



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

Case reference : **LON/00BG/LSC/2018/0278**

Property : **Flats 201, 301, 401 Caroline Adams House, 37 Pedley Street, London E1 5FQ**

Applicants : **Mr Joseph Young (Flat 201)
Mr Matthew McHugh (Flat 301)
Mr Alex Abrahams (Flat 401)**

Representative : **Mr Joseph Young**

Respondent : **Spitalfields Housing Association Limited**

Representative : **Capsticks Solicitors LLP**

Type of application : **Applications in relation to fees and costs.**

Tribunal members : **Tribunal Judge Seifert
Mr M C Taylor FRICS**

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

Date of decision : **18th October 2019**

SUPPLEMENTARY DECISION

DECISION OF THE TRIBUNAL

1. In their application dated 23rd July 2018, the applicants, the leaseholders of flats 201, 301 and 401 Caroline Adams House, applied for determination of liability to pay and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985.

Section 20C and paragraph 5A

2. In the application form, the applicants sought an order for the limitation of the respondent landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985. This provision gives the tribunal power on the application of the tenant, to make an order that such costs are not to be included in the service charge payable by the tenant or any other persons specified in the section 20C application. Each of the applicants were specified. In the application form, the applicants also sought an order limiting payment of the landlord's costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, which provides that a tenant may apply for an order which reduces or extinguishes the tenant's liability to pay an 'administration charge in respect of litigation costs' i.e. contractual costs in a lease.
3. The first applicant's lease (and the tribunal were informed that the second and third applicants' leases were in substantially the same form), contains a covenant by the leaseholder in Clause 7.4 – Service Provision, that the relevant expenditure to be included in the Service Provision shall include:
 - (e) any administrative charges incurred by or on behalf of the landlord but not limited to:
 - (iii) costs arising from non-payment of a sum due to the landlord; and/or
 - (iv) costs arising in connection with a breach (or alleged breach) of this lease.
4. The tribunal's decision on the substantive application dated 11th May 2019, included in paragraph 57 that any submissions by either party in respect of section 20C of the Landlord and Tenant Act 1985 or under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, be made within 14 days of the date of that decision. The decision dated 11th May 2019 was issued on 15th May. No submissions in respect of the section 20C or paragraph 5A were received by the tribunal from the applicants or the respondent within the time limit. The tribunal has therefore made our decision based on the outcome of the proceedings.

5. The applicants have been successful on the main issues in these proceedings. In the exercise of our discretion, we have reached the following conclusions:

(1) under section 20C of the Landlord and Tenant Act 1985, limitation of service charges: costs of proceedings, the tribunal finds that all the costs incurred by the respondent in connection with the proceedings before the tribunal, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by each of the applicants.

(2) under paragraph 5A of the Commonhold and Leasehold Reform Act 2002, each of the applicants' liability to pay administration charges (if any) in respect of litigation costs in respect of these proceedings, is extinguished.

Applicants' request for reimbursement of application and hearing fees

6. In letter to the tribunal dated 11th June 2019 the applicants made submissions in respect fees. That letter enclosed a copy of a letter from the applicants to the respondent dated 24th May 2019, which had not previously been copied to the tribunal. The applicants' letter dated 11th June 2019 included the following:

3.2 that the tribunal use its discretion to award the applicants the application fee (£100) and the hearing fee (£200). The applicants submitted that but for the respondent's conduct there was no need to bring these proceedings or proceed to a hearing.

7. Under rule 13(2) of the Tribunal (Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party.
8. The tribunal considers that the reimbursement of fees is not appropriate in this case. These proceedings included substantial submissions by both parties on the interpretation of the terms of the leases which was necessary for the determination of the issues raised by the applicants.

Request for costs

9. The applicants' letter dated 11th June 2019 also included a request that '... the tribunal use its discretion to award 'reasonable costs to the applicants, being £1,491.50 as per the enclosed schedule. The rate of £19 per hour is requested pursuant to CPR 46.5 (4)(b).'
10. The tribunal declines the applicants' application for costs because the tribunal is primarily a 'no cost' jurisdiction and the CPR do not apply to tribunal proceedings.

Summary of decision

11. Having reached the above conclusions, the tribunal:
- (1) Makes an order pursuant to section 20C of the Landlord and Tenant Act 1985, that all the costs incurred by the respondent in connection with the proceedings before the tribunal, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by each of the applicants.
 - (2) Makes an order pursuant to paragraph 5A of the Commonhold and Leasehold Reform Act 2002, that each of the applicants' liability to pay administration charges in respect of litigation costs in respect of these proceedings, is extinguished.
 - (3) Declines to order the respondent to reimburse (all or any) of the fees paid.
 - (4) Declines the applicants' application for costs.

Name: A Seifert

Date: 18th October 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 any 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 the 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).