



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

Case Reference : **CHI/00MR/LAC/2013/0017**

Property : **Flats 14, 34, 36 & 37,
1 Nancy Road
Fratton
Portsmouth
PO1 5DF**

Applicant : **Rachael Ross**

Representative :

Respondent : **Atlantis Holdings Limited**

Representative :

Type of Application : **For the determination of the
reasonableness of and the liability
to pay administration charges**

Tribunal Members : **Judge Tildesley OBE
Mr P D Turner-Powell FRICS**

**Date and venue of
Hearing** : **Determination on the papers**

Date of Decision : **24 March 2014**

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that the administration charges as detailed in paragraph 6 for each property are not payable by the Applicant.

The application

1. The Applicant seeks a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the amount of administration charges payable by the Applicant.
2. On 10 October 2013 the Tribunal directed the dispute to be determined on the papers. The parties did not object to this course of action. The Application was adjourned until 29 January 2014 to tie up with a service charge dispute involving the same parties but a different property. At the hearing on 29 January 2014 the parties restated their agreement for the matter to be dealt with on the papers.
3. The Applicant is the leaseholder of flats 14, 34, 36, and 37, 1 Nancy Road, Fratton Portsmouth. The Respondent acquired the freehold on 24 November 2011.
4. A copy of the lease for flat 37 was supplied which was made between Wilton Limited, Timothy Wilton and David Honey of the one part and David Honey of the other part for a term of 125 years from 1 January 2002. The Tribunal understands that the lease was representative of those for all the properties.
5. The relevant legal provisions are set out in the Appendix to this decision.

The Dispute

6. The administration charges in dispute were set out in statements dated 27 December 2013 for each of the four flats.

Date	Charge (£)	Detail	Service charge Period
02.02.2012	150.00	Papers to solicitor	2011 & 30 .6. 12
13.07.2012	50.00	1 st reminder	31.12.12
16.01.2013	50.00	1 st reminder	30.6.13
28.02.2013	50.00	Non payment of arrears	30.6.13
20.03.2013	180.00	Papers to solicitor	30.6.13
09.07.2013	50.00	1 st reminder	31.12.13

19.07.2013	50.00	2 nd reminder	31.12.13
21.08.2013	180.00	Papers to solicitor	31.12.13

7. The total claimed in administration charges for each flat was £760 which made a grand total of £3,040.
8. The Applicant contended that the charges were not reasonable for the following reasons:
 - They had not been incurred properly.
 - The Respondent's statements detailing the charges were inconsistent.
 - The charges were not consistent with those detailed on the Respondent's paper work.
 - The charges had not been levied in accordance with the appropriate legislation.
 - Some of the charges were for periods before the Respondent served section 3 Notices.
 - The Respondent was not entitled to issue arrears letters in respect of flats 14 and 37 because the leases applicable to those properties did not set out the percentage contribution payable by the lessee in respect of the service charges.
9. The Respondent said that it was entitled to recover the charges under Clause 3(11) (to pay all charges incurred by the Lessor in contemplation of section 146 and 147 of the 1925 Act proceedings), Clause 4(6) (to pay all legal costs and proper costs incurred by the lessor) and Clause 4(7) (to pay all proper costs incurred by the lessor in running and management of the property).
10. The Respondent stated that the charges related to the enforcement of the Applicant's covenants to pay ground rent and service charges.
11. The Respondent gave at least 28 days for part or full payment of invoices. After which a reminder letter was issued, which was then followed by a further reminder letter after seven days if no payment was made. The second reminder advised the lessee that if no payment was made within seven days, Atlantis would instruct a firm of solicitors to collect the arrears.

12. In 2011 the charges for the first and second reminder letters were £30 each, and £90 for sending the papers to a solicitor. The charges were increased in 2012 to £50 for a letter and £180 for referral to a solicitor. The Respondent offered no explanation for the substantial increase in charges from 2011 to 2012.
13. The Respondent explained that all invoices advised that administration charges would be applied in the case of non-payment. The summary of tenant's rights and obligations was enclosed with each invoice. The covering letter for the invoice set out the date by which the payment must be made. In this case the Respondent informed the Applicant of the charges incurred by means of arrears notices, separate demands and solicitors' letters, which were accompanied by the summary of tenants' rights in respect of administration charges.
14. The Respondent argued that the points raised by the Applicant were somewhat vague. The Respondent pointed out that there had been a notable lack of communication from the Applicant until Tribunal proceedings were brought earlier in 2013. According to the Respondent, the Applicant had made no payments whatsoever to the service charges, and had paid £250 in ground rent against outstanding invoices of £900.

Consideration

15. Paragraph 1(1) of schedule 11 of the Commonhold and Leasehold Act 2002 defines an administration charge as an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly in respect of a failure by a tenant to make a payment by the due date to a landlord or in connection with a breach (or alleged breach) of a covenant or condition in his lease.
16. Paragraph 1(2) of schedule 11 states that a variable administration charge is one which is neither specified in the lease nor calculated in accordance with a formula specified in the lease.
17. Paragraph 2 of schedule 11 provides that a variable administration charge is payable to the extent that the amount of the charge is reasonable.
18. Paragraph 5 of schedule 11 gives the Tribunal jurisdiction to decide whether a variable administration charge is payable.
19. The Tribunal is satisfied that the charges which are the subject of this dispute constituted variable administration charges. The charges related to the Applicant's purported failure to pay the service charges and ground rent on time and or the Applicant's covenant to pay service charges or ground rent. The amount of the charges was not fixed by the terms of the lease.

20. On the information before the Tribunal it would appear that the charges principally related to the Applicant's failure to meet the demands for the service charge for the year ending 2011, and for the half yearly advance payments for service charges for the years ending 2012 and 2013.
21. On 1 October 2013 a previous Tribunal¹ determined in respect of the service charges for the periods ending 2011, 2012 and 2013 for flats 14, 34, 36 and 37 and other flats on the development that
 - A reasonable annual budget for the property for the year ended 31 December 2012 was £48,000 rising to £57,400 for the year ended 31 December 2013.
 - The balancing charges demanded of *the (Tribunal's italics) Respondent* for the period 24 November 2011 to 31 December 2011 were not payable.
 - The amounts payable by *the (Tribunal's italics) Respondent* as a result of this decision would only become due when validly demanded.
22. The Tribunal takes the view that the administration charges claimed by the Respondent related principally to service charges which the previous Tribunal had determined were not payable. The previous Tribunal found that the balancing charge for 2011 was not payable and that no valid demand as at 1 October 2013 had been issued in respect of the payments in advance.
23. The Respondent acknowledged that some of the charges related solely to the non-payment of service charge demands. The amended particulars of claim² deleted the £50 charges on 16 January 2013 and 28 February 2013 from the claim because of their connection with the service charge demands.
24. The Tribunal considered that the Respondent failed to provide sufficient information to justify the level of the charges, which on the face of it appeared to be excessive for posting standard letters and compiling a file to pass to the solicitors. There was also no explanation for the substantial increase in the amount of the charges from 2011 to 2012.
25. Given the strong connection of the charges with the failed service charge demands and the Respondent's failure to provide sufficient justification for the level of charges the Tribunal determines that the charges were wholly unreasonable and not payable by the Applicant.

¹ Case reference CHI/00MR/LSC/2013/0011

² Exhibited at pages 167 to 170 of the bundle

26. The Tribunal adds that there were material differences in the facts of this case from those relating to the Wilton Exchange. In respect of the latter property, the Tribunal concluded that the previous decision (case reference CHI/00MR/LSC/2013/0011) had no application.

The Decision

27. The Tribunal determines that the administration charges as set out in paragraph 6 for each property are not payable by the Applicant.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

Appendix of relevant legislation

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).