



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference : CAM/33UD/LAC/2022/0004

Premises : 21A Trafalgar Road
Great Yarmouth
Norfolk NR30 2LD

Applicants : 1. Phillip Bannell
2. Andrew Bannell

Representative : Phillip Bannell

Respondent : Benjamin Morgan

Type of applications : Liability to pay administration charges

Tribunal members : Judge David Wyatt
Mrs M Hardman FRICS IRRV (Hons)

Date of decision : 11 May 2023

DECISION

Decisions of the tribunal

The tribunal:

- (1) orders under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the Respondent's liability to pay the administration charge determined below (for the costs of the previous tribunal proceedings described below) is reduced to £1,562.50; and
- (2) orders under section 20C of the Landlord and Tenant Act 1985 that all the costs incurred by the Applicants in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent.

NB this means that the amounts payable by the Respondent to the Applicants are:

- a) £3,099.07 for pre-action costs (as determined in the previous tribunal proceedings); and
- b) £1,562.50 in respect of the costs of the previous tribunal proceedings.

Reasons

Previous tribunal proceedings

1. In CAM/33UD/LBC/2021/0009, the Applicant landlords sought a determination under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 (the "2002 Act") that the Respondent leaseholder was in breach of the covenants in clause 6.3 of their lease of the Property. They alleged the Respondent had failed to keep in good and substantial repair and condition "all but one" of the relevant windows and window frames in the Property.
2. In CAM/33UD/LAC/2021/0005, the Applicants sought a determination under paragraph 5 of Schedule 11 to the 2002 Act of whether administration charges of £10,965.86 for pre-action legal and other costs, said to have been incurred as a result of the alleged breaches of covenant, were payable by the Respondent. The Applicants relied on clauses 6.12 and 6.13 of the lease, which provide for contractual costs.
3. In a combined decision dated 28 June 2022 (the "Decision") we: (a) determined that a breach of the covenant in clause 6.3(a) of the lease (to keep the demised premises in good and substantial repair and condition) had occurred as set out in the Decision; (b) determined that administration charges of £3,099.07 were payable under the lease by the Respondent to the Applicants for their pre-action costs; and (c) ordered that all the costs incurred by the Applicants in connection with the proceedings were not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent. Please read this decision with the Decision.

Procedural history

4. In this new application, received on 16 December 2022, the Applicants seek a further determination under paragraph 5 of Schedule 11 to the 2002 Act as to whether administration charges of £9,150.18 are payable by the Respondent for the legal costs of the previous tribunal proceedings.

5. On 11 January 2023, the Judge gave case management directions, proposing to decide this matter on paper unless any party requested a hearing or the tribunal decided a hearing was necessary. There was no request for a hearing. Accordingly, by rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the parties are taken to have consented to this matter being determined without a hearing. We consider that it is appropriate to do so.
6. Pursuant to the directions, the Applicants produced their bundle of case documents, anticipating an application under paragraph 5A of Schedule 11 to the 2002 Act. The Respondent produced their documents in response, which included an application dated 15 February 2023 using the form for applications under section 20C of the Landlord and Tenant Act 1985 (the "1985 Act"). As with the similar application made in the previous proceedings and reading this with the submissions made by the Respondent, we treat this as an application for an order under section 20C of the 1985 Act and an application for an order under paragraph 5A of Schedule 11 to the 2002 Act. As permitted by the directions, the Applicants produced a reply bundle.
7. To ensure there had been no misunderstanding about any of this and to allow a final opportunity for any representations on the detail below, on 20 April 2023 this decision was sent to the parties in draft, allowing them until 28 April 2023 to make any further written representations and directing that on or after 3 May 2023 the tribunal would make its decision. We understand that no representations were received.

Applicants' case

8. On 11 October 2022, the Applicants demanded the disputed £9,150.18 from the Respondent for legal costs, from 21 November 2021 to 20 May 2022, of the previous proceedings. They contend these costs result from the Respondent's breaches of clause 6.3 and are payable under clause 6.13 (or clause 6.12) of the lease. The Applicants said it was reasonable to instruct a solicitor to advise them and act on their behalf and, since the breaches were not admitted, to pursue the applications before the tribunal with Counsel to represent them. They said they had spent a significant amount of their own time on these matters but were not seeking to recover any sum in relation to that time.
9. The Applicants said the £9,150.18 included £391.27 for legal costs for 21 November 2021 to 10 January 2022 from the invoice dated 10 January 2022 which had not been included in the demand for costs assessed in the previous proceedings (noted at [44] in the Decision). For the current proceedings, they gave a breakdown of the time spent but on the information provided it appears this sum is probably made up of the tribunal application fees of £200 and £191.27 for the remaining time spent between those dates. The balance is made up of £3,731 from an invoice dated 16 March 2022 and £5,027.91 from an

invoice dated 20 May 2022. As before, the Applicants' solicitor was Lawrence Talbot of Proprietary Rights Ltd. The relevant sums from their invoices are summarised in the table below.

10. We are satisfied that, for the same reasons explained in the Decision in relation to the pre-action costs, these costs were potentially within the scope of the contractual indemnity in clause 6.13 because of the breach or non-observance of clauses 6.3(a) determined in the Decision. The variable administration charge for these costs is payable only to the extent that the amount of the charge is reasonable (as explained in the Decision).
11. As before, the time costs were charged at £220 per hour (or £110 per hour for time spent on letters or e-mails received) with a 25% discount (i.e. a net full rate of £165 per hour), with some further discounts. Again, for simplicity, we show below the time recorded for letters or e-mails received as half the time at the full rate. All the invoices have a general narrative indicating that they include: "...conference, research, study and drafting; correspondence, postage, telephone charges, photocopying and general care and control".

Invoice	Expenses (£)	Costs (£)	Description (extracts)
10 January 2022	200 tribunal application fees	191.27	Balance of time costs from invoice for period from 24 September to 10 January 2022, which referred to 23 units correspondence, 26 units telephone, 77 units on documents
16 March 2022	200 tribunal hearing fee	3,531	Period from 11 January to 16 March 2022, referring to 60 units correspondence, 48 units telephone, 106 units on documents
20 May 2022	480 inc VAT counsel (SoC) £2,526.66 brief fee inc VAT and travel expenses	2,021.25	Period from 17 March to 20 May 2022, including preparation of reply bundle and brief to counsel, referring to 42.5 units correspondence, 19 units telephone and 61 units on documents

12. The total of the sums in the third column above for the time spent by the Applicants' solicitor (£5,743.52) would be over 348 units (i.e. over 34 hours) if charged at £165 per hour. The breakdowns provided with the invoices include the time spent on preparing the administration charge application for the pre-action costs (13 units) in January 2022. They include preparing a main witness statement and preparing and copying bundles (106 units charged) in March 2022. They also include

preparing a second witness statement, preparing response submissions and preparing the supplemental bundle (52 units) in April 2022. The Applicants' bundle for these proceedings also includes copies of their solicitor's attendance notes. These indicate that at least some of the time appears to have been spent on matters which are not within the scope of the relevant covenant (such as advising one of the Applicants on a question about service charges), but that does not affect our assessment; the amount involved is modest and our assessment below is of the total reasonable charge which would be payable under the covenant.

13. The tribunal application and hearing fees were reasonably incurred. We accept it was reasonable to instruct solicitors to deal or assist with the proceedings, just as it was reasonable to do so for reasonable pre-action correspondence. The proceedings were the first step(s) which could lead to forfeiture of the Respondent's lease and (whether or not this was realistic) there had been a suggestion from one of the experts that disrepair could be causing further damage, as noted in the Decision. However, our assessment is that even more of the costs included in this demand are unreasonable than those which were included in the previous demand for the pre-action costs. That is for the reasons given in the Decision and the following reasons in particular.
14. Our assessment is that the total reasonable fee for Counsel to prepare statements of case and represent the Applicants at the hearing of this matter was £1,500 inclusive of VAT. The issues involved were not complex, the factual and expert evidence was relatively light and after the relatively brief inspection the hearing was concluded in about half a day at a venue within walking distance of the Property. Given the involvement of Counsel as described and the work included in the pre-action costs, the maximum reasonable amount of time spent at £165 per hour for the other work done in relation to the proceedings was 5 hours (50 units), the sum of £825. That includes reasonable allowance for the second application, preparation of witness evidence and supporting documents pursuant to the combined case management directions, attendances on the parties and attendances on others (including the tribunal, Counsel and the experts).
15. The pre-action costs assessed in the Decision were substantial partly because they included the costs (to 20 November 2021) of preparing the application under s.168(4) and the administration charge demand for pre-action costs. Much of the preparatory work had already been done (or should have been done) for the £3,099.07 pre-action costs we have already allowed. These included costs of the experts' reports.
16. In the proceedings, the Respondent had produced limited documentation and had not created additional issues of any real substance. The work done for and attending the Applicants in the

proceedings was excessive, producing several documents when (other than the expert's report) only a simple statement of case and witness statement was required and only a simple reply and reply witness statement (if any) was reasonable. That is not a criticism of the Applicants' solicitor, who was entitled to provide an extremely thorough premium service if that is what their clients wanted, but it was not reasonable to incur the costs of such excessive and repetitive preparation on this case.

17. In our assessment and subject to the following point, the total administration charges payable under clause 6.13 of the lease in respect of the costs of the previous proceedings would have been £2,725, comprised of the sums determined above and summarised in the following table.

Item	Claimed (£)	Assessed (£)
Tribunal fees	400	400
Counsel's fees and travel expenses	3,006.66	1,500
Solicitor's fees	5,743.52	825
Total	9,150.18	2,725

Application under paragraph 5A

18. The Applicants invited the tribunal to refuse to make an order under paragraph 5A of Schedule 11 to the 2002 Act, pointing out (in effect) that they were entitled to the relevant reasonable charge under the terms of the lease. We bear that and their other submissions in mind.
19. However, we consider that it is just and equitable to reduce the relevant charges because of the excessive approach taken by the Applicants, particularly when this is contrasted with the limited disrepair actually determined and the fact that less than 30% of the pre-action costs demanded were determined to be payable. The former was a general point on assessment, but it appears the indemnity provisions in the lease are in effect being misused by the Applicants. To explain this in more detail:
- a) the Applicants asserted on commencement and maintained throughout the proceedings that the Respondent had failed to keep in good and substantial repair and condition "*all bar one*" of the relevant windows and window frames in the Property. Particularly given the pre-action correspondence, inspections and costs and involvement of the inspecting expert before commencement, the

Applicants should before starting the proceedings already have asked their expert or themselves the simple question of which amongst the many unrelated and minor matters identified in the detailed report from the expert about the entire building were actual disrepair for which the Respondent was responsible under the lease of his flat. Even at the hearing, they had not done so and were alleging that other windows were in disrepair, and serious disrepair. When we asked their expert at the hearing, he immediately confirmed the limited ways in which only windows B, D and G were in disrepair and confirmed the other alleged issues were not disrepair. Ultimately, in line with that evidence, we found only very limited instances of previous (internal minor disrepair between 15 April and September 2021 in that sash cords and window locks had been broken and were then repaired) and then current (external, limited and largely minor) disrepair; and

b) the Applicants claimed £10,965.86, largely for unreasonable pre-action costs, reduced to £3,099.07 as set out in the Decision.

20. We do not reduce the tribunal application and hearing fees of £400 but we consider that it is just and equitable to reduce the other costs by 50%, to £1,162.50. Accordingly, the balance payable by the Applicant (in addition to the £3,099.07 already determined in the Decision for pre-action costs) is £1,562.50.

Application under section 20C

21. For the same reasons as those explained in the Decision, we have decided that it is just and equitable to make an order under section 20C of the 1985 Act in respect of the costs of these proceedings.

Name: Judge David Wyatt

Date: 11 May 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).