12822

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/22UN/LAC/2018/0003**
Property	:	**5 Clearwater Reach, 15 Marine Parade East, Clacton-on-Sea CO15 1UJ**
Applicant	:	**Mr Brian Anthony Crooks**
Representative	:	**Mr B A Crooks In Person**
Respondent	:	**Long Term Reversions (Harrogate) Limited**
Representative	:	**Mr Mathew McDermott Counsel**
Type of Application	:	**Schedule 11 Commonhold and leasehold Reform Act 2002 – determination of variable administration charges payable**
Tribunal Members	:	**Judge John Hewitt** **Mr D Brown FRICS** **Mr N Miller BSc**
Date and venue of determination	:	**5 July 2018** **Lifehouse Spa & Hotel**
Date of Decision	:	**8 August 2018**

DECISION

The issue(s) before the tribunal and its decision(s)

1. The issues before the tribunal were applications:

   1.1 Pursuant to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (CLRA) in relation to three variable administration charges:

   20.10.2017 £144.00

   06.11.2017 £198.00

   07.11.2017 £480.00

   1.2 Pursuant to s20C Landlord and Tenant Act 1985 (the Act).

   1.3 Pursuant paragraph 5A of Schedule 11 to CLRA.

2. The decisions of the tribunal are:

   2.1 The administration charges of £144.00 and £198.00 are not payable by the applicant to the respondent, those charges having been withdrawn by the respondent in a letter from Countrywide, the respondent's managing agents, to the tribunal dated 20 July 2018.

   2.2 The administration charge of £480 is not payable by the applicant to the respondent, that charge having been withdrawn by counsel appearing for the respondent during the course of the hearing.

   2.3 An order shall be made (and is hereby made) pursuant to s20C of the Act in relation to any costs which the respondent has incurred or may incur in connection with these proceedings and all and any such costs are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the applicant.

   2.4 An order shall be made (and is hereby made) pursuant to paragraph 5A of schedule 11 to CLRA that none of the costs which the respondent has incurred or may incur in connection with these proceedings shall be recoverable by the respondent from the applicant pursuant any provision in the lease which might impose an obligation on the applicant to pay such costs.

NB Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. The application is dated 2 February 2018 [1].

4. Directions were given on 13 February 2018 [52].

5. The tribunal has been provided with a page numbered hearing bundle of relevant documents. In brief:

The applicant's statement of case:	[55-56]
The respondent's statement of case:	[57-177]
The applicant's reply:	[182-187]
Witness statements:	
Ms Louise Vidgeon	[178-181]
Mr Roy Emmerson	[188-191]
Lease:	[193-211]
Correspondence:	[212-234]

6. The inspection and hearing were set for Thursday 5 July 2018 to coincide with an application by made by Mr C J T Greenslade of 16 Clearwater Reach – Case Reference: CAM/22UN/LSC/2018/0019 which concerned the payability of service charges. There was a large degree of overlap in that both applications touched on the intention of the respondent landlord to repair what it considered to be a defective stairwell window by replacing it. There was a joint inspection followed by the hearing of Mr Crooks' application and then the hearing of Mr Greenslade's application. Both applicants made contributions to both hearings but there was not necessarily uniformity of view between Mr Crooks and Mr Greenslade on some points.

7. Both Mr Crooks and Mr Greenslade were present at the inspection together with representatives of the landlord, namely:

Mr Mathew McDermott	Counsel
Mr David Bland	Head of Litigation – Pier Management – Asset managers
Ms Lyn Walker	Property Manager - Countrywide Estate Management (CEM) – Managing agents
Ms Louise Vidgeon	CEM Southend Office branch manager
Ms Ruby Ali & Ms Fleur Baker	CEM - observing

8. Some of those present drew the attention of the members of the tribunal to a number of physical features, mostly concerning the large stairwell window that the landlord proposes to replace but also to the front façade and those areas of it which may be the subject of an external redecoration project.

9. This decision ought to be read in conjunction with our decision on Mr Greenslade's application in which a number of key findings are made and the reasons for them are set out.

The administration charges in issue

10. In view of the withdrawal of the administration charges, we do not need to relate the lease provisions or legislation and we only need to rehearse such detail of the cases stated by the parties as is relevant to our decisions on section 20c and paragraph 5A.

11. The application form referred to the three charges:

20.10.2017 £144.00

06.11.2017 £198.00
07.11.2017 £480.00

At the hearing the tribunal asked to see the formal demands for those charges. The landlord was able to identify two of them which had been included in the hearing bundle, but was not able to produce one for the charge of £480. Following a short adjournment for the landlord's team to confer and for Mr McDermott to take instructions, the tribunal was told that landlord did not propose to pursue the claim to the £480 and that administration charge was withdrawn.

Thus, the tribunal was concerned only with the charges of £144 and £198.

12. In order to get background detail on how the amount of those charges had been arrived at the tribunal put a number of questions to the respondent's team. The tribunal enquired what provision in the lease the landlord relied upon that Mr Crooks was obliged to pay the charges, whether the landlord had incurred the charges sought to be recovered and how the amount of the charges had been arrived at.

13. Mr McDermott said that reliance was placed on clause 2(1)(d) of the lease which is a covenant on the part of the tenant in these terms:

"(d) To pay all costs charges and expenses (including solicitors costs and surveyors fees) incurred by the Landlord for the purposes of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court"

14. Ms Vidgeon gave some evidence on these matters but did not have precise details to hand. We were told that that the first chase up letter was sent out without any charge being imposed. The account was monitored internally and if still unpaid the second letter (here the letter dated 5 October 2017 [26] was sent at a cost of £144 incl of VAT. This was a standard charge but Ms Vidgeon did not know how it has been arrived at. Ms Vidgeon assumed that an invoice for that sum would have been sent to the landlord to be settled in due course with pre-agreed arrangements. Evidently this was a part of the internal process undertaken by CEM when a charge is applied to a tenant's account.

15. Mr McDermott then raised procedural issues. First, he said that the lease clause relied upon, the question whether the charges claimed had been incurred by the landlord and the reasonableness of the amount of the charges were not pleaded issues and the tribunal ought not to have raised them. Mr Crooks said that he did wish to raise the amount of the charges, which he believed to be outrageous and not in accordance with a provision in his lease, and that he had prepared some notes for his submissions. There then followed a general discussion which included the possibility of allowing Mr Crooks to amend his claim to make it expressly clear that he challenged not only the principle question whether the charge was payable, but that if it was, whether the amount of it was a reasonable amount.

16. In an endeavour deal with these points fairly, the tribunal said that it would give further directions to enable both parties to file with the tribunal and serve on the opposite party written evidence and/or submissions on them by 5pm 20 July 2018. Written directions to that effect are dated 6 July 2018 were duly sent to the parties.

17. In response to those directions, the tribunal has received a letter dated 20 July 2018 from Countrywide, the respondent's managing agents, in which the two remaining charges of £144.00 and £198.00 are withdrawn. In those circumstances there are no longer any 'live' administration charges claimed by the respondent which are disputed by the applicant. Rather curiously the penultimate paragraph of the letter says: *"We look forward to receiving the determination on the issues raised in the application submitted by the Applicant."* The outstanding issues certainly include the s20C application and the paragraph 5A Schedule 11 to CLRA application, and we shall deal with those in die course.

18. The tribunal has also received written submissions from Mr Crooks in letters dated 18 and 22 July 2018 but these are not relevant now that the charges have been withdrawn. Similarly, we do not now need to address the arguments advanced by Mr Crooks during the course of the hearing. In not addressing them it should not be assumed that we found the arguments convincing. Indeed, we are highly sceptical of the correctness of Mr Crooks' submission that the respondent is obliged to conduct a s20 consultation exercise before it is entitled to demand a sum on account of the proposed works.

Discussion and conclusions

The s20C application

19. We permitted Mr Crooks to make an oral application at the hearing. The respondent has not filed and served any submissions opposing the application. S20C provides that the tribunal may make such order as it considers just and equitable in the circumstances.

20. We find that the respondent (through its managing agents) having pursued Mr Crooks quite hard for payment of the three administration charges, only to abandon one of them during the course of the hearing and to abandon the remaining two post the hearing, it would not be just and equitable for the respondent to recover all or any of its costs of the proceedings through a service charge payable by Mr Crooks. We also take into account that the application is not opposed.

21. In these circumstances we have made an order pursuant to s20C of the Act.

The paragraph 5A application

22. Paragraph 5A (2) of Schedule 11 to CLRA provides that the tribunal may make whatever order on the application it considers to be just and equitable.

23. For much the same reasons as set out in paragraph 53 above, we find that even if there is a provision in the lease which may oblige Mr Crooks to pay any costs incurred (or to be incurred) by the respondent in connection with these

proceedings, it would not be just and equitable for the respondent to recover all or any of such costs from him. Thus, we have made an order pursuant to paragraph 5A.

Judge John Hewitt
8 August 2018

The Appendix

Commonhold and Leasehold Reform Act 2002 c. 15

Schedule 11 ADMINISTRATION CHARGES

Part 1 REASONABLENESS OF ADMINISTRATION CHARGES

Meaning of "administration charge"

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.

Reasonableness of administration charges

2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Reasonableness of administration charges

3

(1) Any party to a lease of a dwelling may apply to the appropriate tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

(a) any administration charge specified in the lease is unreasonable, or
(b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3) The variation specified in the order may be—

(a) the variation specified in the application, or
(b) such other variation as the tribunal thinks fit.

(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

Notice in connection with demands for administration charges

4

(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

Liability to pay administration charges

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] [1] 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).

Interpretation
6
(1) This paragraph applies for the purposes of this Part of this Schedule.

(2) *"Tenant"* includes a statutory tenant.

(3) *"Dwelling"* and *"statutory tenant"* (and *"landlord"* in relation to a statutory tenant) have the same meanings as in the 1985 Act.

(4) *"Post-dispute arbitration agreement"*, in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen.

(5) *"Arbitration agreement"* and *"arbitral tribunal"* have the same meanings as in Part 1 of the Arbitration Act 1996 (c. 23).

(6) *"Appropriate tribunal"* means—

(a) in relation to premises in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
(b) in relation to premises in Wales, a leasehold valuation tribunal.

Limitation of administration charges: costs of proceedings
(This paragraph in force from: April 6, 2017)
5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) *"litigation costs"* means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
(b) *"the relevant court or tribunal"* means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	**The relevant court or tribunal**
Court proceedings:	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings:	The First-tier Tribunal
Upper Tribunal proceedings:	The Upper Tribunal
Arbitration proceedings:	The arbitral tribunal, or if the application is made after the proceedings are concluded, the county court

Amendments to the Landlord and Tenant Act 1987

7 ...
8 ...
9 ...
10 ...

Landlord and Tenant Act 1985

20C.— Limitation of service charges: costs of proceedings.

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court residential property tribunal or leasehold valuation tribunal or the First-tier Tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

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 Tribunal 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 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.

4. 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.