



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

Case reference : **LON/00BJ/LAC/2023/0010**

Property : **Flat 3 & 4 Park South, Austin Road,
London SW11 5JN**

Applicant : **Penhurst Properties Ltd**

Representative : **Ricardo Trombetta**

Respondent : **Park South Management Limited**

Representative : **Tideway Investment Management
Limited**

Type of application : **Application for a determination of
payability/reasonableness of
administration charge**

Tribunal member : **Judge Tagliavini**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **4 October 2023**

DECISION

The tribunal's summary decision

- (1) The tribunal finds the respondent's legal fees incurred in the period 06/03/2023 to 29/03/2023 in the sum of £516.60 (plus VAT) are reasonable and payable by the applicant.
 - (2) The tribunal does not make an order under whether an order under paragraph 5A of Schedule 11 to the 2002 Act.
 - (3) The tribunal does not make an order for reimbursement of application/hearing fees.
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The application

1. The applicant seeks a determination under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 as to whether administration charges are payable
2. The lessee also seeks 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 Commonhold and Leasehold Reform Act 2002.

Background

3. The dispute between the parties arises from the leaseholder applicant's alleged failure to comply with the terms of the single long lease dated 23 March 1993, which requires the respondent freeholder to be notified of the sub-letting of the subject premises which comprise two flats in a purpose built block. The applicant disputes the payability and/or reasonableness of the legal costs incurred by the respondent in the sum of £758.76 (including VAT) during the process of seeking the applicant's compliance with the lease terms. The applicant asserts these sums are not payable under the terms of the lease and/or are unreasonable.

The issues

3. The tribunal has identified the following issues to be determined:
 - (i) The reasonableness and payability of administrative charges for legal costs demanded by Northover Litigation on behalf of the respondent in 2023 totalling £758.76
 - (ii) whether an order under paragraph 5A of Schedule 11 to the 2002 Act should be made

- (iii) whether an order for reimbursement of application/hearing fees should be made

The hearing

4. As neither party requested an oral hearing the application was determined on the documents provided in a hearing bundle of 245 (electronic) pages.
5. The applicant relied upon a Statement of Case dated 6 June 2023 and a detailed Reply dated 2 August 2023. The respondent relied upon its Response dated 10 July 2023 and a witness statement of Melanie Ingram dated 7 July 2023. The applicant asserted the sum(s) demanded were unreasonable and/or were not within clause 3(10) of the lease. The respondent asserted the sums were reasonable and within the terms of the lease.

The tribunal's decision

6. The tribunal finds the respondent's legal fees incurred in the period 06/03/2023 to 29/03/2023 in the sum of £516.60 (plus VAT) are reasonable and payable by the applicant.

The tribunal's reasons

8. The clauses of the lease the parties rely upon are as follows:

Clause 3(8)(d)

Not to underlet the Demised Premises or a permitted part unless and underlease shall contain provisions similar in all respects but with any necessary modifications to those contained in Clause 4 hereof and the Fourth and Fifth Schedules hereto as the Lessee may decide and any derivative underlease shall contain a prohibition against all dealing other than with the whole of the premises thereby demised and provisions similar but with any necessary modifications to those contained in this sub-clause.

Clause 3(9)

Within fourteen days next after any subletting charging by way of legal mortgage parting with possession or devolution of the Demised Premises or any permitted part to give written notice thereof to the Lessor's Solicitors and to produce to them a certified copy of every instrument effecting or evidencing the

same and to pay to the Lessor's Solicitors a fee of Twenty Pounds (exclusive of Value Added Tax or any other tax payable thereon) or such other reasonable sum as the Lessor's solicitors shall determine for the registration of such notice.

Clause 3(10)

To pay to the Lessor all costs charges and expenses (including solicitors' counsels' and surveyors' costs and fees) incurred by the Lessor in or in contemplation of an proceedings in respect of this Lease under Sections 146 and 147 of the Law of Property Act 1925 notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court.

9. The tribunal finds the letter dated 22 March 2023 from the respondent to the applicant clearly set out the consequences of continuing to fail to comply with terms of the lease. Consequently, the tribunal finds the legal costs that followed as a result of the correspondence between the parties and with the respondent client were incurred in contemplation of forfeiture proceedings and are therefore recoverable under the terms of the lease.
10. The sums demanded by the respondent are itemised in an invoice No 3187 and range from £36.90 (plus VAT) to £184.50 (plus VAT) and incurred during the period 07/11/2022 to 29/03/2022 for letter/emails between the properties and between the respondent and its legal adviser.
11. The tribunal find the applicant was in breach of the terms of lease in the period relevant to this application from 20/02/2023 to 30/03/2023 at which time compliance with the lease terms was made and formal notification of the sub-letting of Flats 3 and 4 was given and the requisite fee subsequently paid by the applicant.
12. The tribunal find Northover Litigation were first instructed in this matter on 22 March 2023 when it sent its first letter advising of the alleged breach to the applicant. Although the level of fee earner is not expressly identified by the respondent, the tribunal finds the individual sums claimed by the respondent during the period 22/03/2022 to 29/03/2023 are, on the balance of probabilities, both reasonable and reasonably incurred in light of the applicant's delay in complying with the terms of its lease; *Waler v London Borough Council* [2017] EWCA Civ 45.
13. In conclusion the tribunal finds administration charges (legal costs) in the sum of £516.60 (plus VAT) are reasonable and payable by the applicant.

14. In light of the tribunal's decision and reasons above, the tribunal does not make an order under paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 and declines to make an order for the reimbursement of the applicant's application/hearing fee(s).

Name: Judge Tagliavini

Date: 4 October 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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).