FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00KB/LAC/2022/0003**
HMCTS code (paper, video, audio)	**:**	**P: PAPERREMOTE**
Property	**:**	**Flat 4 River Court , 16A River Street, Bedford MK40 1PX**
Applicant	**:**	**Sadie Lou Limited**
Representative	**:**	**Bradley Leviton**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Eagerstates Limited**
Type of application	**:**	**For the determination of the liability to pay administration charges under Paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")**
Tribunal member	**:**	**Judge Ruth Wayte**
Date of decision	**:**	**2 May 2023**

DECISION

Covid-19 pandemic: description of hearing
This has been a paper hearing which has been consented to by the parties. A face-to-face hearing was not held because I considered it unnecessary. Both parties provided submissions in accordance with the directions. The order made is described below.

Decisions of the tribunal

(1) The rent collection fee of £36 demanded on 1 December 2021 and 30 November 2022 is not payable.

(2) The tribunal makes an order under paragraph 5A of Schedule 11 to the 2002 Act extinguishing the tenant's liability to pay administration charges in relation to litigation costs in relation to these proceedings and under section 20C of the Landlord and Tenant Act 1985 preventing the landlord's costs being added to any service charge payable to them.

(3) The respondent must also reimburse the applicant the issue fee of £100.

The application

1. The applicant seeks a determination pursuant to Schedule 11 of the 2002 Act as to their liability to pay a rent collection fee of £36 per annum. The applicant bought their leasehold interest in the flat in October 2021 and has received two demands since then, both requesting payment of £36 described as an "*Admin fee for rent collection*". Both demands contained the prescribed information about administration charges on the reverse side.

2. Directions were ordered on 10 January 2023. The landlord was asked to provide their statement of case and any evidence first, with the tenant responding and a final opportunity for the landlord to comment on any new evidence or argument.

3. Eagerstates replied on behalf of the respondent on 9 February 2023. They enclosed a copy of an earlier decision by the FTT in respect of other flats in the same building, reference CAM/00KB/LAC/2021/0001 and dated 10 June 2021 on which they wished to rely. That decision held that £28 per annum was payable by each of the applicants in that case as a service rather than an administration charge, the scope of those proceedings having been extended by agreement to include whether the "admin fee for rent collection" was payable as a service charge. The decision made it clear that the rent collection fee was not payable as an administration charge.

4. The tribunal wrote to the parties on 21 February 2023 stating that: "*Despite the earlier decision, on which the respondent wishes to rely, the demand dated 1 December 2021 clearly refers to an administration charge and contains the prescribed wording for administration charges on the reverse side. In the circumstances, it would appear that the applicant is entitled to confirmation that the charge is not an administration charge and the refund of their fee by the respondent*". The letter continued that the monies may well be payable as a service charge provided a correct demand could be validly served but queried

the increase sought over and above the £28 per flat determined by the earlier tribunal.

5. Eagerstates responded on 17 March 2023 stating that the application should be dismissed as the applicant had issued the wrong application. They submitted that the charge was payable and in terms of the increase sought "*the original tribunal could not forsee the large increase in costs over the last few years, as well as the high inflationary costs being faced*." They submitted that the application should be dismissed.

6. The applicant responded on 19 March 2023 stating that: "*The issue is not whether if a demand is made an administration* (sic) *can be levied provided that the applicable requirements have been made but whether it is a proper and/or reasonable to make a demand at all thereby attracting the payment of an administration charge in circumstances when there is no requirement or need to make any demand given that rent is and has always been paid in full on time without reminder invariably in advance*."

7. The applicant subsequently sent a further statement setting out their case and a copy of the second demand which they wished to challenge. That demand appeared to have added a further £120 to the amount allegedly outstanding without any explanation as to what that was for.

8. On 29 March 2023 the tribunal wrote again to the parties. The respondent was asked to confirm whether £156 was correct as to the amount outstanding and if so what the additional £120 was for. That letter also confirmed the current scope of the application and reiterated the suggestion that the tribunal could consider whether the fee could be sought as a service charge if the parties consented to the widening of the application.

9. Eagerstates responded on 11 April 2023 stating "*Please note this is being collected as a service charge as per the previous tribunal decision*". On 12 April 2023 the applicant sent a copy of the full demand for 1 December 2022 which clearly contained the prescribed information in respect of administration fees only.

10. In the absence of the parties' consent to the widening of the scope of this application, I have reached a decision on the basis of the 2002 Act. The relevant legislation is set out in an annex to this decision.

The landlord's case

11. The landlord's case was limited and is set out above. In short, Eagerstates failed to engage with the queries about their demands to the applicant and relied on the earlier decision in respect of different flats in the same building which determined that £28 per flat was a reasonable

charge under the lease as the landlord's service cost. That same decision had held that the charge could not be demanded as an administration charge.

12. As set out in that decision, the relevant provision in the lease was the definition of "*service costs*" which included "*the reasonably and properly incurred costs fees and disbursements of any managing agent or other person retained by the Landlord to act on the Landlord's behalf in connection with the Building or the provision of the Services*." The lease envisaged that the leaseholder would be charged "*a fair and reasonable proportion determined by the landlord of the Service Costs*".

13. It was explained that the fee would ordinarily be included within the management contract as part of the agreed fee but as the leaseholders had exercised the no-fault Right to Manage (RTM), Eagerstates only dealt with the collection of the ground rent. That had not been foreseen by the lease but the decision stated that "*No party has argued that the scope of the right to manage acquired includes the administrative process of recovering the rent due under the lease*."

The tenant's case

14. As stated above, the applicant purchased their leasehold interest in October 2021. Presumably, they had no knowledge of the earlier case which did not include their flat in any event.

15. Full copies of the demands dated 1 December 2021 and 30 November 2022 were provided. Both were addressed to the applicant and sought an "*Admin fee for rent collection*" of £36, in addition to demanding the ground rent of £250. The reverse side of both demands contained the prescribed information in respect of administration fees.

16. The applicant's case was that the monies had been demanded as an administration fee for which there was no provision in the lease. A standing order had been set up for the ground rent to be paid on the 20th December in each year from 20 December 2022.

The tribunal's decision

17. Despite the respondent's submission that the monies were being collected as a service charge in accordance with the earlier FTT decision, their demand can only be read as a claim for £36 from the applicant as an administration charge, given the description of the fee and the use of the prescribed wording for administration fees. Given the 2021 decision, it would have been a simple matter for Eagerstates to set out their claim as a service charge, with the provision of the appropriate prescribed information. That said, the wording of the lease requires reconsideration given the Upper Tribunal decision in *Philipp Stampfer v Avon Ground*

Rents Ltd [2022] UKUT 68, together with the question as to whether the landlord can submit a service charge demand following the exercise of the RTM. However, this case is solely about whether the £36 is payable as an administration charge.

18. As stated in the 2021 FTT decision, there is no power in the lease to demand the rent collection fee as an administration charge. In the circumstances the £36 claimed from the applicant in the demands dated 1 December 2021 and 30 November 2022 is not payable. It follows that if any penalty has been levied in respect of that first invoice, that is not payable either.

19. It may be possible for the respondent to charge a reasonable fee for the collection of rent as part of its service costs but if that is to be pursued it will require a fresh and valid demand. As outlined above, I think there is an issue as to whether it is possible for a landlord to continue to demand a service charge after the exercise of the RTM, where management functions become functions of the RTM company rather than the landlord. The clause the respondent relies on is clearly part of the service charge provisions in the lease and they accept that before the RTM was exercised, their costs for collecting the rent were part of their general management fee. That point was not considered in the earlier FTT decision. The parties will also be aware that if the relevant costs were incurred more than 18 months ago they can no longer be collected by the respondent (section 20B of the Landlord and Tenant Act 1985).

Application under s.20C and paragraph 5A

20. In the application form, the applicants applied for an order under section 20C of the 1985 Act and paragraph 5A of the Commonhold and Leasehold Reform Act 2002, preventing the landlord from passing on their costs of the proceedings either as a service or administration charge.

21. Having considered the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable for an order to be made under both provisions so that none of the costs incurred by the respondent in connection with the proceedings can be passed to the applicant either individually or collectively as part of any service charge. This application has been caused by the respondent's failure to demand their rent collection fee as a service cost as opposed to an administration fee, despite the earlier decision which they relied on as their response to the application.

22. For the same reasons I also consider that the respondent must reimburse the applicant's tribunal fees of £100.

Name: Judge Wayte

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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).

Appendix of relevant legislation

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.