



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

Case Reference : CHI/19UD/LAC/2020/0011

Property : 44 Wivenhoe House, Fairways, Ferndown. BH
22 8BB

Applicant : Summer Abrahams
summertime_83@hotmail.com

Representative :

Respondent : **Fairways Residents (Ferndown) Limited**

Representative :

Type of Applications : Section 11 Commonhold and Leasehold
Reform Act 2002 determination of a liability to
pay an administration charge

Tribunal Members : Judge A Lock

Date of Decision : 10 May 2021

DECISION

I exercise my power under Rule 50 to correct the clerical mistake, accidental slip or omission of my Decision dated 10 May 2021. My amendment is made in bold, above from Fairways Ferndown Residents Limited to **Fairways Residents (Ferndown) Limited**. I have corrected my original Decision because of a typographical error.

Signed: A M lock

Dated: 01 June 2021

The applications

1. The Applicant seeks a determination in respect of administration charges. She seeks a determination that administration charges imposed by the Lessor (amounting to £2,223.50) are not recoverable under the original lease of the property. The Applicant also asserts that the demands for service charges did not comply with requirements and that even if administration charges are recoverable in principle, they and/or the sums of them are unreasonable in the circumstances, particularly where it is said some or all relate to ground rent payments which in the event were paid by the Applicant's mortgage company.
2. The Applicant also makes applications pursuant to section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 that the costs incurred in connection with the proceedings not be recoverable through the service charge and liability to pay an administration charge in respect of litigation costs is reduced or extinguished.

Summary of decision

3. The Tribunal finds that the Applicant, Ms Abrahams, is not liable to pay administration charges totalling £2223.50 for the period 2005 to 2017.
4. The Tribunal considers it just and equitable in view of the outcome of the case to make orders under section 20C of the 1985 Act and paragraph 5a schedule 11 of the 2002 Act preventing the Respondent from recovering its costs in connection with these proceedings from the Applicant.
5. The Tribunal orders the Respondent to reimburse the applicant with £100 application fee within 28 days

The lease

6. Ms Abrahams purchased the leasehold to 44 Wivenhoe House in May 1999. The lease was dated 06 January 1970 between TBC Developments Limited and Edith Mary Mertona Parsons. It has been referred to throughout as the "original lease". That lease has a term date from 01 January 1970

7. On 19 March 2019 Ms Abrahams surrendered that original lease and signed a replacement lease (dated 20 March 2019) whose term ran from 01 January 2002 for 999 years. The landlord of that lease was Fairways Residents (Ferndown) Limited (4169046)

Procedural Background

8. The Tribunal received Ms Abrahams' application dated 20 November 2020. On 11 December 2020 the Tribunal issued directions in relation to the application. They set out the documents to be provided and the timescale for so doing and provided for the application to be determined on written submissions and without a hearing unless a party objected within 28 days.
9. Further directions were issued on 15 March 2021 noting that the bundle prepared by the Applicant did not contain a statement of case or documentation submitted on behalf of the Respondent and noting that it appeared that the Respondent was not contesting the application. The directions of the Tribunal required further written evidence from the Applicant on specific points which were not addressed by the documentation provided within the bundle.
10. Neither party having requested an oral hearing this determination has been made solely on the written evidence and submissions of the parties. There has been no inspection of the property by the Tribunal.

The Law and Jurisdiction

11. Paragraph 1 of Schedule 11 to the 2002 Act defines an administration charge as *including "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 the tenant to make a payment by the due date to the landlord or ... in connection with a breach (or alleged breach) of a covenant or condition in his lease"*.
12. Paragraph 1(3) of the same Schedule defines a variable administration charge as *"an administration charge payable by a tenant which is neither (a) specified in his lease or (b) calculated in accordance with a formula specified in his lease"*
13. Under paragraph 2 of the same Schedule a variable administration charge is only payable to the extent that the amount of the charge is reasonable. Under paragraph 4 of the *Schedule "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"*. Under paragraph 5 of the Schedule an application can be made to the tribunal for a

determination (inter alia) as to whether an administration charge (including a variable administration charge) is payable.

14. Section 20C Landlord and Tenant Act 1985 provides as follows” (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, a First-tier Tribunal, or the Lands 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)

(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.”*

Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 states: “A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant’s liability to pay a particular administration charge in respect of litigation costs (20 the relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

The Evidence

15. The bundle has been provided by the Applicant and includes: Applications and Orders; two Statements provided by Ms Abrahams; copy lease of January 1970; Copy lease January 2002; Copy correspondence from (1) S Puddy 15/09/2020; (2) C Kelleway 29/11/2004 and (3) C Taylor 02/02/2006.

16. The Applicant has also provided copies of 2 Tribunal decisions: *LON/00AK/LAC/2017/00024 Mr Rupin Kotecha v Alan Matthey Trust Corporation 05 March 2018 and LON/00BD/LSC/2018/0247 Clearview Homes (Horton Road) Ltd v Ms M Kangwa 25 January 2019*

17. The Supplementary bundle provided by the Applicant in response to the Directions of Judge Morrison contains: Directions dated 15/03/2021; Correspondence between Respondent and Managing agent; Correspondence between Applicant and Respondent and/or managing agent dated 22/02/2021; copies acknowledgement of data request dated 25/08/202; emails re data request dated 15/09/202; Copy invoice dated 29/11/2004; copy demand dated 02/02/2006

The Issues

18. The issues identified by the Tribunal are

(i) The construction of the lease(s);

- (ii) Whether the lease(s) permit(s) administration charges and if so, whether it permits these administration charges.
- (iii) The reasonableness of any charges
- (iv) Whether the Applicant should be permitted to challenge administration charges from 2005 onward.

These issues will be addressed in turn.

The construction of the lease(s)

19. Clause 2(3) of the original lease states that the lessee covenants *“To pay the Managing Agents on the first day of January and the first day of July in each year such sums as they shall demand the sum to be one twelfth of the total maintenance costs expended by the Managing Agents for the preceding six months in the execution of the lessors’ obligations contained in Clause 3 hereof and their obligations (if any) contained in the Management regulations contained in the Schedule hereto or any modifications thereof but subject to the provision that the accounts of the Managing Agents shall be available for inspection by or on behalf of the lessees at the office of the managing Agents for a period of twenty eight days following the submission by the Managing Agents to the lessees of a demand in respect of such maintenance costs.”*
20. Clause 2 (7) of the lease states *“That the lessees will pay to the lessors all costs charges and expenses (including legal costs and fees payable to a Surveyor) which may be incurred by the Lessors in or in contemplation of any proceedings under sections 146 and 147 of the Law of Property Act 1925”*
21. The Management Regulations at Schedule 1 to that lease do not make mention of Administration Charges or payments for costs of late payment charges.
22. Clause 3 (6) states that the Lessors covenant to *“Throughout the term to employ responsible Managing Agents for the purpose of complying with the lessors covenants such Managing Agents to keep proper books of account of all costs charges and expenses incurred by them in carrying out the Lessors obligations herein contained for the purpose of establishing or vouching the expenditure or provisions for the Lessors obligations hereunder and the contributions due from the several flat owners PROVIDED ALWAYS that the said Managing Agents shall be entitled to charge a reasonable fee for their services such fee to be a charge to be included in the maintenance costs to which the Lessees shall make a contribution as provided by Clause 2(3) hereof.*

Whether the lease permits such administration charges

23. In her application Ms Abrahams relies on *LON/ooAK/LAC/2017/00024 Mr Rupin Kotecha v Alan Matthey Trust Corporation 05 March 2018 and LON/ooBD/LSC/2018/0247*

Clearview Homes (Horton Road) Ltd v Ms M Kangwa 25 January 2019 she submits that unless the lease allows for the charging of an administration charge, it is not permitted

24. The Applicant has provided a copy of an invoice for 44 Wivenhoe House from Burns Management dated 29/11/2004 setting out the service charge for the period 01/01/2004 to 30/06/2004 in the sum of £140.85 (page 88). She has also provided a copy of a letter dated 02/02/2006 from Burns Management which refers to an Administration charge for late payment raised on 02/11/2005 in the sum of £23.50 (page 89). These letters have been provided to the Applicant by the current agent, Burns Management under cover of an email (page 87) which confirms that the Property Management software was changed in 2018 and the old system was phased out a consequence of which is that documents generated and stored in the software are no longer accessible as the software crashes. The email also confirms that the normal retention period for documents for Burns Management is 6 years, but in this case, those documents are unavailable.
25. The Applicant has provided copy email sent by her to Burns Management (page 37) dated 18/01/2018 requesting “*the total sum of the late fees I have been charged (since day 1) and when they were incurred*”. The reply to that email is to be found at page 38 of the bundle. This sets out charges under the title “admin fees” for the period 02/11/2005 to 29/11/2017 amounting to £2,223.50.
26. The schedule provided by the agents set out the administration charges disputed by the Applicant. I accept that these were provided in reply to her request for details of the late fees charged.
27. The Tribunal finds that Clause 2 (3) of the lease establishes that a service charge is payable but does not include provision for charges for late payment of service charges. The Management Regulations also make no reference for charges for such late payments.
28. The bundle contains a letter from the Managing Agent (page 3 of the supplementary bundle) to the Lessors asserting that the lease allows for recovery of all costs charges and expenses which are incurred in, or in contemplation of, proceedings under s 146 and 147 Law of Property Act 1925. It is the view of the Managing Agents that the costs of letters sent to the applicant were in contemplation of forfeiture proceedings and as such those costs fall to be included as such are recoverable.
29. The applicant has referred the Tribunal to the Upper Tribunal decision in *Barrett v Robinson* [2014] UKUT 322 (LC) and submits that a landlord must have forfeiture proceedings in mind before any costs are recoverable. The applicant’s case is that neither the landlord nor the managing agent had ever mentioned or instigated forfeiture proceedings against her.

30. There is no documentation supporting the Managing Agents bare assertion that these late payment charges were incurred in or in contemplation of any proceedings under Sections 146 and 147 of the Law of Property Act 1925 or any other court or arbitral proceedings and the Respondent has not provided copies of any letters threatening or warning the appellant regarding forfeiture. The Tribunal does not accept that the late payment charges were incurred in or in contemplation of any proceedings under Section 146 and 147 of the Law of Property Act 1925.
31. In conclusion, the Tribunal does not accept that the lease allows the Respondents to impose these administration charges.
32. Although the decision on the above issue makes this unnecessary, I comment briefly on the issue of whether the charges would be reasonable in amount if recoverable in principle under the lease.

The Reasonableness of the charges

33. The charges set out by the Managing agent at page 38 of the bundle during the period 2005 to 2017 range from of £23.50 to £96.
34. As set out a paragraph 232 above, the Managing Agent has provided a copy of an invoice for 44 Wivenhoe House from Burns Management dated 29/11/2004 and copy letter dated 02/02/2006 from Burns Management which refers to an Administration charge for late payment raised 02/11/2005 in the sum of 23.50 (page 89).
35. I consider the letter provided to be a standard letter, which required little input from the managing agent and consider that a charge of £23.50 for such a letter is unreasonable.
36. The Applicant has stated that she contacted the managing Agents numerous times to request that no further letters were to be sent and that the Mortgagor always paid the ground rent and service charges.
37. The Respondent has been given the opportunity to provide further evidence and submissions. They have not done so. Whilst I understand that there is some difficulty in obtaining information dating back to 2005, I have received no submissions from the lessors as to what these letters may have contained.
38. Taking the above into account, on the basis of the evidence before me. I consider that these administration charges are unreasonable.

Whether the Applicant should be permitted to challenge administration charges from 2005 onwards

39. The Applicant is challenging administration charges from 2005 to 2017. In the Directions Notice dated 11 December 2020 the Tribunal noted that

changes in the case Management System used by the Respondent's agent may have meant that they have limited access to older records and that it may be arguable that prejudice would be caused by the Applicant being permitted to pursue very old charges.

40. The Respondent has not made any submission in this regard and has not responded to those previous directions.
41. It is the view of this Tribunal that whilst it holds an inquisitorial function, the caselaw in this area is not crystal clear. If the Respondent wished the Tribunal to consider the issue of the length of the period over which the Applicant is disputing the Administration charges, representations could and should have been made. The Tribunal has not received any such representations.
42. In the light of this the Tribunal has reached its decision based on the submissions and evidence before it.

Section 20C and paragraph 5A Order

43. The Applicant has made applications pursuant to section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 that the costs incurred in connection with the proceedings not be recoverable through the service charge and liability to pay an administration charge in respect of litigation costs is reduced or extinguished.
44. No representations have been made by the Respondent.
45. The Tribunal considers it just and equitable in view of the outcome of the case to make orders under section 20C of the 1985 Act and paragraph 5a schedule 11 of the 2002 Act preventing the Respondent from recovering its costs in connection with these proceedings from the Applicant.
46. The Tribunal orders the Respondent to reimburse the applicant with £100 application fee within 28 days

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 rpsouthern@justice.gov.uk being 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