



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

Case reference : LON/00BK/LAC/2023/0014

Property : Apartment 2E, Carlisle Place, London,
SW1P 1NP

Applicant : Alexander George Gilbert and Emma
Louise Gilbert, through their attorney,
Justin Gilbert

Representative : TLT LLP
Ref: 305R/AA32/119528/000002

Respondent : 1. Thane Enterprises Limited
2. 1-3 Carlisle Place Limited

Representative : Wansbroughs Solicitors
Ref: OGP/MMM/26737/55

Type of application : To determine the reasonableness and
payability of variable service charges

Tribunal member : Judge Robert Latham

Venue : 10 Alfred Place, London WC1E 7LR

Date of decision : 12 September 2023

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that the administration charges demanded by the First Respondent in their letter dated 18 January 2023 are not payable.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the First and Second Respondents relating to these tribunal proceedings may be passed to the Applicants through the service charge.

- (3) The Tribunal makes an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 so that none of the First and Second Respondents relating to these tribunal proceedings may be passed to the Applicants as an administration charge.
- (4) The Tribunal determines that the First Respondent shall pay the Applicants £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. By an application dated 26 June 2023, the Applicants seek 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 Applicants. TLT LLP Solicitors ("TLT") are acting for the Applicants. On 28 June, the tribunal emailed a copy of the application to Wansbroughs, Solicitors, who have been acting for the First Respondent in this matter.
2. The Applicants are tenants of a one bedroom flat which they occupy pursuant to a lease dated 30 October 1981 (at p.16-47). The First Respondent is their landlord, whilst the Second Respondent is the "maintenance trustee". The Second Respondent is a management company which is owned by the tenants. By paragraph 8 of the Third Schedule of the lease, the tenants covenant not to carry out any structural works to the flat without first obtaining the written consent of the landlord and the maintenance trustee. The tenants further covenant to pay the costs of their surveyor in approving and supervising any such works, together with their proper legal costs in connection with any such licence.
3. This current application relates to works which the Applicants executed to reconfigure their flat. On 15 September 2020, the Applicants obtained a licence for these works. The works were supervised on behalf of the First Respondent by Peter Hubbard, a surveyor. On 2 July 2021, Wansbroughs, acting for the First Respondent, served a section 146 Notice complaining that the tenants had drilled through floor joists to install a 32 mm waste pipe from the new shower room and a 22 mm overflow pipe. In July 2021, a Structural Engineer was instructed on works necessary to strengthen the floor joists. The Applicants did not have the benefit of legal advice at this stage. They state that they have been charged £13,000 in respect of preparing the draft licence and supervising the works. £5,300 of this relates to legal fees. The Applicants do not seek to challenge the charges which they have paid.
4. The current application relates to the administration charges demanded by Wansbroughs in a letter dated 18 January 2023 (at p.118). This includes the following:

- (i) An invoice for professional advice in connection with the alleged breach of the lease and licence in the sum of £1,380 ("the first administration charge").
- (ii) The financial statement for drafting this letter in the sum of £720 ("the second administration charge")
- (iii) Interest pursuant to section 69 of the County Courts Act in the sum of £106.47 from 31 January 2022, the date on which it is said that the sum was first demanded.
5. The Applicants also seek an order against both Respondents pursuant to section 20C of the Landlord and Tenant Act 1985 and under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
 6. On 20 July, a Procedural Judge gave Directions. She allocated the case to the paper track. She directed that the case should be determined in the week commencing 11 September. If any party sought an oral hearing, they were directed to request this by 4 September. She further directed that the Applicants' application and accompanying documents should stand as their statement of case.
 7. On 21 July, the tribunal emailed a copy of these Directions to Wansbroughs. On 26 July 2023, TLT posted a copy of the application and the Directions to both the First and Second Respondents and to Wansbroughs. On 31 July, Wansbroughs acknowledged receipt of this letter. TLT have provided proof of delivery of the letter to the First and Second Respondents.
 8. By 10 August, the First Respondent was directed to email to the Applicants (i) a statement of case responding in full to each issue raised by the Applicants; (ii) copies of any legal authorities; (iii) copies of any documents; and (iv) any signed witness statements. The First Respondent has not complied with this Direction.
 9. By 10 August, the Second Respondent was directed to notify the tribunal whether it intended to make any separate submissions from the First Respondent on the issue of costs. It has failed to do so.
 10. On 14 August, the Tribunal, noting that it had not sent a copy of the application and the Directions to the Second Respondent, sent a copy of these by post to the Second Respondent. On receipt of the letter, the Second Respondent was directed to notify the Tribunal whether it intended to make any separate submissions from the First Respondent on the issue of costs. It has failed to do so.

11. On 31 August, TLT emailed a Bundle of Documents to the Tribunal and to Wansbroughs. TLT posted a copy to the Second Respondent. The Bundle, to which the tribunal refers in this decision, extends to 152 pages.
12. On 11 September at 09.51, Wansbroughs sent an email to the Tribunal stating that there was "a strong dispute of fact in these proceedings". They requested that the matter be listed for an oral hearing. They asserted that the current hearing bundle is not a true representation of the facts to be determine.
13. On 11 September at 10.56, TLT responded to this email opposing the application. They pointed out that no response to the application has been filed by the First Respondent. No explanation has been provided for the First Respondent's failure to comply with the Directions. Any request for an oral hearing should have been made by 4 September. They state that all open correspondence has been included in the Bundle. The Respondents had not requested that any further correspondence should be included.
14. TLT also refer to the pre-application correspondence. On 28 April 2023 (at p.137-143), TLT sent a detailed letter setting out the substance of the Applicants' complaint. On 15 May (at p.144-145), Wansbroughs sent only a brief response. On 15 June, TLT replied (at p.146-149). TLT requested disclosure of a number of documents. These have not been disclosed.

The Tribunal's Determination

15. The Tribunal refuses the First Respondent's application to relist this application for an oral hearing. The tribunal has had regard to the overriding objectives in rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules"). Currently, there is no factual dispute for the tribunal to determine as the Applicants' case is undefended.
16. Wansbroughs have provided no explanation for the First Respondent's failure to comply with the Directions. Were the Tribunal to accede to their application, it would be necessary to issue further Directions for the First Respondent to file its statement of case, authorities, documents and any witness statements. If there is any dispute of fact, it would be necessary to permit the Applicants to file witness statements in response. It would not be proportionate to do this.
17. Having read the pre-action correspondence, the only outstanding issue relating to these works now seem to whether or not a Recirculation Unit required the Respondent's consent. The Applicants installed a Siemens Downdraft Extractor which is situated near the cooker and sucks in any

steam/air an, cleans it and recirculates it around the kitchen. This does not seem to be a structural alteration and the only requirement is that it should comply with any statutory or insurance requirement. There is no evidence that it does not.

18. This is a claim by the First Respondent for variable administration charges. On 19 December 2022 (at p.56-57), HML, the landlord's managing agents, issued a demand for the first administration charge of £1,380. The charge is described as "licence to alter". It is now apparent that it is rather additional legal fees charged by Wansbroughs. The requisite licence had been granted on 15 December 2020.
19. Any demand for an administration charge must be accompanied by the requisite Summary of Rights and Obligations (paragraph 4(2) of Schedule 11 of the 2002 Act). The demand was not accompanied by the requisite Summary of Rights and Obligations for administration charges (the summary for service charges was attached). Further demands were made on 18 January 2013 (at p.118-121), 6 February 2023 (at p.54-55) and 20 April 2023 (at p.53). None of these were accompanied by the requisite Summary of Rights and Obligations.
20. Given that there had been no lawful demand for the first administration charge, it was not open to the First Respondent to make the demand for the second administration charge of £720 for non-payment of this sum. Neither could any demand for interest to arise. In any event, this tribunal has no power to award interest pursuant to section 69 of the County Court Act 1984.
21. The Applicants further argue that these additional administration charges are manifestly unreasonable. TLT refer to the sums of £13,000 which had already been demanded and paid. The Applicants do not seek a determination as to whether these charges were reasonable. It is arguable that they were not.
22. There is a suggestion that the legal costs relate back to the cost of preparing and serving the Section 146 Notice, dated 2 July 2021 (at p.81-82). TLT refer to the statutory requirement imposed by section 168 of the 2002 Act, namely that a landlord may not serve such a notice unless either the tenant admits the breach or this tribunal has made a determination that a breach has occurred. The Applicants deny that any breach had occurred.
23. TLT raise a more serious allegation that the First Respondent has involved solicitors prematurely and that the dispute could reasonably have been resolved by competent managing agents. Further, Wansbroughs failed to deal with correspondence in a proportionate manner, but rather saw any query as an opportunity to increase their costs. The Tribunal notes that Justin Gilbert has made a complaint to the Legal Ombudsman whose investigation is still ongoing. The

Tribunal merely records that it is surprised by the level of costs that have been incurred in this case. Where solicitors are involved, they need to justify that any administration charge is reasonable and payable.

24. The Applicants have set out their case fully in their application. The Tribunal is required to consider two issues. First, are the administration charges payable? The Tribunal is not satisfied that lawful demands have been made. Secondly, have the administration charges been reasonably incurred? The Tribunal is not satisfied that they have.

25. In the light of these findings, the Tribunal is satisfied:

(i) that it is just and equitable to make an order pursuant to section 20C of the Landlord and Tenant Act 1985 so that none of the First and Second Respondents' costs relating to these tribunal proceedings may be passed to the Applicants through the service charge.

(ii) an order should be made under paragraph 5A of 2002 Act so that none of the First and Second Respondents' costs relating to these tribunal proceedings may be passed to the Applicants as an administration charge.

(iii) that the First Respondent should pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

26. This is normally a no costs jurisdiction. The Applicants must therefore bear their legal costs in bringing this application.

Judge Robert Latham
12 September 2023

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).