FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LSC/2019/0335**
Property	**:**	**Flat 1, 1 Montagu Place, London W1H 2EW**
Applicant	**:**	**Mr. Stephen Elliott**
Representative	**:**	**N/A**
Respondents	**:**	**One Montagu Place Limited**
Representative	**:**	**Burlington Estates**
Types of Application	**:**	**Service charges – interpretation of a lease**
Tribunal Members	**:**	**Judge Tagliavini** **Ms M Krisko FRICS**
Date and venue of (paper) hearing	**:**	**17 December 2019** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**18 December 2019**

DECISION

Summary decisions of the tribunal

I The tribunal finds that the lease dated 25 March 1985 does not make provision for the recovery of legal costs other than those recovered in forfeiture proceedings.

The application

2. This is an application made under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") seeking the tribunal's determination as to whether the applicant tenant's lease makes provision for the recovery of legal costs.

Background

3. The applicant acquired an interest of 76 1/4 years (less 3 days) from 25 March 1985 in the subject premises under a lease of the same date and made between One Montagu Place Limited (the intermediate landlord) and Ann Atwater Guardabassi. By a lease dated 6 February 2015 made between Portman Estates Nominees (One) Limited and Portman Estates (Two) Limited and Stephen Kim Elliott and Arti Vashisht the applicant was granted by the freeholder of the building, a further interest in the subject premises expiring on 21 June 2151 at a peppercorn rent. In a number of demands made in the service charge years 2016, 2017, 2018 and 2019 the respondent (intermediate) landlord has demanded from the applicant his apportioned sum representing 28.5714% of the total service charge payable for the building, legal and professional fees in the sums of £285.71; £285.71; £4285.71 and £3428.57 for those service charge years respectively.

The premises

4. The subject premises, also referred to as Flat A, 1 Montague Place, London W1 H 2EW ("the premises) is a ground and basement floor flat in a period conversion.

The issue

5. The tribunal has identified that the sole issue it is required to consider in this application is whether the lease provides for the recovery of legal costs as the applicant asserts it does not. The respondent, however, asserts it is entitled to seek payment of such sums under the terms of the lease.

The hearing

6. Neither party requested an oral hearing of the application and therefore the tribunal determined the matter on the papers. The tribunal was provided with a number of documents from both parties which were neither indexed or paginated or clearly identified as to which party they belonged. Neither party provided a clear statement of case/response in support of their respective positions despite the tribunal's directions dated 25 September 2019 and letter of 15 November 2019.

The Applicant's evidence

7. In the documents provided the applicant asserted that the 1985 lease did not make provision for the collection of legal fees. In an email dated 20 May 2019 to the respondent, the applicant asserted that:

> *"a. there is a very marked contrast between the words you are relying upon and the words in Clause 3.0 stating all costs including solicitors', counsels' and surveyors' costs and fees incurred in legal proceedings under ss.146 and 147 of the Law of Property Act. Also consider the specific words in e.g. Clauses 5.1.3 and 5.1.4.*
>
> *b. the case law shows that the general words you refer to would simply not be sufficient to express an intention that any shortfall in the landlord's costs of litigation would be borne by the service-charge fund……."*

8. In an email dated 1 August 2018 from the applicant to the respondent's representatives, the applicant also referred and relied upon the case of *Sinclair Gardens Investments (Kensington) Ltd v Avon Estates (London) Ltd* 2016 UKUT 317 in support of his submission that litigation costs may not be charges through the service charges. Although the tribunal was provided with numerous letters and emails sent between the parties, the above extract at paragraph 7 above remained the central argument of the applicant's case.

The Respondent's evidence

9. In an email dated July 10 2018 the respondent in answer to the ongoing query raised by the applicant as to his liability to pay legal costs stated:

> "*1. Schedule 4 – definition of Service Charge – the total sum incurred as per paragraph 5.*
>
> *2. Paragraph 5.1 – Service Charge is the total costs of the landlord's compliance with covenants in paragraph* 3.1 to 3.7 which includes (para 5.1.11)* and other expenses reasonable*

incurred by the landlord incidental to the provision of the services in paragraph 3.

3. Paragraph 3.7 – services includes such facilities and services for the building as the landlord reasonably deem appropriate in the interest of maintenance and management thereof.

We would therefor argue that legal fees are incurred as incidental to provision of services (5.1.11) and it reasonable and appropriate for a landlord to employ the services of solicitors in the interests of management of the building (under 3.7) for enforcement of covenants, arrears litigation, general advice etc."

***references are too the Fourth Schedule of the 1985 lease.**

10. Although the tribunal was provided with numerous letters and emails sent between the parties the above extract remained the central argument of the respondent's case. No authorities were relied upon by the Respondent.

The tribunal's decisions and reasons

11. In reaching its decision the tribunal had regard to all, not just part of the clauses in the lease in order to ascertain whether there was an intention for the landlord to be able to recover legal costs through the service charges. In doing so the tribunal had regard to the natural and ordinary meaning of the words of the lease, any other relevant provisions in the lease, the overall purpose of the clauses and the lease, the facts and known or assumed by the parties at the time the lease was executed, commercial common sense whilst disregarding the parties' subjective intentions; *Arnold v Britton* [2015] UKSC 36.

12. The tribunal finds that the legal costs and professional fees demanded by the respondent as set out above at paragraph 3 above, have not been separated into what constitutes legal fees and what are professional fees (if any). The tribunal finds that the sums of £4,285.71 and £3428.57 are the applicant's share of litigation costs incurred in *LON/00BK/LSC/2017/0277* in a dispute brought by another tenant in respect of other disputed service charges.

13. The tribunal had regard to the Fourth Schedule, Part III (Service Charge) of the 1985 lease. Paras 3.7, 4.1, 5 and 5.1 of this states:

3.7 To provide such facilities and services to and for the Building as the Landlord shall from time to time reasonably deem appropriate in the interests of the maintenance and management thereof

4.1 "Service Charge" means the total sum computed under paragraph 5

5 The Service Charge shall be the total of:

5.1 The cost in any Accounting Year to the Landlord of compliance with the Landlord's covenants 3.1 to 3.7 (inclusive) (including where appropriate any sums payable by the landlord to independent contractors and the cost of professional supervision incidental to compliance with paragraphs 3.1. to 3.3 (inclusive) including the cost of any inspection in connection therewith) such costs to include:…."

12. The tribunal finds that the language of the lease does not demonstrate a clear intention that legal costs, other than those incurred in forfeiture proceedings under clause 3.20 are recoverable.

13. Therefore, the tribunal finds that the legal costs demanded by the respondent are not recoverable from the applicant whether they form part of the general estimated annual service charge costs (£285.71) or have resulted from previous litigation (£4285.71 and £3428.57).

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Signed: Judge Tagliavini **Dated: 18 December 2019**

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 this 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 each 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.