



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

Case reference : **LON/00AF/LAC/2019/0016**

Property : **7 Oaklands Road, Bromley, Kent
BR1 3SJ**

Applicants : **(1) Mr. William Preston (Flat B)
(2) Mr. Hector Stavrinidis (Flat D)
(2) Mr. Androniki Chlorou (FlatE)**

Representative : **N/A**

Respondent : **Assethold Ltd.**

Representative : **Eagerstates Ltd.**

Type of application : **The determination of the liability to
pay an administration charge**

Tribunal members : **Judge Tagliavini**

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

Date of decision : **28th August 2019**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the Applicants are liable to pay an administration charge in respect of the collection of ground rent.
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The application

1. The Applicants seeks a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to their liability to pay the Respondent an administration charge in respect of the collection of ground rent.

NB: [The Applicants incorrectly named the landlord’s managing agent as the Respondent rather than the landlord is a party to the lease.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. Neither party requested an oral hearing and this application was therefore determined on the documents provided by both parties.

The background

4. The property which is the subject of this application is a converted house divided into flats of which the Applicants’ premises form part.
5. The Applicants each holds a long lease of the property which requires the payment of ground rent to the Respondent of £250 per annum for the first 25 years of the lease and rising to £4,000 per annum.*

****The tribunal was provided only with a copy of the lease of Flat B which was granted for a term of 125 years from 25th March 2015 but was not informed that the terms of the other leases significantly differed.***

The issue

6. The Applicants did not seek to challenge the amount of the administration charge of the Respondent in the sum of £36.00 for the collection of the ground rent, but disputed only whether the terms of

the lease made provision for such a charge to be made at all under Clause 10 and 11 of the Second Schedule setting out the landlord's obligations, which by whom they can be carried out on the landlord's behalf and the costs of the service charges, the calculation of which is provided for in Clause 11.

7. Clause 10 states:

“Employing any workmen necessary for the proper maintenance of the Property and a Managing Agent Solicitor Accountant Surveyor or other professional adviser in connection with the management of the Property including Maintenance Rent calculation and collection.”

8. Clause 11 states:

“The cost of the forgoing services shall be ascertained and certified by the Lessor's Managing Agents (whose certificate shall be final and binding on the parties hereto) to the Maintenance Year End and payment shall be made within one month of the production of such certificate and until verified by the Managing Agent the Lessee shall pay on account of the Maintenance Rent the amount of the On Account Payment by equal payment on the Payment Dates in each year and shall receive credit therefor against the next Maintenance Rent Payment.”

9. Under clause 1 of the Third Schedule of the lease the Applicants are required:

“To pay the Rent and On Account Payment in respect of the Maintenance Rent and the Maintenance Rent at the times and in the manner at and in which the same are hereinbefore reserved and made payable without deduction.”

10. In the Particulars of the lease the Rent is defined as the ground rent and the Maintenance Rent as the annual service charges.

The applicants' case

11. In a statement dated 8th August 2019 the Applicants asserted that Clause 10 of the Second Schedule does not entitle the Respondent to charge a fee for the collection of the ground rent and submitted that the wording of that clause referred only to the collection of the Maintenance Rent (service charges). The applicants referred to the cases relied upon by the Respondent and asserted that one, provides a decision as to reasonableness of the administration fee and not the tenant's liability to pay, *LON/00AU/LAC/2016/0009* and in the

second case the wording of the lease was “completely different to the wording of our lease”, *LON/00AH/LAC/2018/0004*.

12. The Applicants also asserted that as the Maintenance Rent recovered through another Managing Agent (Acorn Ltd.) chosen by the 7 Oaklands RTM Company, the clauses in the lease do not entitle Eagerstates Ltd. To charge an administration fee for the collection of ground rent.

The Respondent’s case

13. The Respondent relied upon a written statement dated 26 July 2019 in which it was submitted that Clause 10 of the Second Schedule refers not only to the collection of service charges but also the collection of ground rent. As section 116 of the 2002 Act required the service of a notice on the tenants before a ground rent could be properly demanded, this incurred administration costs. The landlord was permitted by the terms of the lease to employ a professional agent to serve these notices and make the demands for the ground rent on behalf of the landlord. Therefore, the administration fees were payable under the terms of the lease and reasonable in amount.

The tribunal’s decision and reasons

14. The tribunal determines that Clause 10 of the Second Schedule of the lease provides for the employment of a professional of choice to collect the Rent (ground rent) in connection with the management of the subject property. The tribunal does not accept the Applicants’ submissions and finds that their interpretation of Clause 10 of the Second Schedule is too narrow and does not properly reflect either the wording or the meaning of the words “...*the management of the property.*”
12. The tribunal is not bound by other First-tier tribunal decisions and found *LON/00AU/LAC/2016/0009* of limited interest as it delay with the issue of “reasonableness” rather than the issue of “liability.” The tribunal found the second of the cases referred to in *LON/00AH/LAC/2018/0004* to be of more relevance, as it was concerned with the issue of “liability to pay”, although the wording of the lease differed in that case to the wording if the lease in this application.
13. Further, the tribunal finds that Clause 11 of the Second Schedule refers only to the calculation of the amount of service charges payable, as it is these charges that are variable, unlike ground rent which is “certain” and does not require to be “ascertained” or “certified.”

14. In conclusion the tribunal determines that the Applicants are liable to pay to the Respondent the administration fees incurred in respect of the collection of the ground rent.

Section 20C and para 5A/schedule 11

15. In this application the Applicants also seek an order under section 20C of the Landlord and Tenant Act 1985, and paragraph 5A of Schedule 11 of the 2002 Act seeking to limit, reduce or extinguish the landlord's costs that have been incurred in connection with this application or which may be charged as an administration charge. In light of the tribunal's determination above, the tribunal declines to make an order under either section 20C or Schedule 5A as sought by the Applicants.

Name: Judge Tagliavini

Date: 28th August 2019

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).

Section 20C of the Landlord and Tenant Act 1985

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the

- proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.