



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

Case Reference	:	LON/00BK/LSC/2018/0426
Property	:	Flat 5, 61-63 Holmes Road, London NW5 3AN
Applicants	:	RJ Bier GD Sands
Respondent	:	Assethold Ltd
Type of Application	:	Reasonableness of and liability to pay service and administration charges
Tribunal Members	:	Judge Nicol Mrs A Flynn MA MRICS
Date and venue of Hearing	:	13th May 2021; by video conference
Date of Decision	:	13th May 2021

DECISION

In accordance with paragraph 5(4)(a) of the Commonhold and Leasehold Reform Act 2002, the Tribunal may not hear this application and so it must be dismissed.

The relevant legal provisions are set out in the Appendix to this decision.

The Tribunal's reasons

1. The Applicants are the lessees of the subject property, a 2-bedroom flat in a block of 8. The Respondent is the freeholder. The Respondent's agents are Eagerstates Ltd.
2. The Applicants sought and obtained a summary of their service charges. In accordance with section 22 of the Landlord and Tenant Act 1985, they asked the Respondent for the receipts and other documents supporting

the summary. The Respondent provided invoices. The Applicants thought this was incomplete and demanded to be provided with “paid receipts”. The Respondent replied that they weren’t entitled to anything more than had already been sent.

3. The Applicants understood that the Respondent’s failure to provide “receipts” entitled them to withhold their service charges unless and until the allegedly missing documents were provided. As a result, the Respondent initiated recovery proceedings through The Debt Recovery Agency. This included issuing a claim in the county court (claim no: G3QZ92N1) on 3rd August 2020.
4. By email dated 5th August 2020, the Applicants notified the Respondent that they had sent £671.85 which they understood to settle all outstanding amounts. DRA replied the same day saying that this, in fact, only reduced the debt to £1,635.20. They further stated,

As a gesture, they will be prepared to reduce their administrative charge of 30 July by an amount of £180 which reduces the balance to £1,455.20.

On the basis that this sum is paid to our client no later than 4pm tomorrow, they have agreed to withdraw the claim and confirm that the account will be deemed to have been settled in full.
5. The sum of £1,455.20 consisted of DRA’s charges of £990, additional administration charges from Eagerstates and a court fee, all incurred in relation to chasing the Applicants for their alleged debt.
6. On 6th August 2020, DRA emailed the Applicants noting that they had paid £1,455.20 and providing evidence that, following this payment, the court claim had been discontinued.
7. On 10th August 2020 the Applicants applied to the Tribunal stating that they wanted the amount of £1,455 returned to them.
8. The Tribunal heard the application by remote video conference on 13th May 2021. The First Applicant appeared in person on behalf of himself and his fellow Applicant. Mr Ronni Gurvits appeared on behalf of the Respondent.
9. Although the application form purported to be completed pursuant to section 27A of the Landlord and Tenant Act 1985 (which deals with service charge disputes), the charges in dispute are administration charges within Schedule 11 of the Commonhold and Leasehold Reform Act 2002. Mr Gurvitz argued that, under paragraph 5(4)(a) of Schedule 11 to the 2002 Act, no application could be made because the matter had been agreed.
10. The Applicants had not taken legal advice. The First Applicant described how he and his fellow Applicant felt under severe pressure to pay the amount claimed in the court proceedings. DRA had pointed out the threat to their credit rating. They felt coerced into paying the alleged debt

in order to get rid of the court claim. They did not intend to give up their right to challenge the reasonableness of the charges.

11. Mr Gurvitz argued that the Respondent understood the Applicants to be agreeing their offer in DRA's email of 5th August 2020 and were entitled to finality.
12. In the Tribunal's opinion, its jurisdiction should only be ousted where the terms of the statute clearly apply. To deprive a party of a substantive determination of their dispute is not something to be taken lightly. However, the Tribunal must go by the words used by the parties as they would be objectively understood. The "matter" in issue here was the settlement of the charges alleged to be owing, as specifically mentioned in DRA's email. By making the payment, the Applicants were accepting the Respondent's offer to settle the debt, not merely to bring an end to the court proceedings.
13. In the terms of paragraph 5(4)(a) of Schedule 11 to the 2002 Act, the Tribunal is satisfied that the matter has been agreed and that, therefore, no application may be made in respect of it.

Name: Judge Nicol

Date: 13th May 2021

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

Schedule 11, 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 the appropriate 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 the appropriate 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).