



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

**Case Reference** : BIR/OOCN/LIS/2018/0066

**Property** : 85 Geach Street, Newtown, Birmingham, B19 2NR

**Applicant** : Mrs Noeleen Odhiambo

**Representative** : Newbold Solicitors

**Respondent** : Clarion Housing Association Limited

**Type of Application** : 1 Application for determination of liability to pay and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985;

2 Application for an Order under s.20C of the Landlord and Tenant Act 1985;

3 Application for an Order limiting payment of Landlord's costs under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

**Tribunal Members** : I.D. Humphries B.Sc.(Est.Man.) FRICS  
P.J. Hawksworth (Lawyer)

**Date and Venue of Hearing** : None. Paper Determination.

**Date of Decision** : 4 April 2019

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**DECISION**

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## Introduction

- 1 The Applicant, Mrs Odhiambo, holds a shared ownership lease of a house at 85 Geach Street, Newtown, Birmingham, previously known as Plot 10, Guildford Drive, Newtown, Birmingham, dated 10 March 1999. The Respondent Landlord is Clarion Housing Association Limited. Under the terms of the lease, the Applicant has to pay a service charge that includes payment for property management.
- 2 A previous Decision of this Tribunal (differently constituted) dated 8 November 2017, determined the management fee at £75.00 for 2016/17. (Ref.BIR/00CN/LIS/2017/0023).
- 3 However, for the year 2017/18, the Respondent increased the property management fee to £185.00.
- 4 It is understood that possession proceedings have been commenced in the Court on the ground that the Applicant has not paid the rent and service charge although the Tribunal has not seen correspondence confirming this. The Claim No. is E7PP1343.
- 5 On 16 November 2018 the Applicant applied to the Tribunal for determination of points (1)-(5) below and added point (6) by Statement dated 23 January 2019 in response to Tribunal Directions Order No.2:
  - 1 the management fee;
  - 2 whether the Respondent's refusal to obtain like for like insurance was lawful;
  - 3 whether the building insurance cover and third party cover were adequate;
  - 4 an application for an Order under section 20C of the Landlord and Tenant Act 1985 to prevent the Respondent including the costs of the Application in the service charge;
  - 5 an application for an Order limiting payment of the Landlord's costs under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002;
  - 6 an application for payment of the Applicant's legal costs.
- 6 On 8 January 2019, the Respondent provided a Statement in response to Directions Order No.2, advising that in respect of point (1) there had been an administrative error following the Tribunal's previous Decision and the management fee would be reduced to £75 p.a. for each of the years 2017/18, 2018/19 and 2019/20.
- 7 Further, the Respondent advised that it would not be seeking recovery of its legal costs as a result of the application and requested that each party should pay their own costs.

## Tribunal Determination

- 8 The Tribunal inspected the exterior of the property on 28 February 2019 with the parties' representatives. Neither party requested a Hearing and the Decision has been made following review of the submitted papers.
- 9 In respect of the six points, the Tribunal finds:
  - 1 This item has been superseded by the Respondent's submission and the Tribunal notes the Respondent's proposed revised fee for the years 2017/18, 2018/19 and 2019/20 and accordingly, determines that the Management Fee for those years shall be limited to £75.00 pa.

- 2 The insurance question had already been struck out by the Tribunal under Rule 9(2)(a) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 in Directions Order No.1 dated 20 November 2018, for lack of jurisdiction.
- 3 The building insurance question had been struck out by the Tribunal under Rule 9(3)(c) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 in Directions Order No.1 dated 20 November 2018, as the question or a question substantially to the like effect, had already been determined by previous Tribunal.
- 4 Bearing in mind the admitted mistake by the Respondent, the Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 preventing the Respondent from including the costs of this application in the service charge.
- 5 In respect of the requested Order under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, the Tribunal notes the Respondent's proposal not to seek its legal costs as a result of the application and in any event given the circumstances of the Application and the admitted administrative error on the part of the Respondent, the Tribunal determines that it is just and equitable that the Applicant make no payment in respect of the Respondent's legal costs. Accordingly for the purposes of Paragraph 5A above the Tribunal orders that any liability on the part of the Applicant to pay the Respondents legal costs consequential on this Application is extinguished in full.
- 6 In respect of the Applicant's request for payment of her own legal costs by the Respondent, the Tribunal finds the Applicant has been successful in respect of point (1) above but the application in respect of points (2) and (3) was unnecessary as they had already been litigated.

On the question of whether a costs order should be made, Rule 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 refers to a person acting unreasonably in 'bringing, defending or conducting proceedings'. The issue therefore, is whether the Respondent acted unreasonably in defending this Application. The test of unreasonable behaviour is that set out in the well-known cases of *Willow Court Management Co (1985) Ltd v Mrs Ratna Alexander* (and associated cases) (2016) UKUT 290 (LC) and *Ridehalgh v Horsefield* (1994) Ch 205. The Application was entered on 16 November 2018 which thus starts time running for the Respondent to be shown to have acted unreasonably in defending proceedings. By a Statement dated 8 January 2019 the Respondent admitted the administrative error and stated that it would reduce the management fee to the previous figure of £75.00. In *Willow Court* at paragraph 62 it is stated:

“Although in some cases, the fact that a party has been unsuccessful before the Tribunal in a substantive hearing might reinforce a view that there has been unreasonable behaviour, that failure cannot be determinative on its own. The residential property division of the First-tier Tribunal is a costs shifting jurisdiction by exception only and parties must usually expect to bear their own costs”.

In this case, therefore, the Applicant has to persuade the Tribunal that this is an exceptional case which justifies an award of costs being made. The Tribunal determines that the Applicant succeeds on this point because (a) she had no alternative other than to make the Application, facing as she did a significant

increase in management fees and (b) immediately on receipt of the Application the Respondent could and should have admitted its administrative error and re-

instated the fees to £75.00 pa. It was, in the Tribunal's view, unreasonable conduct in the defending of proceedings only to make this concession in a Statement nearly two months after the Application had been entered. Had the error been discovered as it should have been when the Respondent received the Application and the concession been made at that time, costs would have been minimal.

As to quantum, the Tribunal has considered the cost sheets prepared by Newbold Solicitors requesting £776.60 plus VAT, i.e. £931.92, and finds that a reasonable sum for all the work carried out would have been £650.00 plus VAT, i.e. £780.00. No representations on the amount of the costs claimed were submitted by the Respondent.

The Application raised three substantive points (1) management fee (2) like-for-like insurance and (3) the adequacy of insurance cover. Only (1) above was justified the others having been struck out by the Tribunal as mentioned above. The Tribunal, therefore, consider the Applicant should be awarded one third of her legal costs, rounded up to £220.00 plus VAT. However, before making an Award, the Tribunal is required to invite the Respondent to make any submission on the point pursuant to Rule 13(6) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

The Tribunal wrote to the Respondent on 18 March 2019 inviting comment. The Respondent replied and the Tribunal have considered its comments but the Tribunal still find it unreasonable for the Respondent to have delayed two months before offering to reduce the charge. There is nothing in the response to displace the Tribunal's initial finding. Accordingly the Tribunal awards the Applicant her legal fees of £220.00 plus VAT.

I.D. Humphries B.Sc.(Est.Man.) FRICS

Date: 4 April 2019

### **Appeal**

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property). Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.