



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

Case Reference : **LON/00AN/LAC/2019/0001 & 0003**

Property : **Flat B, 469 Fulham Palace Road,
London SW6 6SU**

Applicant : **Ms Sophie Wright**

Representative : **Mr. Robert Wright**

Respondents : **Assehold Limited**

Representative : **Mr. R Gurvits of Eagerstates
Limited (managing agent)**

Types of Application : **Payability of administration
charges**

Tribunal Members : **Judge Tagliavini
Mr. A Harris LLM FRICS FCIArb**

**Date and venue of
Hearing** : **8 May 2019
10 Alfred Place, London WC1E 7LR**

Date of Decision : **9 May 2019**

DECISION

Decisions of the tribunal

- (i) The tribunal determines that the sum of £120 imposed by the Respondent on 4 January 2018 is not payable by the Applicant.**
 - (ii) The tribunal determines that the sum of £120 imposed by the Respondent on 10 January 2019 is not payable by the Applicant.**
 - (iii) The Respondent has conceded that the sum of £600 for legal costs imposed on 18 January 2018 is not payable by the Applicant.**
 - (iv) The tribunal determines that the sum of £36 is payable by the Applicant.**
 - (v) The tribunal determines that the sums of £300 for the application and hearing fees are to be refunded to the Applicant by the Respondent within 28 days of the date of this decision.**
 - (vi) The tribunal makes an order preventing the Respondent from seeking to charge any of its costs of these proceedings by way of an administration charge.**
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The application

1. The Applicant has made two applications seeking the tribunal's determination as to the payability of administration charges under Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Background

2. The Applicant is the long lessee of the subject premises pursuant to a lease dated 28 November 2014, granting a term of 125 years. At the date of these applications, the Annual (ground) rent payable was £450 per annum, payable in advance on the 1st January of each year. Service charges are payable in equal instalments on 24th June and 1st January of each service charge year. By a tribunal decision dated 26 October 2018, a right to manage was acquired by 469 Fulham Palace Road RTM Limited of which, the Applicant is a member.
3. In her applications, the Applicant seeks to challenge the reasonableness and payability fee of the £120 imposed by the Respondent, through its managing agent Eagerstates Limited, in a letter dated 4 January 2018 headed *Notice of Proceedings*.' This letter referred to the late payment of £1,352.38 made up of the ground rent

of £450 payable for 2018, a service charge instalment in the sum of £746.38, (payable under paragraph 3 of the Fifth Schedule of the lease on 24th June and 1st January) and included £36.00 administrative charge, incurred for sending the demand and the sum of £120 incurred by Mr. Gurvits for the preparation of a file to send to solicitors for the issue of legal proceedings.

4. In a second application, the Applicant seeks to challenge the reasonableness and payability of a further sum of £120. This was imposed by the Respondent on 10 January 2019 in a letter headed *Notice of Proceedings* seeking payment of £606. This sum was made up of ground rent of £450 due on 1st January, charges of £120 for the preparation by Mr. Gurvits of a file to pass to solicitors for the recovery of the late payment and the sum of £36 imposed for the preparation and demand of the payment of this ground rent. Additionally, the Applicant seeks to challenge the reasonableness and payability of the sum of £600 claimed by the Respondent's solicitors in a letter dated 18 January 2019 in respect of legal costs.

The Applicant's case

5. For the oral hearing of the applications, the Applicant provided a bundle of documents in a file to the tribunal, containing the documents on which both parties sought to rely, together with some additional evidence provided at the hearing. Mr. Wright told the tribunal that he disputed the first charge of £120 said to be in respect of costs incurred due to the late payment of ground rent of £450 due on 1 January 2018. Mr. Wright told the tribunal that this sum had been paid on 4 January 2018 and therefore, it was unreasonable to impose such a charge which, is excessive in amount.
6. Mr. Wright also disputed the second charge of £120 said to have been levied in respect of ground rent of £450 for the year 2019 which, was paid in full on 5 February 2019. Mr. Wright again submitted that the sum sought is both excessive and unreasonable.
7. Mr. Wright disputed the payability of a sum of £36 imposed on in respect of the ground rent demand. Mr. Wright referred the tribunal to an earlier decision dated 28 July 2018 *LON/00AN/LSC/2018/0086*, in which, it had been found that a similar sum was not payable due to a lack of evidence, establishing that the Respondent was entitled to make such a charge in the applicable Management Agreement provided in those proceedings.
8. Mr. Wright also seek to challenge the sum of £600 said by the Respondent's solicitors to have been incurred for legal costs due to the Applicant's non-payment of the costs of £240 and £36. However, during the course of the hearing Mr. Gurvits conceded that the legal costs of £600 had not been incurred and therefore were not payable by the Applicant. The tribunal therefore considered that no further evidence or submissions were necessary on this issue.

The Respondent's case

9. Mr. Gurvits told the tribunal that it was reasonable to have incurred the costs of £120 due to the late payment of the ground rent by the Applicant, even though it had been paid on 4 January 2018. Mr. Gurvits stated it was not his practice to send out reminders for payment after the demand for ground rent had been sent and had by 3 January 2018, prepared a 'file' to be sent to solicitors for the initiation of forfeiture proceedings.
10. Mr. Gurvits repeated the arguments above in respect of the second charge of £120 and referred the tribunal to a Management Agency agreement between Assethold Limited and Eagerstates Limited dated 12 November 2018. This agreement set out a schedule of costs including the sum of £30 plus VAT for the service of a ground rent demand and £150 per hour (plus VAT) for the "*Legal recovery of unpaid service charges or ground rents or action for non-compliance with leases including instructing solicitors and preparing for attending court/LVT*". Mr. Gurvits told the tribunal that the £120 charge represented the time spent in respect of preparing a file for solicitors to issue legal proceeding, which had been less than an hour and which included VAT.

The tribunal's decisions and reasons

11. The tribunal notes that clause 6 of the lease prohibits the re-entry into the subject premises by the landlord until the rents reserved (annual rent and service charges) had remained unpaid for twenty-one days.
12. Further, the tribunal has regard to section 167 of the Commonhold and Leasehold Reform Act 2002, which states in respect of a failure to pay small amount for a short period:

"(1)A landlord under a long lease of a dwelling may not exercise a right of re-entry or forfeiture for failure by a tenant to pay an amount consisting of rent, service charges or administration charges (or a combination of them) ("the unpaid amount") unless the unpaid amount—

(a)exceeds the prescribed sum, or

(b)consists of or includes an amount which has been payable for more than a prescribed period.

(2)The sum prescribed under subsection (1)(a) must not exceed £500.

13. The tribunal finds that the threat of legal proceedings on 4 January 2018, three days after ground rent and service charges were due, to be

unreasonable and contrary to the terms of the lease. The tribunal finds that at the date of that letter, the parties were disputing the payment of service charges and that during the hearing Mr. Gurvits appeared to accept that only the ground rent was late in being paid. In any event, the tribunal considers that having regard to the terms of the lease and the conduct of Mr. Gurvits in threatening legal proceedings at such an early date, the tribunal finds that the administration charge of £120 in preparation for legal proceeding is unreasonable and is not payable by the Applicant.

14. The tribunal finds that the ground rent demanded in the letter dated 10 January 2019, did not exceed £500 and therefore could not be subject to forfeiture proceedings, despite Mr. Gurvits' preparation of a file to send to solicitors in preparation for forfeiture proceedings. Therefore, the tribunal determines that the further sum claimed of £120 is neither reasonable nor payable by the Applicant.
15. The tribunal finds that, the inclusion of a sum of £36 for the ground rent/service charge demand for 2018 was dealt with by the tribunal in its decision dated 24 July 2018 and was found not to be payable; *LON/00AN/LSC/2018/0086*.
16. The tribunal finds that the lease provides at paragraph 1.1.5 of the Fifth Schedule, for the payment by the Applicant of administration charges incurred in respect of ground rent demands. Further, the tribunal is satisfied that this charge is now provided for in the schedule of charges in the Management Agency Agreement. Therefore, the tribunal finds that the sum of £30 plus VAT (£36) charged by the Respondent in its letter of 10 January 2019 is reasonable and payable.

Reimbursement of application and hearing fees

17. Mr. Wright also sought the reimbursement of application and hearing fees totalling £300 as he had been unaware until the hearing that the Respondent was no longer seeking the payment of £600. Mr. Wright stated that had he been aware of this then a paper determination, as originally requested, would have been appropriate or an agreement could have been reached in respect of the remaining sum of £276. Consequently, as a hearing had been necessary, the Applicant should be entitled to the £300 fees incurred.
18. Mr. Gurvits opposed this application for the reimbursement of fees and asserted that the letter dated 18 January 2018 did not make a demand for £600 legal costs and that the Applicant and Mr. Wright must have been aware of this. Therefore, it had been unreasonable to make and proceed with these two applications.
19. The tribunal finds that the letter of 18 January 2019 from Scott Cohen solicitors stated *'Please note that our client will also seek to claim Administration Charge arrears presently in the sum of £276.00 together with any further costs and interest incurred in relation to*

these proceedings. To date, this includes the firm's fees of £600 bringing the outstanding balance to £1,326.00."

20. The tribunal finds that until the concession made by the Respondent at the hearing of these applications, it was reasonable for the Applicant to believe the Respondent was seeking legal costs in the sum of £600. Having regard to the tribunal's findings as set out above and the Respondent's late concession, the tribunal finds it reasonable and appropriate to order the Respondent reimburse the Applicant the sum of £300 application and hearing fees.
21. Having regard to the findings set out above, the tribunal considers that the Respondent is not entitled to add the costs of these proceedings to the service charges or seek to recover them as administration charges from the Applicant.

Signed: Judge Tagliavini

Dated: 9 May 2019