



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

**Case reference** : **LON/00AX/LAC/2021/0002 P**

**HMCTS code  
(paper, video,  
audio)** : **P: PAPERREMOTE**

**Property** : **171 Surbiton Hill Park, Surbiton, KT5  
8EL**

**Applicant** : **Laura Kennett**

**Representative** :

**Respondent** : **Concept 34 Ltd**

**Representative** : **Mr T Nevitte**

**Type of application** : **For the determination of the liability to  
pay an administration charge under  
Schedule 11 Commonhold and  
Leasehold Reform Act 2002 (as  
amended by s131 Housing and Planning  
Act 2016)**

**Tribunal member** : **Judge Pittaway**

**Date of decision** : **11 May 2021**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers which has been consented to by the applicant and not objected to by the respondent. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same, or it was not practicable and all issues could be determined in a remote hearing/on paper. The documents that the tribunal was referred to are in a bundle of 40 pages, including

- The application
- Directions
- The Statement of Case by Concept 34 Ltd
- The applicant's response and five appendices

the contents of which the tribunal has noted.

## **Decisions of the tribunal**

- (1) Registration fees are not administration charges and are outside the jurisdiction of this tribunal.
- (2) The tribunal determines that nothing is payable by the applicant in respect of the administrative charges levied in 2018 and 2020.
- (3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge/ by way of administrative charges.

## **The application**

1. The Applicant seeks a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the **2002 Act**") as to liability to pay and reasonableness of two administration charges levied by the respondent, one in 2018 and one in 2020.

## **The background**

2. The property which is the subject of this application is a described in the application as a two-bedroom ground floor maisonette flat.

3. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
4. The applicant holds a long lease of the property dated 30 April 2007. The bundle did not include a copy of the lease despite the Directions requiring that it should. The tribunal has referred to the copy lease provided with the original application.

### **The issues**

5. The directions identified the relevant issues for determination as follows:
  - (i) Whether administration charges of £285 charged in 2018 and £320 charged in 2020 are reasonable and payable.
  - (ii) Whether an order under section 20C of the Landlord and Tenant Act 1985 (the '**1985 Act**') limiting the landlord's costs in the proceedings and/or an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (the '**2002 Act**') reducing or extinguishing the tenant's liability to pay an administration charge in respect of litigation costs.

### **Evidence and submissions**

6. The applicant referred the tribunal to Paragraph 5-9.3 of Schedule 5 of the lease which provides,

'Within 28 days of assignment, charge, sublease or any transmission or other devolution relating to the Property the Tenant must produce a certified copy of any relevant document for registration with the landlord's solicitor, and must pay the Landlord's solicitor's reasonable charges for registration of at least £40'.

The tribunal notes that the directions record that during the oral case management hearing Mr Nevitte confirmed that the fees had been received by the respondent not the landlord's solicitor.

7. The respondent's statement of case set out various clauses from the lease. Clause 1.1.9 which defines 'The Landlord's Expenses', clause 5.10 which is a covenant by the tenant to pay costs incurred by the landlord in connection with any application for consent under the lease, clause 6-3.3 which provides that the landlord will enforce the obligations of other tenants subject to repayment to the landlord of the cost of doing

so and clause 7-2.3 which deems to include certain costs as Landlord's Expenses.

The respondent's statement also included demands for landlord's services, the copy 2020 demand (which is almost illegible in the bundle provided) states that the demand is for the 'Notice Fees'. The copy 2018 demand is headed 'copy demand for Landlord services' and details those services as being, 'Providing details of ground rent/service charge, and receipts; Confirmation of any outstanding arrears, Receipting a Notice of Charge.' In its statement the respondent explained that the services provided by the landlord in each case extend beyond a simple acknowledgment of a notice of charge, that the landlord has charged the work at £40 per hour, and solicitors were not instructed to keep the costs low.

8. The applicant submitted that based on a charge out rate of £40 per hour the respondent had spent 7 hours on the 2018 notice of charge and 8 hours on the 2020 notice of charge. On the work detailed in the 2018 notice the applicant submits that the respondent has provided no evidence that the information (as to ground rent, etc.) was required by the solicitors acting for the mortgagee, who confirmed to her that the amount demanded, 'is a set fee by the freeholder'. The applicant gave evidence that by the time the 2020 demand was made an RTM company was responsible for the management of the property and had been since February 2019. The applicant submits that the solicitor then acting (Optima Legal) made no requests to the freeholder and the only e mail from the freeholder was a request for the Notice of Charge. As to the respondent claiming that it needed to review the lease the applicant accepts that this may have been necessary in 2018 but there was no need to repeat the exercise in 2020.

The applicant referred the tribunal to an Upper Tribunal decision *Sheldon v Proxima GR Properties Ltd* [2012] UK UT (LC) in which it was held, in relation to a licence to underlet, that a fee greater than £40 could not be justified. In the applicant's submission a fee of more than £40 for each registration fee could not be justified.

### **Reasons for the tribunal's decisions**

9. Having considered all of the documents provided, the tribunal has made the determinations set out above on the various issues for the following reasons.

#### **Are the charges 'administration charges'?**

10. This is an application as to the reasonableness of administration fees charged by the respondent in 2018 and 2020. From the respondent's statement of case it appears that the charges levied relate to more than

just the registration fee (described in the bundle as the ‘Notice Fee’) payable under Paragraph 5-9.3 of Schedule 5. Part of the charge is by way of the registration fee and the remainder relates to other charges claimed by the respondent, such as providing details of ground rent/service charge, and receipts, and confirmation of any outstanding arrears. While both demands state that they refer to the Notice Fee it is the respondent’s submission that the work involved was more than just the acknowledgement of the notice of charge in each case.

11. A registration fee payable to register notice of a charge is not an ‘administration charge’ for the purposes of the 2002 Act.

12. Paragraph 1 of Schedule 11 defines an ‘administration charge’ as

(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, .....

A registration fee payable for registering a charge does not fall within the definition.

13. The tribunal were unable to locate any Upper Tribunal decision *Sheldon v Proxima GR Properties Ltd*, as cited by the applicant.

14. The clauses from the lease referred to by the respondent in its case do not relate to administration charges, which are the subject of this application.

15. From the description given by the respondent of the other work which it undertook it appears that these charges do fall within paragraph 1(1)(b) of Schedule 11 of the 2002 Act and the tribunal has the jurisdiction to determine the liability to pay and reasonableness of these charges.

Paragraph 5 of Schedule 11 of the 2002 Act provides

‘(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.

### Are the administration charges payable?

16. Paragraph 4 of Schedule 11 of the 2002 Act provides
- (1) 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.
  - (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.
17. There is no evidence before the tribunal that the demands made by the respondent were accompanied by any summary of rights and obligations.
18. In the absence of such summary the applicant is not liable to pay the administration charges claimed.

### Reasonableness of the administration charges

19. As the charges are not payable by the applicant the tribunal does not have to consider whether the charges in question were reasonable. If it had had to consider the reasonableness of the charges it would not have found them to be reasonable.
20. In the absence of any breakdown of the charges levied, between the registration fee and the other charges the tribunal would have allocated £40 of each charge to the registration fee, being the minimum sum payable for each registration fee under the terms of the lease. The other charges would therefore have amounted to £245 in 2018 and £280 in 2020, representing just over 6 hours work and 7 hours work by the landlord at its charge out rate of £40 per hour respectively.
21. The tribunal accepts the applicant's evidence and submissions that in relation to the 2020 charge Optima Legal made no requests to the freeholder and that only e mail from the freeholder was a request for the Notice of Charge. It also accepts that a detailed review of the lease would not have been necessary as this had been undertaken in 2018 and there had been no changes to it since. The tribunal therefore would

have found that it was not reasonable for the landlord to charge £280 by way of administration charges in 2020. There is no evidence before the tribunal that the respondent provided any information or documents which might have given rise to an administrative charge under paragraph 1(1) (b) of Schedule 11.

22. As to the adjusted charge of £245 levied in 2018 the respondent submits that this related to providing details of ground rent/service charge, and receipts, and confirmation of any outstanding arrears. Such charges would be administrative charges under paragraph 1(1)(b) of Schedule 11 of the 2002 Act. The applicant submits that no evidence has been provided that such requests were made but the tribunal would have been prepared to accept that the landlord might have been asked to provide such information, as detailed in the invoice provided. The tribunal would not however have considered charging for 7 hours of work for these services to be reasonable. It would be reasonable for a charge of between one and two hours be made for providing the information that the respondent says was provided. A reasonable amount to have been charged for providing this information would have been, say, £60.

Application under s.20C of the 1985 Act and/or paragraph 5A Schedule 11 of the 2002 Act

23. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act and paragraph 5A of the 2002 Act, so that the respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** Judge Pittaway

**Date:** 11 May 2021

**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).