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FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	CHI/29UN/LAC/2018/0004
Property	:	Flats 3 and 4, 34 Charlotte Place, Margate, Kent CT9 1LP
Applicant	:	Ms. Kay Golesworthy
Respondent	:	Three Keys Properties Limited
Type of Application(s)	:	(1) Determination of payability and reasonableness of administration charges under schedule 11 Commonhold and Leasehold Reform Act 2002 (2) For an order under section 20C Landlord and Tenant Act (3) For an order under Paragraph 5A of Schedule 11 to Schedule 11 Commonhold and Leasehold Reform Act 2002
Tribunal Member	:	Judge M. Davey
Date of decision	:	11 May 2018

Decision

(1) An administration charge limited to £50 per Flat, in relation to Flats 3 and 4, 34 Charlotte Place, Margate, Kent, is payable by the Applicant by way of costs incurred in connection with the preparation by the Respondent Lessor of Law of Property Act 1925 section 146 Notices dated 31 August 2017 and given to the Applicant by the Respondent.

(2) The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that none of the costs of the Tribunal proceedings shall be treated as relevant costs for the purpose of any future service charge demand made of the Applicant Lessee.

(3) The Respondent is required to reimburse the Applicant in respect of the Application fee, which she has incurred in making her Application to this Tribunal.

Reasons for decision

The Applications

1. By an application ("the Application") to the First-tier Tribunal (Property Chamber) ("the Tribunal"), on 3 February 2018, Ms. Kay Golesworthy, ("the Applicant") who is a Lessee of Flats 3 and 4, 34 Charlotte Place Margate Kent CT9 1 LP ("the Flats") seeks a determination from the Tribunal as to the payability of an "administration fee" of £500 in respect of each Flat, claimed by the Lessor, Three Keys Properties Limited, ("the Respondent") in connection with the preparation and service of two notices served by the Respondent Lessor on the Applicant, under Section 146 of the Law of Property Act 1925 ("The Section 146 Notices"). The Application was made under section 27A of the Landlord and Tenant Act 1985 (payability and reasonableness of service charges) but has been treated by the parties and the Tribunal as an application under paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for a determination as to the payability of an "administration charge" as defined in that Schedule.

2. The Applicant also seeks orders under section 20C of the Landlord and Tenant Act 1925 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 preventing all or part of the Lessor's costs in relation to the Tribunal proceedings being included in any future service charge or administration charge demand by the Lessor.

3. On 23 March 2018 Judge D.R. Whitney issued Directions setting out a timetable for the presentation of the cases of the respective parties, together with any supporting evidence and legal arguments. The Directions proposed that the matter be dealt with on written submissions without the need for an oral hearing unless requested by either party.

(Rule 31 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013). No such request was made and the Tribunal considered the matter, on the basis of the written submissions, on 3 May 2018.

The Property

4. 34 Charlotte Place, Margate, Kent is a three-storey property. It was constructed in 2003 and comprises 4 flats on the upper two storeys and a ground floor undercroft. Flats 3 and 4 are on the second floor.

The Leases

5. The Lease of Flat 3 is dated 22 September 2003 and was granted for a term of 125 years from 29 September 2002. It was made between the then Lessor, John Raymond Dawson and the Applicant Lessee, Ms Kay Golesworthy. The Applicant also holds the Lease of Flat 4 which is taken to be in substantially the same form as that for Flat 3. It is stated to be dated 9 December 2004 The Respondent Lessor holds the freehold reversionary interest in the Property, which it acquired on 2 December 2009.

6. The Leases each make provision for a service charge to be payable by the Lessee in respect of services provided by the Lessor.

7. Clause 3.28 of the Lease(s) in so far as relevant contains a covenant by the Lessee "To pay all expenses (including legal and surveyors' fees) which the Landlord incurs in preparing and serving: (i) a notice under section 146 of the Law of Property Act 1925, even if forfeiture is avoided without a court order".....

The Applicant's Case

8. The Applicant disputes both the payability and reasonableness of the sums demanded of her. She explained that in 2017 she was in dispute with the Lessor over service charges demanded of her and a neighbouring lessee (Flat 1) by the Lessor. In December 2016 both lessees made an application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 seeking a determination as to the payability and reasonableness of the charges. The Tribunal issued its reasoned decision on 28 April 2017. That decision was reissued as amended on 19 June 2017. The result was a reduction in the sums demanded by the Lessor. On 21 August 2017 the Tribunal refused the lessee applicants permission to appeal and notified the parties of the same.

9. The Applicant says that the outcome of the Tribunal decision issued on 19 June 2017 was that the sums payable by way of service charge due in respect of each of Flats 3 and 4 was £2,429.25. By a letter and enclosed statement to her, dated 24 July 2017, the Respondent (who did not know

at that time of the application for permission to appeal made by the Lessees) demanded payment of £2,670.67, which included interim charges of £120.07 and £121.35, which had become due. The Respondent wrote to the Applicant with a revised statement on 24 August 2017 (following the Tribunal's refusal of permission to appeal). This reduced the sum payable to £2590.67 (reflecting a payment of £80 that had been made in the interim) and demanded payment by 31 August 2017. The Applicant says however, that it was neither reasonable nor necessary for the Respondent to have issued Section 146 Notices on 31 August 2017, despite not having received payment from the Applicant as requested by that date. She says that this is because at all times her mortgagee had agreed to settle any outstanding service charges and for the sums in question to be added to her mortgage account. She says that she had also informed the Lessor of this arrangement from April 2017 onwards, most recently in a letter dated 25 August 2017.

10. Furthermore, the Applicant says that on 12 September 2017 she received a letter from the mortgagee of Flat 3 (Mortgage Trust) informing her that the Lessor had written to the mortgagee on 31 August 2017 advising it that the Applicant owed £3,182.04 including £91.37 interest on unpaid service charges and had included copy of a section 146 Notice (dated 31 August 2017) for which the Lessor had added an administration fee of £500. The Applicant says that she then received a letter, dated 13 September 2017, from the Lessor enclosing what was referred to as a further copy of the section 146 Notice. She denies having received any Section 146 Notice before receipt of this letter and enclosure.

11. By a letter dated 1 September 2017 Mortgage Trust) asked the Lessor whether the outstanding payment had been settled by the Applicant. The writer said that they had written *again* to the Applicant asking her to make arrangements to settle the account within 14 days (emphasis supplied). If not the mortgagee would "consider settling the debt on behalf of the borrower in order to protect its security, providing a breakdown of the arrears and proof you are entitled to claim the amount outstanding is received." The Applicant says that in a phone conversation with an officer of Mortgage Trust, on 15 September 2017, the mortgagee agreed that it was wrong of them to have suggested that they had written to her before 1 September 2017. The Applicant referred also to a letter to her from Paragon Bank plc (formerly Mortgage Trust) of 20 October 2017. However, this letter simply said that they had not written to the *Lessor* before 1 September 2017.

12. By a letter to the Applicant of 1 September 2017 Mortgage Trust asked her if she would settle the payment of £3,182.04 with the Lessor by 14 September 2017. The Applicant says that on receipt of this letter (which was some days later than 2 September 2017) she signed an authority, dated 10 September 2017, whereby she authorized Mortgage Trust to settle that sum with the Lessor. On 26 September 2017 Mortgage Trust wrote to the Lessor acknowledging receipt of their letter of 31 August 2017 and confirming that they had written to the Applicant requesting her to make immediate payment of the sums due but that if not settled they would

settle the account on her behalf in order to protect their security. They eventually settled the sum by a cheque to the Lessor dated 12 October 2017 (received on 16 October 2017).

13. In summary, the Applicant argues that a section 146 Notice dated 31 August 2017 (which she denies having received before 14 September 2017 at the earliest) should not have been served because she had told the Lessor, in a letter dated 24 August 2017 (of which she had not kept a copy), that the mortgagee would settle the outstanding charges. The Applicant says that she only received a copy of the section 146 Notice from the Respondent upon receipt of the letter of 13 September 2017 from the Respondent. Furthermore, she disputed the £500 charge as unreasonable.

14. With regard to Flat 4, the Applicant says that on receipt from the Lessor of the statement of 24 July 2017 (demanding £2,670.67) she informed the mortgagee of Flat 4 (Birmingham Midshires) of this amount which she says the mortgagee had agreed to discharge and add to the mortgage debt. A letter and statement of 24 August 2017 from the Lessor to the Applicant reduced this sum to £2,590.67. On 31 August 2017 the Lessor wrote to Birmingham Midshires with regard to Flat 4 in the same terms as the letter of their same date to Mortgage Trust with regard to Flat 3. The sum in question was £3,182.04 being made up in the same way as that requested in the case of Flat 3.

15. On 12 September 2017 Birmingham Midshires wrote to the Applicant. The letter began "Thank you for your recent call to our Customer Service Team advising that you would like us to make payments of £2670.67 on your behalf to Three Keys Properties Limited for Service Charges..We write to confirm Three Keys Properties Limited advised that you owe £3,182.04 plus interest for Service Charges and the enclosed section 146 notice."

16. The Applicant states that, as in the case of Flat 3 she never received the section 146 notice from Three Keys Properties Ltd and saw it only when it was copied to her by the mortgagee with its letter to her of 12 September 2017. That letter went on to advise the Applicant to pay the outstanding sums but accepted that if this was not done by 22 September 2017 they would pay the outstanding amount and debit her mortgage account accordingly.

17. The Applicant argues that, as in the case of Flat 3, the Lessor was aware that the debt would be settled by the mortgagee and that a Section 146 Notice (which was never received until it was copied to her by the mortgagee) was therefore unnecessary. Furthermore, she submits that the sum of £500 was unreasonable in amount.

The Respondent's case

18. The Respondent's case is that upon receipt from the Tribunal, on 23 August 2017, of the refusal of the Applicant's application for permission to appeal the Tribunal decision of 19 June 2017, the Respondent wrote to the Applicant on 24 August 2017 requesting payment of £2,590.67 for each

Flat account by 31 August 2017. When the Applicant failed to make that payment the Respondent served Section 146 Notices on her on 31 August 2014. The Respondent says that it notified the Applicant's lenders of the pending action and consequent threat to their security and the lenders made payment of the respective sums then due on 14 September 2017 (Flat 4 – Birmingham Midshires) and 16 October 2017 (Flat 3 – Paragon Bank).

The Law

19. In so far as relevant to this application "administration charge" is defined in Schedule 11 paragraph 1 of the Commonhold and Leasehold Reform Act 2002 as "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 other 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 (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease."

20. By paragraph 2 "A variable administration charge is payable only to the extent that the amount of the charge is reasonable." A "variable administration charge" means "an administration charge payable by a tenant which is neither – (a) specified in his lease, nor (b) calculated by reference to a formula in his lease" (paragraph 1(3)).

21. Paragraph 4 provides

    (1) A demand for 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.

    (2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations

    (3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

    (4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

22. By paragraph 5(1) An application may be made to [the 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.

23. Paragraph 5(2) provides that Paragraph 5(1) applies whether or not payment has been made.

The Tribunal's determination

24. The sole issue raised by the Applicant that is within the jurisdiction of the Tribunal is whether an administration charge is payable and if so the amount of that charge.

25. The first aspect of this issue is whether the disputed charge fall within the definition of an administration charge for the purposes of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. The second issue is whether the Lease or some other statute permits such a charge. The third issue is whether, assuming that the answer to the first two issues is affirmative, the charge is payable and if so and variable, whether it is reasonable and if not what would be a reasonable charge.

26. With regard to the first issue the Section 146 Notice charge, if established as payable, falls within paragraphs 1(1)(c) or (d) of Schedule 11 of the 2002 Act. That is to say as amounts payable by the 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."

27. The second issue, of payability, depends first on the wording of the Lease. Does it permit such charges to be made and if so are the charges properly levied?

28. Clause 3.28 of the Lease(s) in so far as relevant contains a covenant by the Lessee "To pay all expenses (including legal and surveyors' fees which the Landlord incurs in preparing and serving: (i) a notice under section 146 of the Law of Property Act 1925, even if forfeiture is avoided without a court order....." It follows that the expenses incurred by the Respondent Lessor in preparing and serving the section 146 Notices would be recoverable provided they were reasonably incurred and to the extent that they are reasonable.

29. The Applicant's case is that there was no ground for service of section 146 Notices on 31 August 2017 because the Respondent was perfectly aware that the Applicant had an arrangement with her mortgagees that they would pay any outstanding sums due by way of service charge. She argues therefore that any costs incurred in preparing and serving the section 146 notices were not properly incurred. She also says that she did not receive

the section 146 Notices notice save by way of a copy forwarded to her by her mortgagees on 13 September 2017.

30. The Respondent's case is that, in its letter to the Applicant of 24 August 2017, it had demanded payment of the outstanding charges by 31 August 2017 and that such payment not having been received by that date it acted reasonably in serving the section 146 notices, dated 31 August 2017.

31. The Tribunal accepts the Applicant's assertion that she had told the Respondent that it was her understanding that her lenders would settle any outstanding charges and add the sums paid on her behalf to her mortgage accounts. However, the lenders had not given any such undertaking to the Respondent in writing before 31 August 2017. The mortgagee of Flat 3 only gave such an assurance to the Respondent on 26 September 2017 and payment was finally made on 16 October 2017. The mortgagee of Flat 4 only made payment to the Respondent Lessor on 14 September 2017 and there is no evidence of any written undertaking to the Respondent before that date that they would do so.

32. The Tribunal therefore finds that it was open to the Lessor to serve section 146 Notices on 31 August 2017. The Tribunal accepts the Applicant's assertion that she did not receive the section 146 Notices until they were copied to her. The Respondent provided no evidence of posting or receipt. Furthermore, the Applicant's address given in the Notices was Flat 2 St Stephens Manor, Broadstairs, Kent, rather than 2 The Mews, St Stephens Manor, Broadstairs, Kent, which is a different property. The Applicant says that she had notified the Respondent of her correct address and a failure to correctly address correspondence had led to delays in receipt in the past. However, despite this finding the Tribunal considers that for the reasons set out above it does not have any bearing on whether it was proper for the Respondent to have served the notices. The fact remains that the Applicant received the Notices before the Respondent had received written undertakings from the lenders that they would pay the outstanding sums on behalf of the Applicant.

33. The remaining issue is that of the reasonableness of the sum of £500 by way of "administration fee" in respect of each Notice demanded by the Respondent. Paragraph 2 of Schedule 11 to the 2002 Act provides that a variable administration charge is payable only to the extent that it is reasonable. The Respondent in the present case is entitled under the terms of the Lease to the costs incurred in preparing and serving the section 146 notices. Paragraph 1(1) provides that an administration charge is variable if it is neither specified in the lease nor calculated in accordance with a formula specified in the lease. Thus the sums claimed in this case are a variable administration charge. However, such costs must have been reasonably incurred and be reasonable in amount.

34. As determined above the Tribunal finds that it was reasonable for the Respondent to have incurred costs in preparation and service of the section 146 Notices. However, The Tribunal finds that the "administration fee" levied in respect of each Notice is not reasonable. Despite the clear

Directions of the Tribunal, the Respondent has produced no evidence whatsoever to justify the charge of £500 per notice. There is neither evidence of solicitors or surveyors having been involved nor any details as to who prepared the Notices, the time taken, or the charging rate of the person involved. The Applicant says that a managing agent, Cockett Henderson, of Broadstairs, Kent, has advised her that a normal charge for serving a section 146 notice would be between £100 and £200.

35. The one page Notices served in the present case are in an identical standard form format with minimal insertions of the relevant details. The schedule of service charge and other costs attached to the Notices is identical in both cases. In the absence of any evidence from the Respondent as to the costs actually incurred the Tribunal determines that any charge should be at the lower end of the spectrum and that no more than £50 per notice is reasonable in view of the work required, which was to verify the details to be inserted and prepare the statement of sums due (which the Respondent already had to hand).

Section 20C Landlord and Tenant Act 1985 application

36. The Applicant seeks an order under this provision preventing the Respondent from treating any of the costs of the Tribunal proceedings as part of any future service charge payable by the Applicant Lessee. Section 20C provides that the tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances. Because the Applicant has substantially succeeded in her challenge to the administration charge of £500 per Flat the Tribunal makes the order requested.

37. The Tribunal makes this Order for the sake of completeness despite the fact that the Lease would not in any event appear to permit recovery by the Landlord of the costs of the present Tribunal proceedings by way of a service charge.

Commonhold and Leasehold Reform Act 2002
Paragraph 5A of Schedule 11

38. Paragraph 5A of Schedule 11 gives the Tribunal jurisdiction to make an order reducing or extinguishing the Lessee's liability to pay a particular administration charge in respect of litigation costs incurred by the Landlord in connection with the proceedings before the Tribunal. The Tribunal may make whatever order on the application it considers to be just and equitable. In the present case no such particular charge is claimed to have been incurred and therefore there is no liability to be extinguished by an Order. Furthermore, such a charge does not appear to be provided for by the Lease in any event.

Application fee

39. The Tribunal has further decided to exercise its power to require the Respondent to reimburse the Applicant in respect of the Application fee, which she has incurred in connection with this Application to the Tribunal. This power can be exercised at the discretion of the Tribunal under regulation 13 of the Tribunal Procedure (First-tier Tribunal) Property Chamber Rules 2013. In the present case the Applicant has succeeded substantially in her claim and the Tribunal accordingly orders that the Respondent reimburse the Applicant the sum of £100 being the amount of her Application fee to the Tribunal.

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 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, that 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.

Martin Davey
11 May 2018

Annex: The Law

Section 20C Landlord and Tenant Act 1985

(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 the First-tier Tribunal are not to be regarded as relevant costs to be taken into account when determining the amount of service charge payable by the tenant or any other person or persons specified in the application.

.....

(4) the 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

Paragraph 5A of Schedule 11 provides that

(1) A tenant of a dwelling in England make 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 the kind mentioned in the table and
    (b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to these proceedings

Proceedings to which costs relate	"the relevant court or tribunal"
Court proceedings	The court before which the proceedings are taking place or, if the application is made after proceedings are concluded, the county court
First-tier Tribunal proceedings	The First–tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court