



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

Case reference : **LON/00AT/LAC/2020/0019**

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

Property : **First Floor flat 23 Arlington Gardens,
London W4 4EZ**

Applicant : **Samra Iqbal**

Representative :

Respondent : **Thomas Gallagher**

Representative :

Type of application : **For the determination of the liability to
pay an administration charge under
schedule 11 Commonhold and Leasehold
Reform Act 2002**

Tribunal members : **Tribunal Judge Dutton
Mr K Ridgeway MRICS**

Venue : **Remote paper determination**

Date of decision : **23 March 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was. P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, no-one requested the same and all issues could be determined on paper. The documents that I was referred to are in two bundle of some 86 pages submitted by the applicant and 317 pages submitted by the respondent, the contents of which we have noted. The order made is described at the end of these reasons.

Decisions of the tribunal

- (1) The tribunal determines that the sums of £50.00 purportedly demanded on 1 June 2018, £1,329.00 purportedly demanded on 24 March 2019 and £700 purportedly demanded on 11 May 2020 are not payable by the Applicant in respect of the administration charges for those years.
- (2) The tribunal determinations that the claims for interest in the sum of £3.24 and £143.34 are not payable by the applicant.
- (3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (4) The tribunal makes an order that under the provisions of paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing the applicant's liability, if any, to pay an administration charge in respect of litigation costs.
- (5) The tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The application

1. The Applicant seeks a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of administration charges payable by the Applicant in the years 2017 to 2020.
2. In addition, the applicant challenges the claim for interest made by the respondent.

The background

3. The property which is the subject of this application is a two bedroomed first floor flat in a converted property of three flats. The respondent freeholder lives in the ground floor flat.
4. 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.
5. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

6. The issues relate to administration charges levied by the respondent in the period 2017 to 2020. The service charges for this period are not in dispute and have been paid by the applicant.
 - (i) There are three claims for administration charges made by the respondent to which the applicant objects. There is an initial demand covering 2017 and 2018 at page 36 of the respondent's bundle, dated 1 June 2018 in the sum of £50 for arranging building insurance. The second demand is at page 37 of the respondent's bundle in the sum of £1,392, a breakdown of which is provided at the next page. The third demand is to be found at page 41 which contains an administration charge in the sum of 700, the breakdown of which is provided at page 42 onwards.
 - (ii) The applicant challenges the respondent's right to claim interest on the administration charges, apparently under the Late Payment of Commercial Debts (Interest) Act 1998 in the total sum of £146.58.
7. We have considered the two bundles lodged, which include a Scott Schedule completed by both parties, a schedule of items in dispute, with relevant accounts and the respondent's statements, the applicant's statements, with reply and correspondence passing between the parties and solicitors instructed to act for the applicant. In addition, we have reviewed the lease dated 30 January 1989 and a further lease dated 19 May 2015 granted following a lease extension for the flat under the Leasehold Reform, Housing and Urban Development Act 1993, which in truth mirrors the earlier lease.

Administration charges

8. As set out above there are three demands for administration charges which we will deal together.

The tribunal's decision

9. The tribunal determines that the amount payable in respect of the administration charges in the sums of £50, £1,392 and £700 are not recoverable.

Reasons for the tribunal's decision

10. The terms of the lease make no provision for the levying of administration charges. There is no provision allowing for any management fee, which is essentially what the respondent is attempting to impose. The sums claimed do not fall within the provisions of paragraph 1 (1) (a) to (d) of the 11th Schedule to the 2002 Act.
11. The respondent appears to be alleging by reference to the Scott Schedule that the costs for arranging the insurance fall within s18 of the Landlord and Tenant Act 1985 (the 1985 Act). In respect of the other claims for £1,392 and £700 that these are landlord's overheads under s18 of the 1985 Act and recoverable by reason of the provisions of the 6th Schedule to the lease.
12. The 6th Schedule relates to items to be repaired including the main structure of the building, service pipework and common parts.
13. Our finding is that there is no term of the lease which allows the recovery of these alleged overheads. There is no management provision. Further the items of expenditure the respondent seeks to recover would in our finding be excessive, even if the lease allowed for the recovery. The charges made, for example, to review correspondence from the applicant's solicitors appear to have no basis in fact. No indication has been given to the applicant as to the respondent's alleged charging rates which have been imposed on an almost whimsical basis.
14. It is also noted that the respondent has not made claims for administration charges prior to him taking on the responsibility for insuring the property in 2017. The applicant does not object to him taking on this responsibility. The respondent appears to allege that the insurance effected by the applicant, as she is obliged to do under the terms of the lease, was somehow defective. We do not propose to interfere with the arrangements the parties have come to on the question of insurance. It seems to us to be sensible for the landlord to insure the whole building and provided the tenants are happy with the insurance effected and pay the premium all well and good. However, it does not seem to us that the respondent, in removing the rights of the tenant to insure, can then seek to recover his purported costs of so doing.

15. Whilst we note that a number of items of costs used to make up the sums of £1,392 and £700 relate to the management of the property there is no service charge provision within the lease that allows the recovery of these charges.
16. Finally, we would add that there is no evidence that the demands for these alleged administration charges were accompanied by a summary and obligations of tenants as provided for at paragraph 4(1) of the 2002 Act. This impacts on our findings as to interest to which we will now turn.

Interest demanded in respect of the late payment of administration charges

17. There are two interest charges claimed which we will deal with as one.

The tribunal's decision

18. The tribunal determines that the sums of £324 and £143.34 are not payable for the reasons set out below

Reasons for the tribunal's decision

19. The respondent refers to the Late Payment of Commercial Debts (Interest) Act 1998. This legislation relates to parties acting in the course of a business (S2(1)), which is not the case. Further the lease, the contract for the purposes of the Act, make no provisions for the supply of services in the form of management/administration. We do not consider the Act is relevant to this matter. In addition, the lease is silent on the question of interest.
20. As we have indicated above there is no evidence that the requirements of paragraph 4(1) of the 2002 Act have been complied with. Accordingly, even if we had found that the administration charges were recoverable, in the apparent absence of the rights and obligations wording the sums would not yet be due and payable and interest could not run for late payment.

Application under s.20C and refund of fees

21. The applicant made application for an order under s20C of the 1985 Act and under paragraph 5A of schedule 11 to the 2002 Act. Given the outcome of the application we consider it to be just and convenient to make an order that the costs shall not be recoverable as a service charge and that any legal fees the respondent has incurred as litigation costs in these proceedings are not recoverable from the applicant.

22. It is noted that the respondent appears to be seeking to make an application under s27A for the recovery of the items disputed by the applicant in this case. In addition, he seeks to recover costs. The lease does not make provision for the recovery of costs. The only way costs could be recoverable is by reason of rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, where costs have been incurred through the unreasonableness of a party in bringing, defending or in the conduct of proceedings. We do not consider the applicant has acted unreasonably and costs would not be payable by her. Further the attempt to recover the costs in dispute by claiming them as service charges would seem inappropriate. In any event we are not prepared to consider such an application in these proceedings and a properly formulated application, with the requisite fee would need to be paid if the respondent considered it was a reasonable way to proceed.

Name: Tribunal Judge Dutton

Date: 23 March 2021

Commonhold and Leasehold Reform Act 2002

SCHEDULE 11 ADMINISTRATION CHARGES

PART 1 REASONABLENESS OF ADMINISTRATION CHARGES

Meaning of “administration charge”

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.

Notice in connection with demands for administration charges

4(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

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).