



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

Case Reference : **LON/00AY/LAC/2023/0015**

Property : **Flat 6, 55 Drewstead Road, London
SW16 1AA**

Applicant : **Mr Jonathan Ford**

Respondent : **Eagerstates Ltd**

Representative : **Mr Ronni Gurvits**

Type of Application : **For the determination of the
liability to pay an administration
charge**

Tribunal Member : **Judge Prof R Percival**

**Date of paper
determination** : **13 November 2023**

Date of Decision : **13 November 2023**

DECISION

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 liability to pay an administration charge by the Applicant in respect of the administration of ground rents from September 2021 to 2023.
2. The application was allocated to the paper track.
3. The legislation referred to in this decision may also be consulted at:
<https://www.legislation.gov.uk/ukpga/1985/70/contents>
<https://www.legislation.gov.uk/ukpga/2002/15/contents>

The property

4. The flat is one of six in a converted house.

Determination

5. As a preliminary matter, I note that the Respondent is identified as Eagerstates Ltd, not the freeholder. The application is brought under paragraph 5 of schedule 11 to the 2004 Act, which (like its model in section 27A of the Landlord and Tenant Act 1985) is broadly drafted, and gives the Tribunal jurisdiction to determine whether an administration charge is payable, rather than specify that the Respondent must be the freeholder, and in this case, the administration charge was made by Eagerstates and, given its nature, is likely to have been retained by it. Nonetheless, I record that had the Applicant made an application to substitute Assethold as the Respondent, I would have acceded to the application.
6. The Respondent has not produced a statement of case. Mr Gurvits, of Eagerstates, contended that he had not received the Applicant’s case, and requested a delay to prepare his statement of case. The request was referred to a procedural judge, who was satisfied that the Applicant had sent his case to the Respondent timeously, and so the application has proceeded.
7. The Applicant relates that the leaseholders have exercised the right to manage and that the RTM company “was formalised” on 25 May 2021. I take that to mean that that was the date upon which the right to manage was acquired.
8. The ground rent is paid quarterly. From the September to December quarter of 2021, the Respondent claimed a charge of £39 with the ground rent, which was stated to be an “Admin fee for rent collection”.

9. In correspondence with the Applicant, produced in the bundle, Mr Gurvits claimed that the fee was justified under paragraph 10 of the second schedule to the lease. The Applicant paid the charge, under protest, and initiated these proceedings.
10. In the particulars, the lease defines “maintenance rent” as “one sixth of the costs and expenses that the Lessor incurs pursuant to its covenants contained in the second schedule hereto.” The maintenance rent is thus the term used in the lease for the service charge.
11. The lessor covenants to “cause the works and other matters referred to in the Second Schedule hereto” in clause 3(a)(ii) of the lease.
12. The second schedule contains normal lessor’s obligations such as repairing and decorating the reserved elements of the property, cleaning the common parts and so on. Paragraph 10 of the schedule is in the following terms:

“Employing any workmen necessary for the proper maintenance of the property and a management agent solicitor accountant surveyor or other professional adviser in connection with the management of the property including maintenance rent calculation and collection.”
13. First, then, the paragraph upon which the Respondent relies does not create an administration fee at all, chargeable against lessees individually. It allows expenditure on the professionals specified to be charged to the service charge. Now that the RMT company is in place, neither the freeholder, nor its agent is entitled to charge a service charge in respect of these matters.
14. Secondly, the maintenance rent is not ground rent. It is the term used to describe the service charge. The “calculation” and collection of the ground rent cannot be charged under the paragraph for this reason, either.
15. Accordingly, I find that the purported administration charges are not payable.
16. The Applicant makes an application under paragraph 5A of Schedule 11 to the 2002 Act extinguishing any liability to pay an administration charge in respect of litigation cost in relation to the proceedings.
17. I consider the application on the basis that the lease does provide for such costs to be passed on as administration charges by either the lessor or the Respondent, without deciding whether that is the case or not. Whether the lease does, in fact, make such provision is,

accordingly, an open question should the matter be litigated in the future.

18. The equivalent application in respect of service charges under section 20C of the Landlord and Tenant Act 1985 has been found to be determined on the basis of what is just and equitable in all the circumstances (*Tenants of Langford Court v Doren Ltd* (LRX/37/2000). The approach must be the same under paragraph 5A, which was enacted to ensure that a parallel jurisdiction existed in relation to administration charges to that conferred by section 20C.
19. An order restricting an administration charge is an interference with the landlord's contractual rights, and must never be made as a matter of course. Further, I should take into account the effect of the order on others affected, including the landlord: *Re SCMLLA (Freehold) Ltd* [2014] UKUT 58 (LC); *Conway v Jam Factory Freehold Ltd* [2013] UKUT 592 (LC); [2014] 1 EGLR 111.
20. The Respondent manages an extensive property portfolio, and there is no reason to suppose that denying it legal costs would have an unwarranted effect upon it (as may be the case, for instance, where a landlord is a leaseholder owned company). I also note that it must have been apparent to a property manager of Mr Gurvits' extensive experience that paragraph 10 of the second schedule does not justify an administration charge for billing ground rent.
21. The success or failure of a party to the proceedings is not determinative. Comparative success is, however, a significant matter in weighing up what is just and equitable in the circumstances
22. The Applicant has been wholly successful in this determination. The case for making the order is overwhelming.
23. Had this application been heard orally, the Applicant may have made an application for an order under rule 13(2) that the Respondent reimburse him for fees paid to the Tribunal, and if he did not, the Tribunal may have invited him to do so. The terms of rule 13(2) are wide and not dependent upon an application. For the same reasons as I make the paragraph 5A order, I make an order for the Respondent to reimburse the Applicant's application fee (£100).

24. The Tribunal orders
- (1) under Commonhold and Leasehold Reform Act 2002, schedule 11, paragraph 5A that any liability of the Applicant to pay litigation costs as defined in that paragraph be extinguished; and
 - (3) under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2) that the Respondent reimburse the Applicant's application and hearing fees.

Rights of appeal

25. 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 London regional office.
26. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
27. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
28. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 13 November 2023