FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AY/LAC/2021/0025**
HMCTS Reference		**P:PAPERREMOTE**
Property	**:**	**Flat A, 247 Valley Road, Streatham, London, SW16 2AB**
Applicant	**:**	**Mrs Samantha Chhokar-Hyde**
Representative	**:**	**Mr Raj Chhokar**
Respondent	**:**	**Assethold Limited**
Representative	**:**	**Eagerstates Limited**
Type of application	**:**	**Application under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 to determine the liability to pay an administration charge.**
Tribunal	**:**	**Mr C Norman FRICS**
Date of Decision	**:**	**10 March 2022**

DECISION

Covid-19 Arrangements

This has been a remote determination on paper which have been not objected to by the parties. The form of remote determination was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same, and all issues could be determined on paper. The documents that the Tribunal was referred to are in a bundle of 113 pages the contents of which the Tribunal has noted.

Decision

(1) The ground rent collection fee of £55 plus VAT is unreasonable and should not exceed £30 plus VAT

(2) The subsequent chasing letter of 6 July 2021 and email of 31 August 2021 in relation to the ground rent collection as addressed to the applicant should each be charged at no more than £40 plus VAT.

(3) The costs of the managing agent instructing The Debt Recovery Agency are irrecoverable under the lease.

(4) The total reasonable and payable administration charges are therefore £110 plus VAT.

Background

(1) The applicant seeks a determination under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in relation to an administration charge claimed by the respondent and which in turn relates to a late payment fee. The applicants say they believe the charges to be unreasonable. They say that the annual ground rent is £200.00 to which a £66 administration fee is added by the landlord/managing agents. They accept that they failed to pay the ground rent on time, paying approximately three-months' later.

(2) The applicants say that the landlord/manager instructed The Debt Recovery Agency ("DRA") to recover the ground rent and a further £120.00 fee for 'notice of proceedings', an administration charge of £360.00, plus The Debt Recovery Agency Referral Fee of £216.00 and The Debt Recovery Agency Correspondence Fee of £474, making a total claimed in this matter of £1,486.00.

(3) In addition to the above, when The Debt Recovery Agency Limited referred the matter to the applicants' mortgagee a further £630.00 lender fee was added, making a total of £2,116.00. This appears now to have been reduced to £1,170.00.

(4) The landlord submitted that Eagerstates were the managing agent and not the freeholder, which was Assethold Limited. Further, the applicant

was Ms Samantha Chhokar-Hyde as sole leaseholder. The tribunal accepts these submissions and directs that these changes be noted on the case record.

The applicants case

1. This may be summarised as follows. The applicants accept that payment of the ground rent of £200 was late owing to difficult family circumstances following a bereavement.

2. The £66 initial administration charge by way of rent collection was disputed as were all other administration fees. The administration charges were disputed on the grounds that they were not fair and reasonable. In a final demand of £2116, a "lenders fee" was included by DRA rather than the mortgage lender. This the applicants also challenged.

3. The applicant complained that she had not received some of the chasing letters or emails.

4. The applicant referred to her protection from section 146 notices as the ground rent was less than £350.

5. The applicant also submitted that on three occasions, DRA had advised that they had closed the file and advised Eagerstates to remove the DRA fees and that they had not invoiced Eagerstates for these fees. However, Eagerstates insisted that the DRA fees were still payable.

The landlord's case

6. Ms Hyde was invoiced on 26 May 2021 for ground rent and a ground rent collection fee by post and email. On 6 July 2021 a notice of proceedings were sent to Ms Hyde which was ignored. On 23 August 2021 the matter was transferred to DRA, a debt agency. Their costs have been added to the debt.

7. On 28 August 2021 the lessee wrote to Eagerstates asking if she had paid the invoice. This was five days after DRA had written to her. On 31 August 2021, part payment was made direct to Eagerstates. In the interim, DRA had written to the mortgagees seeking payment. On 27 September 2021, Ms Hyde wrote to Eagerstates and to DRA but according to that correspondence her account was still outstanding.

8. Ms Hyde was aware that the DRA was involved in this matter. The fact that they close their files was due to the fact that Eagerstates received payment and they in turn paid DRA. The debt to DRA had not been settled but rather the freeholder had settled the cost with DRA.

9. The collection fee of £55 plus VAT was charged from June 2021. This was not unreasonable for dealing with the collection of ground rent

because of the need for compliance with section 166 of the Commonhold and Leasehold Reform Act 2002. The respondent also referred to Paragraph 6 of Part V of the lease (see below).

10. In connection with costs incurred due to the instruction of DRA, on 6 July 2021 a fee of £100 was charged for works undertaken in connection with Notice of Proceedings. On 23 August 2021 the landlord incurred costs of £300 in preparing a file for solicitors and supplying information to the solicitors and debt agency. This required a review of the property's file and records, reporting to client, and thereafter to the solicitors/debt agency with information and responding to requests for further information. This was a fixed fee based on two hours' work.

11. DRA costs were broken down as follows: a referral fee of £216 which is made for each referred case to cover the cost of reviewing the lessee's statement of account, carrying out necessary correspondence with the referring client, and telephone discussions with the client. A further fee of £474 was for review and correspondence is made for each case referred. This is to cover setting up the case on the DRA database, sending out a letter together with statement and relevant documentation and engaging with the lessee by email and telephone and liaising with the client. A further fee for contacting mortgagees was waived by DRA as the lessee made contact and paid the original sum due.

12. Para. 6, Part V of the lease enabled recovery of these administration charges.

The Lease

13. The property is held under a lease dated 2 October 1989. By clause 2(5) the lessee covenants "to pay all costs charges and expenses including solicitors costs and surveyors fees incurred by the lessors for the purpose of or incidental to (a) the preparation and service of a notice under section 146 and 147 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise by relief granted by the court…"

14. Para 6 of Part V of the Schedule provides: "The lessors or their agent shall keep proper books of account of all costs charges and expenses incurred in carrying out its obligations under this part of the schedule hereto and an account shall be taken on the 25th day of March in each year during the continuance of the demise of the amount of the said costs charges and expenses incurred since the date of the commencement of the term hereby demised or of the last preceding account as the case may be and the lessor shall be entitled to include in such costs charges and expenses the reasonable and proper fees of the Lessors Managing Agent for the collection of the rents of the Flat in the building and for the general management thereof provided that if and

so long as the landlord does not employ managing agents the landlord shall be entitled to add to the said expenses and outgoings sum of 10% thereof as the Landlord Management Charge."

The Law (see also legal appendix below)

Restrictions on Forfeiture

15. By virtue of section 167(1) of the Commonhold and Leasehold Reform Act 2002, a landlord under a long lease of a dwelling may not exercise a right of re-entry or forfeiture by failure by a tenant to pay an amount consisting of rent service charges or administration charges or a combination of them unless the unpaid amount exceeds the prescribed sum or consists of or includes an amount which has been payable more than a prescribed period. The prescribed sum is £350 and the prescribed period is three years.

16. Further by section 81(1) of the Housing Act 1996, a landlord may not in relation to premises let as a dwelling exercise a right of re-entry or forfeiture for failure by a tenant to pay a service charge or administration charge unless (a) it is finally determined by or on appeal from the appropriate tribunal or by a court [...], that the amount of the service charge or administration charges is payable by him or (b) the tenant has admitted that it is so payable.

Findings

17. The tribunal finds on the balance of probability that letters referred to by the respondent were sent to the applicant at the lease address. No witness statement was included from the applicant's tenants stating that such correspondence was not received or how such landlord correspondence is dealt with. The Tribunal also finds that a chasing email was also sent.

18. The lessor is entitled to a charge a reasonable fee for the collection of ground rent. The lease clearly specifies that where the lessor carries out this function in-house it is entitled to charge 10%. This is currently £20. The tribunal accepts that managing agents' fees might be somewhat higher and therefore finds that the reasonable amount is £30, plus VAT.

19. The landlord also implied that forfeiture would be available as remedy for non-payment of the £200 ground rent. The tribunal finds that this is not so, the following reasons.

20. Firstly, The landlord cannot rely on clause 2(5) (service of a s.146 notice) because service of such notice is not required for non-payment of rent. Secondly, the only admitted sum, being ground rent of £200, falls below the threshold for forfeiture proceedings by virtue of section 167(1) of the Commonhold and Leasehold Reform Act 2002. By virtue

of s 81 Housing Act 1996, subsequent administration charges cannot be added to this sum to increase this amount until they have been finally determined by the tribunal or a court. Therefore throughout the present proceedings, the amount in issue was £200 and below the £350 threshold.

21. In terms of chasing letters and emails issued by the managing agent to the applicant, the tribunal considers that these may require slightly more work and finds that £40 plus VAT per letter or email is reasonable. The Tribunal also finds that solicitors were not instructed to act.

22. Para 6 of Part V of the lease Schedule uses the expression "the reasonable and proper fees of the lessors managing agent for the collection of the rents and for the general management thereof". In the tribunal's judgment this wording does not extend to the cost of the managing agent employing a debt collection agency to collect rents. In particular, there is no reference to the managing agent incurring costs in performing this function but only its fees. Rather, the wording of the covenant is limited to rent collection costs incurred directly by the managing agent, which is a central part of the managing agents' function. The Tribunal also finds that the instruction of debt collectors falls outside the term "general management" so the landlord would also be unable to recover such costs.

23. Therefore the tribunal finds that the costs of the debt collection agency are outside the scope of the lease and not payable.

Name: Mr Charles Norman FRICS **Date:** 10 March 2022.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

(a) "costs" includes overheads, and
(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate Tribunal for a determination whether a service 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) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) 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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate Tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken

into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(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, residential property Tribunal or the Upper 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) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property Tribunal, to that Tribunal;
- (b) in the case of proceedings before a residential property Tribunal, to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property Tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the Tribunal;

(d) in the case of arbitration proceedings, to the arbitral Tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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.

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).

Schedule 11, paragraph 5A

5A(1)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.

(2)The relevant court or Tribunal may make whatever order on the application it considers to be just and equitable.

(3)In this paragraph—

(a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b)“the relevant court or Tribunal” means the court or Tribunal mentioned in the table in relation to those proceeding