



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

Case Reference : **LON/00AH/LAC/2019/0011**

Property : **25 Farleigh Court, Warham Road,
South Croydon, Surrey CR2 6LH**

Applicant : **Farleigh Court (Freehold) Limited**

Representative : **Gregsons Solicitors**

Respondent : **Mr Gnaganesh Gnanasampanthan
Mrs Bhavani Gnanasampanthan**

Representative : **-**

Type of Application : **For the determination of the
reasonableness of and the liability to
pay an administration charge**

Tribunal Members : **PMJ Casey MRICS**

**Date and venue of
Hearing** : **29 July 2019
10 Alfred Place, London WC1E 7LR**

Date of Decision : **23 August 2019**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £5,017.50 is payable by the respondent in respect of the administration charges incurred by the applicant in the period September 2015 to March 2017.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.

The application

1. The Applicant seeks a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of administration charges payable by the respondent.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The tribunal issued directions for the conduct of the application on 29 May 2019. The directions identified the application as suitable for determination without a hearing unless either party requested an oral hearing; neither did so. They also asked the parties to prepare a bundle of documents containing their statements of case and copies of all documents relied on in evidence. The applicant duly provided a bundle as directed but the respondents played no part in the pre-hearing preparation and have not made any contact with the tribunal to indicate whether or not they dispute the administration charges the applicant seeks against them.

The background

4. The property which is the subject of this application is a second floor purpose built flat, part of a development erected in the mid-1960s and comprising two, four storey blocks comprising 32 similar flats in all together with separate garage blocks. The subject flat is No 25 Farleigh Court, Warham Road, South Croydon, Surrey CR2 6LH.

5. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
6. The respondent holds a lease of the property dated 31 January 1965 for a term of 99 years from 25 March 1965. The specific provisions of the lease will be referred to below, where appropriate.
7. On 25 November 2015 the applicant had made a previous application to the tribunal for an order that there had been a breach of covenant by the respondents in relation to an alleged failure on their part to repair a leaking overflow pipe. On 27 January 2016 the tribunal which considered that matter issued its decision that there had indeed been the breach complained of.
8. The applicant sent to the respondents on 25 April 2017 an invoice in the sum of £5,017.50 relating to the costs it had incurred in that application together with a Summary of Tenants Rights and Obligations relating to administration charges. The sum was made up of solicitors costs of £3,500 plus £700 VAT and disbursements (official office copies from Land Registry) £30; Managing agents additional fees £518.75 plus £103.75 VAT; and a bill from the contractor who the Managing Agents instructed to investigate the leak in the absence of any action by the respondents in the sum of £165 including VAT. Invoices for each of the amounts claimed were included in the bundle. The respondents have not paid any of these sums hence the present application to the tribunal for a determination that they are reasonable in amount and are payable by the respondents.

The issues

9. The payability and reasonableness of the administration charges claimed is the sole issue for the tribunal's determination.
10. Having read the submissions from the applicant and considered all of the documents provided, the tribunal has made its determination on the issue as follows.

The tribunal's decision

11. The applicant relies for its claim to the administration charges on clause 2(E) of the lease by which the Lessee covenants with the Landlords "To

pay all costs charges and expenses (including Solicitors costs and Surveyors fees) incurred by the Landlords for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided or otherwise than by relief granted by the Court". The 2015 application to the tribunal for an order that a breach of covenant had occurred was a necessary precursor to commencing forfeiture proceedings. A S146 notice has been issued.

12. The applicant clearly has a right under the terms of the lease to seek the costs it incurred in the process of serving the Section 146 notice including the tribunal application in 2015. Those costs are not limited to the solicitors costs alone but can include additional fees claimed by the managing agent for work outside the scope of what their management fee covered (though no copy of the management agreement was included in the bundle) and Clause 2(E) is wide enough to cover the contractor's report on the leak. The amounts claimed against the activities listed as undertaken in the invoices do not seem excessive given the period covered from September 2015 to March 2017. The respondents have made no reply to the application and it is not the role of the tribunal to seek to make a case for them. In all the circumstances the tribunal is satisfied that the administration charges claimed of £5,017.50 are reasonable in amount and are payable by the respondents under the terms of their lease.

Name: Patrick M J Casey

Date: 23 August 2019

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

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).