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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/OOFF/LSC/2013/0131**
Property	**:**	**APARTMENT 5, HERON HOUSE, BRINKWORTH TERRACE, YORK, YO10 3DE**
Applicant	**:**	**MISS NICOLA CHAMBERLAIN ASSISTED BY MR TOM JONES**
Respondent	**:**	**REMUS MANAGEMENT LIMITED**
Type of Application	**:**	**LIABILITY TO PAY SERVICE CHARGES. THE LANDLORD AND TENANT ACT 1985, SECTIONS 27A, 19 AND 20C.**
Tribunal Members	**:**	**MR C. P. TONGE, LLB, BA.** **MR C. I. H. LONCASTER** FRICS. **MRS M. R. OATES, BA.**
Date of Decision	**:**	**12 MAY 2014**

DECISION

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Summary of the Decision

1. By 30 June 2010 the Applicant was liable to pay to the service charge account being held by the Respondent, for the property, the sum of £1568. This money has not been paid to the Respondent and it remains payable.

2. By 30 June 2012 the Applicant was liable to pay to the service charge account being held by the Respondent, for the property, the sum of £40 administration charge. This money has not been paid to the Respondent and it remains payable.

3. The Tribunal makes an order pursuant to section 20C of The Act. The Landlord and Respondent shall not bring into account any costs incurred in connection with proceedings before the Tribunal, in calculating service charges payable by the Applicant.

4. No other orders are made as to costs.

Application and Background

5. This matter came before the Tribunal as a result of an application by Miss Nicola Chamberlain (the Applicant) received by the Tribunal on 11 September 2013. The Respondent is Remus Management Limited (the Respondent).

6. The application related to Apartment 5, Heron House, Brinkworth Terrace, York, YO10 3DE (the property).

7. The Tribunal was asked to decide, firstly, if the Applicant was liable to pay £1568 in respect of service charges, for the period prior to 30 June 2010. Secondly, was the Applicant liable to pay administration charges claimed as a result of non-receipt by the Respondent of the £1568? Thirdly, to determine what service charges became payable in respect of service charge years ending on the last day of 2011, 2012 and 2013. Finally, the issue of costs was to be considered with an application under section 20C of The Act.

8. The Applicant holds the remainder of a lease of 125 years on the property signed by the Applicant and her husband Mr Cohen on 22 June 2004. The Applicant and her husband are now divorced and it was agreed during the divorce proceedings that the Applicant become solely responsible for the lease on the property.

9. Directions were given on 13 November 2013. There was a joint bundle of evidence before the Tribunal when it sat to consider this case at Leeds on 12 May 2014.

10. The Respondent property management company manage the property on behalf of the freeholder, landlord, Mintoncrest Limited.

Inspection of the Property

11. The Tribunal inspected the property at about 10am on 12 May 2014. The Applicant was not present. Ms Laura O'Sullivan, Property Manager and Ms Zoe Byass, Senior Property Manager, were present on behalf of the Respondent.

12. The property is a ground floor purpose built apartment situated in Heron House. The Heron House building has a central block with two adjoining blocks. The building has four floors served by a lift in the central block and stair wells in the two adjoining blocks. A door buzzer security entry system is provided at the entrance doors. Corridors give access to the rest of the building, these and the stair wells are carpeted, lit with electric lighting and heated with storage heaters. The property is let with a private parking space.

13. Heron House is one of three similar "houses" on a purpose built estate of 70 apartments. The grounds contain private parking for the residents and a few parking spaces for visitors. The grounds contain link roads, pathways, lawns, hedges and areas mostly planted with shrubs. Electric lighting is provided and security cameras are situated throughout the site although the Tribunal was informed that these are a hoax, intended to put offenders off committing crime.

14. The Tribunal formed the opinion that the complex is well kept.

The Law

Section 18 of the Landlord and Tenant Act 1985 Meaning of "service charge" and "relevant costs".

(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 purposes—

(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 20C "Limitation of service charges: costs of proceedings.
(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 or leasehold valuation tribunal, or the Lands 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;
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
(c) in the case of proceedings before the Lands 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."

Section 27A Liability to pay service charges: jurisdiction
(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.

(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 of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

The Commonhold and Leasehold Reform Act 2002

SCHEDULE 11
ADMINISTRATION CHARGES
PART 1
REASONABLENESS OF ADMINISTRATION CHARGES

Meaning of "administration charge"

Para 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.

Reasonableness of administration charges

Para 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Relevant Provisions of the Lease

15. The Applicant holds the remainder of a lease of 125 years on the property signed by the Applicant and her husband Mr Cohen on 22 June 2004.

16. The tenant's covenants are dealt with at section 2 of the lease and clause 2.2 requires the tenant to pay to the Landlord, service charges calculated in accordance with the Fourth Schedule.

17. Clause 2.12 of the lease requires the tenant to pay on a full indemnity basis any costs, charges and expenses reasonably incurred by the Landlord and his agents in the collection of rent and service charges.

18. Clause 5, with eleven sub-clauses, provides that the Landlord covenants to maintain the development.

19. The Fourth Schedule to the lease defines what are to be considered to be service charges that are payable under the lease.

20. Clause 53.1.1., brings expenditure by the Landlord in complying with his obligations pursuant to the Respondent's covenant in Clause 5 into what can be charged to a tenant as a service charge.

Written Submissions

21. These are dealt with very briefly due to the fact that the majority of the case was agreed between the parties before the hearing commenced. As such only a brief summary is given of the issues that were relevant after those agreements were made.

The Applicant

22. The Applicant's case was to the effect that she was not liable to pay the £1568 to the Respondent because she had paid it by standing order to the previous management agent, Eddison's. She had done this by mistake, after Eddison's had ceased to be the appointed management agents. The

Applicant took the view that the mistake had been partially caused by the Respondent who had failed to inform her properly that there had been a change in management agents.

23. This mistake had been compounded when Kirsty Robbins, an employee of the Respondent working in the credit control department, had offered to help sort the problem out. This caused the Applicant to delay in taking action herself. Eddison's had repaid the £1568 to Mr Cohen, without the Applicant's knowledge or permission and the money was now lost to the Applicant.

24. The Applicant took the view that she had paid the money once and was not liable to pay it again. Further, administration charges could not be payable in pursuing this debt, because the Applicant was not liable for the debt.

The Respondent

25. The Respondent took the view that the service charges were payable and that the Respondent had not been paid. Administration charges were also payable in pursuing payment.

The Hearing

26. The hearing commenced at 11.45am on 12 May 2014 at the Tribunal Office, York Place, Leeds. The Applicant was present at the hearing and was assisted by Mr Tom Jones. The Respondent was represented by Ms O'Sullivan and Ms Byass, who had both been present at the inspection.

27. At the start of the hearing the parties told the Tribunal that much of the case had now been agreed between them. The agreement was that the only remaining issues for the Tribunal to consider were whether or not the Applicant is liable to pay the £1568 and the administration charges of £205 sought by the Respondent as a result of non-payment of that money. The figure of £1568 was an agreed figure, the Tribunal only to consider liability to pay it.

28. The Applicant left the Tribunal room at 1pm, leaving Mr Jones to represent her in her absence.

The Applicant's case as presented at the hearing

29. The applicant had purchased the long lease on the property on 22 June 2004 with her ex-husband, Mr Cohen.

30. On 7 September 2007 she moved address.

31. In August 2009 she separated from her husband.

32. In June 2010 she moved address.

33. In November 2010 she moved address.

34. In May 2011 she moved address. On each move of address the Applicant assumed that she had told the management agents of the new address. She also assumed that she had taken out a postal redirect with the post office for 3 or 6 months. Each address was supplied to the Tribunal.

35. The split between husband and wife had been a difficult split. Soon after the split the Applicant had been told by Mr Cohen that she was to be responsible for the property. Financial matters were fully resolved 2 months ago and the fact that the Applicant was now solely responsible for the property had been confirmed in the divorce proceedings.

36. The Applicant had not received the letter from the freeholders of the property (at page 24 of the bundle). The letter dated, 30August 2007, would have informed the Applicant that there was to be a change of management agents with effect from 1 November 2007 and that standing orders may need to be changed.

37. The Applicant had not received the letter from the Respondent's (at page 25 of the bundle). The letter dated, 31 October 2007, would have informed the Applicant that there was to be a change of management agents with effect from 1 November 2007 and that the Respondent's had been appointed as the new management agents, enclosing a brochure.

38. In February 2010 Mr Cohen had handed a bundle of documents to the Applicant, concerning the property.

39. A copy of the Eddison's account for the property (at page 30 of the bundle) showed that Eddison's had transferred credit of £503.62 to the Respondent on 5 February 2008. This was part of the transfer of management from Eddison's to the Respondent.

40. The account had then received a further 8 quarterly payments of £196 by operation of the standing order, which by error, had not been cancelled.

41. On 2 June 2011 £1568 had been refunded to Mr Cohen. The Applicant had not asked her husband to return that money to her.

42. The Applicant said that Kirsty Robbins, an employee of the Respondent had offered to help to get the money back from Eddison's. The Tribunal was referred to an email (section 2, page 5 of the bundle) dated 22 June 2011 from Ms Robbins to the Applicant. Part of this email read as follows,

"Please note that we took over management from Eddison's on the 2nd November 2007 and your payments were made to Eddison's after this date." With a further sentence, "I will keep you informed with the progress with Eddison's." The Applicant relied upon this as proof that Ms Robbins had agreed to help to get the money transferred to the Respondent.

43. Mr Jones on behalf of the Applicant was referred to a letter (section 2 of the bundle, page 5) written by the Applicant to Wilton Finance, who had been appointed by the Respondent to collect the debt then owed to the Respondent. The letter is dated 21 February 2009. Mr Jones agreed that by that date the Applicant must have known that the Respondent was now the management agent. Mr Jones agreed that half of the payments made in error to Eddison's had been made after that date.

44. Mr Jones stated that other tenants had complained of poor communications from the Respondent. There had been insufficient communication from the Respondent with the Applicant in this case, about the fact that they had taken over management of the property.

45. In relation to the application pursuant to section 20C of The Act Mr Jones made submissions to the following effect:

- The Applicant was not being vexatious in bringing this matter before the Tribunal, she had attempted to reach agreement with the Respondent and had attempted to make payments (section 2, pages 13 to 30, of the bundle).
- The vast majority of the case had been settled today between the parties without the Tribunal having to consider it.
- Payments have been made before the hearing, so that the only sums outstanding today are the £1568 and the now reduced administration charge.
- The Applicant realises that the money is owed but considers that she is not 100% responsible for the loss of the money to Mr Cohen. If there had been better communication between the parties the standing order would have been cancelled and the money would have gone to the Respondent.
- Ms Robbins, representing the Respondent volunteered to assist in getting the money back from Eddison's, lulling the Applicant into a false sense of security. Ms Robbins could have said no at the outset and then the Applicant might have had a chance of getting the £1568 back.
- In the circumstances it would be wrong to permit the Respondent to charge the Applicant extra in service charges because the Applicant had brought this case to the Tribunal.

46. The Applicant asks that the Tribunal consider ordering a refund of the Applicants case fee of £125, hearing fee of £190 and out of pocket expenses incurred in attending the directions hearing of £200.

The Respondent's case as presented at the hearing

47. On behalf of the Respondent it was submitted that the Applicant is liable to pay service charges as calculated in the service charge, fourth schedule, of the lease.

48. The Respondent's case was that the figure of £1568 had already been agreed as being the figure in issue between the parties, in effect they had agreed that the figure was a reasonable figure to charge as a service charge. The only issue for the Tribunal to decide in relation to that figure was whether or not the figure was payable by the Applicant.

49. The Respondent did not intend to call Kirsty Robins to give evidence. She was no longer an employee of the Respondent. The message (section 2, page 5 of the bundle) was only evidence that Ms Robbins was in contact with Eddison's. It did not otherwise support the Applicant's case.

50. The Respondent took the view that the sum of £1568 remained payable by the Applicant. Nothing was done by Ms Robbins that could change that. The Respondent had done nothing wrong, it simply had never received the money.

51. The Respondent's case in relation to the administration charges changed as the Respondent's case was presented. The Respondent chose to pursue only the one £40 administration charge that related to preparation of the case in relation to it being sent to Wilton Finance Limited. That company was instructed to collect the unpaid service charges from the Applicant. The instructions included preparing a synopsis of the case to provide enough information for Wilton Finance to understand the case and copying all relevant documents.

52. On behalf of the Respondent it was submitted that administration charges are payable under the terms of the costs section of the lease, particularly clause 2.12.

53. Section 20C of the Act was considered and on behalf of the Respondent it was indicated that the Respondent would seek to draw in the costs incurred by the Respondent, namely £525 plus value added tax, into the next service charge demand for the Applicant.

54. The Respondent considered it reasonable to do this because the £1568 had always been payable and had not been paid.

The Deliberations

55. It was agreed between the parties that over a period time before 30 June 2010 service charges of £1568 had been demanded by the Respondent from the Applicant in relation to the property. It was also agreed that although that money had been paid to Eddison's it had not been received by the Respondent. It was further agreed between the parties that the Tribunal in relation to this £1568, only had consider the issue of liability to pay it and not reasonableness of the individual charges making up the sum. Service charges are payable under the provisions of the fourth schedule of the lease and in particular, clause 53.1.1. and clause 2.3.

56. The Tribunal considered the Mintoncrest Limited account for the property (at pages 21 to 23 of the bundle) and the evidence given about it. This account established that the Applicant had been paying service charges to the Respondent since 12 March 2009. It is therefore clear that from that date the Applicant knew that service charges should be paid to the Respondent. Indeed Mr Jones on behalf of the Applicant had conceded that as a result of a letter that the Applicant had written, she must have this knowledge by 12 February 2009.

57. There were a total of eight payments made to Eddison's by error and four of these payments were made after it is undeniable that the Applicant knew that payments were to be made to the Respondent and not Eddison's.

58. The Tribunal notes that in all the correspondence and service charge demands in the bundle of evidence that were issued the Respondent, the Respondent went to great lengths to identify to whom the payments should be made.

59. The Tribunal notes that the Applicant separated from her husband in August 2009 and that five erroneous payments had already been made by that time.

60. The only people who could have cancelled the standing order were the Applicant and or Mr Cohen.

61. The Tribunal decided that this was an error on the part of the Applicant, who should have cancelled the standing order as soon as she became aware of the change in management agents.

62. The Tribunal, having assessed all the evidence, both written and oral, does not put any blame upon the Respondent for the Applicant's failure to cancel the standing order.

63. The Tribunal considering the involvement of Ms Robbins noted that it was unfortunate that the Respondent had not called her to give evidence, although accepting that she was no longer an employee of the Respondent.

64. It is clear that Ms Robbins was liaising with Eddison's by 22 June 2011. She was looking into an issue as to whether or not a payment had been made in October 2008 (page 5, of section 2 of the bundle). There is no way for the Tribunal to determine at what date Miss Robbins first approached Eddison's.

65. The Tribunal accepts that the Applicant thought that this involvement might result in the £1568 being retrieved from Eddison's and that this may have caused a delay in the actions that she should have taken herself. This however, is not enough for the Tribunal to decide that the Respondent is at fault for the fact that the £1568 was repaid to Mr Cohen.

66. The Tribunal notes that the £1568 was repaid to Mr Cohen on 2 June 2011. The money had been paid out of a joint account and either account holder could ask for a repayment of the money. Faced with such a request from Mr Cohen, the money was repaid to him. The Tribunal accepts the evidence of the Applicant that Mr Cohen should not have done this, but he had already taken the repayment before the email from Ms Robbins on 22 June 2011.

67. The simple fact is that Ms Robbins would not have been able to anything with the money even if it had still been in the Eddison's account, it would have required action from the Applicant to retrieve that money.

68. In relation to the application pursuant to section 20C of The Act, the Tribunal accepts the evidence on behalf of the Applicant to the extent that the Tribunal finds that it is just and equitable to make an order that the Respondents costs associated with responding to this case should not be taken into account in calculating service charges in the future.

69. The Tribunal does not make any other orders in relation to costs or the refund of fees paid by the Applicant.

70. The only remaining administration charge for the Tribunal to consider is the £40 charge, referred to in paragraph 51 of this decision. This is payable under clause 2.12 of the lease and the Tribunal considers this to be a reasonable charge, raised by the Respondent in pursuing the unpaid £1568.

The Tribunal Determination

71. By 30 June 2010 the Applicant was liable to pay to the service charge account being held by the Respondent, for the property, the sum of £1568. This money has not been paid to the Respondent and it remains payable.

72. By 30 June 2012 the Applicant was liable to pay to the service charge account being held by the Respondent, for the property, the sum of £40 administration charge. This money has not been paid to the Respondent and it remains payable

73. The Tribunal makes an order pursuant to section 20C of The Act. The Landlord and Respondent shall not bring into account any costs incurred in connection with proceedings before the Tribunal, in calculating service charges payable by the Applicant.

74. No other orders are made as to costs.