



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

<b>Case Reference</b>	:	<b>CAM/22UN/LSC/2018/0053</b>
<b>Property</b>	:	Flat 1, Homelea, Prince's Esplanade, Walton on the Naze, Essex CO14 8QD
<b>Applicant</b>	:	Homelea Management Ltd
<b>Representative</b>	:	C J Knighton (Director)
<b>Respondent</b>	:	Lawrence Cohen (in person)
<b>Type of Application</b>	:	for determination of reasonableness and payability of service charges [LTA 1985, s.27A] and administration charges [CLRA 2002, s.158 & Sch 11]
<b>Tribunal Members</b>	:	G K Sinclair, S E Moll MRICS & J E Francis QPM
<b>Date and venue of Hearing</b>	:	Monday 19 <sup>th</sup> November 2018 at Lifehouse Spa & Hotel, Thorpe-le-Soken
<b>Date of decision</b>	:	23 <sup>rd</sup> November 2018

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**DECISION**

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1. The landlord seeks to recover money from the defendant lessee on three bases – as service charges, as parking fees, and as administration charges. For the reasons which follow the tribunal determines that :
  - a. The claim for service charges is dismissed
  - b. Parking fees are not recoverable under the lease and are a separate matter between landlord and tenant which are recoverable (if at all) on the basis of mesne profits for use and occupation of land, outwith the jurisdiction of this tribunal
  - c. The claim for administration charges (mainly for corresponding with the respondent) is dismissed.

### **Background**

2. These proceedings began as a County Court claim for damages for diminution in value of the respondent lessee's ground floor flat (ie a reduction in rent of £25 per month) by the landlord allowing the parking of cars in front of the flat . He also wanted the garden at the front to be reinstated. This claim was dismissed by District Judge Mitchell on 11<sup>th</sup> July 2018. The order also referred the landlord's counterclaim of £2 447.23 (expressed as being for "service charges under the lease and administration charges under statute") to this tribunal.
3. The nature of this counterclaim by the landlord (which is the applicant before this tribunal) is not set out in the hearing bundle other than in paragraph 14 in the applicant's statement of case, in section C, where the amount claimed is split between arrears of service charges of £1 297.23 as at the date of the court hearing on 11<sup>th</sup> July 2018 and administration charges to 12<sup>th</sup> December 2017 of £1 150.00. Of these amounts the respondent lessee was said to have paid £1 104.88 on 17<sup>th</sup> September 2018.

### **The lease**

4. The respondent's lease is dated 11<sup>th</sup> July 1988, granting a lease of flat 1 on the ground floor for a term of 125 years from 25<sup>th</sup> December 1986. By clause 3(1) the lessee covenants to pay to the lessor the rent and an annual contribution towards the expenditure from time to time incurred by the lessor in carrying out its obligations under clause 4. As at 30<sup>th</sup> November in each year an estimate of anticipated expenditure is to be prepared and certified by a competent person appointed by the lessor. Clause 4 lists a number of items for which the lessor may seek recovery of its outlay, including at (6) the appointment of managing or other agents. There is no provision, contrary to what often appears, for a lessor that manages the property itself to add a percentage of sums expended by way of a management fee.
5. The annual contribution payable by the lessee on 1<sup>st</sup> December in each year shall be an amount equal to the fraction of the estimate of which the floor area of the demised flats is the numerator and the total floor area of all parts of the block is the denominator. As confirmed by a previous tribunal decision concerning flat 3<sup>1</sup>, the definition of "the block" in the lease includes the garages at the rear, so that the total payable by all the flats is less than 100%. As the garages are all owned and used by the lessor company (save for one that it has let separately) this may not matter in practice.
6. While the rights included in the demise (in the Fourth Schedule) include rights of way over entrances, halls, passages, landings, balconies, staircases of the block coloured green and hatched brown for purposes of access and egress, and the right to use the roads, pavements and gardens of the block for the purpose of access and reasonable recreation they do not include any right to park.
7. Save for payment of the usual fee (in this case £10 plus VAT) for registration of any transfer, charge or underlease, etc and for payment of costs, charges and expenses (including legal costs and surveyors' fees) incurred by the lessor for the purposes of or incidental to the preparation and service of a schedule of dilapidations or a notice under the provisions of sections 146 or 147 of the Law

<sup>1</sup> CAM/22UN/LSC/2012/0058

of Property Act 1925 the lease makes no provision for the lessor to levy or impose administrations charges of any other kind.

**Relevant statutory provisions**

8. The method of calculation and overall amount payable by tenants for maintenance, repairs, other services and management costs by way of service charge are governed principally by the express terms of the lease, but always subject to the cap imposed by section 19 of the Landlord and Tenant Act 1985, which limits the recoverability of relevant costs :
  - a. only to the extent that they are reasonably incurred, and
  - b. where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.
  
9. The amount payable may be determined by the tribunal under section 27A. This is the provision under which this application has been brought. Please note sub-sections (5) & (6), which provide that a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment, and that an agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement)<sup>2</sup> is void in so far as it purports to provide for a determination in a particular manner or on particular evidence of any question which may be the subject of an application to the tribunal under section 27A.
  
10. Two further provisions, concerning demands for payment of service charge, have been put in issue or are relevant to this case. First, by section 47 of the Landlord and Tenant Act 1987, where any written demand is given to a tenant of premises for rent or other sums payable under the lease (which expression would include a demand for payment of service charge), the demand must contain the name and address of the landlord.
  
11. Secondly, since 1<sup>st</sup> October 2007 section 21B of the 1985 Act provides that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. The content of that summary is prescribed by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007.<sup>3</sup> The document must contain the prescribed heading and text and must be legible in a typewritten or printed form of at least 10 point.<sup>4</sup>
  
12. By section 158 of and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 the tribunal is given power to restrict variable administrative charges recoverable under a lease to such amounts as it regards as reasonable, as under section 27A above. The tribunal may also exercise its power to vary a lease to reduce a specified administration charge on the ground that it, or the formula by which it is calculated is unreasonable. Payment is dependent upon service of the prescribed summary under similar regulations, namely the Administration Charges (Summary of Rights and Obligations, and Transitional Provision)

<sup>2</sup> Eg. provisions in a lease stating that the landlord's accountant's certificate shall be conclusive, or that any dispute shall be referred to arbitration

<sup>3</sup> SI 2007/1257

<sup>4</sup> *Op cit*, reg 3

(England) Regulations 2007,<sup>5</sup> to ensure that lessees' rights are drawn to their attention.

### **Inspection and hearing**

13. The tribunal inspected flat 1, the common parts and staircase near it, and the exterior of the block, including the garages and yard to the rear. What was once a restaurant occupying the middle of the ground floor frontage has since been converted into a flat, known as flat 10.
14. At the hearing both parties were unrepresented. The bundle was set out in a confusing manner, seemingly with many pages to which Mr Knighton wished to refer missing. It would have helped considerably if he, on behalf of the applicant, had complied with paragraph 1 of the tribunal's directions :

The applicant shall, by 4,00pm on the 28<sup>th</sup> September 2018, file with the tribunal office and serve on the respondent a statement setting out its justification in principle and in law for the claimed service charge demands made and administration fees to include details of how they are made up. This should attach copies of each service charge demand and a single sheet of A4 paper setting out exactly what is owed to include the date incurred, a full description of the item claimed, the amount and any payments made.
15. Instead the applicant filed a short statement of case (at tab C) explaining in detail disputes between the lessor and Mr Cohen about parking and his decision, in view of the lengthy correspondence, to levy statutory administration charges for replying. He also alleged that Mr Cohen has been underletting without consent, but no application in respect of any such alleged breach has been issued or is before the tribunal for determination. At paragraphs 15 and 16 the applicant also sought to amend its statement of case to increase the amount of the administration charge by £500 and by adding a claim for parking charges of £10 per week since assignment of the lease to the respondent, in the sum of £1 710.00 as per a letter dated 15<sup>th</sup> August 2018.
16. The tribunal enquired where the service charge demands might be, and whether they were properly accompanied by the prescribed summary of tenants' rights. Neither Mr Knighton nor Mr Cohen could assist from their own files of papers, and no assistance was to be found in the hearing bundle. Mr Knighton said that if the correct documentation was not there then he could only apologise, and the tribunal should dismiss his claim and he would leave.
17. The tribunal then explained to Mr Knighton that the charges he was seeking to impose for parking were not recoverable under the lease, and were not a service charge item about which the tribunal could adjudicate. As this was the item that he explained he was most concerned about (Mr Cohen having made a substantial payment by cheque to reduce the alleged arrears – about which more later), Mr Knighton became flustered and said that there was little point in him continuing.
18. The tribunal then drew attention to his apparent recognition that the lease did not provide for the imposition of administration charges, as his claim was "under statute". The nature and purpose of Schedule 11 was explained to him. It did not

<sup>5</sup> SI 2007/1258

create a freestanding entitlement to impose charges that were not mentioned in the lease.

19. Mr Cohen was asked why the applicant had at first returned his cheque in part-payment of service charges. It had been made out to the applicant company, but not by reference to any specific account number. He explained that it had been returned on the grounds that the applicant's bank had closed its account. A copy of the cheque, dated 20<sup>th</sup> August 2018, was produced by him.
20. At this point Mr Knighton stepped in and said that Lloyds Bank had shut his company's account, so he asked Mr Cohen instead to make payment to Graystone Property Services Ltd, another group company. No explanation was offered as to why the bank should take such a step, or any sensible reason why the company did not simply open an account with a rival bank. In these circumstances who, Mr Knighton was asked, could give a valid receipt for any payments made under the lease?

#### **Discussion and findings**

21. So far as parking charges are concerned, these are not service charges and – if the applicant really wanted to recover them – should have been included in its counterclaim from the outset. It would seem that they are non-contractual in nature, so could be recovered only in tort once a basis for assessing any true loss was proved. It is not a matter for this tribunal.
22. Administration charges are simply not provided for in the lease, and Mr Knighton cannot simply make up an hourly rate of his choosing for corresponding with Mr Cohen. Schedule 11 of the 2002 Act does not assist. This aspect is therefore dismissed.
23. The position concerning service charges is a complete mess. The lessor company, which should be holding any service charge advance payments in a trust account, does not even possess its own banking facilities, for reasons which Mr Knighton was unable or unwilling to explain.
24. A previous tribunal, in 2012, was prepared to take on trust that Mr Knighton, being “familiar with property management, through his own portfolio, and ... aware of the legislation”, would have served demands with the correct summary of tenants' rights and obligations. Given his approach to administration charges, and to his responsibility to maintain a separate trust account for service charge funds, this tribunal is not so prepared to give him the benefit of the doubt. His document A16 (behind tab D) sets out what he said is an account of what is due, yet it is headed “Applicant's Statement of Costs Claimed at 17 September 2018” and lumps together service charges (including interest until 17<sup>th</sup> September), his “car park space fee” of £1 710.00, administration charges, ground rent, and court and tribunal fees totalling £3 974.18.
25. Behind tab D there are some schedules of estimated service charge expenditure, but they each include an element for “management and accountancy fees”, without splitting them. None appear to be certified by an independent person, contrary both to the lease and to section 21(6) of the 1985 Act (which requires an independent accountant to certify them if charges are payable by the tenants of

more than four dwellings).

26. Further, Mr Cohen has already made a part-payment – admitted by the applicant – against invoices which include inadmissible items.
27. In these circumstances it is impossible for the tribunal to determine that anything remains payable to the applicant by way of service charges, and this aspect of the claim is also dismissed.

Dated 23<sup>rd</sup> November 2018

*Graham Sinclair*

Graham Sinclair  
Tribunal Judge