

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

On a reference from the county court under paragraph 3(1)(a) of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.

In the matter of the payability of administration charges under Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Premises: 454 Altair House, Falcon Drive, Butetown, Cardiff, CF10 4RH

Reference: LVT/005/06/15

Hearing: 15th September 2015 (Southgate House, Cardiff)

Decision: 24th September 2015

Applicant: Freehold Managers (Nominees) Ltd

Respondent: Mr J Lamb

Members of the Tribunal: Mr E Mitchell (legal chairman); Mr K Watkins (surveyor member); Ms C Calvin-Thomas (lay member).

DECISION

The disputed administration charges of £144 and £150 are not payable by Mr Lamb. Mr Lamb is not liable to pay the charges under the terms of his Lease. The case is now transferred back to the Cardiff County Court.

REASONS FOR DECISION

Background

1. On 31 March 2015 Cardiff County Court issued Freehold Managers (Nominees) Ltd's claim for possession of apartment 454 Altair House for which they hold the head leasehold title. The claim form indicates that the claim was made on the ground of "forfeiture of the lease". The defendant to the claim was Mr Lamb. The claim no. is BOOCF477.

2. The particulars of claim alleged that Mr Lamb was in breach of the terms of his Lease by having failed to pay ground rent for a number of years. Of more relevance to the present proceedings, the particulars also argued the Landlord had incurred administration charges of £294 in "dealing with the default terms of the Lease by the Defendant". By this, the particulars meant the alleged failure to pay ground rent.

3. The claim form argued “the Defendant has committed a clear breach of covenant of the Lease...and the Claimant is entitled to debit the administration charges to the account and demand them as payable”. The Landlord’s statement of case in the present proceedings argues the charges were incurred in connection with the claim for possession / forfeiture for alleged failure to pay ground rent.

4. The claim form argued that the Lease of the Flat “by these proceedings is forfeit” and claimed relief which included possession of the Flat and “money judgment for arrears of rent, interest and administration charges”. The particulars of breach did not assert that the claim for forfeiture fell within section 146 or 147 of the Law of Property Act 1925 and no evidence was adduced that the notices required for section 146 proceedings had been served.

5. Mr Lamb filed his defence to the claim on 5th May 2015. He denied that he was in breach of his obligation under the Lease to pay ground rent. Mr Lamb argued that under section 166(1) of the Commonhold and Leasehold Reform Act 2002 he was not liable to pay ground rent because the landlord had not “given him notice relating to the payment”. In fact, the argument was that notice had not been given in the correct form.

6. Mr Lamb also denied that he was liable to pay administration charges. He said he was not in arrears of ground rent and so “no administration charges can be claimed”.

7. In a reply dated 13th May 2015, the Landlord disputed that it had failed to serve Mr Lamb with the correct form of notice to pay ground rent. The Landlord repeated its claim to be entitled to administration charges.

8. On 1 June 2015, District Judge DH Morgan made the following order:

“1. The question of determination of the service charge and administration charge be transferred to The Leasehold Valuation Tribunal. This includes the adequacy of the notice served by the Landlord.”

9. Two points need to be borne in mind in interpreting that order. Firstly, the Landlord’s claim did not relate to service charges: there was no service charge element to this dispute. Secondly, the adequacy of the ground rent notice was relied on by Mr Lamb to deny he was liable to pay ground rent. Whether or not ground rent is payable falls outside the jurisdiction of the Leasehold Valuation Tribunal for Wales although it is might be possible for the validity of ground rent demand notices to have implications for the payability of any linked attempt to impose an administration charge. The payability of administration charges is within the Tribunal’s jurisdiction.

10. A procedural tribunal chairman gave directions on 10th June 2015. These required, in summary, the applicant Landlord to provide a statement by 29th June 2015 explaining its authority to impose administration charges and the respondent Mr Lamb to provide a statement by 10th July 2015 explaining if he disputed any of the administration charges or their reasonableness.

11. On 16th June 2015, the Landlord’s solicitors wrote to Mr Lamb to make a formal demand for administration charges. The letter states “the Landlord formally demands the administration charges of £144.00 and £150.00 from you”. A summary of rights and obligations was attached in standard form. The Landlord also supplied a statement of case as required by the directions. The Landlord’s case was that the

disputed administration charges all related to activities performed by the Landlord or its agent in connection with the county court claim.

12. On 6th July 2015, Mr Lamb supplied his statement. This argued the disputed administration charges were not authorised by clause 2(9) of the lease because they were not in contemplation of any proceedings in respect of the Lease under sections 146 and 147 of the Law of Property Act 1925. Mr Lamb also expressed the view that the Tribunal could not decide whether the Landlord gave valid notices of ground rent. Alternatively, Mr Lamb disputed the reasonableness of the disputed administration charges.

13. After the transfer order was made, Mr Lamb paid the Landlord a sum equivalent to the disputed ground rent. But he did so without any admission of liability.

14. The Landlord's solicitors informed the Tribunal that the Landlord would not be represented at the hearing. Some two weeks before the hearing Tribunal staff emailed the solicitors to inform them that it was the Landlord's choice whether or not to be represented and sought confirmation that they instead relied on written submissions. The solicitors were also informed that any further written submission had to be copied to Mr Lamb. No reply was received. As a result, the Tribunal concluded the Landlord wished to rely in its earlier written submissions.

Legal Framework

15. Paragraph 3(1)(a) of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 ("2002 Act") provides that "where in any proceedings before a court there falls for determination a question falling within the jurisdiction of a leasehold valuation tribunal, the court...may by order transfer to a leasehold valuation tribunal so much of the proceedings as relate to the determination of that question".

16. Schedule 11(1) to the 2002 Act defines administration charge. Amongst other elements, the definition provides for a charge to be "payable by a tenant". Whether or not a charge is payable depends on whether it is authorised by the terms of the relevant lease.

17. Schedule 11(2) to the 2002 Act provides that "a variable administration charge [which is what the disputed charges purport to be] is payable only to the extent that the amount of the charge is reasonable".

18. Schedule 11(4)(1) to the 2002 Act requires a demand for payment of an administration charge to be accompanied by a summary of the tenant's rights and obligations. Schedule 11(4)(3) permits the tenant to withhold payment of an administration charge if that summary has not been supplied.

19. Schedule 11(5) to the 2002 Act gives the Leasehold Valuation Tribunal jurisdiction to determine (amongst other things) whether an administration charge is payable and, if so, the amount which is payable (as just noted, a charge is only payable to the extent that the amount of the charge is reasonable).

20. It is not disputed that the relevant lease in this case contains an express proviso for re-entry or forfeiture by the Landlord on the occurrence of specified events. The

right to forfeit, where provided for by a lease, is a common law right (i.e. not a right conferred by statute). But statute has at various times intervened to place limitations and conditions on the exercise of the right, the first recorded example probably being the Landlord and Tenant Act 1730. That goes to show that the right itself is not a statutory right.

21. Sections 146 and 147 of the Law of Property Act 1925 place conditions on a landlord's exercise of the right of forfeiture. However, these do not affect the law relating to forfeiture in case of non-payment of rent (section 146(11)).

22. In this case, the Landlord argues the administration charge is payable because it is authorised by the terms of the Lease.

23. The first (and principal) term relied on by the Landlord is clause 2(2) which, so far as relevant, requires the Tenant:

“To pay to the Lessor as arrears of rent all costs charges and expenses including solicitors' counsels' surveyors' costs and fees at any time during the said term incurred by the Lessor in or in contemplation of any proceedings in respect of this Lease under section 146 and 147 of the Law of Property Act 1925 or any re-enactment or modification thereof...”

24. The Landlord also relies on clause 2(9) which, so far as relevant, requires the Tenant:

“To comply in all respects at the Tenant's own cost with the provisions of any statute statutory instrument rule order or regulation and of any order direction or requirement made or given by any authority or the appropriate minister or Court so far as the same affect the demised premises...”

The hearing

25. As mentioned above, the Landlord chose not to be represented at the hearing. To ensure all the arguments were addressed, the Tribunal at the hearing put the Landlord's written case to Mr Lamb. The Tribunal was satisfied that it had the power to hold a hearing in the absence of one of the parties because the condition in rule 14(8) of the LVT (Wales) (Procedure) Regulations was met. The Tribunal was also of the view that it was fair and in the interests of justice to proceed with the hearing.

Conclusion

26. The principal argument relied on by Mr Lamb on this reference is correct. The Landlord's power to impose a charge under clause 2(9) of the Lease is limited to costs, charges and expenses incurred “in or in contemplation of any proceedings in respect of this Lease under section 146 and 147 of the Law of Property Act 1925”. The proceedings brought against Mr Lamb, and to which the disputed administration charges all relate, were not brought under the Law of Property Act 1925. They were proceedings in connection with the Landlord's asserted exercise of a common law right to forfeit. That the proceedings were not section 146/147 proceedings is to be expected because this case of forfeiture relied on the ground of non-payment of rent

which falls outside those legislative provisions. That also explains why the Landlord did not serve the special type of notice required for proceedings to which section 146 applies.

27. Clause 2(9) of the Lease does not authorise imposition of the disputed administration charges. It applies only to costs connected with compliance with legislation or requirements imposed by various public bodies. It does not authorise the independent imposition of charges by the Landlord.

28. That is sufficient to dispose of this reference but, for completeness, the Tribunal was also of the view that Mr Lamb correctly argued that he was entitled to withhold payment of any administration charge until he received a demand in the correct form which did not occur until after the county court made its transfer order. There was also force in Mr Lamb's argument that the underlying ground rent demands relied on by the Landlord on this reference, being dated 24th March 2015 (there was a dispute as to the validity of earlier demands), had not triggered any obligation to pay ground rent by the time the county claim was issued since, by that point, the statutory minimum period had not expired. The Tribunal was also inclined to accept that the Landlord had not demonstrated that the administration charges were, in total, reasonable. There was no breakdown of who did what activities and for how long. And the cost comparator relied on was a solicitor yet there was no explanation as to why the activities undertaken by, or on behalf of, the Landlord were of commensurate complexity to those performed by the comparator solicitor.

Dated this 24th September 2015



Mr E. Mitchell
Chairman