



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

Case Reference : CHI/29UM/LAC/2022/0003

Property : Flat B (Top Flat), 301 High Street, Sheerness,
Kent, ME12 1UT

Applicant : Influential Consultants Limited

Representative : -

Respondent : Ms Catherine Mary Willens

Representative : -

Type of Application : Determination as to liability to
pay an administration charges
Schedule 11 to the Commonhold and
Leasehold Reform Act 2002 (as amended by
section 131 Housing and Planning Act 2016)

**Tribunal
Member(s)** : Judge D Whitney

Date of Decision : 22 November 2022

DECISION

Background

1. The Applicant seeks Determination as to liability to pay an administration charge pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
2. Directions were first issued dated 21st March 2022. Subsequently various other sets of directions were issued including on 20th September 2022 providing that each party would file their own bundle to be used for the determination.
3. The Respondent made various applications seeking to extend time but ultimately no bundle was received from her and by determination dated 24th October 2022 it was determined that the application would be decided on the basis of the Applicants bundle only.
4. I have determined this application on the basis of that bundle and references in [] are to pdf pages within that bundle. The bundle ran to some 205 pages.

Decision

5. The Applicant is the freeholder of the Property of which the Respondent is a long leaseholder. There is a substantial history of dispute between the parties with many previous application to this Tribunal. It is against that background that the latest application was made.
6. The Applicant, acting by its director Mr Thompson, seeks to recover as an administration charge solicitors charges and interest. The Applicant relies on the lease [81-104] and in particular certain clauses:

“3(13) to pay all expenses including solicitor’s costs and disbursements and surveyors fees incurred by the Landlord incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1929 or incurred in or in contemplation of proceedings under Sections 146 or 147 of that Act notwithstanding in any such case forfeiture is avoided otherwise than by relief granted by the Court and to pay all expenses including solicitors* costs and disbursements and surveyors* fees incurred by the Landlord of and incidental to the service of all notices and schedules relating to wants of repair of the Building whether the hmm be served during or after the expiration or sooner determination of the tare hereby granted (but relating in all cases to such wants of repair that accrued not later than the expiration or sooner determination of the aald term as aforesaid)”*

and

“(2) if any rent properly due (whether demanded or not) or any other monetary payment due to the Landlord is not paid within one (1) month of the date on which such payment is due then to pay interest on such sum such interest to accrue from day to day commencing on the date when such payment is due until payment”

7. At [25] is a copy of the invoice sent by the Applicant to the Respondent in the sum of £5,562 dated 23rd July 2021. The appropriate summary of rights and obligations was attached [27-30] as was a copy of the invoice from TWM Solicitors LLP to the Applicant [26].
8. Mr Thompson has provided a witness statement [106-110]. This sets out the chronology which will be well known to the parties and I do not repeat within this decision. Essentially a previous tribunal made a determination relating to service charges due and owing. The Applicant sought to instruct solicitors with a view to seeking forfeiture of the Respondents lease. Forfeiture was avoided as the Respondents mortgage lender paid the outstanding arrears of service charge. Subsequently the Applicant sought to recover the costs incurred and this has led to the current application.
9. I am satisfied that such costs are a variable administration charge and so this Tribunal has jurisdiction to determine the same. Further I am satisfied that the clause 3(13) of the lease as set out above in principle allows the Applicant to recover legal costs when looking to undertake forfeiture proceedings.
10. I note the Applicant seeks interest. The lease provides that interest is payable on any sums due and owing. Clause 7(3) provides interest shall be at 5% above Barclays Base rate or 12% whichever is the greater [99]. Currently the rate would be 12%. The question of interest is not a matter this Tribunal has jurisdiction over save to record the terms of the lease.
11. At [146 and 147] is a copy of a Section 146 notice dated 21st May 2021 sent to the Respondent and her mortgage lender.
12. The Applicant has included the Respondent's response [155-170]. The Respondent disputes her liability to pay and the amounts. She suggests demands are invalid and that in any event the Applicant did not intend to forfeit or had waived any right.
13. I do not agree with the Respondent's submissions. I am satisfied that the demand referred to above is a valid demand.
14. Further I am satisfied that the Applicant was seeking to forfeit the Respondent's lease. The Applicant when it received the initial Tribunal determination relating to the service charges took steps to

enforce the same. It had to await the determination of the application for leave to appeal to the Upper Tribunal and upon the Upper Tribunal's refusal it looked to serve a Section 146 Notice. Ultimately it was service of this notice which led to the Respondent's mortgage lender settling the amount found to be due and owing. In respect of service charges. It was in my judgment on the evidence before me plain that the Applicant was intending to forfeit the lease for non-payment of the service charges. Whether or not the same would have been successful is academic. In my judgment the actions engaged the relevant lease provisions and the costs are payable by the Respondent.

15. I am not however satisfied that all the work undertaken by TWM Solicitors was in relation to the forfeiture proceedings. Their invoice refers to considering matters relating to the appeal by the Respondent to the Upper Tribunal. I note no breakdown of the time spent or work undertaken has been provided beyond the bundle containing copies of certain letters sent by the solicitors. It is plain the case was highly contentious and it is suggested much correspondence took place with the Respondent.
16. Doing the best I can using my expert knowledge and all the material contained within the bundle I assess the costs payable as approximately 2/3rds of the total sum. I find that the Respondent is liable to pay £3,600 (£3000 plus vat) as the administrative costs due and owing to the Applicant and that the demand issued on 23rd July 2021 is a valid demand.

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 by email to rpsouthern@justice.gov.uk
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.