11479

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/OOBE/LAC/2016/0016**
Property	**:**	**Ground Floor Flat, 3 Elcot Avenue, London, SE15 1 QB**
Applicant	**:**	**Primeview Developments Limited (freeholder)**
Representative	**:**	**Mr Steven Newman, D & S Property Management**
Respondent	**:**	**Ms Joyce Ntow (leaseholder)**
Representative	**:**	**Mr Bruce Bebington of the Lambeth Law Centre**
Type of Application	**:**	**An application under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ('the Act) as to the liability to pay an administration charge**
Tribunal Members	**:**	**Judge James Driscoll, solicitor**
Date of Hearing	**:**	**13 July, 2016 when the tribunal reached a decision by considering the papers filed by the parties and without an oral hearing**
Date of Decision	**:**	**15 July 2016**

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DECISION

The Decision summarised

1. The administration charges claimed on behalf of the freeholder are unreasonable and they are not recoverable from the leaseholder. An order is made under Section 20C of the Landlord and Tenant Act to prevent any legal or other professional costs incurred in this application being recovered as a future service charge.

The application

2. This is an application made under the Act. It is made on behalf of the freeholder which is the landlord under a lease of the subject premises held by the respondent leaseholder. According to the application (which was made on 5 March, 2016) it was made by a solicitor who works for D & S Management. The premises consists of two flats.

3. The application relates to a county court claim made on behalf of the applicant freeholder for unpaid service charges and unpaid ground rent.

4. On 8 February 2016 the Lambeth County Court heard the freeholder's application for a judgement in the sum of £1,091.50 in respect of unpaid service charges and ground rent following a demand made on 23 March 2015. The freeholder was represented by counsel and the leaseholder attended unrepresented.

5. The Court noted that the claim was made by both the freeholder and a company by the name of Jaiman Property Management LLP, their managing agents. It struck out the claim made by the managing agents on the basis that they had, as agents, no cause of action against the leaseholder.

6. Of the sums claimed by the landlord the court found that at the date of the hearing the sum of £1,091.50 was claimed and of that sum, the sum of £291.50 remained outstanding. The Court also found that addition sums claimed for legal work undertaken to recover the debt were irrecoverable as no demand had been made for their payment as required by the Act.

7. The Court ordered that the leaseholder pay the sum of £291.50, plus £38.94 in interest, and fixed court costs of £310, making a total of £640.44 to be paid by 16 February 2016. In this order the Court noted that the freeholder reserved its right to claim additional contractual costs claimed under the lease.

8. The following day (9 February 2016) the managing agents demanded the sum of £5,005.50 made up of £3,235 legal costs and £1,770 for the managing agents costs. The leaseholder was required to pay this sum by 23 February 2016.

9. As noted above, this application was made on 5 March 2016. Directions were given on 17 March 2016 following a case management conference which was attended by Mr Newman, an in-house solicitor working for D & S Property Management on behalf of the freeholder, and Mr Bebington a solicitor working for the Lambeth Law Centre who appeared on behalf of the leaseholder. She also attended that hearing.

Reasons for the decision

10. Neither party having requested a hearing, I considered the matter on 13 July 2016. I had before me a bundle of documents prepared on behalf of the freeholders which contained some 242 pages. A separate bundle of documents was sent to the tribunal (it appears) by the leaseholder.

11. Before dealing with the rival submissions I note from the documents that the original court claim was for the sum of £1,659.50 (plus the court fee and fixed costs). The court claim was made by Mr Anthony Tse a solicitor working for ASR Estates. In the particulars of claim the sum of £791.50 said to be unpaid service charges and ground rents was claimed, along with £60 for two reminder letters (in relation to the unpaid demands), £800 for legal fees and £8 for a Land Registry fee.

12. As noted above the legal fees were disallowed by the Court on the basis that they are administration charges for which a statutory notice had not been given (as required by the Act).

13. In the particulars of claim, it was also stated that it was Jaimin Property Management, the agents appointed the freeholder, who had pursued the unpaid charges. They then instructed Mr Tse, a solicitor who works for a different firm of managing agents, to pursue the charges. They had agreed a fixed fee of £800 with him for this work.

14. Before proceeding, I note that the freeholder, the managing agents and ASR Estates (who employ Mr Tse) share the same postal address, that is 100 College Road, Harrow HA1 1 BQ. It is not clear from the papers why another managing agent (D & S Property Management) has been instructed in this claim.

15. In this claim the freeholder relies on clause 2(r)(ii) of the lease and the decision of the Court of Appeal in *Chaplair Limited v Kumari* [2015] EWCA Civ 798. I read clause 2 of the lease which is drafted in a common form and allows the landlord to demand costs in relation to matters such as the recovery of unpaid rents or other monies.

16. As to the *Kumari* decision I note that this dealt with two issues: first, whether the court has power to order a leaseholder to pay costs under a lease relating to leasehold valuation tribunal proceedings and second,

whether costs can be ordered when a county court claim has been allocated to the small claims track.

17. This leads me to the following conclusions. First, that this claim is different to the *Kumar* claim. In that claim the landlord claimed unpaid charges in the county court which transferred the disputes over the recoverability of the charges to the tribunal for a determination. Following a determination of the charges the court was asked to determine the landlord's costs which it did by deciding that the costs were limited to the amount fixed under the Civil Procedure Rules in a small claims case. On appeal the judge allowed the landlord to recover costs incurred in the tribunal proceedings as a contractual claim in the county court and this was upheld by the Court of Appeal.

18. This case is different in that rather than claim the contractual costs in the county court proceedings the landlord reserved its right to do so in later proceedings. (It has already been noted that its claim for the costs of employing Mr Tse were disallowed). For this application the landlord has used a solicitor with a different managing agent to pursue a claim far in excess of the costs claimed in the county court.

19. The tribunal is required to determine whether the claim for £5,005.50 is recoverable as an administration charge. A copy of the relevant statutory provision is annexed to this decision. An administration charge is defined in Schedule 11 to the Act in the following way: 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'.

20. I consider that the legal charges now claimed are within this definition and that a notice of rights appears to have been given in the 9 February 2016 demand. However, Schedule 11 also states that such a charge is only recoverable if it reasonable.

21. This means that I must consider the reasonableness of the charges. The bundles contain a number of statements made on behalf of each party with the freeholder claiming that the charges are reasonable and the leaseholder, not surprisingly, taking the opposite view.

22. Having considered these rival submissions and having read the quite extensive documentation I have concluded that the costs claimed for the county court claim are unreasonable. I reached this conclusion for the following reasons.

23. First, I do not consider that the freeholder was acting reasonably in instructing his managing agents to instruct a solicitor to take court proceedings for a relatively small sum of money (where much of the claim was for 'late charges' made by the agents when the leaseholder failed to pay). Enforcing non-payment of small arrears is surely something an experienced agent could take on themselves. Not only the sums small but there were no obvious legal issues to be dealt with at all.

24. Second, I note that the managing agents claim that when they instructed Mr Tse he agreed to take on the case for a fixed fee of £800. This claim was included in the county court claim but was disallowed.

25. My other reasons are based on my reading of the 9 February 2016 demand and the schedules that were sent with it. In my view, claiming costs of over £5,000 to recover such a modest debt is out of all proportion to what was involved. The managing agents seek to charge the sum of £1,770 (inclusive of VAT) for their work. I note that this includes the £50 they included in the county court claim (which is accounted for in the judgement), time with their client and their solicitor and the sum of £900 in relation to the hearing.

26. I conclude that none of these charges are reasonable. The managing agents chose to instruct a solicitor and with such a simple claim as this that should have been the end of the matter. I have already recorded my conclusion that instructing a lawyer was quite unnecessary in this case. An experienced agent could have taken summary proceedings in the small claims court without involving a lawyer. Having instructed a lawyer, how can they justify claiming £900 in costs for attending the hearing? Why did they consider it necessary to attend the hearing? (The court order only refers to counsel attending on behalf of the freeholder).

27. This brings me to the solicitor's costs of £2,515.50. It appears from the details filed that the solicitor did not attend the hearing. I cannot see any justification for charging such high costs for such a simple claim, one for which he had originally agreed to take on for a fixed fee of £800. Nor do I think that it reasonable to charge such a sum for legal work and in addition to instruct counsel to advise on the claim and to appear at the hearing.

28. For these reasons, I conclude that whilst the freeholder is entitled, in principle, to charge for any costs incurred in recovering sums under the lease, the actual charges (which are administration charges) are not reasonable and are not recoverable from the leaseholder.

29. The freeholder was unsuccessful in recovering the legal costs in the county court but it was awarded the fixed costs, which in my judgement is the appropriate costs order given the circumstances of this case. The leaseholder is not liable for any further charges in relation to that claim.

30. Finally, having expressed my surprise that the freeholder now involves a third firm of managing agents and a second solicitor, brings me to the

issue of any costs that the freeholder might seek to claim in a future service charge. Having regard to my decision on the recoverability of the legal and administrative costs I consider it appropriate to make an order under Section 20 C of the Landlord and Tenant Act 1985 that such costs may not be included in future service charge demand.

31. To summarise, and to conclude, the administration costs claimed are unreasonable and they cannot be recovered from the leaseholder. The leaseholder's only liability for the unpaid service and other charges is that ordered by the County Court.

32. Any costs incurred by the landlord in this application cannot be recovered as a future service charge by virtue of my order under Section 20 C of the Landlord and Tenant Act 1985.

James Driscoll, 15 July 2016

Appendix of the relevant legislation

Schedule 11, Commonhold and Leasehold Reform Act 2002

Administration charges

Part 1
Reasonableness of administration charges
Meaning of "administration charge"
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.

Reasonableness of administration charges
2
A variable administration charge is payable only to the extent that the amount of the charge is reasonable.
3
(1)
Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—
(a)
any administration charge specified in the lease is unreasonable, or
(b)

any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.
(2)
If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.
(3)
The variation specified in the order may be—
(a)
the variation specified in the application, or
(b)
such other variation as the tribunal thinks fit.
(4)
The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.
(5)
The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.
(6)
Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.
Notice in connection with demands for administration charges
4
(1)
A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
(2)
The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
(3)
A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.
(4)
Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.
Liability to pay administration charges
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).
Interpretation
6
(1)
This paragraph applies for the purposes of this Part of this Schedule.
(2)
"Tenant" includes a statutory tenant.
(3)
"Dwelling" and "statutory tenant" (and "landlord" in relation to a statutory tenant) have the same meanings as in the 1985 Act.
(4)

"Post-dispute arbitration agreement", in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen.
(5)
"Arbitration agreement" and "arbitral tribunal" have the same meanings as in Part 1 of the Arbitration Act 1996 (c. 23).

Section 20C, Landlord and Tenant Act 1985

20C Limitation of service charges: costs of proceedings.

(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 [F2, residential property tribunal] or leasehold valuation tribunal, or the [F3Upper 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;
[F4(aa)
in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;]
(b)
in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
(c)
in the case of proceedings before the [F5Upper 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.]