



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

Case Reference : **MAN/00BR/LAC/2023/0001**

Property : **Flat 101 Adelphi Wharf, Adelphi Street,
Salford, M3 6EN**

Applicant : **Timothy Beardsall**

Respondents : **Aviva Investors Ground Rent Gp
Limited & Aviva Investors Ground Rent
Hold Limited**

Representative : **Mainstay**

Type of Application : **Commonhold and Leasehold Reform
Act 2002 – Sch 11 para 5 and Sch 11 para
5A**

Tribunal Members : **Mr J Fraser FRICS
Mr W Reynolds MRICS**

**Date of
determination** : **11th December 2023**

Date of decision : **24th January 2024**

DECISION

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DECISION

1. The Applicant is not liable to pay the administration charges of £702.45 in dispute.
2. An order is made to extinguish the Applicant's liability to pay any administration charges in respect of the Respondent's litigation costs incurred in these proceedings.

REASONS

Background

3. This is an application made by Timothy Beardsall ("the Applicant") for a determination under Schedule 11, paragraph 5 and 5A of the Commonhold and Leasehold Reform Act 2002 ("the Act") as to whether administration charges in respect of Flat 101 Adelphi Wharf, Adelphi Street, Salford, M3 6EN ("the property") are payable and/or reasonable and for an order reducing or extinguishing the Applicant's liability to pay a particular administration charge in respect of costs incurred in connection with these proceedings.
4. The Respondents are Aviva Investors Ground Rent Gp Limited & Aviva Investors Ground Rent Hold Limited, represented by Mainstay.
5. This quantum of charges in dispute amounts to £702.45 comprising legal fees of £414.00, interest of £138.45 and INT referral fee and associated letter totalling £150.00. The administration charges relate to non-payment of ground rent and the nature of the dispute is whether the Respondent has used the correct service address for the Applicant.
6. The original Landlord was Fortis Developments Ltd, however the Freehold of the Property was subsequently transferred to the Respondents who are now the Applicant's Landlord, the Tribunal is not provided with any information in relation to the Freehold transfer and do not know on what date this occurred.
7. Directions were issued by the Tribunal on 21st June 2023. It was directed that the matter would be determined by way of written submissions and the parties were invited to inform the Tribunal if they wished to make oral representations at a hearing. No such applications have been received by the Tribunal and the determination has proceeded based on the written submissions provided to the Tribunal. The parties were directed as follows:

Provision of financial information

Within 14 days of the date of these directions, the Respondent must send to the Applicant, and to the Tribunal, a statement showing the total administration charges it believes to be payable by the Applicant for each year in dispute and

explaining (by reference to the lease) the basis on which those charges have been applied, calculated and apportioned.

The Applicant's case

Within 21 days (beginning with the date on which the financial information referred to above is received), the Applicant must send to the Respondent, and to the Tribunal a statement of case setting out the grounds for the application. The Applicant's statement must identify, in respect of each year, the administration charges which are in dispute. This should be done by means of a schedule or spreadsheet arranged in date order with separate columns to show (a) each disputed item; (b) the reasons why the item is disputed; (c) the amount (if any) the Applicant is willing to pay; and (d) a space for the Respondent's comments on each item.

The statement of case must be accompanied by copies of:

- *any signed witness statements of fact upon which the Applicant relies; and*
- *any other document upon which the Applicant relies.*

The Respondent's case

Within 21 days (beginning with the date on which the Applicant's statement of case is received), the Respondent must send to the Applicant, and to the Tribunal, a statement of case in response setting out the reasons for opposing the application.

The statement of case should include a copy of the Applicant's schedule or spreadsheet showing the Respondent's comments on each disputed item, and it must be accompanied by copies [of]:

- *any signed witness statements of fact upon which the Respondent relies; and*
- *any other document upon which the Respondent relies.*

The Applicant's reply

Within 7 days (beginning with the date on which the Respondent's statement of case is received) the Applicant may send to the Respondent, and to the Tribunal, a short supplementary statement in reply.

8. The Tribunal has not inspected the Property, it is understood to comprise a modern purpose built flat, within a larger flatted development.
9. The Application has arisen following late payment of ground rent by the Applicant with subsequent charges for administration fees and interest issued by the Respondent in respect of that late payment.

The Law

10. Schedule 11 of the Commonhold and Leasehold Reform Act 2002 provides:

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.

.....

Paragraph 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.

Paragraph 5

(1) An application may be made to [the appropriate tribunal]¹ for a determination whether an administration charge is payable and, if it is, as to—

- (a) the person by whom it is payable,*
- (b) the person to whom it is payable,*
- (c) the amount which is payable,*
- (d) the date at or by which it is payable, and*
- (e) the manner in which it is payable.*

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on [the appropriate tribunal]¹ in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—

- (a) has been agreed or admitted by the tenant,*
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*
- (c) has been the subject of determination by a court, or*
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

.....

Paragraph 5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.

<i>Proceedings to which costs relate</i>	<i>“The relevant court or tribunal”</i>
<i>Court proceedings</i>	<i>The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court</i>
<i>First-tier Tribunal proceedings</i>	<i>The First-tier Tribunal</i>
<i>Upper Tribunal proceedings</i>	<i>The Upper Tribunal</i>
<i>Arbitration proceedings</i>	<i>The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.”</i>

11. Section 166 of the Commonhold and Leasehold Reform Act 2002 provides:

- (1) A tenant under a long lease of a dwelling is not liable to make a payment of rent under the lease unless the landlord has given him a notice relating to the payment; and the date on which he is liable to make the payment is that specified in the notice.*
- (2) The notice must specify—*

 - (a) the amount of the payment,*
 - (b) the date on which the tenant is liable to make it, and*
 - (c) if different from that date, the date on which he would have been liable to make it in accordance with the lease, and shall contain any such further information as may be prescribed.*
- (3) The date on which the tenant is liable to make the payment must not be—*

 - (a) either less than 30 days or more than 60 days after the day on which the notice is given, or*
 - (b) before that on which he would have been liable to make it in accordance with the lease.*
- (4) If the date on which the tenant is liable to make the payment is after that on which he would have been liable to make it in accordance with the lease, any provisions of the lease relating to non-payment or late payment of rent have effect accordingly.*
- (5) The notice—*

 - (a) must be in the prescribed form, and*
 - (b) may be sent by post.*
- (6) If the notice is sent by post, it must be addressed to a tenant at the dwelling unless he has notified the landlord in writing of a different address in England and Wales at which he wishes to be given notices under this section (in which case it must be addressed to him there).*
- (7) In this section “rent” does not include—*

 - (a) a service charge (within the meaning of section 18(1) of the 1985 Act), or*
 - (b) an administration charge (within the meaning of Part 1 of Schedule 11 to this Act).*
- (8) In this section “long lease of a dwelling” does not include—*

- (a) a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies,
- (b) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 (c. 5) in relation to which that Act applies, or
- (c) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (c. 8).

(9) In this section—

*“dwelling” has the same meaning as in the 1985 Act,
“landlord” and “tenant” have the same meanings as in Chapter 1
of this Part,
“long lease” has the meaning given by sections 76 and 77 of this
Act, and
“prescribed” means prescribed by regulations made by the
appropriate national authority.*

The Lease

12. The property is held on a long lease dated 3rd August 2015 for a term of 250 years from the same date, the parties to the lease are Fortis Developments Ltd (Landlord), Adelphi Wharf Management Ltd (Company) and Timothy John Beardsall (Tenant). The relevant clauses are as follows:

LR3 Parties to this lease

Landlord

Fortis Developments Ltd (the Landlord)....

Tenant

Timothy John Beardsall (the Tenant) of Flat 9A, King Sing Mansion, 187 Wan Chai Road, Wan Chai, Hong Kong

Other Parties

Adelphi Wharf Management Ltd (the Company).....

3.21 Landlord’s and Company’s costs

The tenant shall pay on demand all costs, fees, charges, disbursement and expenses incurred by the Landlord or the Company including those payable to

solicitors, counsel, architects, surveyors, bailiffs in relation to or in contemplation of:

(a)

(b)

(c) the recovery or attempted recovery of arrears of Rent or other additional rents, or other amounts due from the Tenant or in remedying any breach of the Tenant's Covenants

(d)

(e)

(f)

8.5 Notices

Section 196 of the Law of Property Act 1925 shall apply to all Notices and documents relating to this lease but such provisions shall be extended as follows:

(a) Where the expression "Tenant" includes more than one person service on anyone of them shall be deemed to be service on them all.

(b) Any Notice or document shall be correctly served if it is sent by recorded delivery post in a stamped addressed envelope, addressed as the case may be to the Landlord, the Company or the Tenant

(i) at their last known place of abode or business or registered office in the United Kingdom; or

(ii) In the case of the Tenant at:

(aa) the address of the Flat; or

(bb) the address specified in Clause 8.5(d);

and any Notice or document shall on proof of posting be treated as having been received.

(c) Any Notice or document sent by mail shall be treated as having been received on the second Working Day after the day of posting.

(d) Any notice, claim form or other document relating to this Lease may be served on the Tenant by sending it to the Tenant's address for service in England and Wales specified in Clause LR3;

The Applicant's case

13. The Applicant's case is set out in a document titled "Statement of Timothy Beardsall" and it can be summarised as follows; there is no dispute that the ground rent is owed and that the lease allows for fees associated with recovery of ground rent to be charged; but that the fees charged in this instance have been incurred unnecessarily; that Fortis [the former Landlord] were updated of a new address for the Applicant as prior to completion of the Applicant's purchase of the Property, he updated his appointed conveyancers, TQ Property Lawyers, with his new address and assumed Land Registry therefore had also been updated; that it wasn't until the Respondents took over from Fortis that communication issues arose, the ground rent having always been paid on time to Fortis and that it was the responsibility of Fortis to pass on the correct address to a new Freeholder; that the Respondents should have contacted Fortis if they could not contact the Applicant at the address they held for him; a £42 trace fee is not disputed and that the trace should have easily been able to locate him; that all late payment and legal fees charged by Mainstay are in dispute as this is the failure of Fortis and the Respondents, who should have ensured that the correct correspondence address was provided when the Freehold was transferred.

The Respondent's case

14. The Respondent's case takes the form of two signed Statements, prepared by Mark Monkhouse, Associate Director of Mainstay Asset Management Limited ("Mainstay") dated 29th June 2023 and 25th July 2023 respectively. A bundle is provided with each Statement. At page 1 of the bundle accompanying the first Statement, a schedule of fees amounting to £669.60 is provided comprising six entries with a heading of 'INT Maybeck Legal Fees' and two entries with a heading of 'INT Late Payment Fee'. The bundle comprises the aforementioned schedule of fees and a copy of the Lease. In his first Statement, the Respondent refers the Tribunal to 3.21(c) of the Lease in regard to costs incurred for the "recovery or attempted recovery of arrears of Rent...". A brief statement of how the administration fees were arrived at is provided.
15. The background to the dispute is provided within Mr Monkhouse's first statement. He says that the Applicant failed to pay ground rent "properly due and demanded" in respect of calendar years 2020, 2021 and 2023 [the statement is silent on ground rent for 2022] and that payment was only forthcoming upon instructing a third party recovery agent "Maybeck Collections Limited" ("Maybeck") on 30th September 2021 and that they sent several letters ("sent [to] the address stipulated on the Office Copy Entry and on the Lease") and an email to the Respondent ("to the same address from which later emails were received from the Applicant") and that Maybeck having received no response or payment instructed a third-party trace agent to locate the Applicant who confirmed that the Applicant was resident at "the same address where previous correspondence had been issued." The Respondent further explains that following a further letter before action to "said address" on 17th February 2023 and a further follow up email on 10th March 2023, the Applicant contacted Maybeck and agreed to pay the ground rent alone. On the 27th April 2023, payment was made in the sum of £1,763.01 to clear "Ground

rent, late payment interest, trace fee and Land Registry fees (although the latter were only partially settled)” with the Applicant stating that “an application would be made regarding the additional costs on the basis that our email of 10th March 2023 was the first they had known of the arrears being outstanding”. Finally, the Respondent says that the Applicant provided a change of postal and email address which were not previously communicated to the Respondents, Mainstay or Maybeck.

The Applicant’s response

16. The Applicants response seeks to address various points raised in the Respondent’s first statement in more detail, albeit the substance of the Applicant’s submission remains broadly the same with some further documents provided in support.

The Respondent’s further response

17. The Respondents second statement can be summarised as follows; Fortis Residential Lettings [with which the Applicant has a management agreement for sub-letting of the Property] are a separate entity to Fortis Developments Limited, TQ Property Lawyers did not update the address for service; Mainstay and Maybeck utilised the contact information held and ultimately the onus was on the Applicant to ensure that the contact information held was correct. Further documentation is provided in a second bundle in support of the second statement including copies of e-mails and letters addressed to the Applicant.

Determination

18. The administration charges that form the basis of the application have arisen due to late payment of ground rent and interest charges on the same. The Tribunal is satisfied that clause 3.21 (c) of the lease allows for administration charges to be levied in relation to the collection of ground rent and this point is agreed by the Applicant in their first statement and further, that such a charge would fall under the scope of Paragraph 1 (1)(c), Schedule 11 of the Act. However, for an administration charge in relation to a ground rent to be payable, notwithstanding the reasonableness of that charge, the ground rent to which it relates needs to have been properly demanded in accordance with s.166 of the Act. Subsection 5 of the Act sets out that “the notice (a) must be in the prescribed form, and (b) may be sent by post”. Subsection 6 requires that if it is sent by post it “must be addressed to a tenant at the dwelling unless he has notified the landlord in writing of a different address in England and Wales at which he wishes to be given notices under this section (in which case it must be addressed to him there).” Therefore, whilst there is no statutory requirement for the notice to be posted, if it is, it must be to the tenant at the dwelling, in this case the Property itself, or another address in England and Wales as notified by the tenant. Neither party submit that an alternative address in England and Wales was provided by the tenant (the Applicant). Accordingly, a prescribed ground rent demand needed to be served on the tenant and if posted, at the Property. The Respondent has not provided to the Tribunal any copies of ground rent demands (whether posted or emailed) and the Tribunal finds that

the Respondent has failed to evidence that the Ground Rent payable has been properly demanded in accordance with s.166 of the Act.

19. The Tribunal has further considered whether clause LR3 of the Lease amounts to notification of an alternative address in accordance with s.166(6) of the Act however both the Act and Clause 8.5 of the lease stipulate that any such address for service must be in England and Wales whereas the address listed at LR3 is Flat 9A, King Sing Mansion, 187 Wan Chai Road, Wan Chai, Hong Kong being a non-compliant address that is outside of England and Wales. The law as it relates to the service of Notices under Section 166 as considered in the case of **Obi-Ezekpazu v Avon Ground Rents Ltd [2022] UKUT 121 (LC)** by Martin Rodger KC Deputy Chamber President, finding at [45] that “A ground rent demand under section 166 is given neither under LPA 1925 nor under an instrument affecting property (the lease) but is a specific statutory notice with its own statutory service requirements.” At [46] he said “Because no ground rent was payable, the Appellant was not in breach of covenant..... No administration charges are therefore payable by the Appellant in respect of costs incurred by the Landlord in seeking to recover ground rent....” Therefore, absent the Respondent providing any evidence that the Ground Rent was correctly demanded, the Tribunal finds there to be no evidence that the administration charges that have been levied are payable.
20. Finally, notwithstanding the Tribunal’s findings above, the Lease (Clause 8.5 (b)) specifically extends Section 196 of the LPA 1925 to require that “*Any Notice or document shall be correctly served if it is sent by recorded delivery post in a stamped addressed envelope, addressed as the case may be to the Landlord, the Company or the Tenant*” The Tribunal is not provided with any evidence to show that the Applicant was provided any notices by recorded delivery.
21. We do not go on to consider whether the Applicant had explicitly or implicitly provided the Respondent with an updated address in Hong Kong, finding that administration charges are not payable. Nor do we consider whether the Applicant was properly notified of the transfer of the Freehold interest in the property. The Tribunal’s decision is that administration charges amounting to £702.45, and as set out in the application for determination by the Tribunal and the schedule attached to the Applicant’s first statement, are not payable.
22. The Applicant has made an application under Paragraph 5a of Schedule 11 of the Act to reduce or extinguish administration charges relating to these proceedings. Subsection (2) states: “*The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.*” On the basis that the Tribunal has found that the administration charges in dispute are not payable, the Tribunal makes an order that administration charges relating to the Respondent’s costs of these proceedings cannot be recovered from the Applicant by way of an administration charge.

Signed: J Fraser
Chair of the First-Tier Tribunal
Date: 24th January 2024

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 to appeal 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 be 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 applications 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 rounds 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).