



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

Case reference : **LON/00AH/LAC/2018/0004**

Property : **Newton House, 175 Queens Road,
Croydon, Surrey CR0 2PX**

Applicants : **Rodrigo Trompiz, Alexander King,
Tomasz & Wioleta Kicka, Alice
Schroeder, Thomas Carter**

Representative : **Rodrigo Trompiz**

Respondent : **Assethold Limited**

Representative : **Eagerstates Limited**

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

Tribunal member : **Tribunal Judge Dutton**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **24th April 2018**

DECISION

Decisions of the tribunal

The tribunal determines that the sum of £66 is payable by the Applicants in respect of the administration charges for the year 2017/18 in respect of the Ground Rent Demand

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 the administration charges payable by the Applicants in respect of ground rent demands for the year 2017/18.
2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The tenants of the 5 of the 6 flats at Newton House, 175 Queens Road, Croydon (The Property) applied to the tribunal challenging the right of Eagerstates Limited, the managing agents for the Freeholder, Assethold Limited, to charge for demanding Ground Rent for the year 2017/18.
4. I was told that until the tenants had established a Right to Manage company, which had acquired the right to manage the Property in March 2017, the Respondent had not sought to charge a fee for recovering the ground rent.
5. I was provided with a copy of the demand dated 28th November 2017 which seeks the recovery of the ground rent in the sum of £350 and an administration charge of £66, being £55 plus VAT for the administration associated with the collection of the rent figure. It is not complete but it is not argued by the Applicants that the demands failed to comply with section 166 or schedule 11 of the 2002 Act.
6. The Applicants hold long leases of the flats in the Property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge and in addition to pay an annual rent of £350, doubling every 25 years. The specific provisions of the lease will be referred to below, where appropriate.

The issues

7. The Landlord says, through Eagerstates, that paragraph 1.1.5 of the Fifth Schedule of the lease allows the recovery of costs incurred in the collection of the ground rent. The fee is £55 plus VAT and in a letter

dated 16th March 2018 to Mr Trompiz, which appears at page 21 in the bundle before me, they set out what is undertaken by them to recover the ground rent. I have noted all that is said. They also rely on an earlier Tribunal decision in case LON/OOAU/LAC/2016/0009 relating to a property at Tollington Way, involving the same Landlord and managing agent. There the Tribunal found that the charge was reasonable, that being the challenge. His short statement does not explain why the Landlord did not make this charge before the RTM company acquired the right to manage.

8. It is the Applicants case that this charge has never been made before. Further the lease does not allow the recovery of this administration fee. The paragraph referred to, 1.1.5 of the Fifth Schedule is found in the section sub-headed 'The Service Charge'. It is only the RTM company which has the right to recover service charges. The amount of the charge is not relevant as it is not payable.

The tribunal's decision

9. The tribunal determines that the amount payable in respect of the administration charge of £66 for each flat in respect of the administration charge for the recovery of the annual rent is payable.

Reasons for the tribunal's decision

10. I have considered the lease and in particular paragraph 1.1 and 1.1.5 of the Fifth Schedule. This says as follows at 1.1. under the heading "Total Expenditure" *means the total expenditure incurred by the Landlord in any Accounting Period in carrying out their obligations under Clause 5 of this lease and any other costs and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the foregoing:*"
11. Under paragraph 1.1.5 it says as follows: "*All legal and administration and other ancillary costs incurred in the collection of any sums or the enforcement of any obligation on the part of the Tenant due under the terms of this lease or the Lease of any other flat in the building including any sums avoided pursuant to any form of arbitration insofar as it is not recovered from the individual Tenant in Default in each case*"
12. I have also considered section 96 of the 2002 Act which defines management functions at 96(5), which makes no reference to ground rent.
13. My finding is that the Respondent is entitled to make a reasonable charge to recover the ground rent. The Fifth Schedule refers generally to service charges but paragraph 1.1.5 refers to "*all legal and*

administrative and other ancillary costs.....” It is the Landlord who recovers the Ground Rent, not the RTM company and costs will be incurred in complying with s166 of the 2002 Act. The costs are an administration charge, not a service charge. I am given no reason why this charge only appears this year, after the RTM company took over. I could speculate as to the thinking behind this but it does nothing for this case. In fact it would seem that the Applicants may have avoided the charge in years gone by, it being “lumped in” with the service charge demand. The costs I find are reasonable, but I would not expect them rise each year as the increase in the Ground Rent is clearly provided for in the lease and it should not take much research, and can be dealt with in bulk, thus keeping costs to a reasonable level.

Andrew Dutton

Name: Tribunal Judge Dutton **Date:** 24th April 2018

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).

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).