

10227



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

Case reference : **LON/00AE/LSC/2014/0184**

Property : **53 Cornmow Drive, Dollis Hill,
London NW10 1BA**

Applicant : **Mr Frederick Mbafeno**

Representative : **None**

Respondent : **Quadron Investments Ltd**

Representative : **Brady Solicitos**

Type of application : **For the determination of the
reasonableness of and the liability
to pay an administration charge**

Tribunal members : **Judge S O'Sullivan**

Date of decision : **10 July 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal finds that the administration charges which are the subject of this application are not payable.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge

The application

1. The Applicant made an application pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") seeking the tribunal's determination as to the reasonableness and payability of costs incurred in respect of a section 146 notice. This application should in fact have been made under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") but will be regarded as having been made under the correct jurisdiction. The applicant also seeks an order under section 20C of the 1985 Act.
2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The property which is the subject of this application is a 2 bedroom flat in a purpose built block of flats.
4. There is some history to the application. The Respondent made an application to the County Court in relation to service charge arrears in the sum of £6,523.33 and costs of £1,365.90. The sums were agreed and the parties entered into a Tomlin order allowing for payment of the sums due by instalments. The Applicant then found himself in financial difficulties and was unable to meet the payments. Despite negotiation the Respondent served a section 146 notice on 13 February 2014. The Applicant's mortgagee made a payment to the Respondent in the sum of £10,681.60. This included the sum included in the Tomlin inclusive of costs together with further costs of £2,790.37. It is these further costs which are the subject of the application.
5. Directions were made dated 24 April 2014 which provided for the parties to exchange statements of case and for it to be heard by way of a paper determination in the week commencing 9 June 2014. Due to late submissions of evidence it was not in fact considered until 10 July 2014.

6. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The Applicant's case

7. The Applicant says that the further costs of £2,790.37 are unreasonable. He refers the tribunal to paragraph 2 of the Tomlin Order which states;

"If the defendant shall default on any of the above monthly payments the claimant (will) be entitled to request judgement for the amount outstanding plus the costs for requesting judgement and additional interest and minus any payments made by the defendant".

8. Thus the Applicant says that on default the Respondent should have applied to have judgment entered and would have been entitled to the costs of requesting judgment. However the Respondent then served a section 146 notice, the Applicant says that this hampered negotiations.
9. The Applicant also criticises the level of the Respondent's costs. He says they are inflated as any calls lasted no more than a few minutes and he was not aware that he would be charged. He also says that the Respondent has failed to evidence the various letters and emails claimed for.

The Respondent's case

10. The Respondent relies on a statement made by Elizabeth Rowen on behalf of the management company dated 27 June 2014. This confirmed that no invoices have been raised as it is said that the matter is ongoing. It also states that the additional costs are £2771.56. However it then goes on to say that this figure included costs which predated settlement and thus the correct figure for inclusion was £1345.20 inclusive of Vat. The tribunal is not clear whether it is intended that the total sum of £2771.56 be charged to the leaseholder or the reduced figure of £1345.20.
11. The breakdown of the costs provided is brief and is simply a list of the number of letters/emails and calls in and out, preparation and the fixed fee for the preparation of the section 146 notice. No reference is made to the dates upon which the charges were incurred and no narrative is provided.
12. The statement did not attach a copy of the section 146 notice, the demand served on the leaseholder in respect of the administration

charges nor the accompanying summary of tenants rights and obligations.

The tribunal's decision

13. The tribunal finds that no sums are due in respect of the administration charges claimed of £2771.56 and/or £1345.20. Any sums paid by the mortgage company should therefore be repaid within 14 days of the date of this decision.

Reasons for the tribunal's decision

14. The tribunal has not been provided with a copy of the section 146 notice, the demand served on the leaseholder in respect of the administration charges nor the accompanying summary of tenant's rights and obligations. It appears therefore on the evidence before it that the sums in issue have not been properly demanded. A valid demand is a prerequisite to the recovery of those costs.
15. In addition the costs in issue have not yet been invoiced to the landlord and do not appear therefore to be costs incurred. The tribunal is unclear whether the total amount of the work in progress will in fact be invoiced to the landlord. The tribunal is disappointed with the statement of case provided on behalf of the Respondent given it is legally represented. It should be well aware of the requirements to provide evidence that any administration charges have been properly demanded.
16. In any event the costs in issue appear to this tribunal to be wholly excessive for a claim of this nature. The tribunal has not been provided with a sufficiently detailed narrative. However on the basis of the evidence before us if the tribunal were to be found to be wrong on the issue of the costs being payable in principle, it would in any event have only allowed costs in the sum of £500 plus Vat. This amount is considered to be a reasonable allowance for taking instructions from the client and the service of a notice under section 146.

Application under s.20C

17. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Sonya O'Sullivan

Date: 10 July 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration 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 tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, 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.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal 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 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).