



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)¹ &
IN THE COUNTY COURT at
Hertford, sitting at Swindon
Magistrates Court, Princes Street,
Swindon, Wiltshire SN1 2JB**

Tribunal reference : **CHI/00HX/LAC/2020/0001**

Court claim number : **F30YM333**

Property : **15 Boatman Close, Swindon,
Wiltshire, SN25 2HL**

Applicant/Claimant : **Orchid Fields Swindon
Management Company Limited**

Representative : **Nicholas Warren**

Respondent/Defendant : **Shaun Sheppard**

Representative :

Tribunal members : **Judge Tildesley OBE**

In the county court : **Judge Tildesley (sitting as a Judge
of the County Court [District
Judge])**

Date of decision : **23 March 2020**

DECISION

Summary of the decisions made by the FTT

1. The following sums are payable by Mr Sheppard to Orchid Fields Swindon Management Company Limited by 14 April 2020:
 - (i) Administration charges: £609

Summary of the decisions made by the County Court

- (ii) Court and Tribunal fees of £170 and expenses of £219.38.
- (iii) Contractual Interest at 12% calculated in the case of administration charge demands from 29 June 2018 to the date of judgment: £104.22 and continuing at a daily rate of £0.20.

Background

1. The original proceedings were issued in the County Court under claim no. F30YM333 and were transferred initially to the Tribunal by District Judge Newman by order dated 5 December 2019.
2. On 30 January 2020 District Judge Newman allocated the claim to be dealt with in its entirety by a Tribunal Judge sitting first in that capacity and then as a County Court Judge exercising the jurisdiction of a District Judge.
3. The Tribunal issued directions and the matter eventually came to hearing on 17 March 2020.
4. The subject property is a purpose built flat which was purchased by Mr Sheppard some 15 years ago.
5. Mr Sheppard holds a long lease of the subject property, which was made between George Wimpey South West Limited and George Wimpey UK Limited (1), Orchid Fields Swindon Management Company Limited (2) and Shaun Sheppard (3) and dated 23 February 2005. The term of the lease is £150 years and the rent is £100 per annum subject to review.
6. The claim against the respondent in the County Court comprised the following:
 - (i) Administration charges of £855
 - (ii) Interest on arrears.
 - (iii) Court fees and expenses.

Reasons (FTT)

7. The issue before the Tribunal was whether the administration charges totalling £855 were reasonable and payable in accordance with paragraphs 2 and 5 of schedule 11 of the Commonhold and Leasehold Reform Act 2002.
8. The Administration Charges comprised the following:
 - a. A charge of £300 by the Managing Agent HML dated 22 June 2018 for instructing PDC solicitors to collect a debt for service charge arrears.

- b. A charge of £240 by PDC solicitors dated 22 June 2018 for the work done in collecting the debt.
 - c. A charge of £96 by the Managing Agent HML dated 29 January 2019 for the issue of an arrears letter reminder.
 - d. A charge of £99 by Leasehold Debt Recovery dated 13 March 2019 for sending a letter of Claim in respect of service charge arrears.
 - e. A charge of £120 by Leasehold Debt Recovery dated 20 March 2019 for sending a debt recovery letter and letter to mortgagee dated £120.
9. The Tribunal finds the following facts:
- a. Mr Sheppard failed to pay the demands for service charges issued on 2 January 2018 and 13 December 2018 in the sums of £679.08 and £734.51 respectively within 14 days of receipt.
 - b. The demands were posted to Mr Sheppard at the address given in the Office Copy Entry of the Registered Title for the Property. The Tribunal is satisfied that the demands were duly served on Mr Sheppard in accordance with section 196 of the Law of Property Act 1925 (see paragraph 2 of the Seventh Schedule of the Lease).
 - c. Orchid Fields Swindon Management Company Limited (OFS) was entitled to rely on section 196 for service of demands. Mr Sheppard's defence that he had agreed service of demands by email was not supported by the evidence and in any event not relevant because of the reference to section 196 in the lease. The Tribunal notes Mr Sheppard did not pay within 14 days of becoming aware by email of the outstanding service charge for £679.08.
 - d. By virtue of paragraph 12 of the Third Schedule to the Lease Mr Sheppard is obliged to pay all expenses incurred by OFS in the recovery of arrears of service charges (referred to as maintenance charges in the lease). The Tribunal is, therefore, satisfied that OFS had authority under the lease to make administration charges for the costs incurred in the collection of service charges.
 - e. The administration charges which are the subject of these proceedings related to costs incurred by OFS in the collection of service charge arrears from Mr Sheppard.

- f. The administration charges were duly demanded of Mr Sheppard. A summary of tenant's rights and obligations for administration charges accompanied the demands.
- g. OFS produced no documentary evidence to substantiate the charges of £300 and £240 dated 22 June 2018. The Tribunal had regard to Mr Warren's evidence. The Tribunal, however, decided there was an element of duplication between the charges. Further the Tribunal concluded applying its general knowledge and expertise that HML's charge of £300 for instructing solicitors was excessive, and that it should be reduced to £100. In the light of that reduction, the Tribunal decided that the amount of £240 for the work done by the solicitors in pursuing the debt on behalf of OFS was reasonable.
- h. The charge of £96 was for the production of a standard arrears letter which in the Tribunal's view was excessive. The Tribunal determined that a charge of £50 was reasonable. The Tribunal noted that Mr Warren charged £50 plus VAT for a reminder letter. The Tribunal rejected Mr Warren's contention that the Tribunal had no jurisdiction to determine this specific dispute. The Tribunal disagreed with Mr Warren's suggestion that Mr Sheppard's payment of a previous administration charge for an arrears letter constituted an admission. In the Tribunal's view, mere payment of a previous charge, did not amount to an admission of liability to pay future charges of the same amount.
- i. Mr Warren supplied convincing evidence to substantiate the charges of £99 and £120 dated 13 and 20 March 2019 respectively.
- j. The Tribunal determined that the charges of £240 dated 22 June 2018, of £99 dated 13 March 2019 and of £120 dated 20 March 2019 were reasonable and payable.
- k. The Tribunal determined that the charges of £300 dated 22 June 2018 and of £96 dated 29 January 2019 were excessive. The Tribunal determined that amounts of £100 and £50 were reasonable and payable.

Reasons (County Court)

Interest on Administration Charges

- 10. OCS had claimed interest of 12 per cent under Paragraph 1(a)(ii) of the Third Schedule to the Lease.

11. The Court has no jurisdiction to alter a rate of interest agreed under contract.
12. The Court ordered interest in the amount of £104.22 and continuing at a daily rate of £0.20.

Costs

13. The Court found that Mr Sheppard had been partly successful with his challenge to the administration charges. The Court reduced the Tribunal fee of £200 to £100.
14. The Court ordered Mr Sheppard to pay £170 in Tribunal and Court fees and Mr Warren's travelling and overnight expenses in the sum of £219.38.

Rights of appeal

Appeals in respect of decisions made by the FTT

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).

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court

No application for permission to appeal was made at the hearing. If a party wishes now to apply for permission to appeal he should seek advice.

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court and in respect the decisions made by the FTT

You must follow **both** routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues with either the Tribunal Judge or proceeding directly to the County Court.