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

Case Reference : **MAN/OOCG/LAC/2013/0012**

Property : **Apartment 3, Primrose House, Langsett Road,
Sheffield S6 2UE**

Applicant : **Mr Garry Salmons**

Respondent : **Forte Freehold Managers Limited as Agents
for UK Ground Rent Estates Limited**

Type of Application : **Commonhold & Leasehold Reform Act 2002
Schedule 11, Paragraph 5**

Tribunal Members : **Laurence Bennett (Tribunal Judge)
Jonathan Holbrook (Tribunal Judge)**

Date of Decision : **26 November 2013**

DECISION

Application

1. Mr Garry Salmons applies for a determination under Paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 of his liability to pay and reasonableness of an administration charge relating to Apartment 3, Primrose House, Langsett Road, Sheffield S6 2UE (the Property).

Preliminary

2. The Applicant is the owner of the Leasehold estate in the Property and the Respondent is Agent for the owner of the Lessor's interest in the Property created by the Lease specified below.
3. The application was received on 29 August 2013.
4. Directions dated 3 October 2013 made by a Deputy Regional Judge of the Tribunal included: "It is considered that this matter is one that can be resolved by way of submission of documentary and other written evidence leading to an early determination." The directions gave opportunity for the parties to request a hearing. No request was made.
5. The Applicant and Respondent provided submissions and documents in accordance with the directions.
6. The Tribunal convened on 26 November 2013 without the parties to determine the application.

The Law

7. Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the Act) provides that:-
 - 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 application for such approvals,
 - (b) for or in connection with the provisions 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.
 - 1(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
 - 2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.
 - 5 (1) An application may be made to the appropriate tribunal for 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

8. The operation of the Act was brought into effect by SI 2003 No 1986. Paragraph 8 of Schedule 2 of that instrument states:

Paragraphs 2-5 of Schedule 11 shall not apply to an administration charge that was payable before the first commencement date.

9. The first commencement date was 30 September 2003

The Lease

- 10. The Applicant holds the leasehold interest in the property created by a lease dated 12 April 2007 made between Hazel Homes (Langsett Road) Limited of the one part and Mark Unsted of the other part for a term of 300 years from 1 June 2006 (the Lease).
- 11. Paragraph 5.20 of the Lease contains the Lessee's covenant: "To indemnify the Landlord against all expenses proceedings costs claims damages demands and any other liability or consequence arising out of or in respect of any breach of any of the Tenant's obligations under this Lease (including all costs reasonably incurred by the Landlord in an attempt to mitigate any such breach)"

Facts and Submissions

- 12. The Lease provides for payment of a rent of £140 p.a. payable by half yearly payments in advance on 1 January and 1 July of each year.
- 13. On 13 May 2013 a rental demand for the rent due on 1 July 2013 was sent by the Respondent Agents and on 3 July 2013 notice as given of default with details of the costs of action that would be taken if funds were not received within 7 days.
- 14. On 12 July 2013 the Respondent incurred a Land Registry fee for copies of the Register and sent a letter to the Applicant's mortgagee with a copy to Mr Salmons.
- 15. The Respondent submitted invoices for expenses £67.20 for the letter of 3 July 2013, £12 Land Registry fee, £134.40 for the letter to the mortgagee and £67.20 for the copy to Mr Salmons.
- 16. Mr Salmons stated that he made the payment of rent on time but to an incorrect account, Avoca Estate Management to whom service charge is paid. He did not receive a prior intimation that the payment was wrongly addressed. He also submits that the response time to the arrears notification was too short and "please note the respondents do not take phone calls, therefore making it very difficult and time consuming to rectify any queries and they only allow 7 days response time from the date on the letter not allowing for the postage time (underhand tactics?)."
- 17. Mr Salmons submits that the fees charged are excessive and unjustified.

Tribunal's conclusions with reasons

18. We find that the Lease makes provision for payment by the Lessee of the Landlord's expenses in circumstances where it is necessary to take action for non payment of rents due. Whilst the Applicant believed he had sent a remittance in good time it is clear this was wrongly addressed and cannot be considered payment. We find it reasonable that the Respondent took action and incurred expenses to recover overdue rent.
19. Noting the provisions of the Lease, the request for expenses made by the Respondent to the Applicant and recited above is a variable service charge falling within Paragraphs 1(1)c and (d) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and within the Tribunal's jurisdiction.
20. We have considered the work that might be involved in sending what we consider a standard and routine letter asking for arrears as on 3 July 2013. We find the sum requested significantly beyond a reasonable charge for the work involved. The circumstances would not have been exceptional for a party involved in collection of rent and the expense would in our view not exceed £25. We note VAT is not applicable.
21. We find the period between the letter of 3 July 2013 and the subsequent activity on 12 July 2013 unreasonably short to allow receipt of a response and consider the Respondent was inappropriately hasty. We conclude it unreasonable for the 12 July 2013 charges to have been incurred.
22. For the above reasons we determine that the sum of £25 only is payable to the Respondent in respect of the late payment of rent due 1 July 2013.

Order

23. The sum payable to Forte Freehold Managers Limited as Agents for UK Ground Rent Estates Limited by Mr Garry Salmons shall be £25.