likewise no such document was before us.

20. He said he had given them a briefing note for which a charge of £60 had been made but this was not within the bundle and that he had not received advice from the solicitors as to the statutory requirements in respect of the wording that should accompany any demands sent for either service charge or administration costs. There had, he said, been some past claims involving the Applicant made to the small claims court but those had been resolved.

21. In response the Applicant told us that she normally paid any outstanding service charges before proceedings were commenced and that the Respondents were very quick to go to court. In response to that, Mr McConway told us that he had owned his flat for nine years and only been to court on two occasions. There were, he said, no problems with ongoing service charges and that it was not until this year that the statutory wording required under Section 21B of the 1985 Act and paragraph 4 of schedule 11 of the 2002 Act had been included. Confirmation was given to him that the address for service of any documents and or demands on the Applicant was 6 Gravell Hill, Croydon, Surrey CR0 5BB. This concluded the live evidence.

22. Mr Perring made submissions referring us to schedule 1 clause 1 of the lease which provides for prohibition against nuisance. In addition, it was said that there seemed also to be breaches of clause 2 of the first schedule, clauses 5, 7, 11 and 12.1. He said that the witness statements of Mr McConway and the others supported the allegations of breaches. He said that the costs were reasonably incurred and that there was evidence to show that there had been difficulties with

the tenants. As to legal costs he said that the sum was reasonable and as a point of principle it was not appropriate to equate the costs with what might be the cheapest charge-out rates that could be obtained. He did accept, however, that interest was not recoverable but the sums incurred otherwise in managing the situation were recoverable once proper demands had been made.

23. On the question of the legal costs he accepted there was no hard evidence but that we had heard that bills had been produced in the sums claimed and that those had been paid. He considered that it was not unreasonable for the costs to have been incurred.

24. The Applicant said that she had responded to Mr McConway in relation to the various letters he had sent, that the charges were random and she did not know how those had been achieved. She considered that she had been the subject of victimisation. She told us that the door had been replaced and that in fact she would agree to make further replacement of a door identical to others in the block so that there was conformity. We were told that the damaged door had been replaced on 17th May 2016 and she agreed she would now pursue the matter with more diligence insofar as the Police's responsibility for replacing/repairing the door.

## THE LAW

25. The law applicable to this application is set out in the schedule 11 to the 2002 Act. It is not we think necessary for us to go into any details as to the Landlord and Tenant Act 1985 as there is no claim for any arrears of service charges before us at the moment.

## FINDINGS

26. It is always sad when there is a breakdown between lessees and the lessor. In this case the Respondent is a Residents Association of which we understand the Applicant is a member. We have heard all that was said by the parties at the hearing and have read the documentation before us. It does not seem appropriate for us to consider whether there is the evidence as to whether or not there have been any breaches of the lease as alleged by the Respondent. That is not what we are being asked to consider. Our task is to consider the Applicant's application which relates to demands for administration charges. The first of these is dated 21st January 2015 originally in the sum of £356.36 but now reduced to £301.36.

27. We were told by Mr McConway that he considered £40 for each letter was reasonable. We considered the letters in question. They start with a letter of 13th August 2014 which was at page 47 of the Respondent's bundle. This alleges that the Applicant's tenants were in breach of the leasehold conditions and that she would be responsible for enforcement and any costs incurred by the Respondent. Some of the breaches are said to be the smoking of marijuana, the keeping of a dog from time to time and apparently verbal abuse suffered by Mr McConway from one of the tenants. On 18th August Mr McConway sent to the Applicant a copy of a letter that he had given to her tenants said to be a second written warning. This indicated that action would be taken by informing the Police, summarily terminating the tenancy and terminating the lease of the Applicant. On 31st August

2014 there is another letter responding to the one written by the Applicant, which partly raised complaints about the Respondent's action and at one paragraph responded to the complaints about a lodger in the property. Following on from that there is a further letter on 17th November 2014 again responding to a letter written by the Applicant, this merely acknowledges that letters have been sent, complains that a detailed response had not been provided, that the lodger had apparently returned and that the directors of the Respondents would be making an unannounced visit to the flat. A letter on 10th December 2014 for which a further charge is made, recites the attendance by the Police and sets out requirements that directors of the Respondent Company require the Applicant to vet her respective tenants and set down three requirements as to suitability. The letter went onto say that if the subsequent tenant proved to be unsatisfactory the directors of the Respondent would formally vet any future prospective tenant.

28. Another letter for which a charge of £40 was made was sent on 5th January 2015. This addressed four matters, (1) alleging that notice of termination of the tenancy had not been given, (2) that there was an allegation of damage to the external door release mechanism, which is now not pursued (3) requiring replacement of the door damaged by the Metropolitan Police and (4) a warning about action to be taken by the Respondent and a threat that the directors of the Respondent Company would take appropriate action to terminate the tenancy of the Applicant's tenants.

29. We have considered these letters. There are it seems to us two issues to be determined apart from the fact that the invoice fails to comply with paragraph 4 of schedule 11 of the 2002 Act and is not presently therefore payable in any event. However, it seems to us that the amount claimed is wholly unreasonable. Whilst we might praise Mr McConway for taking on the responsibility as Company Secretary for the Respondents, he needs to be careful that he does not view the development as his own fiefdom. We consider that the letter sent on 13th August 2014 notifying the Applicant that there were problems is not an unreasonable step to take. However, the subsequent letters appear to be close to bullying and do contain requirements that the Respondents expected the Applicant to undertake with regard to the vetting of her tenant. There is no such requirement in the lease, nor does the Respondent have any right to terminate the agreement that the Applicant has entered into. These letters, therefore, go beyond what we would consider to be reasonable. They do give some credence to the applicant's concern that there is something of a vendetta being pursued against her. We can understand that there may be concerns that the tenants have caused some difficulties. However, the Police have investigated and the matter has not been taken any further, the damage to the door by the Police is an issue that the Applicant must pursue with more vigour and it is accepted that the damage to the door release could not be laid at the foot of the Applicant as her responsibility.

30. In addition to the above we do not consider that a charge of £40 for writing a letter is reasonable in the circumstances. The letter of 13th August is not long and we would have thought could have been dealt with in no more than 15 minutes. The other letters we do not consider are appropriate. It seems to us that taking the matter in the round a charge of £25 to include any correspondence with the solicitors (which we have not been provided with) and the photocopying is sufficient to deal with the elements claimed in the invoice of 21st January 2015.

31. We turn then to the other matters raised by the Applicant in her application.

32. Firstly, we would say that there is no evidence before us of any demand being made for the sum of £200 in respect of the costs of the Respondents in hand delivering letters nor any evidence to support the legal costs of £691.20 and the approximate further costs of £1,471.60. The letter from MW of 18th January confirms that a request for the breakdown of the fees has been requested. This letter in January says that the details of the claim were outlined in their letter of 16th October 2015. No such copy letter has been put before us. There is a letter of 9th October 2015 to which the Applicant responded on 16th October 2015. The letter of 9th October 2015 went into details as to the allegations of nuisance and as to legal costs merely says they will be on a time basis and recoverable under Section 5(xiii) of the Lease. The letter went on to put the Applicant on notice but gave no breakdown. We should also add in the Applicant's first witness statement, which is dated 23rd February 2016, she raised with the Respondent the failure on the part of the Respondent to provide a notice under Section 166 of the 2002 Act although in fact this related to the payment of ground rent. Nonetheless, this should have put the Respondents on notice that this was an issue that needed to be considered. And the response set out in the Respondent's statement is to say the least unhelpful.

33. It seems to us that the matter can simply be dealt with on the basis that no formal demand has been made for any of these payments. It is impossible for us to take Mr Perring's request to review the question of legal costs as something we can realistically deal with. There is no breakdown of the time spent, we have no information on the fee earner or the hourly rate and it is impossible to estimate how fees could have been incurred to the sum in excess of £2,000. In those circumstances we make an order that no such legal fees are presently payable. Whether they are to become payable will depend upon whether or not MW provide proper information as to what their charging rates are, a proper demand is made seeking to recover amounts that might be due and the Applicant has the right to challenge whether those costs are recoverable under the terms of the lease in any event.

34. Insofar as the additional charge of £200 is concerned, said to be as a result of Mr McConway and another hand delivering two letters, we can say that we consider that to be wholly unreasonable and to be irrecoverable even if a demand is issued. Details of this item of expenditure are to be found in MW's letter of 9th October 2015 at page 58 of the Applicant's bundle. It refers to these costs being incurred as a result of the Applicant's refusal to accept letters or to confirm an address. The letters are dated 4th August 2015 and 9th September 2015. We could not see in the bundle a copy of letter of 4th August but there is one of 9th September and this relates to the non-payment of service charges for the year ending February 2016. Insofar as we are aware, the demand did not comply with the Act in that the statutory wording was not included. Accordingly, the liability on the part of the Applicant to make payment (although she has done) could not be sustained. In those circumstances we disallow the sum of £200.

35. It will be for the Respondents to consider whether or not they should take the question of legal costs further. It does seem to us, however, they have had ample

opportunity to have dealt with the issues relating to those legal costs when this matter came before us. They could and should have provided a full breakdown of the legal fees yet despite requests failed to do so. They could and should have provided proper demands compliant with the Act but they have failed to do so. If they are to seek to recover these monies from the Applicant, we would suggest that they need to consider whether they are prevented from so doing by their failure to put forward the relevant evidence in these proceedings and whether the legal argument of res judicata might apply.

36. No findings that we have made in this decision should be taken as any indication as to whether or not there have been any breaches of the lease. There is no application before us making an allegation under Section 168 of the 2002 Act and in those circumstances it is not necessary for to us make any findings nor to give any consideration to the various witness statements put forward by the Respondent.

Judge: Andrew Dutton

Date: 23rd June 2016

**ANNEX – RIGHTS OF APPEAL**

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.