FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00ML/LAC/2020/0010
Property	**:**	Flat 2, 51 Tisbury Road, Hove, BN3 3BL
Applicant	**:**	51 Tisbury Road Hove Limited
Representative	**:**	Dean Wilson LLP
Respondent	**:**	Fredrik Kurt Forrest
Representative	**:**	
Type of Application	**:**	Determination as to liability to pay and administration charge Schedule 11 Commonhold and Leasehold Reform Act 2002
Tribunal Member(s)	**:**	Judge J Dobson
Date of hearing/ venue	**:**	Paper determination
Date of Decision	**:**	26th February 2021

DECISION

SUMMARY OF DECISION

1. **Tribunal determines that the Respondent is liable to pay administration charges to the Applicant in the sum of £3489.40.**

2. **The Respondent shall further pay the fee of £100 paid by the Applicant in respect of this application.**

BACKGROUND

3. The Applicant applied for a determination of the Respondent's liability to pay administration charges by way of application dated 10th November 2020. The administration charges are in respect of costs of solicitors and related expenses in respect of steps taken related to forfeiture of the Property, as explained further below.

4. In 2019, the Applicant applied to the Tribunal for the determination of an application in respect of an alleged breach of covenant by the Respondent. In essence, the allegation related to the Property being let on short-term or holiday lets through AirBnB. By way of a Decision dated 18th September 2019, the Tribunal (Judge Talbot) determined that a breach of covenants contained in clause (1)(h) of and paragraph 1 of the First Schedule to the Respondent's long lease of the Property ("the Lease") had occurred.

5. The Applicant asserts- and the Respondent has not denied- that subsequently, on 29th November 2019, a Notice was served for forfeiture of the Property pursuant to section 146 of the Law of Property Act 1925. In addition, correspondence was written seeking evidence that the breaches found by the Tribunal had been remedied, or at least would not recur.

6. The Applicant states that it incurred legal costs and expenses in relation to those matters. Those are the costs that the Applicant wishes to charge as administration charges and in respect of which this determination is sought.

HISTORY OF APPLICATION

7. Directions were given on 8th December 2020 (Judge Agnew) for steps to be taken ahead of a proposed determination of the application on paper, including provision of statements of case and supporting documents and the preparation of a bundle of documents for the determination.

8. There has been no objection to determination of the application on paper. The Respondent has not responded to the application. The Applicant's representative did email the Respondent on 1st February 2021- and need not have done- providing a further copy of the Directions and advising when the bundle would be submitted.

9. The Applicant's representative has provided a suitable bundle. The Tribunal has considered that. For the avoidance of doubt, the Tribunal remains satisfied that the application is suitable for determination on paper.

10. This is the decision following the paper determination of the application. Numbers in brackets as shown [ ] are numbers of pages of the bundle.

THE LEASE

11. The Lease [16 onwards] is dated 28th October 1984 and between two original contracting parties neither of whom are the parties to this application. It demises a property described as First Floor Flat, 51 Tisbury Road, Hove.

12. The Tribunal proceeds on the footing that First Floor Flat is now known as number 2, 51 Tisbury Road and as such the property described in the Lease and the Respondent's Property are one and the same.

13. In clause 3 of the Lease [20], the Lessee covenants to do a number of things, including most immediately of relevance at clause 3. (1) (f).

14. That provision reads as follows:

    (f) To pay all expenses (including solicitor's costs and surveyors' fees) incurred by the lessor incidental to the preparation and service of a Notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the Court.

15. There is nothing of direct relevance contained in the remainder of the Lease.

THE LAW

16. The relevant statute law is set out in the Commonhold and Leasehold Reform Act 2002. The relevant parts for the purpose of this Decision read as follows:

SCHEDULE 11

Administration Charges

Part 1

Reasonableness of Administration Charges

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-

.....
(d) in connection with a breach (or alleged) breach of a covenant or condition in his lease
.....
(3) In this Part of this Schedule "variable administration charge" means an administration charge which is neither-
(a) specified in the lease, nor,
(b) calculated in accordance with a formula specified in his lease.
.....

2. A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

17. There remains some uncertainty as to how far that provision in relation to the amount of the charge being reasonable goes, in terms of whether a charge may be found not to be reasonable at all or whether reasonableness only relates to the amount of the charge. However, it appears to the Tribunal that the provision relates to both aspects.

18. There is caselaw in relation to whether certain fees were not reasonable, which appears to the Tribunal to indicate that the Tribunal can consider whether to allow charges at all, in addition to considering the level of the charges which are in principle allowed. The Tribunal therefore adopts that approach, although as will be seen below, in the event there is no effect on the outcome of this application.

19. Caselaw has identified that the statutory provision does not give a clear presumption for or against reasonableness of costs. However, there is some authority for the landlord having to justify reasonableness, and hence the burden of proof lies with the Lessor in relation to the reasonableness, at least in the circumstances of that particular case, Crosspite Ltd v Dachdev [2021] UKUT 321 (LC). The Tribunal also adopts that approach in this instance. The statute states that the charge is "only" payable "to the extent that it is reasonable", which the Tribunal finds sits with that.

20. Where the Lease provides that the Lessee must indemnify the Lessor as to its legal fees, the position is arguably different. In such circumstances, the Tribunal must properly treat the costs forming the administration charges as reasonable unless the Lessee can demonstrate otherwise.

CONSIDERATION

21. The application contends that legal costs were incurred in the sum of £4908.60, that a demand was made for the administration charge in that

sum on 9th April 2020 [13] and that the sum has not been paid. A demand is attached [26].

22. It is apparent from the wording on the demand that the demand is not for legal costs of £4908.60. Rather it is for legal costs of £4178.60 and for £730 of other sums, described as "arrears from previous/other demands".

23. The Applicant's statement of case dated 6th January 2021 [34 onward] indicates that point was subsequently identified by the Applicant's representative. The statement of case sets out a little more of the history and states that the £730 was demanded by the Applicant's managing agent on 16th March 2020, comprising interim service charges and ground rent. It is apparent from later documents that the former is £700 of the sum and the latter is the £30 balance.

24. There are two principal other matters of note addressed in the statement of case. One of those is a request that the Tribunal determines that the Respondent is liable to pay the service charge of £700. The relevant provision in the Lease is quoted.

25. The Tribunal declines that invitation. The application made is for determination of administration charges. At no time has the Applicant applied to vary the application and at no time has an additional application been made. The Tribunal has first become aware of the matter when determining the application that has been made in relation to administration charges.

26. That is not the appropriate manner in which to address a separate question of payability and reasonableness of service charges. If the Applicant wishes the Tribunal to determine the payability and/or reasonableness of the interim service charge demanded in March 2020, the Applicant will need to apply, at which time the Tribunal will issue directions in relation to that application and will, in due course, determine the application.

27. For the avoidance of doubt, no further reference has been made in relation to the balance £30 in respect of ground rent, which the Applicant is no doubt aware does not fall within the jurisdiction of this Tribunal. The Respondent may not be so aware, hence this reference to it.

28. The other principal matter set out in the statement of case is in respect of the reasonableness of the costs claimed. In that regard, the Applicant's representative asserts that it was reasonable for solicitors to be involved "given that the issue of sub-letting involved the interpretation of the Lease and the review of case- law". It is said that "the preparation of a section 146 required specialist knowledge of the law of forfeiture" It is further contended that "Lower grade fee earners were utilised where possible and costs incurred were not disproportionate to the issue in dispute".

29. The Tribunal is mindful that no case has been advanced by the Respondent. However, the Tribunal is unable to fully accept those three

assertions and addresses that further below when considering the reasonableness of the administration charges.

30. Before doing so, the Tribunal should, and does, identify whether the contractual and any other requirements for making any charge are met. The Tribunal notes that the Respondent has not, within the documentation in the bundle, accepted or admitted the administration charges.

31. The Tribunal finds that clause 3 (1) (f) provides the contractual basis for rendering the administration charges in respect of which a determination is sought. The Tribunal further finds that the Applicant has complied with statutory requirements.

32. The Tribunal therefore turns to the reasonableness of the administration charges.

33. As the Applicant's representatives appear to accept, the provision in the Lease is not expressed in indemnity terms. "All" arguably gets close to amounting to such a provision but does not state that it is in terms.

34. The Applicant's representatives have not sought to argue that the clause is an indemnity one. The Tribunal considers it reasonable to assume that they would have so argued in the event that they had considered such an argument sustainable.

35. Hence, the Tribunal ought to consider the reasonableness of the administration charge in relation to legal costs and to apply the test of reasonableness both to the question of solicitor's costs being incurred at all and, if relevant, to the amount of such costs on the footing that it is for the Applicant to demonstrate such reasonableness.

36. The Tribunal has some doubt that the instruction of solicitors was a necessity in order to deal with the question of sub-letting and case-law. Notably, this is a specialist Tribunal, the facts of the original application were simple and there was one leading case which required consideration. The Tribunal amply determined the application in a fairly short Decision.

37. The Tribunal also has some doubt that preparation of the section 146 notice required especially specialist knowledge, not least where such forfeiture was founded on a very clear determination by the Tribunal of breaches of the Lease.

38. However, the Tribunal considers that it would be to go much too far to find that in the context of the wording of the Lease, it was unreasonable for the Applicant to instruct solicitors. Such instruction is a course of action which the contracting parties to the Lease plainly envisaged and provided for. Even more so where the Respondent has not made any contrary assertion.

39. The above points nevertheless return to relevance when consideration is given to the amount of the reasonable administration charges for legal costs.

40. In that regard, the Applicant's representatives third quoted comment as to costs does the application no particular favours. Some 142 units of time are recorded. 140 are for grade A or grade B fee earners. Just 2 of them are for grade D fee earners. That implies that there was effectively no work for which anything other than fairly senior fee earners could be used.

41. The Tribunal does not accept that.

42. The Tribunal reminds itself that it is not undertaking a summary assessment of costs. However, in order to determine the reasonableness of the administration charges, and necessarily therefore the legal costs in which they are founded, a process akin to costs assessment is required.

43. Taking a necessarily broad- brush approach, some of the drafting of letters, some other drafting of documents and most of the preparation of the Tribunal bundle could entirely satisfactorily- and should- have been undertaken at grade D levels. The Tribunal determines that to be to the tune of at least 25 units. The Tribunal determines that a sum reflecting the undertaking of that work grade D charging rate- as considered below- is the maximum level of administration charges reasonable in respect of such work.

44. It is difficult to identify than much, if indeed any, of the case properly required the input of a grade A fee earner and it may well be that no time at that rate would be allowed on a summary assessment of costs, not least where the overwhelming majority of work in a case of the nature undertaken was dealt with by grade b- and so fairly senior- fee earners. It will be recalled that the Tribunal does not accept the assertions of the Applicant's representatives as to complexity. The maximum level of administration charges for work at a grade A charging rate- as considered below -which can be regarded as reasonable is 10 units.

45. Those levels for grade A and grade D fee earners give 107 units of work remaining, which the Tribunal accepts reasonable to be recovered as administration charges at grade B level. It appears quite likely that much of the work could have been undertaken at grade C level entirely competently but the Tribunal will accept grade B to fall within reasonableness in the context of considering the reasonable administration charges payable as a result of the costs incurred.

46. In terms of the quantity of work, the level is not obviously outside of being reasonable and the Respondent has chosen not to make any submissions. Such as there are individual entries for items of work- in respect of work on documents- those are at a reasonable level. The Tribunal accordingly accepts that the reasonable level of administration charges payable encompasses each item of work undertaken, provided charged at appropriate rates and undertaken by the appropriate level of fee earner.

47. The hourly rates charged are significantly above current County Court guideline rates. No argument has been advanced as to why the work

undertaken merits being charged at a higher rate than County Court work and produce administration charges reasonably payable by the Lessee at a level reflecting those rates. Indeed, given that forfeiture proceedings would have been dealt with by that court, it would be difficult to argue that work undertaken prior to such proceedings should be charged at a higher rate.

48. The County Court guideline rates are well-known to be somewhat dated, are in the process of being revised and it is clear that the new rates will be somewhat higher than the previous rates, unless unexpectedly reduced significantly from those currently proposed. They are also guidelines and not binding, albeit that they must be given due weight and respect.

49. The new rates are likely to be £261, 218 and £126 for Grades A, B and D respectively for areas in National 1 (although rates in National 2 are only slightly lower and rather closer to National 1 than the relative current guidelines rates).

50. The rates charged by the Applicant's representatives are above those proposed new rates- £275 for grade A, £230 and £225 for grade B and, markedly higher, £175 for grade D.

51. The Tribunal bears in mind that the relevant work in this instance was overwhelmingly undertaken in 2019. The considers that the reasonable rates in this instance are no more than £250 for grade A, £210 for grade B and £120 for grade D.

52. It may be that the Respondent could have made other points about the level of work, fee earner grades or otherwise. However, the Tribunal does not consider it appropriate to go further than the above where the Respondent has chosen not to engage in the application. Whilst the Tribunal is charged with determining the reasonableness of the administration charges to be paid by the Lessee pursuant to the Act, it is not the role of the Tribunal to second guess every last issue that the Respondent might have raised had he sought to respond to the application.

53. Accordingly, the Tribunal determines the reasonable level of administration charges for the legal costs incurred to be:

10 units at grade A at £250 per hour =	£250.00 +
107 units at grade B at £210 per hour =	£2247.00 +
25 units at grade D at £120 per hour =	£300.00
Total	£2797.00.

54. VAT must be added of £559.40. That produces the figure of £3356.40 in relation to the element of administration costs consisting of legal costs plus VAT.

55. The Applicant also incurred a fee for the original application to this Tribunal of £100, which was unavoidable and so the Tribunal finds reasonable to be rendered to the Respondent as an administration charge.

56. The Tribunal notes in that regard that the Decision in 2019 does not mention the fee for that application and does not order its payment. However, in not mentioning the fee, the Decision did not disallow recovery of it and indeed there is no obvious reason why it would have.

57. The Tribunal takes it as read that the Respondent did not subsequently refund the fee, given that it has been demanded as administration charges more recently. It appears to the Tribunal unlikely that the Respondent would have so paid, not apparently having been ordered to do so.

58. In addition, the Applicant incurred Land Registry fees of £33. Whilst modest in itself, that is relatively high for fees paid to the Land Registry. It is unclear which entries and/or documents were required to attract such a fee. However, given the modest level relative to the case and given the lack of objection from the Respondent, the fees are allowed.

59. The Tribunal accordingly determines that the Respondent's liability to pay administration charges is £3489.40.

60. It is further appropriate for the Applicant to be repaid by the Respondent the fee paid for this application of £100. The Applicant was entitled to seek the determination applied for and has received a determination that an administration charges is payable.

RIGHTS OF APPEAL

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 by email at rpsouthern@justice.ogv.uk

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.