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FIRST TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/22UN/LAC/2013/0004**
Property	:	**4 Stourview Court, Stow Road, Harwich, Essex CO12 3HF**
Applicant	:	**Mr H Humphries**
Representative	:	
Respondent	:	**Mr T Tarttelin**
Representative	:	
Type of Application	:	**For a determination as to liability to pay and reasonableness of variable administration charge**
Tribunal Members	:	**Mr G Wilson (Chair)** **Mr R Thomas MRICS**
Date and venue of Hearing	:	**15 November 2013** **Colchester Magistrates' Court**
Date of Decision	:	**15 November 2013**

DECISION

DETERMINATION

(1) The Tribunal determined that administration charges (for legal fees) totalling £1,336.41 should be reduced to £461, plus VAT and disbursements.

(2) The Tribunal made an order under Section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with the Application should not be treated as relevant costs when determining the service charge.

REASONS

1. By an Application received in the Tribunal Office on 28 June 2013 the Applicant applied for a determination as to liability to pay and reasonableness of variable administration charges of £1,402.79. This represented legal fees incurred by the Respondent in

connection with claims made against the Applicant relating to breaches of covenant and service charge arrears.

2. The Tribunal had been prepared to deal with the Application "on paper", but, despite efforts by the parties, in particular the Applicant, to clarify the precise figure being challenged, a hearing proved necessary – it being the quickest and cheapest way to resolve the dispute.

The Law

3. This is to be found in Schedule 11 of the Commonhold and Leasehold Reform Act 2002, the material parts of which are as follows:

> ..."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...
>
> ...(c) in respect of a failure by the tenant to make a payment by the due date to the landord 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...
>
> ..."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...
>
> ...*Reasonableness of administration charges*
> 2. A variable administration charge is payable only to the extent that the amount of the charge is reasonable...
>
> ...*Liability to pay administration charges*
> 5.–(1) An application may be made 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....

The Hearing – the Parties' cases and the Tribunal's findings

4. It was established that the Applicant was in fact challenging two figures, one of £417.40 and one of £919.01, a total of £1,336.41. These figures represented solicitors' fees for pursuing the Applicant for breaches of covenant and ground rent and service charge arrears in 2012 and 2013.

5. The Respondent had instructed solicitors in May 2012 in connection with three alleged breaches :

(1) the decorative state of windows
(2) the nuisance caused by the Applicant's (then) tenant
(3) service charge and ground rent arrears

6. It was clear from the documents produced by the Applicant that he had been in correspondence with the Respondent over the first two issues. It emerged as a result of Mr Tarttelin's fair and frank concession that a "payment plan" was in place to deal with the third issue. Mr Tarttelin confirmed that the solicitors should not have been writing about this issue. No more should they have been writing about the first issue because the Applicant had instructed the Respondent (as the Respondent had offered) to undertake the necessary work. As to the second issue, the Applicant had served a Notice to Quit on his tenant as early as March 2012 and had explained this to the Respondent. The parties appeared to agree that the service of a two month Notice followed by proceedings if necessary was the quickest and surest way to secure the tenant's removal. Unfortunately, other tenants in the block were not made aware of the steps being taken to oust the offending tenant and they continued to complain to the Respondent. The Respondent then instructed solicitors.

7. Once the Applicant became aware of the charges to be made by the solicitors, he took issue with them via the solicitors. This served only to increase them to £417.40.

8. In the first quarter of 2013, the Respondent issued proceedings to recover the £417.40 and, in addition, to recover the January 2013 service charge and ground rent.

9. The amount of the service charges etc was not in issue. The demand was issued at the end of 2012. At the end of January the Applicant returned a completed standing order mandate to the Respondent as, he stated, he had done the previous years. That was so even though, as the Applicant acknowledged, such a mandate should have been sent by him to his bank, not to the Respondent (as indeed the form of mandate made clear). The service charges etc remained unpaid, until settled by the Applicant's mortgagee in the face of proceedings to forfeit the lease.

10. The Tribunal's findings were as follows:

    (1) The solicitor's costs of £417.40 were not in the circumstances reasonable and would be disallowed.
    (2) It followed that the costs of their recovery should be disallowed (an element of the second bill).
    (3) If service charges etc were unpaid the Respondent had the right, indeed the obligation, to take steps to recover them. It was the Applicant's responsibility to ensure that service charges were paid. He was himself a landlord and it was no answer to assert that he could rely on the Respondent to forward the mandate to the Applicant's bank simply because they had done so in the past. The administration charge in connection with the recovery of the service charges was determined at £300, plus VAT and disbursements, a total of £461, that being the Tribunal's assessment of what was reasonable in the circumstances.

11. No other Applications were made by either of the parties at the conclusion of the hearing, but in his Application the Applicant had applied for an order under Section 20C of the Landlord and Tenant Act 1985. The Tribunal was not prepared to make such an order. The hearing that had had to take place was the result of the failure by the Applicant to make clear to the Tribunal and to the Respondent what sum he was challenging. The figure he challenged at the hearing was not the same as that in his Application and was at odds also with a letter written to the Tribunal and dated 4 October 2013 in which he asserted he was challenging "*two separate figures* [emphasis supplied] of £417.40... and the amount of £919.01". If the Respondent were to seek to recover its cost via the service charge, it should bear in mind that while a hearing could have been avoided, the Applicant had been to a substantial degree successful. Any such charge would, of course be subject to challenge under the 2002 Act

G Wilson
Chair
15 November 2013