10017

FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

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| **Case Reference** | : | **LON/00BE/LAC/2014/0007** |
| **Property** | : | **14 Burnham Close, London SE1 5RL** |
| **Applicant** | : | **Ms B. O. Akodu** |
| **Representative** | : | **TKD Solicitors** |
| **Respondent** | : | **Freehold Manager (Nominees) Limited** |
| **Representative** | : | **JB Leitch, Solicitors** |
| **Type of Application** | : | **Administration Charges – Schedule 11, Commonhold and Leasehold Reform Act 2002,** |
| **Tribunal Members** | : | **Judge L. W. G. Robson**<br>**Mr T.W. Sennett MA FCIEH**<br>**Mr C. S. Piarroux JP CQSW** |
| **Date and venue of Determination** | : | **22nd May 2014**<br>**10 Alfred Place, London WC1E 7LR** |
| **Date of Decision** | : | **2nd June 2014** |

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**DECISION**

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## Decisions of the Tribunal

(1) The Tribunal determined that all the administration charges which are the subject of this determination, (totalling £334 as stated in paragraph 11 of the Respondent's statement of case dated 22nd April 2014) are unreasonable. Thus the Respondent has no liability to pay any part of such charges.

(2) The Tribunal made the other determinations as set out under the various headings in this decision.

## The application

1. By an application dated 20th March 2014 the Applicant seeks a determination pursuant to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) as to whether the administration charges noted below are reasonable, and whether the administration charges demanded by the Respondent are payable pursuant to the terms of a lease dated 8th December 1989 (the Lease).

2. The charges are:

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|---|---|---|
| 7/12/11 | £24 | Arrears charge |
| 20/01/14 | £48 | Administration charge |
| 24/02/14 | £120 | Administration charge Mortgage |
| 21/03/14 | £144 | Arrears charge Solicitors |

3. Directions were given by the Tribunal on 4th April 2014 without a case management conference, for a paper determination in the week commencing 19th May 2014.

4. In compliance with the Directions both parties submitted written statements of case with relevant documents attached. These were considered by the Tribunal as a paper determination on 22nd May 2014.

## Applicant's Case

5. The Applicant submitted in her written statement dated 2nd May 2014 that;
   a) In her original claim she had assumed that the Respondent's administration charges totalled £240 in reliance upon the letter dated 5th march 2014 from Diamond Debt Settlement Services on behalf of the Applicant. However on 21st March 2014 the Respondent had added a further sum of £144 to the account without notice to her.
   b) The Lease contained no express terms which allowed the Respondent to charge administration charges as defined in Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
   c) The only provision in the Lease allowing the Respondent to make charges of that nature was Para. 15 of the Third Schedule, which related to costs and expenses incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925. The charges claimed made did not relate to such a notice. While a section 146 notice had been prepared and served by the

Respondent on 28th March 2014, this was after the Applicant had made this application to the Tribunal. Even if the Respondent correctly argued that some of the costs related to a Section 146 notice, the charges should not be allowed because it was the Respondent's unreasonable refusal to accept payment since it had been first offered in December (Tribunal' note – in fact November) 2011 that had allowed the amount outstanding to accumulate in the first place.

d) The Tribunal was referred to the emails between the parties between 7th December 2011 – 21st March 2014. The Applicant had offered to pay the ground rent in December 2011 but the Respondent refused to accept payment which did not include an administration charge of £48, which the Applicant disputed. The Applicant had made subsequent attempts to pay the ground rent but had met with similar refusals.

e) The administration charges were unreasonable and not payable.

### Respondent's case

6. The Respondent in its written statement dated 24th April 2014 submitted that;

a) The Applicant's arithmetic was incorrect. In addition to the amount of £144 (noted by the Applicant above) the Applicant had incorrectly added a sum of £48 but that had been deducted from the outstanding balance on 4th October 2011.

b) The Applicant had committed a clear breach of the Lease by failing to pay ground rent in accordance with the Lease thus the Respondent was entitled to debit the administration charges to the account and demand them as payable.

c) The Respondent demands administration charges once the ground rent has been demanded and not paid by the Applicant. £24 was demanded from the Applicant in the letter sent on 7th December 2011, which required full payment within 14 days. When payment was not received from the Applicant a further charge of £48 was added, described as in respect of a "Notice Before Action", sent on 20th January 2014, which included checking the Land Register for alternative addresses and sending the Notice. The Respondent then tried to recover the money from the Applicant's lender with a letter on 24th February 2014. A further charge of £120 was made to cover reviewing the file, checking and sending land registry copies to the lender, and approaching the lender. The Respondent then sent its files to its solicitors, JB Leitch. A letter dated 21st March 2014 was sent to the Applicant outlining the charge made.

d) The Respondent had reasonably incurred the administration charges for "chasing" arrears of ground rent.

### Determination

7. The Tribunal considered the evidence and submissions. As is often the case with paper determinations, neither party is available to answer questions, and where relevant documents which should be available are not provided, the Tribunal must make such reasonable inferences as it may from the absence of such documents.

8. In this case, a number of relevant documents were missing, particularly from the Respondent landlord's bundle. The Respondent omitted a letter sent by the Applicant on 7th December 2011 by email, and also an email "string" between the Applicant and the Respondent's Kimberly Robson, on 7th and 8th December 2011. These were in the Applicant's bundle. The letter and email string disclosed that;

(i) The parties had previously communicated over the payment of ground rent on a number of occasions over several years. The Applicant had asked on previous occasions to pay the ground rents by standing order.
(ii) In March 2011 there had been some difficulty with a cheque for ground rent having been returned unpaid. It was not clear from the email letter of 7th December 2011 for the reasons why the cheque was returned, or whose cheque it was, but the Applicant had then again requested the Respondent's bank details, because the Applicant no longer had a cheque book. The Respondent's agent had again refused. (The Tribunal notes in passing that the Respondent's statement of the Applicant's account at p.67 of the bundle for 2011 shows no entries relating to this matter, which suggests that the statement is not a full contemporaneous record of movements on the account. This is surprising).
(iii) There was further telephone contact between the Applicant and Ms Robson in June or July 2011. Ms Robson had suggested that the agent would make a charge in respect of the arrears in both March and July. This had been rejected by the Applicant on the grounds that there was no provision in the Lease.
(iv) On 9th November 2011, the Applicant had a telephone conversation with a Ms Nandha, who advised that she could not pay by cheque, but she could pay the outstanding ground rent (of £75) by card on the telephone. A letter was sent to the Applicant on 21st November 2011 confirming this, although neither party has given details of any other matter noted in this letter.
(v) There was at least one telephone conversation between the Applicant and Ms Robson on 7th December 2011 when the Applicant offered to pay the ground rent by telephone. Ms Robson refused to accept payment, unless an administration charge of £48 was paid (subsequently reduced to £24).
(vi) Ms Robson apparently had no copy of the Lease on 7th December 2011, and had asked the Applicant for a copy, which she provided.
(vii) After receiving the Lease, there were several email exchanges with Ms Robson on 7th and 8th December 2011 over the terms of the Lease and payment of the administration charge. Neither party gave ground.

9. The Tribunal was surprised that none of these exchanges was revealed by the Respondent in their account of the dealings between the parties.

10. On 7th December 2011 the Respondent's agent (Freehold Managers PLC) sent the Applicant an invoice for the charge of £24, together with a demand for payment within 14 days. There was no specific evidence before the Tribunal that the Respondent's managing agent had done any work to justify this charge, or that the charges had been notified to the Applicant prior to the offers of payment made in November 2012.

11. After this point, the Respondent's correspondence trail becomes somewhat contradictory. At Annex 6 of its statement the Respondent exhibits a letter dated 7th December 2011 from Diamond Debt Settlement Services an entity with the same address as the Respondent and its managing agents,. This letter demands a sum of £334.50 from the Applicant. Attached is a statement of account totalling £334.50 which shows all sums claimed due up to 20th January 2014. It is difficult to find any rational explanation for the contradictions, except that the letter cannot have been written until January 2014 at the earliest. This letter raised questions as to the credibility of the Respondent's evidence.

12. The Tribunal then considered the terms of the Lease. The Respondent correctly referred to paragraph 1 of the Third Schedule where the lessee agreed to pay the rent "at the time and in the manner appointed for payment without any deductions whatsoever". The Lease specifies the amount of the rent and the dates of payment, but makes no provision for the method of payment. Thus the lessee's obligation is to pay the rent in a reasonably practicable way. The Landlord cannot dictate any particular method. Thus refusing payment except by cheque is not within the terms of the Lease agreement.

13. The Tribunal found the managing agent's reluctance to accept payment by bank standing order quite perplexing. Most agents would consider this the most desirable method of payment. But then most managing agents would consider it their obligation to collect their client's money when offered, and if necessary, before collection of their own fees. The managing agents in this case are connected with the landlord. The actual effect of refusing the rent payment offered was to leave the Applicant (at least technically) in breach of the Lease, and to push the Applicant further into rent arrears and thus liable to further and more severe recovery action, all of which was unnecessary. This dispute started over a £48 (subsequently reduced to £24) administration fee, the validity of which was questioned from the start on reasonable grounds as the Respondent's agent should have realised, if it had properly considered the Applicant's letters. The Tribunal decided that refusing to accept ground rent in such circumstances until disputed administration charges were paid was improper. It seemed even a breach of the agent's duty to the Respondent landlord. The Respondent's solicitors also appeared to have overlooked this point. A landlord who refuses to accept rent without good reason, cannot then enforce administration charges incurred as a result of that refusal.

14. The Respondent placed an unexplained reliance on paragraph 2 of the Schedule, although the covenant is to pay rates, taxes, and outgoings relates to payments to public bodies in respect of the land, not the landlord.

15. Paragraph 15 of the Third Schedule is a very common standard clause relating to the payment of the landlord's costs relating to Section 146 Notices. The Tribunal considered the Respondent's submission that its charges could be collected via this clause to be seriously flawed. Firstly, no mention had been made of Section 146 prior to 21st March 2014. Secondly, while the Respondent's solicitors had purported to issue a Section 146 Notice on 28th March 2014, the notice was a complete nullity. The Respondent had neglected to obtain an order or even issue an application under Section 168 of the Commonhold and Leasehold Reform Act 2002 in this Tribunal, and the notice had been issued after the Applicant had notified it of the issue of this application on 21st March 2014. In both cases, the issue of the Section 146 Notice was an abuse of process.

16. The Respondent also called in aid paragraph 3 of the Sixth Schedule, which is a standard clause permitting the landlord to re-enter the property for a breach of covenant by the lessee. In the light of paragraph 15 above, again this seemed more likely to intimidate the Applicant than to advance the Respondent's case.

17. The Tribunal decided that it preferred the evidence and submissions of the Applicant on the material points in this application.

18. The Tribunal decided that none of the administration charges subject to this determination were reasonable or payable. These must be removed from the Applicant's account within 21 days of the date of this decision.

19. Although not forming part of its decision, the Tribunal noted that the Respondent's case suffered from a number of other defects. There was no evidence of a demand for rent in compliance with Section 166 of the Commonhold and Leasehold Reform Act 2002, or the managing agent's agreement with the Respondent which would have clarified if and when such administration charges were payable. Also there was no evidence of the Applicant being advised of the amount of the administration charges prior to 9th November 2011. The demand of 7th December 2011 does not comply with Sections 47 and 48 of the Landlord and Tenant Act 1987, as the Landlord's name and address are both absent. Thus the money demanded was not legally due, even if it was payable under the terms of the Lease.

20. In summary, the Respondent's case was a catalogue of errors. The Respondent is a large professional landlord. The Respondent's knowledge and understanding of relevant legislation since 1986 appeared questionable, given the evidence presented. The method and process of demanding money and adding administration charges to the Applicant's account further highlighted this problem. In this case the Applicant made no application for costs, for which the Respondent should be grateful. Rule 13 of the new Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 provide for the Tribunal to make wasted and unreasonable costs orders. If such an application had been made the Tribunal might have found sufficient evidence to make such an order. The Respondent should consider the errors made in this case, and take steps to eliminate them.

Signed: Lancelot Robson
Tribunal Judge

Dated: 2nd June 2014

## Appendix

***Landlord & Tenant Act 1985***

**Section 18**

(1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
 (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
 (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
 (a) "costs" includes overheads, and
 (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

**Section 19**

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 (a) only to the extent that they are reasonably incurred, and
 (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

**Section 27A**

(1) An application may be made to a Leasehold valuation tribunal for a determination whether a service 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) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) 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.

**Schedule 11 Commonhold and Leasehold Reform Act 2002**

**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 a leasehold valuation 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 a leasehold valuation 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).

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