



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

**Case reference** : **LON/00AJ/LAC/2019/0006**

**Property** : **Flat 3 74 Grange Road London W5  
3PJ**

**Applicant** : **Ellecap Limited**

**Representative** :

**Respondent** : **Mr Felix Titov-Voskhodov**

**Representative** : **Starck & Uberoi**

**Type of application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge**

**Tribunal members** : **Mrs E Flint FRICS  
Ms S Coughlin MCIEH**

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

**Date of decision** : **28 May 2019**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal determines that the Respondent shall pay the Applicant £3,387.38 within 28 days of this Decision in respect of the administration charges claimed in relation to Tribunal decision ref LON/00AJ/LBC/2018/0059.
- (2) The tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant

## **The application**

1. The Applicant seeks a determination under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the amount of administration charges payable by the Respondent in respect of the an application to the Tribunal under Section 168 of the Commonhold and Leasehold Reform Act 2002.
2. The relevant legal provisions are set out in the Appendix to this decision.

## **The background**

3. The property which is the subject of this application is a flat in a converted house.
4. The Applicant is the freeholder of the property and the Respondent is the lessee of the Flat under a lease dated 16th January 2015 for a term of 115 years from 25 March 2014.
5. The Applicant brought proceedings alleging that there had been a breach of Covenant. The Tribunal determined that there had been a breach relating to floor coverings and that at the date of the hearing it was continuing.

## **The Evidence**

6. The Applicant referred to the Respondent’s obligation under Schedule 4 Clause 7.1 of the Lease “*To pay to the Landlord on demand the costs and expenses and any VAT on them assessed on a full indemnity basis incurred by the Landlord (both during and after the end of the Term) in connection with ...the enforcement of any of the Tenant Covenants*”.
7. The Appellant submitted that there was a contractual entitlement to recover the costs of enforcement action by way of a variable

administration charge under paragraph 5 of Schedule 11 of the 2002 Act. It was stated that the Applicant had sought to minimise their costs at every stage including by hiring junior counsel to attend the Tribunal as his fee was less than if its solicitor had attended. A hearing had only been necessary because of the Respondent's lack of engagement regarding the breach exacerbated by the Respondent's failure to provide an up to date address and/or contact details. The claim was for the costs of £3708.58 relating to the substantive hearing, and if successful the £100 application fee for this application.

8. The Applicant produced copy invoices from his solicitor totalling £3,708.58 including VAT and disbursements.
9. The Respondent did not dispute his contractual liability under the lease. He stated that he had purchased the flat fully refurbished and had not appreciated that a lack of carpets was in breach of his covenants. He was now undertaking the necessary remedial work. He submitted that if the costs had been properly claimed at the previous hearing that this application would not have been necessary. It was unreasonable for a Grade A fee earner to prepare the bundles.
10. The Applicant offered to reduce the solicitor's costs as it accepted that some of the work of preparing the bundles could have been undertaken by a more junior member of staff. The revised total claimed was reduced to \$3,387.38

### **The tribunal's decision**

11. The tribunal determines that the amount payable in respect of administration charges is £3,387.38. The application fee of £100 should be added to this amount.

### **Reasons for the tribunal's decision**

12. The Respondent did not engage with either the applicant or the Tribunal in respect of the breach of covenant. The Applicant had no choice but to attend the Tribunal and also make the current application in view of the lack of proper contact details for the respondent.
13. The fees claimed, as adjusted, are reasonable and payable.

**Name:** E Flint

**Date:** 28 May 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).