



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

Case reference : **CAM/22UB/LAC/2022/0005**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **Regency House, 1 Station Court,
Radford Way, Billericay, Essex CM12
0DZ**

Applicants : **The leaseholders flats 1-6**

Representative : **Gary Caldon**

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 : **23 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: there were no apparent disputed facts. Both parties provided initial submissions in accordance with the directions. The order made is described below.

Decisions of the tribunal

- (1) The rent collection fee of £60 demanded on 30 November 2022 is not payable by the leaseholders as an administration charge.
- (2) The tribunal makes an order under paragraph 5A of Schedule 11 to the 2002 Act extinguishing the tenants' 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.
- (3) The respondent must also reimburse Mr Caldron with the issue fee of £100.

The application

1. The applicants seek a determination pursuant to Schedule 11 of the 2002 Act as to their liability to pay a rent collection fee of £60 each per annum. It would appear that the first demand was made on 30 November 2022, following the exercise of the no-fault right to manage (RTM). That demand described the charge as an "Admin fee for rent collection". There are 6 leaseholders in the property and therefore the total charge sought amounts to £360 per annum.
2. Directions were ordered on 27 February 2023. The landlord was asked to provide their statement of case and any evidence first, with the tenants' responding and a final opportunity for the landlord to comment on any new evidence or argument. No further response was received by the landlord and I have therefore decided the case on the basis of the initial responses alone.
3. The relevant legislation is set out in an annex to this decision.

The landlord's case

4. The landlord's statement of case was provided on 29 March 2023, together with three First-tier (FTT) decisions which had upheld a rent collection fee charged by Assethold in respect of different properties.
5. The submissions did not address the question of whether the fee could be an administration charge. The respondent relied on Schedule 7 of the lease at paragraph i (c), which defined the services for which a service charge could be claimed as including "*the costs fees and disbursements reasonably and properly incurred of any other person reasonably and properly retained by the Landlord to act on behalf of the Landlord in connection with the Building or the provision of the Services.*"

6. It was explained that the fee would ordinarily be included within the management charge as part of the general service charge but as the leaseholders had exercised the RTM, Eagerstates now only deal with the collection of the ground rent.
7. The statement erroneously described the fee as £50 for each half year, which was justified on the basis that it included: drafting the notice under section 166 of the Commonhold and Leasehold Reform Act 2002; checking the lease to ensure the correct rent was being charged (which the respondent claimed must be done each year); dealing with any queries; monitoring and recording payments and reporting to the freeholder. The charge also included postage and stationery.
8. The respondent claimed that of the three first-tier decisions, case reference LON/00AH/LAC/2018/0004 in respect of the property known as Newton House was the most relevant as the wording of the lease was “almost identical”. A copy of the lease was not provided but the decision refers to the definition of “*total expenditure*” in the lease as meaning “*the total expenditure incurred by the Landlord in any Accounting Period in carrying out their obligations under Clause 5 of this lease and any other costs and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the foregoing.*” The decision also quoted an additional provision which referred specifically to the recovery of “*All legal and administration and other ancillary costs included in the collection of any sums...due under the terms of this lease...not recovered from the individual tenant in Default in each case.*” That decision found that the charge was payable as an administration charge, not a service charge. Of the other two cases, one upheld a rent collection fee as a service charge in proceedings under section 27A of the Landlord and Tenant Act 1985, where the sole issue was the reasonableness of the amount and the other as an administration charge.

The tenants’ case

9. In their response to the respondent’s statement of case, the applicants reiterated their position that there was nothing in the lease which entitled the landlord to claim the rent collection fee as an administration charge. They also relied on the fact that the definition of an administration charge in Schedule 11 to the 2002 Act did not appear to encompass a “rent collection fee”.
10. Without prejudice to the leaseholders’ primary contention that no charge was payable, in terms of the work the respondent maintained needed to be carried out each year, their first point was that the ground rent was not due to change until 2039 and therefore an electronic diary note would remove the need to repeat checking in the interim. Other work was simple and if any leaseholder defaulted, an administration

charge would be payable for their breach of the covenant to pay rent. The leaseholders were happy to receive the demands by email to avoid the cost of postage.

11. In terms of first instance decisions, the applicants pointed out that their lease was not identical to the Newton House lease as the second provision reproduced above was missing and also produced a new FTT decision involving Assethold Limited where counsel instructed on their behalf was unable to point to any provision in that lease enabling them to charge an administration fee for the collection of rent.

The tribunal's decision

12. This application is solely about whether a rent collection fee can be collected from the leaseholders as an administration charge. As stated above, the demand dated 30 November 2022 described the charge as an "Admin fee for rent collection", although the demand included the prescribed information for tenants in respect of service charges.
13. Part 1 of Schedule 11 to the 2002 Act is annexed to this decision and it is clear that a rent collection fee does not fall under any of the types of payments defined as administration charges in that Act.
14. Turning to the lease itself, the tenant's covenants are in Schedule 4, which is where you would expect to see any specific provisions in respect of the payment of the landlord's costs and expenses as an administration charge. There are clear service charge provisions in paragraph 2 which require the tenant to pay the estimated service charge for each year in four equal instalments on the Quarter Days. There is also a separate provision for the payment of Insurance Rent. The only provisions in respect of payment of the landlord's costs directly by the tenant as an administration charge are in paragraph 7. Those costs are in respect of breaches of covenant, notices of inspection or in respect of consents. There is no mention whatsoever of payment in respect of the landlord's cost of collecting the ground rent.
15. As stated above, the respondent relies on Schedule 7 to the lease which sets out the definition of services in terms of the total of costs incurred or estimated by the landlord under a number of headings, including under Part 2, paragraph i (c) the costs of "*any other person reasonably and properly retained by the Landlord to act on behalf of the Landlord in connection with the Building or the provision of the services*". This is of course part of the service charge machinery under the lease and as acknowledged by the respondent, prior to the exercise of the RTM, the costs of rent collection were included in the general management fee and paid as a service charge.

16. The various FTT decisions relied on are of no particular relevance to this case. Firstly, FTT decisions in respect of different properties are not binding on the FTT, not least as leases tend to differ. In particular the lease in the Newton House case included a separate provision in respect of the payment of the landlord's costs by the leaseholder which is not in this lease. Secondly, the decisions varied in terms of whether the application was in respect of administration or service charges, the particular challenge made and the tribunal's conclusion. There is no clear pattern to assist in this case.
17. What the cases appear to have in common is that in each case the landlord is attempting to recover its agent's costs for the collection of rent following the RTM. The respondent has been less than clear as to whether the demand is as a service charge rather than an administration charge and this is an application under the 2002 Act. That Act also deals with the RTM and provides in sections 96(2) and (3) that upon the RTM Company acquiring management, the "management functions" imposed by the lease become functions of the RTM Company. Management functions are defined in section 95(5) as "*functions with respect to services, repairs, maintenance, improvements, insurance and management.*" In those circumstances it seems to me that Assethold's entitlement to claim ongoing service charges has ceased following the acquisition of the RTM, although that conclusion is outside the scope of this application.
18. The demand in this case, made following the acquisition of the RTM, described the charge as an "Admin fee", made no express mention of service charges and requested payment on the Christmas quarter day in full, rather than in four instalments as set out above. In the circumstances I consider that the demand was for payment of an administration charge for which there is no provision in the lease. In the circumstances the rent collection fee demanded on 30 November 2022 is not payable.
19. Although it is therefore unnecessary to decide whether the sum claimed is reasonable, given my conclusion, since arguments have been made by both parties and in order to assist should the matter proceed further, I will give a view. Eagerstates did not confirm their hourly rate when providing their list of tasks. I agree with the applicants that it is unreasonable to expect them to pay for the agent to consider each lease every year and unnecessary for the agent to do so. One would expect some form of electronic record which should be updated as required in the event of any changes – for example a lease extensions etc. I also agree that the section 166 notice is standard. I would expect a reasonably competent managing agent to require no more than 1 hour to prepare and send the relevant demands and deal with any subsequent administration for the entire property. In the circumstances and using my knowledge and experience of the management market I consider that a reasonable charge for this

service, if payable, would be no more than £100 plus any VAT payable for the whole property.

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 Schedule 11 to the 2002 Act, limiting any costs of the proceedings incurred by the landlord payable either as a service or administration charge.
21. Having considered the submissions from the parties and for the avoidance of doubt, the tribunal determines that it is just and equitable for an order to be made under section 20C of the 1985 Act so that none of the costs incurred by the respondent in connection with the proceedings can be passed through the service charge. The tribunal also considers it just and equitable to make an order extinguishing any liability of the leaseholders to pay the landlord's costs as an administration charge. This application has been caused by the respondent's failure to be clear about the legal basis on which the rent collection fee has been sought or identify a clause in the lease which entitles them to charge a fee as an administration charge.
22. For the same reasons, I exercise my discretion under rule 13(2) to order the respondent to repay the application fee of £100 to Mr Caldon.

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.