



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

Case Reference : **MAN/OOCG/LAC/2015/0009**

Property : **Apartment 4, Avignon, 48 Kenwood,
Sheffield S7 1NQ**

Applicant : **Ian Andrews**

Respondent : **Simarc Property**
Respondent's
Representative : **Stevensons Solicitors**

Type of Application : **Commonhold & Leasehold Reform Act 2002
Schedule 11, Paragraph 5**

Tribunal Members : **Laurence Bennett (Tribunal Judge)
Jonathan Holbrook (Tribunal Judge)**

Date of determination : **27 July 2015**

Date of Decision : **29th July 2015**

DECISION

Application

1. Mr Ian Andrews applies for a determination under Paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 of his liability to pay and reasonableness of administration charges relating to Apartment 4, Avignon, 48 Kenwood Road, Sheffield S7 1NQ (the Property).

Preliminary

2. The Applicant and the Respondent are the respective owners of the Lessors and Lessees interest in the Property created by the lease mentioned below.
3. The application was received on 27 April 2015.
4. Directions dated 28 May 2015 made by a Deputy Regional Judge of the Tribunal included: "The Tribunal considers it is appropriate for the matter to be determined by way of a paper determination." The directions gave opportunity for the parties to request a hearing. No request was made.
5. The Applicant and Respondent provided submissions and documents in accordance with the directions.
6. The Tribunal convened on 27 July 2015 without the parties to determine the application.

The Law

7. Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the Act) provides that:-
 - 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 application for such approvals,
 - (b) for or in connection with the provisions 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.
 - 1(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

- 2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.
- 5 (1) An application may be made to the appropriate Tribunal for 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

8. The operation of the Act was brought into effect by SI 2003 No 1986. Paragraph 8 of Schedule 2 of that instrument states:

Paragraphs 2-5 of Schedule 11 shall not apply to an administration charge that was payable before the first commencement date.

9. The first commencement date was 30 September 2003

The Lease

10. The Applicant holds the leasehold interest in the property created by a lease dated 13 May 2005 made between Strata Homes Limited (1) Mistral (Kenwood Road) Management Company Limited (2) Rodney Ainley (3) for a term of 200 years from and including 1 January 2005 (the Lease).
11. Paragraph 5.21 of the Lease contains the Tenants covenant with the other parties: "Within one month of every dealing with, mortgage or charge of the Property to give notice of it to the Landlord or the Landlord's solicitors and to pay a reasonable registration fee of not less than £4"

Facts and Submissions

12. The application relates to payments requested by the Respondent in respect of "Notice of assignment and charge (£288), deed of covenant (£216) and ground rent arrears fees (£96)."
13. The Respondent's statement of case as acknowledged in the Applicant's reply confirms that "It no longer seeks from the Applicant any deed of covenant fee or any ground rent arrears fees."
14. The sole issue remaining for determination relates to the notice of assignment and charge fee.
15. The Respondent's solicitors submit that the Tribunal does not have jurisdiction as the remaining charge falls outside the definition of administration charge in paragraph 1(1) of Schedule 11 above. Attention is drawn to Tribunal decisions in 2009 and 2010 which conclude that similar notice fees are not administration fees.
16. The Applicant submits that the relevant fee could be considered a charge 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. The Applicant concludes his reasoning: "Therefore it can be said that this disputed fee is for the provision of information on behalf of the Landlord; the information required in order to pay the Landlord the ground rent due."

Tribunal's conclusions with reasons

17. In order for the Tribunal to have jurisdiction, the fee referred must necessarily constitute an administration charge within the provisions set out above. This appears to be acknowledged by the Applicant in his comments in reply to the Respondent's case.
18. We accept that on the face of it as is consistent with the prior decisions cited by the Respondent that the fee does not obviously fall within the statutory definition.
19. We have considered the Applicant's submission, notwithstanding the history of contact between the parties, the fee is clearly allocated to the particular activity or service. We do not find factors that somehow convert or transpose the reason for the fee such that it falls within the statutory definition. It remains a notice fee.
20. For the above reason we conclude we do not have authority to determine the outstanding sum and make no comment as to liability or reasonableness.

Order

21. Mr Andrews' application is dismissed.