



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

Case Reference : **MAN/00BM/LAC/2019/0004**
Property : **60, Milner Street, Radcliffe,**
Manchester : **M26 3TH**
Applicant : **Ms Nicola Belfield**
Representative : **Mr Peter Creswell**

Respondent : **Sunnywood Estates Limited**
Representative : **Landmark Collections**

Type of Application : **Commonhold and Leasehold Reform
Act 2002 – Schedule 11, paragraph 5**
Date of Hearing : **24 January 2020**

Tribunal Members : **Tribunal Judge C Wood**
Ms S Latham

Date of Decision : **11 March 2020**

DECISION

Order

1. The Tribunal orders as follows:
 - 1.1 each of the 2nd reminder letter charge and the debt referral charge constitute variable administration charges within paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, (“the Act”);
 - 1.2 the Applicant has not agreed to the charges within the meaning of paragraph 5(4)(a) of Schedule 11 to the Act. The Tribunal has jurisdiction to consider the applications for determinations as to the Applicant’s liability to pay these charges;
 - 1.3 in accordance with paragraph 2 of Schedule 11 to the Act:
 - (i) the charge of £60 the 2nd reminder letter is reasonable; and
 - (ii) the debt referral charge of £120 is unreasonable and a fee of £60 is substituted.
 - 1.4 In view of the above determinations, the Tribunal considered that it was not just and equitable to grant the Applicant’s section 20C application.

Background

2. By applications dated 4 March 2019, (“the Applications”), the Applicant sought determinations as to the liability to pay, and reasonableness of, administration charges relating to the late payment of ground rent, together with an application under section 20C of the Landlord and Tenant Act 1985, (“the 1985 Act”).
3. Directions were issued by the Tribunal dated 15 April 2019 pursuant to which written submissions were made on behalf of both parties.
4. The Directions provided that the Applications would be determined following a hearing. They also provided that no inspection of the Property was required.

5. A hearing was scheduled to take place at 10:30 on Friday 24 January 2020 at the Tribunal's offices at 1st Floor, Piccadilly Exchange, 2 Piccadilly Plaza, Manchester M1 4AH.

Law

6. Paragraph 1 of Schedule 11 to the Act provides as follows-
 - 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.
7. Paragraph 5 of Schedule 11 to the Act provides as follows-
 - 5(1) An application may be made...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) ...

- (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) ...

Hearing

8. The hearing was attended by the Applicant and her representative, Mr Peter Creswell. The Respondent was represented by Mr Andrew Savage of Landmark Collections.
9. At the hearing, Mr. Savage confirmed that the Respondent was not seeking recovery of the costs of the debt collection agency, PDC, and that a determination regarding the Applicant's liability to pay, or the reasonableness of those costs, was not sought.
10. The Applicant's submissions in her Statement of Case and as made by her representative, Mr Creswell, at the hearing are summarised as follows:

Liability

- 10.1 the factual background to the late payment of ground rent was explained;
- 10.2 the right to charge interest on the late payment of ground rent is contained in clause 2(1)(c) of the lease dated 30 November 2007 made between Sunnywood Estates Limited (1) and Nicola Jane Belfield (2), ("the Lease"). Where payment of ground rent had been late in the past, interest had been charged but not any other fee/charge;

- 10.3 the Applicant placed reliance on the Upper Tribunal decision in *Fairhold Freeholds No.2 Limited v Alistair C Moody* [2016] UKUT 0311 (Case No. LRX/92/2015), (“the Moody decision”), to support her claim that there was no liability under the terms of the Lease to make the charges claimed. In the Moody decision, it was determined that the relevant clause in the lease in that case (clause 4.1) did not permit the recovery of an administration charge or to recoup solicitor’s fees in connection with the late payment of ground rent;
- 10.4 the comparable provision in the Lease to that in the Moody decision is clause 2(12) which comprises an indemnity of the Lessor by the Lessee against “...all damages losses costs expenses actions demands proceedings claims and liabilities made against suffered or incurred by the Lessor arising directly or indirectly out of...any breach or non-observance by the Lessee of the covenants conditions or other provisions of this Lease...”;
- 10.5 Mr Creswell accepted that there was a difference in the wording of the two clauses: specifically, the indemnity in clause 2(12) includes damages, losses, costs, expenses etc “incurred by the Lessor” as a result of a breach or non-observance of covenants in the Lease..” Mr Creswell acknowledged that this could give rise to a different interpretation of clause 2(12) to the clause in the Moody decision. Nonetheless Mr Creswell pointed out that the Lease does not contain any specific reference to charges relating to late payment. In this respect, reference was made to paragraph 15 of the Moody decision quoting paragraphs 26 and 27 of the First-tier Tribunal’s decision, in which two points were made:
- (i) that, whilst it was not necessary for a lease to include specific wording relating to the right to recover administration charges for late payment, the wording of the specific clause did not encompass such charges: “...it was defensive in nature and was not intended to apply to situations where the Lessor took the initiative and instigated action against the Lessee”;

- (ii) that regard should be had to the lease as a whole. In the Moody case, there was a Schedule to the lease that listed charges recoverable under its terms and the Tribunal “...considered that if the landlord had intended to be able to levy administration charges for late payment of ground rent that this would have been included...”;
- 10.6 in addition, clause 2(8) of the Lease contains a covenant, “[T]o pay to the Lessor all expenses...properly incurred by the Lessor incidental to the preparation and service of any notice under Section 146 of the Law of Property Act 1925...”. “It was stated that this was not relevant in these circumstances;
- 10.7 clause 2(1)(c) is the only clause in the Lease which refers specifically to late payment and that entitles the Lessor to charge interest on such overdue payments.

Reasonableness

11. Without prejudice to the Applicant’s position regarding liability, the following points were made with regard to the charges:
- (i) the Respondent has not suffered any loss or damage by reason of the late payment of the ground rent;
 - (ii) the reminder letters are contained in the Applicant’s statement at pages 30 and 31. They are one page “standard” letters and it is difficult to justify £60 for their preparation. £20 is a reasonable sum which the Applicant is willing to pay;
 - (iii) there is no information regarding what was involved in instructing PDC but, if the work involved was similar to the reminder letters, then again the Applicant considers that £20 is a reasonable sum which she is willing to pay.
12. The Respondent’s submissions, as set out in its Statement of Case and as made by its representative, Mr Savage, at the hearing are summarised as follows:

Liability

- 12.1 whilst acknowledging the right to claim interest on late payments under clause 2(1)(c) of the Lease and that, in the past, interest has been charged, it is no longer the practice to do so as the amounts are often very small;
- 12.1 the relevant clause in the Lease is clause 2(12), (and not clause 2(8) as incorrectly suggested by PDC), which differs fundamentally from the comparable lease provision in the Moody decision. Specifically, it includes costs etc “incurred by the Lessor”, and that, in this case, it includes the costs incurred by the Lessor in pursuing the Applicant for non-payment of ground rent.

Reasonableness

- 12.2 With regard to the amount of the charges, Mr Savage explained as follows:
- (i) the Respondent’s agent manages 15000 properties, and it is impossible to individually quantify the costs involved in sending reminder letters etc. The process is run on a “break even” basis;
 - (ii) there is no charge for the 1st reminder letter;
 - (iii) with regard to the work involved in issuing the 2nd reminder letter, the computer system generates a daily list of arrears, together with the reminder letter and statement. This needs to be manually folded, put into an envelope and posted;
 - (iv) with regard to instructing PDC, Mr Savage confirmed that again the computer system generates a schedule detailing the property, freeholder, tenant and the amount in dispute. This is reviewed in order to decide whether the instruction should be sent. This takes a few minutes. Where it is to be sent to PDC, then an e-mail is attached to the schedule. In total, the review and sending the instruction takes about 10 minutes;

- (v) reference was made in the Respondent's written submission to a Tribunal decision (MAN/00EQ/LAC/2017/0011) where it is suggested that in "identical" circumstances "insofar as the parties carrying out the work carried exactly the same work before being contacted by the applicant in both cases", the Tribunal determined that reasonable charges were £270.

Reasons

13. In reaching its determinations, the Tribunal took into account the following matters:

Liability

- 13.1 The Tribunal is satisfied that the charges in dispute fall within the definition of variable administration charges as set out in paragraph 1(1)(d) of Schedule 11 to the Act, namely, as being an amount payable "in connection with a breach...of a covenant...in his lease", in this case, the Lessee's obligation to make payment of ground rent in accordance with clause 2(1)(b) of the Lease.
- 13.2 Further, the Tribunal is satisfied that clause 2(12) of the Lease permits recovery by way of an indemnity from the Lessee of amounts expended by the Lessor on sending the 2nd reminder letter and on instructing PDC. Specifically, the Tribunal is satisfied that the word "incurred" in clause 2(12) of the Lease extended the ambit of the Lessor's indemnity from that contained in clause 4(1) of the lease in the Moody decision. The indemnity was not only "defensive in nature" but also provided an indemnity in respect of costs arising from actions taken by the Lessor on its own initiative: in this case, the costs of sending the 2nd reminder letter and instructing PDC

Reasonableness

13.3 With regard to the reasonableness of the charges, the Tribunal notes the following:

- (i) the Tribunal was satisfied that the Applicant was in breach of the covenant in clause 2(1)(b) of the Lease to pay the ground rent on 1 January. Further, the Tribunal is satisfied that the Applicant understood her obligation to make payment under the terms of the Lease, and that, based on her own evidence, she was aware that the ground rent was overdue by at least 18 January 2019. This obligation was not affected by the Respondent's practice of allowing a "grace period" before levying any charges. In particular, the Tribunal noted that the Applicant could have made payment by 30 January 2019 without incurring any charge;
- (ii) the Tribunal saw no relevance to its determinations that the Respondent had in previous years chosen to charge interest on overdue payments, rather than levy a charge, or that it had changed its practice in this respect;
- (iii) that no charge was made for the 1st reminder letter;
- (iv) Mr Savage's evidence that the time involved in sending the instruction to PDC was no more than 10 minutes;
- (v) that, in the decision referred to the Tribunal by the Respondent, whilst the aggregate charges determined to be reasonable were £270, the component charges determined to be reasonable by the Tribunal were:
 - (a) late payment reminders: £60;
 - (b) debt agency referral fee: £60;
 - (c) debt collection fee: £150.

The Tribunal considered that its determinations in paragraph 1 of this Decision in respect of the 2nd reminder letter and the referral charge were consistent with this.

Section 20C

13.4 Having regard to the Tribunal's determinations, the Tribunal considered that it was not just and equitable to grant the Applicant's s20C application.

Tribunal Judge C Wood