



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

Case reference : **LON/00AF/LAC/2021/0012**

HMCTS code : **V:CVPREMOTE**

Property : **1A Brewery Road Bromley Kent
BR1 2PQ**

Applicant : **Mr Gary Tarrant**

Respondent : **Assethold Limited**

Represented by : **Mr R Gurvits of Eagerstates**

Type of application : **For the determination of the
reasonableness of and the liability
to pay administration charges**

Tribunal members : **Mrs E Flint DMS FRICS
Mr P Roberts DipArch RIBA**

**Date and Venue of
hearing** : **17 November 2021**

Date of decision : **1 December 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was CVPREMOTE with all participants joining from elsewhere. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal were referred to are in a series of electronic documents, the contents of which have been noted. The order made is described below.

Decisions of the tribunal

- (1) The Tribunal determines that administration charges of £36 for 2018 and £39 per year for 2019, 2020 and 2021 are not payable. However, an administration charge of £500 + VAT is payable in relation to administering a building insurance claim in 2017.

The application

1. The applicant seeks a determination under paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the Act), as to whether administration charges are payable and reasonable.
2. The applicant also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish the tenant's liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the 2002 Act.
3. The relevant legal provisions are set out in the Appendix to this decision.

The background

4. The applicant is the lessee of the ground floor flat in 1 Brewery Road Bromley: a converted detached house.
5. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The Lease

6. The applicant holds a lease for 125 years from 2 December 2015 at a rent of £250 per year for the first 25 years, doubling every 25 years thereafter.

The lease requires the ground rent to be paid quarterly on the usual quarter days. The following clauses are relevant for the purposes of this application:

7. The Lessee covenants under clause 1(i) to pay the rent and the maintenance rent on the payment dates.

8. The maintenance rent is defined in the Particulars as being one half of the costs and expenses the landlord incurs pursuant to the covenants in the second schedule of the lease.

9. The Second Schedule provides for *maintaining and keeping in good and substantial repair and condition* the Property and other usual physical features, services in respect of the common parts, arranging insurance, maintaining a sinking fund and paying the outgoings relating to the common parts.

10. By Clause 10 of the Second Schedule the costs include those incurred in *“employing any workmen necessary for the proper maintenance of the Property and a Managing Agent Solicitor Accountant Surveyor or other professional adviser in connection with the management of the property including Maintenance Rent calculation and collection”*

The Issues

11. The relevant issues set out for determination are as follows:

12. The payability and reasonableness of the administration charge of £36 per quarter in 2018 and £39 per quarter in 2019-2021 for demanding the quarterly ground rent and an administration charge of £1310 for managing a building insurance claim in 2017.

13. Having heard the evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the issues as follows.

The Applicant’s case

14. Ms Fenton on behalf of Mr Tarrant stated that prior to the RTM company taking over the management of the building in June 2018 no charge had been made for demanding the quarterly ground rent. There was no need to calculate the charge as the amount was fixed for the first 25 years of the lease. She said that Mr Tarrant had sought advice from the Leasehold Advisory Service. The advice supported their opinion that as there was no provision in the lease providing for a charge for collecting the ground rent no charge was payable.

15. There was very little administration involved in sending out the demands as the rent was fixed for the first 25 years of the lease. There was no need to recalculate the amount each quarter. The documents were in a standard form and were all computer generated. If it was found that a fee was payable then it should be a small fee; the fees currently demanded were excessive.

16. As regards the administration charge for managing the insurance claim Mr Tarrant explained that he had employed his insurance assessor who had dealt with the insurance company directly. He had initially emailed Eagerstates to advise them of the water damage and obtain details of the insurer. The claim was settled in October 2017. However, there was no administration charge included in the year end accounts. The charge had only appeared in the final accounts when the management was handed over to the RTM company in 2018.

17. He had taken advice from LEASE who had advised that there was no mention in the lease regarding a charge for arranging insurance. He was of the opinion that the charge was unreasonable.

The Respondent's case

18. Mr Gurvits stated that the landlord's ability to charge for the collection of ground rent is contained in clauses 10 and 11 of the Second Schedule of the lease. He was of the opinion that the clauses provide that as part of the service charge provisions the landlord can appoint an agent to deal with the building for any function that the landlord desires that is reasonable to deal with the building.

19. Consequently, the landlord is entitled to charge a fee, payable by the tenant, for collecting the ground rent. Ordinarily the fee would be part of the managing agent's fee however in this instance there are two parties involved: the RTM company which manages the building but has no power over the ground rent and no rights with regard to it and the Freeholder's appointed agent to deal with the ground rent and any other obligations which the Freeholder has at the property.

20. He referred to several First Tier Tribunal decisions. The most relevant was 7 Oaklands Road v Assethold Limited ref LON/00AH/LAC/2018/004 where the lease clauses were identical to clauses 10 and 11 in the Second Schedule in the lease under consideration. The Tribunal had accepted that collecting the ground rent was a management function covered by Clause 10 and did not accept that the reference therein to Maintenance Rent precluded the landlord from charging an administration charge for collection of the ground rent.

21. The fee in 2018 was based on £30+ VAT per quarter, rising to £32.50 + VAT per quarter in subsequent years. He argued that these are not

unreasonable charges for dealing with the collection of ground rent as Section 166 of the Act requires the ground rent to be demanded before payment may be enforced. Moreover, it is essential that the notice is in the correct format. It was not unreasonable for the freeholder to employ a managing agent to deal with the notices and collect the ground rent.

22. He listed the work which he said had to be carried out before issuing each demand:

- Checking the lease re the amount of ground rent
- Issue s166 notice
- Deal with any queries
- Monitor payment – record payments received and monitor non-payment.
- Account and report to Freeholder

23. As regards the charge relating to the 2017 insurance claim, Mr Gurvits said Eagerstates were involved in dealing with the claim. They had advised the insurers of the damage and submitted the claim. He agreed that Mr Tarrant had employed his own expert however Eagerstates had liaised with both Mr Tarrant's expert and the insurer's loss adjuster. The settlement had been paid to Mr Tarrant via the managing agents.

24. The management agreement with the landlord provided for fees in relation to insurance claims to be up to 10% of the claim. In this instance he had taken the view that 10% was an unreasonable amount bearing in mind the size of the claim which had been settled at £26200. In the circumstances the fee of £1310 based on 5% of the claim was reasonable.

25. Mr Gurvits accepted that there was no copy of the management agreement in the bundle but said that he had sent one to the Applicant with his statement of case. Ms Fenton apologised for not including it in the bundle, she had not appreciated that it ought to have been included and Mr Gurvits had not alerted her to the omission prior to the hearing.

The Tribunal's decision

26. In respect of the administration charge for collecting the ground rent the Tribunal first looked at the provisions in the lease and the decision in 7 Oaklands Road and confirmed that the lease clauses were in identical terms and that the facts were similar in that the building was managed by a RTM company and that as in this instance the freeholder had employed Eagerstates to collect the ground rent.

27. The Tribunal is not bound by decisions of other First Tier Tribunals although they may provide guidance. The decision in 7 Oaklands Road was made on the papers submitted and consequently there was no cross examination of the evidence.

28. The Tribunal accepts the Respondent's statement that the managing agent employed by the freeholder collected the ground rent and that there was no itemised charge for so doing prior to the RTM Company taking over the management of the property. However, once the RTM Company has acquired the management functions the right of the freeholder to require the payment of a management fee no longer exists because the lease does not provide for a charge to be levied except in respect of the obligations included in the Second Schedule of the lease; collection of the ground rent is not included in the Second Schedule.

29. The Tribunal determines that an administration fee for collecting the ground rent on behalf of the freeholder is not payable.

30. In respect of the administration charge for administering the 2017 insurance claim the Tribunal accepts that the work undertaken in submitting the claim and liaising with the parties was outside the work included in the usual management fee agreed with the freeholder. However, the work was significantly reduced as Mr Tarrant's own adviser dealt with the insurers directly regarding the quantum of the claim.

31. The Tribunal determines that the charge for this work should be reduced to £500 + VAT.

Application under s.20C and Paragraph 5A of Schedule 11 of the 2002 Act

32. As Eagerstates and the freeholder no longer manage the building there will be no addition to the service charge for costs incurred in respect of this application: there is no provision in the lease allowing the freeholder to recover such charges. If that had not been the case the Tribunal would have determined that in the circumstances it was just and equitable that an order be made under section 20C of the 1985 Act because the applicant had been largely successful in the application.

33. Furthermore, no administration fees should be levied for any litigation costs in respect of this application since there is no provision in the lease for the same.

Name: E Flint

Date: 1 December 2021

ANNEX - RIGHTS OF APPEAL

- i. 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 the case.
- ii. 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.
- iii. 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 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.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).