

12274



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

Case reference : LON/00AG/LAC/2017/0011

Property : 68 Compayne Gardens, London
NW6 3RY

Applicant : The 68 Compayne Gardens
Management Company Limited

Respondent : Sanya Dragacevic

Type of application : Liability to pay administration
charges

Tribunal member(s) : Judge Dickie

Date of decision : 12 July 2017

DECISION

Summary

The following expenditure is recoverable under Clause 3.14 from the respondent as an administration charge:

£565 Tribunal fees
£230 Other expenditure

Introduction

1. The applicant seeks a determination under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") whether administration charges of £1056.13 are payable in respect of legal costs incurred in previous proceedings before this tribunal (case reference LON/00AG/LSC/2015/0351 & 0377). The relevant legislation is attached to this decision.

2. The tribunal issued directions on 22 May 2017 for the determination of this application on the papers. Neither party has requested an oral hearing.
3. The tribunal issued its interim decision on that application on 21 October 2016 and its final decision on 15 March 2017. In its decisions on case LON/00AG/LSC/2015/0351 & 0377 the tribunal found that the respondent was liable under Clause 3.14 of the lease to pay as an administration charge the landlord's legal costs (being those it found were incurred in previous proceedings brought by the landlord for an order under s.20ZA of the Landlord and Tenant Act 1985 for dispensation in respect of statutory consultation).
4. The landlord now relies on Clause 3.14 as entitling it to recover the costs that are the subject of this present application. By virtue of that clause the respondent covenants:

“to pay to the Lessors on a full indemnity basis all costs and expenses incurred by the Lessors or the Lessors' solicitors in connection with any proceedings taken against the Tenant to recover any rent service charge or other monies payable by the Tenant under the terms of this Lease.”
5. It will be observed that Clause 3.14 only entitles the landlord to recover costs and expenses where it has brought the proceedings. The landlord brought an application to the tribunal under s.27A in respect of the 2015 service charge year and the tenant made an application under s.27A in respect of the years 2003-2014. The landlord cannot recover under this clause any costs and expenditure for resisting the respondent's application. Costs being payable on an indemnity basis, any doubt as to whether they were reasonable or reasonably incurred should be resolved in favour of the landlord.
6. The proceedings involved five days of hearings in total, with substantial documentation produced by both parties. In a decision dated 25 May 2017 the respondent's application under s.20C for an order limiting the landlord's ability to recover its costs in these proceedings through the service charge was dismissed.
7. The application relates to:
 - a. £565 in tribunal fees and
 - b. £491.13 in administration costs including postage, stationery, printing and binding.A summary of the tenant's rights and obligations was attached to the demand dated 4 April 2017.

Preliminary Matters

- (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).

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.

8. The respondent did not agree the landlord's bundle and has submitted a bundle of her own containing over 260 pages. She begins by stating that she has not received any documentation/bundles from the landlord and that the landlord has not complied with directions. The respondent asks that the application be struck out for breach of the directions. I understand the landlord's statement of case was served according to direction 5 (reference is made to it in the respondent's statement of case). This contained the supporting documentation for the expenditure. The landlord's bundle contains almost nothing more of substance and the tenant has not been prejudiced by late service (if any) of the landlord's bundle. I consider it appropriate to waive non compliance (if indeed there has been any).
9. The respondent wrongly asserts that this application is out of time. This is because she understands it to be a costs application (which the tribunal directed must be filed within 14 days of the tribunal's decision of 14 March 2017). However, it is not an application for exercise by the tribunal of its power to award costs. It is an application in respect of an administration charge, pursuant to the tribunal's jurisdiction under Schedule 11 of the 2002 Act and it is not out of time.
10. Rejecting the respondent's assertion to the contrary, there is nothing improper in the landlord having made a separate application in respect of these administration charges after the completion of the proceedings and after the demand for them had been issued and not paid.

Tribunal Fees

11. The tribunal fees are made up of:
 - a. An application fee of £250. In respect of this fee the tribunal has already ordered the respondent to pay £125 to the applicant.
 - b. A hearing fee of £95. This relates to the half of the hearing fee paid by the applicant (the respondent having paid the other half of the £190 fee payable (a single hearing fee being payable in respect of both applications).
 - c. An application fee for permission to appeal to the Upper Tribunal.
12. The respondent considers that the tribunal's orders as to costs are final, and that she should not have to pay the Upper Tribunal fee for an application for permission to appeal that was dismissed as being without merit. However, the power of a landlord to recover expenditure under a lease as an administration charge is separate to that of the tribunal to make an order for repayment of fees under Rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The respondent has a covenant under the lease upon which the landlord can rely. I am satisfied that all of the costs sought relate to the proceedings brought by the landlord against the tenant, and that they fall within Clause

3.14. All of the tribunal fees of £565 are payable by the tenant under that clause and they are not unreasonable given the wording to include an indemnity clause. The landlord cannot, of course, obtain double recovery of fees which the tenant has already been ordered to pay.

Other Expenditure

13. An itemised list of expenditure has been produced, and includes Companies House fees, binding, stationery, postage and copying/printing. No explanation is given why the Companies House fees totalling £35 were costs incurred in the proceedings. The respondent objects as no such documents were relied on by the landlord in the proceedings. The fees relate to activities / information (e.g. Director's change of particulars, Change of Company's registered office) which are company matters and I find are not costs incurred in respect of the proceedings. They are not recoverable as an administration charge under Clause 3.14.
14. The respondent rehearses the history of this litigation, but I am well aware of it. I have considered the respondent's statement of case and, broadly, she disputes that the costs of binding, stationery, postage and copying/printing costs were incurred in respect of the proceedings, or were reasonably incurred.
15. The respondent has responded to each and every item of expenditure. It is not proportionate to set out my findings in this decision in respect of every discrete item, but I have read and considered every point of objection. Overall, however, I do not find merit in the respondent's challenge to this expenditure, which is modest. The landlord did not instruct solicitors, and the respondent is thus meeting a much smaller administration charge than might otherwise have been the case.
16. The tribunal saw correspondence and bundles prepared in the proceedings. The respondent appears to suggest that the applicant did not incur any expenditure in their production, but this clearly cannot be the case. There was nothing unreasonable in the manner of the landlord's preparation.
17. I have insufficient reason to accept the respondent's view that these costs were incurred for company or personal use. I am satisfied that they are likely to have been incurred in both sets of proceedings. It is not necessarily suspicious that they were not paid out of the company account where they may have been otherwise paid in circumstances in which the company is liable for reimbursement. I have also considered the respondent's comments on the descriptions on the receipts, but they do not cause me to doubt the expenditure is recoverable.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28 day time limit, such application must include a request for 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.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. 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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

18. However, there is no apportionment made of the costs incurred in respect of the landlord's application and the tenant's, and using a broad brush I allow £230 (approximately 50%) of the costs as recoverable in respect of the former. I find these costs are reasonable.
19. I further order the respondent to refund to the applicant within 28 days the fee of £100 paid to the tribunal to bring this application.

Name: F. Dickie

Date: 12 July 2017