FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/LAC/2019/0007**
Property	**:**	**Flat 212 Wharfside Point, 4 Prestons Road, London E14 9EL**
Applicant	**:**	**Mr Yimin Liu**
Respondents	**:**	**CFIF Nominee Limited and Westbury Residential Limited**
Type of application	**:**	**For a determination as to liability to pay an administration charge**
Tribunal members	**:**	**Judge P Korn** **Mr D Jagger MRICS**
Date of decision	**:**	**8th July 2019**

DECISION

Decision of the tribunal

(1) The administration charge is not payable either in whole or in part.

(2) No cost applications have been made.

The application

1. The Applicant seeks a determination under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**the 2002 Act**") that an administration charge is not payable.

2. The charge comprises the aggregate of (a) a late payment administration charge of £102.00, (b) a solicitor referral fee of £138.00, (c) solicitors' fees of £250 plus VAT and (d) a Land Registry disbursement of £3.00. All of these charges relate to the chasing of an item of service charge arrears. The total charge appears, based on the papers, to be £543.00. It appears (again based on the papers) that in practice the Respondents have accepted the slightly lower figure of £510.82 in full settlement of the amount allegedly due.

3. According to the application, CFIF Nominee Limited ("**CFIF**") is the Applicant's landlord, and CFIF is also described by Bradys Solicitors in letters to the Applicant as their client. Westbury Residential Limited ("**Westbury**") would appear just to be the managing agents and yet they are described as the "Respondent" in the witness statement by Cheryl Bates of Bradys and in the tribunal's directions, despite the fact that the Applicant's lease is just a two party lease. However, we also note that the leaseholders are in the process of setting up an RTM company, and therefore in case there is any doubt as to who is the true Respondent we have named both CFIF and Westbury as joint Respondents.

Paper determination

4. The tribunal's directions provide for this case to be dealt with on the papers alone without an oral hearing unless either party requests a hearing. Neither party has requested a hearing, and accordingly this case is proceeding as a determination on the papers alone without an oral hearing.

Applicant's case

5. In his application, the Applicant states that he has always paid his service charge on time and then suddenly on 26th April 2018 he received a solicitor's letter claiming unpaid service charges for £557.99 in respect of the cost of drainage work plus administration fees in connection with non payment.

6. The Applicant states that he did not receive the original demand for his contribution towards the cost of drainage work and therefore that he should not have to pay the administration fees in connection with non payment. He also states that he spoke to Karen of Westbury on 1st May 2018 and that she told him that there was no record of Westbury having sent a specific email to him attaching the invoice but that sometimes Westbury send generic emails to all leaseholders without specifying the recipient. He does not accept that Westbury did this as previously every invoice sent to him by email has been "unique and specified".

Respondents' response

7. Ms Cheryl Bates, a solicitor at Bradys Solicitors, has given a written witness statement on behalf of the Respondents.

8. She states that Westbury sent a demand to the Applicant on 1st March 2018 requesting that he pay outstanding service charges in the sum of £557.99. The Applicant failed to pay and so a further copy of the invoice was sent by email on 19th March 2018 (the implication presumably being that the first demand was sent by post). Again, payment was still not forthcoming and so on 23rd April 2018 Bradys were instructed to collect the arrears, now including a late payment administration charge of £102.00 and a solicitor referral fee of £138.00. The Applicant then paid the original amount of £557.99 but did not pay the late payment administration charge or the solicitor referral fee or Bradys' own fixed fee of £250 + VAT plus a Land Registry disbursement of £3.00.

9. Ms Bates refers in her witness statement to what she considers to be the relevant provisions of the Applicant's lease in order to demonstrate that, in her submission, these administration charges are payable in full by the Applicant. The provisions quoted by Ms Bates will be analysed in turn below.

The relevant legal provisions

10. Paragraph 1 of Schedule 11 to the 2002 Act defines an administration charge as including *"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly … in respect of a failure by the tenant to make a payment by the due date to the landlord or … in connection with a breach (or alleged breach) of a covenant or condition in his lease"*. We are satisfied that the disputed sum in this case falls within this definition.

11. Paragraph 1(3) of the same Schedule defines a variable administration charge as *"an administration charge payable by a tenant which is neither (a) specified in his lease or (b) calculated in accordance with a formula specified in his lease"*. We are satisfied that the disputed sum

in this case falls within this definition too and that therefore as well as being an administration charge it is also a "variable" administration charge.

12. Under paragraph 2 of the same Schedule a variable administration charge is only payable to the extent that the amount of the charge is reasonable. Under paragraph 4 of the Schedule *"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"*. Under paragraph 5 of the Schedule an application can be made to the tribunal for a determination (inter alia) as to whether an administration charge (including a variable administration charge) is payable.

Tribunal's analysis

13. We will approach the issues in this case in three stages. First of all, what is our analysis of the factual matrix? Secondly, does the lease allow for recovery of the relevant sums in principle? Thirdly, are the sums claimed reasonable in amount?

14. Dealing with the first issue, it would have been useful to have had an opportunity to cross-examine the parties on the factual background, but in practice it is not proportionate to deal with a dispute of this low value and nature by way of a formal hearing (including a £200.00 hearing fee), and therefore we are forced to do the best we can on the basis of the papers alone. On the basis of the papers, we note the Applicant's statement that he did not receive the service charge demand until administration charges had already been added, but on the balance of probabilities we prefer the Respondents' evidence. The Applicant would need greater proof to demonstrate that Westbury lied about the sending out of demands, and again on the balance of probabilities we consider that the Applicant would have received at least one of the original demands, one of which was sent by hard copy and the other of which was sent by email. Therefore our factual finding is that the original invoice was received prior to the administration charges starting to accrue.

15. We now turn to the second issue, namely recoverability under the terms of the lease, and we will deal with the lease provisions in the order in which they have been quoted.

16. Under paragraph 10(a) of the Fourth Schedule the tenant covenants with the landlord *"to pay to the Landlord within 14 days of written demand the [residential service charge] …"*. This establishes that a service charge is payable but does not cover charges for late payment.

17. Under paragraph 10(f)(viii) of the Fourth Schedule *"The Tenant acknowledges that … The Tenant shall be liable to make an appropriate contribution under the provisions contained in this clause in respect of any costs charges and expenses incurred by the Landlord in the management and administration of the service charges and the preparation and supply of statements of accounts in respect of the service charges"*. In its use of the phrase "an appropriate contribution" and in the context of its being part of a clause dealing with the payment of service charges rather than administration charges it is clear that this provision was not intended to serve as a provision entitling a landlord to charge by way of administration charge 100% (or any lesser proportion) of the cost of chasing service charge arrears. Instead, it allows the landlord to charge the service charge proportion of the items specified in this sub-paragraph as part of the service charge. As the service charge proportions are defined in the lease as a "fair and reasonable proportion" we are not in a position to know – and the Respondents have not told us – what this proportion is, but in any event this provision in our view relates to the sharing of the cost of more administrative matters such as preparation of statements of account rather than the sharing of administration costs connected to late payment of service charge (or other) arrears.

18. Clause 7(a) of the lease contains a right of re-entry or forfeiture but does not itself reserve a right to charge fees for late payment of service charges as an administration charge. Clause 8(d) of the lease states that *"any indemnity in favour of the Landlord shall be deemed to be an obligation to indemnify and keep fully indemnified the Landlord from and against liability in respect of all proceedings damages penalties costs expenses claims and demands of whatsoever nature including … any proper and reasonable fees and expenditure reasonably incurred by the Landlord"*. However, this clause does not create a new basis for payment of sums by the tenant; it merely clarifies in relation to any indemnity what the extent of that indemnity is. In the absence of any submission that there is a specific indemnity contained in the lease on which the Respondents can rely it is irrelevant to draw attention to the precise interpretation of the ambit of indemnities in general.

19. It is unclear what point is being made in respect of clause 12 of the lease. As regards clause 14(a) of the lease, this obliges the tenant "To pay to the Landlord all costs charges and expenses (including legal costs and fees payable to a surveyor) which may be properly incurred … in or in contemplation of any (i) proceedings under Sections 146 and 147 of the Law of Property Act 1925 … [or] (ii) any other court or arbitral proceedings …". However, there is no real evidence that these late payment charges were imposed in or in contemplation of any proceedings under Sections 146 and 147 of the Law of Property Act 1925 or any other court or arbitral proceedings and we do not accept that they have been.

20. Therefore, in conclusion in relation to the second issue, we do not accept that the lease allows the Respondents to impose these administration charges.

21. Although our decision on the second issue makes this unnecessary, we would just comment briefly on the third issue, namely whether the charges would be reasonable in amount if recoverable in principle under the lease. In our view, the aggregate amount is not reasonable. On the basis of the evidence before us there is a duplication as between the Respondents' administration charge of £102.00 and their solicitor referral fee of £138.00. Or, at least, if it is not technically a duplication, the sum of £240.00 is in our view unreasonably high for such a simple exercise. Therefore, if it was payable at all under the lease (which it is not) we would reduce the aggregate amount from £240.00 to £100.00. As regards the solicitors' fee of £250.00 + VAT, whilst it has been described as a 'fixed fee' that does not make it reasonable in amount. We do not consider it reasonable for the amount of work done, and so if it was payable at all under the lease (which again it is not) we would reduce it from £250.00 + VAT to £100.00 + VAT.

Cost applications

22. No cost applications were made.

Name: Judge P Korn **Date:** 8th July 2019

RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. 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.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. 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.