FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/18UC/LAC/2020/0005
Property	**:**	15 Greyfriars Road, Exeter, Devon, EX4 7BS
Applicant	**:**	Sophia Lewis
Representative	**:**	Ben Lewis
Respondents	**:**	Wallace Estates Ltd
Representatives	**:**	Stephensons Solicitors
Tribunal Member	**:**	Judge M Loveday
Date of hearing/venue	**:**	Decision without a hearing
Date of decision	**:**	30 September 2020

DECISION

Introduction

1. This is a determination on the papers without a hearing. The application relates to a flat at 15 Greyfriars Road, Exeter. By an application dated 8 November 2019, the lessee sought:
    - A determination of liability to pay "ground rent collection costs" of £444 under Sch.11 to the Commonhold and Leasehold Reform Act 2002.
    - A determination of liability to pay "notice to underlet charges" of £138.
    - Reimbursement of Tribunal application fees of £200.

- An order under s.20C of the 1985 Act.

2. The Tribunal has had regard to the application and the statements of case filed by the Applicant lessee (21 February 2020) and the Respondent landlord (17 August 2020).

Ground rent collection costs

3. The lease attached to the application is dated 8 November 2005. Clause 1 requires the lessee to pay a ground rent of £125pa. By Sch.4, the lessee is obliged to pay:
    - "the ground rent specified in the Particulars on 1st January in each year if demanded by the Landlord": para 1.
    - "interest on all rent or other sums payable by the Tenant which are in arrear and unpaid for more than fourteen days after the same shall become due and payable under the lease whether formally demanded or not": para 3.

    The Respondent's statement of case (paras 7-8) relies on the former provision, not the latter.

4. By demands dated 22 November 2017, 22 November 2018 and 22 November 2019, the Respondent's managing agents Simarc Property Management Ltd sought payment of the 2018, 2019 and 2020 ground rent. Copies of each demand are included in the bundle.

5. It is the Respondent's case that the Applicant failed to pay the ground rent by the due date: para 9 of Respondent's Statement of Case. The Applicant does not deny she failed to pay the ground rent by the due date, stating that the "total fees" had been in dispute and that that "as of 18 July 2020, the Applicant had no outstanding charges with the Landlord": see paras 10 and 17(a) of her statement of case.

6. The Respondent's agents have demanded payment of £444 for "Ground Rent Collection Charges":

- On 22 November 2018, the Respondent demanded a charge of £132 in respect of unpaid 2018 ground rent.
- On 22 November 2019, the Respondent added a further charge of £132 in respect of unpaid 2019 ground rent.
- On 30 January 2020, the Respondent added a further charge of £180 in respect of unpaid 2020 ground rent.

7. The Applicant contends that the charges are disproportionately high for the work involved, that the lease makes no provision for this kind of charge (although it does provide for interest on late ground rent) and that attempts to pay ground rent have been frustrated by administrative problems in the agents' offices. The Respondent contends that it is entitled to claim its "reasonable costs caused by the breach as damages for breach of contract". It sends demands for payment about 1 month before the due date and no action is taken against a defaulting lessee until a month after that date. The Respondent produced a number of emails and letters showing the work undertaken by Simarc in chasing arrears and gave details of staff charge out rates. For the 2018 and 2019 ground rent, the Ground Rent Collection Charge was fixed at £110 + VAT. For 2020, the charge increased to £150 + VAT. It submitted these charges were reasonable.

8. The Tribunal finds that charges of £110 and £150 + VAT are not unreasonable in all the circumstances. Having considered the correspondence, and the evidence about the hourly rates charging by Simarc staff it is clear that the Ground Rent Collection Charges are reasonable in amount. The charge appears to be a fixed charge applied to other leaseholders which does not vary according to the amount of work carried out by the agents. In some cases, a fixed charge of £110 or £150 + VAT might be considered excessive. But in this particular case, the evidence suggests the Ground Rent Collection Charges claimed are reasonable in amount.

9. The Tribunal also rejects the suggestion that Ground Rent Collection Charges should not have been incurred because she had problems paying the ground rent. The Tribunal has considered the correspondence in some detail, and although there is evidence that ground rent was tendered (e.g. in February 2019), it does not appear the full amount was ever tendered or paid before 1 January in any of the three years.

10. However, the Tribunal finds the Applicant is correct in her contention that the Ground Rent Collection Charges are not payable under the terms of the Lease. The meaning of para 3 of Sch.4 is quite clear. Under that provision, the landlord may charge interest on late payments of ground rent, but it does not provide that the landlord may pass onto the lessee its costs of ground rent collection. The Respondent's suggestion that the charges are "damages" for breach of the covenant to pay ground rent in para 1 of Sch.4 is untenable. There is no provision in the Lease which provides any fixed or variable administration charge as a result of any default, and the First-tier Tribunal (Property Chamber) has no general power to award a landlord unliquidated damages for breach of a tenant's covenant.

Notice of underletting fee

11. The material covenant by the lessee is at para 17 of Sch.4:

> "*To give to the Landlord and the Management Company notice of every dealing with or underletting or transmission of the legal estate in the property including all mortgages or legal charges of the property within twenty one days after the same shall occur and to pay to each of the Landlord and the Management Company such reasonable registration fees (including Value Added Tax) as the Landlord and the Management Company respectively shall from time to time determine*"

12. The premises have been underlet by the Applicant to tenants, and the Respondent has produced a copy of an Assured Shorthold Tenancy agreement dated 26 March 2018. On 22 November 2019, the Respondent's agents demanded payment of £138 for "a Notice of

Subletting". It should be said the papers show a great deal of correspondence about similar charges dating back to November 2017.

13. The Applicant contends that the demand is inappropriate because the agreement was simply a renewal of a previous tenancy, and there is no provision in the Lease for any "repeat" fee. She also argues the charge is excessive, referring to numerous decisions of this Tribunal and the Upper Tribunal which determined the amount of various administration charges. These decisions include *Proxima GR Properties Ltd v McGhee* [2014] UKUT 0059 (LC), which was the first case referred to in the application itself.

14. In reply, the Respondent contends there is no jurisdiction to determine liability to pay the kind of registration fee covered by para 17.4 of Sch.4 to the Lease, referring to previous decisions of this Tribunal in *137 and 145 Kirby View, Sheffield* (MAN/00CC/LAC/2008/0004 and 0005 and in *31 Belwood Gardens, High Wycombe* (CAM/11UF/LSC/2009/0064). The Respondent made no other substantive arguments in reply to the Applicant and did not respond to the suggestion the fee was excessive.

15. As far as the Tribunal's jurisdiction is concerned, this appears in Sch.11 to the Commonhold and Leasehold Reform Act 2002. Under para 5 of Sch.11 to the Act, the Tribunal may determine "whether an administration charge is payable". The term "administration charge" is in turn defined by para 1 as follows:

> "*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."

16. In this case, para 17.4 of Sch.4 provides that the landlord may charge "*reasonable registration fees (including Value Added Tax)*" in respect of underlettings. Neither party suggests the Lease prevents the Applicant from underletting the whole of the flat, or that it gives the Respondent the power to withhold consent. Para 17.4 is therefore a straightforward registration fee, not a charge by a landlord for considering whether to consent to underlet.

17. The Tribunal considers a registration fee for an "underletting" cannot be characterised as a charge "for or in connection with the grant of approvals" under para 1(1)(a) of Sch.1 to the Act. In *Proxima v McGhee*, Martin Rodger Q.C. stated that:

> "*22. A sum payable as a fee for registering a document is not, in my judgment, payable "directly or indirectly for or in connection with the grant of approvals under [a] lease or applications for such approvals" so as to come within paragraph 1(1)(a) of Schedule 11 to the 2002 Act. If a request was made for the landlord's approval of a proposed underletting, and that approval was granted but the underletting did not then proceed, there would be no question of a registration fee being payable under paragraph 28 because no transactions would have taken place. The written notice which the respondent was required to give under paragraph 27 of the eighth schedule to the lease was not a request for an approval of any sort, nor was the charge which the appellant is entitled to make for registering the transaction of which notice is given a charge for the grant of an approval or in connection with an application for approval.*"

The position is confirmed in *Service Charges and Management*, Tanfield Chambers, (4th ed) (2018) at paragraph 15-06, and the Tribunal adopts the Deputy President's reasoning set out above. Apart from *McGhee*, the appeal decisions quoted by the Applicant relate to other kinds of fees charged by landlords. This Tribunal is not bound by any previous first instance decisions of the LVT or the First-tier

Tribunal (Property Chamber) cited by either the Applicant or the Respondent – particularly decisions made before the *McGhee* decision.

18. In short, the Tribunal has no jurisdiction to consider whether the registration fee of £138 is payable.

Reimbursement of fees

19. The power to reimburse fees in Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 "is unrestricted, other than by the overriding objective": *Willow Court Management Co and others v Alexander and others* [2016] UKUT 290 (LC). There is no requirement in this respect to meet any 'unreasonable conduct' threshold. Although costs do not simply follow the event, and allowing that exceptions might need to be made in particular cases, there will be a general expectation that a successful applicant will be entitled to reimbursement of her fees by a respondent, certainly by a respondent that has actively sought to resist the application: see *Greenslade v Next Distribution Ltd* UKEAT/0156/15/DA.

20. In this case, the Applicant has succeeded on one of the substantive issues and failed on the other. The Tribunal therefore orders the Respondent to reimburse half the application fee of £200.

LTA 1985 s.20C

21. In her application to the Tribunal, the Applicant sought an order under Landlord and Tenant Act 1985 s.20C that all or part of the landlord's costs incurred in connection with their application to the Tribunal should not be added to the service charges payable by the property. In essence.

22. The Tribunal considers it is just and equitable in all the circumstances that the landlord's costs incurred in connection with the Tribunal application should be added to the service charges of the lessee. Although the Applicant succeeded on one issue, the Tribunal is satisfied

it was not unreasonable to contest the application and there was nothing in its conduct of the proceedings which was unreasonable.

Conclusions

23. The Tribunal therefore determines:

- The Applicant is not liable to pay "ground rent collection costs" of £444 under the terms of the Lease.
- The Tribunal has no jurisdiction to determine liability to pay "notice to underlet charges" of £138.
- The Respondent should reimburse half the Applicant's Tribunal application fees in the sum of £100.
- There is no order under s.20C of the 1985 Act.

Dated 30 September 2020
Judge M. Loveday

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.