

9341



**First-tier Tribunal  
Property Chamber  
(Residential Property)**

**Case Reference** : CAM/00KG/LAC/2013/0005

**Property** : 59 Garner Court,  
Dunlop Road,  
Tilbury,  
Essex RM18 7BG

**Applicant** : Chijioke Igbokwe

**Respondents** : Freehold Managers (Nominees) Ltd.

**Date of Application** : 26<sup>th</sup> August 2013

**Type of Application** : To determine reasonableness and  
payability of service charges and variable  
administration charges

**The Tribunal** : Bruce Edgington (lawyer chair)  
Mr. David Brown FRICS MCI Arb

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**DECISION**

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1. The application is amended to enable the Tribunal to determine the payability and reasonableness of service charges.
2. Of the service charges and variable administration charges claimed from the Applicant by the Respondent or its agents, the determination of the Tribunal is as follows:-

<u>Charge</u>	<u>Claim(£)</u>	<u>Determination</u>
29/05/12 service charge deficit	13.55	payable
11/06/13 INT Post legal fee	66.00	not reasonable
09/07/13 INT Referral Fee	96.00	£25 is reasonable
Legal costs	<u>183.00</u>	not reasonable
Total cost	358.55	

Accordingly, the Tribunal finds that only £38.55 is payable and reasonable in respect of those claims.

3. The Tribunal makes an order pursuant to Section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") preventing the Applicant from recovering its costs of representation before this Tribunal from the Respondent as part of any future service charge demand save for the administration fees determined to be payable (see below).

## Reasons

### Introduction

4. The application filed in this case is for the Tribunal to determine the payability and reasonableness of variable administration charges but it did not specify exactly what administration charges were being disputed. It said that in May 2012 the Applicant notified the 'Freeholder' i.e. the Respondent "*of a new address for all communications*". The Applicant therefore concluded that no subsequently applied administration charges were payable because the Respondent's agent continued writing to the Applicant at his old address.
5. By a directions order dated 15<sup>th</sup> September 2013, the Respondent was ordered to file and serve a statement dealing with the allegations in the application. A statement was served by Michelle James, credit manager of the Respondent's managing agents, Mainstay Residential Ltd. ("Mainstay") but it was about as helpful as the application form in providing the sort of detail needed by the Tribunal to determine the issues. However, as far as the Applicant's address was concerned, the managing agents said that the first they heard of the new address was an undated letter received on the 16<sup>th</sup> January 2013.
6. One document which was annexed to the Respondent's statement at Annex 4 (page 69) was a statement of account dated 30<sup>th</sup> September 2013 which sets out a record of charges and payments made between 1<sup>st</sup> January 2009 and 6<sup>th</sup> September 2013 in respect of the subject property. This showed that the amount allegedly outstanding from the Applicant as at 30<sup>th</sup> September was £175.55 which made up the first 3 items in the total is as set out in the decision above. A letter from the Respondent's solicitors to the Applicant dated 22<sup>nd</sup> August 2013 which is in the bundle at pages 95 and 96 refers, in passing, to an additional amount of legal charges in the sum of £183.00 without specifying how they are calculated or what they are for.
7. A subsequent statement from the Applicant puts his case for saying that (a) the amounts claimed are not payable and/or (b) that they are unreasonable. It appears clear from the statement of account that the first item is described as "*Service Charge Deficit Y/E 31/12/11 - £13.55*". Thus it seems clear that part of the disputed claim is for service charges. In view of the small amount involved, and in accordance with the overriding objective, the Tribunal has therefore taken it upon itself to amend the application to enable it to determine whether the service charge element of the claim is payable and/or reasonable.
8. The directions order referred to above said that the Tribunal would not inspect the property and would be prepared to deal with the determination on the basis of the papers and written representations made. It pointed out that a

determination would not be made before 8<sup>th</sup> November 2013 and either party had the opportunity to both ask for an inspection of the property and have an oral hearing if they so requested. No request was made for either.

### **Discussion**

9. As far as the notification of change of address is concerned, the subsequent statement of the Applicant slightly, but significantly, changed his earlier position. He says that the Respondent issued proceedings against him in the county court on the 14<sup>th</sup> May 2012 to recover disputed service charges. He then says "*In my response to that claim on 22<sup>nd</sup> May 2012 I advised that all notices should be sent to me at my address 20 Ringwood Way, London N21 2QY*". He then goes on to say that since then the Respondent's solicitors and managing agents have communicated with him at that address. It is clear that the managing agents did continue to write to him at his old address.
10. At page 110 in the bundle is an acknowledgement of service to a claim brought against him by the Respondent which is indeed dated 22<sup>nd</sup> May 2012. Under the heading "*Address to which documents about this claim should be sent*" is "*20 Ringwood Way*". There is nothing else on the copy supplied to the Tribunal but it is assumed that the rest of such address has become covered over in copying.
11. The next document in the bundle commencing at page 111 is the decision of the Leasehold Valuation Tribunal following the dispute having been transferred to the Tribunal by Barnet County Court on 7<sup>th</sup> August 2012. From paragraph 34 of that decision it is clear that the claim only sought payments on account of service charges for the years 2011 and 2012. Thus, there was no final determination of service charges for the year ending 31<sup>st</sup> December 2011 (the first item of claim) within those proceedings as is claimed by the Applicant in his statement at page 80 in the bundle.
12. The Applicant stated in his application form that similar issues had been determined in the London Tribunal case number LON/OOBK/LAC/2011/0001 which has the title *O'Brien v CityWest Homes*. The Tribunal did consider that case although it is not bound by any decision made. However, the facts were different. In that case, Ms. O'Brien wrote a letter to the landlord saying that she was moving and that all future correspondence should be sent to a specified address. The Tribunal found that such letter was received but not passed on to the appropriate department of the landlord who did not deny this or that Ms. O'Brien's subtenant had returned all post to them at the time which was addressed to Ms. O'Brien. Finally, it was found that all service charges demanded of which Ms. O'Brien was aware, had been paid immediately without question.
13. The Applicant's position is that when he received each demand, he wrote asking for a summary of the charges claimed. A statement dated 21<sup>st</sup> June 2013 is in the bundle at page 98 as part of the Applicant's case which appears to be a duplicate of the statement of account referred to earlier in this decision subject, of course to items added after the 21<sup>st</sup> June. That statement sets out in fairly clear terms what is being claimed and, indeed, reflects credits being applied following the

Tribunal's earlier determination. It is noted that the Applicant appears to have paid all outstanding amounts save for the claims referred to in the decision above. It seems to be admitted in the application form at page 10 in the bundle that this was received on the 28<sup>th</sup> June 2013.

14. What appears clear from the correspondence is that the Respondent's managing agent has been very clear and open about what charges would be applied to the service charge account in the event of non payment.

### **The Law**

15. Paragraph 1 of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the Schedule") defines an administration charge as being:-

*"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable... in connection with a breach (or alleged breach) of a covenant or condition in his lease."*

16. Paragraph 2 of the Schedule, which applies to amounts payable after 30<sup>th</sup> September 2003, then says:-

*"a variable administration charge is payable only to the extent that the amount of the charge is reasonable"*

17. Paragraph 4 states that any demand for an administration fee must be accompanied by a summary of the rights and obligations of tenants in the form prescribed by the appropriate Regulations.
18. Finally, paragraph 5 of the Schedule provides that an application may be made to this Tribunal, as successor to the LVT, for a determination as to whether an administration charge is payable which includes, by definition, a determination as to whether it is reasonable.

### **The Lease**

19. As has been determined before in the Tribunal's earlier decision, this lease does make provision for administration charges of the sort claimed and this is not disputed by the Applicant.

### **Conclusions**

20. As far as notification of the Applicant's address is concerned, the Tribunal finds that the only notification given by the Applicant was the acknowledgement of service document lodged with the court following the issue of court proceedings. This, self evidently, was only an address for the service of documents relating to those court proceedings. There could have been any number of reasons why a party to court proceedings would want to choose an address for service which was not his or her residential address.
21. The Tribunal finds that the Applicant's comment in his application that he "*had notified the Freeholder of a new address for all communication in May 2012*" is wrong. He had simply told them that his address for service within those

proceedings was different to the address they had for him.

22. The first item of claim is £13.55 for service charges incurred in the year ending 31<sup>st</sup> December 2011. The only dispute about that figure is the assertion by the Applicant that the Tribunal's earlier decision resolved the actual service charges for that year. It is self evident for the reason stated above that this is incorrect. On balance, the Tribunal considers that the Applicant has not established a *prima facie* case of unreasonableness and it is allowed.
23. The Tribunal finds that the Applicant had been asking for details of the claims being made against him and that he received those details on or about the 28<sup>th</sup> June 2013 by means of the statement of account referred to above. The charge of £66 imposed on the 11<sup>th</sup> June is therefore not reasonable.
24. However, payment of the admitted outstanding balance was not made until 6<sup>th</sup> September 2013. The Tribunal finds that it was reasonable for the Respondent to claim for another chasing letter. It will not surprise them when this Tribunal confirms the decision of the previous Tribunal that £25 per letter is a reasonable amount and that amount is allowed only.
25. As to the £183.00, this is only referred to in passing by the solicitors in their letter to the Applicant. Whilst it appears to have been incurred in or before August 2013, it is not on the statement dated 30<sup>th</sup> September 2013 which is relied upon by the Respondent in Annex 4 to the credit manager's statement. As this figure is specifically mentioned in the application and the Respondent has supplied no information supplied to justify it, it is not determined to be reasonable. However, the solicitor's letter does refer to an appeal of which the Tribunal has no knowledge. If it should transpire that these costs are reasonably payable as a result of separate court proceedings, then that will be a different matter.
26. As to the costs position, the Applicant has asked for an order pursuant to section 20C of the 1985 Act. The Respondent was ordered to deal with this in its statement. It did not specifically address that issue. As this application has been largely successful and there has been no hearing, the Tribunal considers it to just and equitable that such an order should be made.

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**Bruce Edgington**  
**Regional Judge**  
**20<sup>th</sup> November 2013**

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