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

Case Reference : **MAN/00EQ/LAC/2017/0011**

Property : **Flats 101, 105, 106, 107, 204, 407,
502 & 503 The Woodlands on
Stamford, Stamford St East, Ashton
Under Lyme, OL6 6QG**

Applicant : **Mr Robert McKendrick**

Respondent : **Drake Hall Limited**

Type of Application : **Commonhold and Leasehold
Reform Act 2002-Schedule 11,
Paragraph 5 –administration
charges
Landlord & Tenant Act 1985-
Section 20C**

Tribunal Members : **Judge J. E. Oliver
Tribunal Member A. Ramshaw
(Valuer)**

Date of Determination : **10th May 2018**

Date of Decision : **5th July 2018**

DECISION

Decision

1. The Tribunal does not have jurisdiction to make a determination upon the rate of interest charged for the late payment of ground rent.
2. The Tribunal determined the following administration charges are reasonable:
 - (a) a late payment fee of £60;
 - (b) a fee for a referral to a debt collection agency of £60;
 - (c) a fee of the debt collection agency of £150
3. The demands for the payment of ground rent were valid and properly served.
4. The Tribunal does not have the jurisdiction to vary Clause 2.3.2 of the Lease.
5. No order is made pursuant to Section 20C of the 1985 Act.

Background

6. This is an application by Mr Robert McKendrick ("the Applicant") for a determination of three issues. The first is whether the administration charges in respect of Flats 101, 105, 106, 107, 204, 407, 502 & 503 The Woodlands on Stamford, Ashton Under Lyme ("the Properties") are payable and reasonable, pursuant to paragraph 5, Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). The Properties form part of a development at The Woodlands on Stamford and are each held under identical leases made between Constable House (Ashton-Under-Lyme) Limited (1) The Woodlands No. 1 Management Company Limited (2) the Applicant (3) ("the Leases"). They are dated between 2007 and 2008 and each is for a term of 999 years from 1st January 2006. The second is an application for an order pursuant to Section 20C of the Landlord & Tenant Act 1985 ("1985 Act"). The third is for the variation of Clause 2.3.2 of the Leases.
7. The Respondent to the application is the freeholder of the Properties, Drake Hall Limited ("the Respondent"). PDC Law represents the Respondent in the proceedings. The Respondent has instructed Landmark Collections to collect the ground rent on its behalf.
8. On 26th October 2017, the Tribunal issued directions regarding the conduct of the application. They provided for the filing of statements and for the matter to be determined without either an inspection or hearing, unless it was later determined either would be necessary.
9. The application was listed for determination on 10th May 2018, without either an inspection or hearing.

The Lease

10. Clause 2.2 of the Leases provides for the Applicant, as lessee, to pay ground rent in the sum of £140 per annum for each property, payable on 1st January and 1st July in each year.
11. Clause 2.3.2 further provides for the Applicant to pay:

“Costs charges and expenses which the Landlord may from time to time incur in relation to or as a result of any breach of any obligation of the Tenant under this lease”.

12. Clause 7 of the Lease provides for interest to be payable upon unpaid amounts due under the Lease. Clause 7.1.2 further provides:
“the rate of interest will be four per cent above the base rate from time to time of Barclays Bank plc (or any other comparable rate designated by the party to whom the interest is due if the base rate is no longer published) calculated on a day to day basis from the due date for payment until actual payment;”
13. Clause 8 provides that the service of any notice under the Lease “*must*” in writing and “*may*” be served either personally, by first class post, by facsimile or by leaving it at the “*apartment*”.

The Issues

14. The Applicant challenged late payment charge of £60 made in respect of ground rent relating to the properties. This was from 2006 to the date of the application.
15. The Applicant further challenged administration charges, in the sum of £270.
16. The Applicant further submitted the demands for the payment of ground rent were defective.
17. The Applicant also sought an amendment to Clause 2.3.2 of the Lease to add the word “reasonable” such that it then reads:
“Any reasonable costs charges and expenses which the Landlord may from time to time incur in relation to or as a result of a breach of any obligation of the tenant under this lease”.
18. An application was made for an order pursuant to Section 20C of the 1985 Act

Submissions

19. The Applicant objected to all interest charges made in respect of the late payment of ground rent. The charges commenced in 2014 and varied, but the Applicant submitted there was no information as to how this amount had been calculated.
20. In addition to interest charges, late payment charges had also been applied to the accounts for the Properties. He complained that he had paid the sum of £73.99 on each of the Properties on 8th March and there was nothing further owing on that date. In July he was charged a further £70 for each property. A reminder was sent on 20th July, but he was then working away. By 25th August the debt for one property had risen to £438.65 and £466.58 for the remainder. He had sent payment of £80 per property, in the sum of £640, on 4th September 2017, but that was subsequently returned to him.
21. On 25th August 2017, further charges were applied to each of the accounts in the sum of £270 per property. This comprised of an administration fee of £120 for passing the necessary details to a debt

- collection agency. The debt collection agency made a further charge of £150 and a Land Registry fee of £10.
22. In each case the Applicant submitted the amounts were unreasonable and made an offer to pay £10 per property in respect of all matters.
 23. The Applicant further asked that Clause 2.3.2 be amended to insert the word "reasonable" to ensure all future costs were reasonable.
 24. The Applicant submitted the demands for the payment of ground rent were defective in that the "Tenants Rights" statements were illegible. In addition, Landmark Collections charged VAT but did not provide any VAT registration details on their demands. Clause 8 of the Lease provides for all notices to be served by either first class post, personally, facsimile or left at the property. The demands sent by Landmark were by second class post.
 25. The Respondent stated that all charges were properly made. The Lease entitles the Respondent to charge interest and late payment. The late payment fee of £60 had no sliding scale, had not been increased since 2013. It submitted a fee of £60 for several chasing letters was "*more than reasonable*". In respect of the debt collection charge of £150, the Respondent confirmed this was a set charge and included all work necessary prior to taking legal action, including searches at HM Land Registry. It was said the fixed fee was a cheaper than the alternative of instructing a solicitor and being charged on a time basis, possibly at a rate of £150 to £400 per hour.
 26. The Respondent submitted the proposed variation to Clause 2.3.2 of the Lease could only be effected pursuant to Part IV of the Landlord and Tenant Act 1987 ("the 1987 Act") and no such application had been made.
 27. The Respondent disputed that the Tenants Rights Statements were illegible and provided a copy of the document sent with the demands. Further, the VAT registration number was at the bottom of the demands sent by Landmark.
 28. The Respondent argued that all charges were reasonable and consequently no order should be made pursuant to Section 20C of the 1985 Act.

Determination

29. The Tribunal considered the interest charged for the late payment of ground rent and determined this charge was permitted under Clause 7.1.1 of the Lease. The amount of interest was also provided for by Clause 7.1.2. at "*the rate of 4% above the base rate from time to time of Barclays Bank plc...*" The clause further provided interest would be calculated on a daily basis. Therefore, whilst the Applicant stated he was unaware of how the interest was calculated, the method is contained within the Lease. Upon the basis the interest rate is fixed within the Lease, it is not a variable administration charge. Consequently the Tribunal does not have the jurisdiction to make any determination in respect of it.
30. The Tribunal considered the issue of the late payment charges in the sum of £60, said by the Applicant to be unreasonable. The Tribunal noted from the statements this amount had been charged once in 2014

and then in March and August 2017 for each of the Properties. On all other occasions, where payment was late, although interest had been charged, no other late payment charges had been applied. The Tribunal did not consider either the charge or the amount to be unreasonable. Clause 2.3.2 of the Lease permitted the charge to be made. The Respondent had not acted unreasonably when making the charge. The Applicant was fully aware of his liability to pay ground rent; had he made the payments when due, no charges would have been made. The Applicant's statement that he had been working away was not a valid excuse. The Tribunal noted that the amount covered more than one set of work; it extended to several reminders, should those be necessary. The Tribunal determined the charge to be reasonable.

31. The Tribunal thereafter considered the charges made for referring the issue to a debt collection agency, in the sum of £120 and the further charge by the agency of £150. In respect of the former, the Tribunal determined the sum of £120 to be unreasonable. The Respondent had, at the time of referral, collated all the necessary information to enable a referral to be made. It had already been dealing with the arrears. Therefore, it expected the referral to the agency would not involve significantly more work than had already been done. The Tribunal determined a more reasonable charge for this would be £60. In respect of the debt agency's fee of £150, the Tribunal accepted the submissions made by The Respondent. The work undertaken for this sum was reasonable and a likely cheaper alternative to other methods of enforcement. Accordingly, it determined the charge of £150 was reasonable.
32. The Tribunal thereafter considered the Applicant's submissions regarding the defective demands for payment. There was no evidence shown to the Tribunal to support the allegations made that the demands did not contain a VAT number, nor that they were illegible. The Respondent had produced to the Tribunal a copy of the demands for the payment of ground rent, each of which had the VAT number at the bottom of the page. The Respondent also provided a copy of the "Summary of Tenant's Rights and Obligations" sent with each demand. It was a legible copy and the Applicant had not provided any evidence to the contrary. The Tribunal further considered the Applicant's argument that the Leases provide for the demands to be sent by either first class post, facsimile, personally or by leaving them at the Properties. Clause 8 of the Lease states a notice under the Lease "must" be given in writing but "may" be served by one of the methods specified. The word "may" outlines permissive, but not exclusive methods of service. Therefore, service by second-class post does not render the demands ineffective. The Tribunal therefore determined the demands for the payment of ground rent were effective and properly served. The Tribunal did note that had it determined the demands were invalid, it would not have prevented the Respondent from re-serving the demands in their proper form.
33. The Tribunal considered the application for the variation of Clause 2.3.2 and the insertion of the word "reasonable". The Tribunal agreed with the Respondent's submissions that no appropriate application had

been brought to enable it to deal with this issue. It would be necessary for an application to be made pursuant to Part IV of the 1987 Act.

34. The Tribunal did not consider it appropriate for an order to be made under Section 20C of the 1985 Act. The Applicant had only succeeded upon one of the issues before the Tribunal.

Judge J Oliver
05/07/2018