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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	LON/OOBK/LAC/2013/0023
Property	:	FLAT 36a HANOVER GATE MANSIONS PARK ROAD LONDON NW1 4SL
Applicant	:	GOBARSHAD AMRANI
Representative	:	No representative
Respondent	:	HANOVER GATE MANSIONS LIMITED
Representative	:	Messrs Farrer & Co not represented
Type of Application	:	Reasonableness of administration charges under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")
Tribunal Member	:	JUDGE T RABIN
Paper determination	:	23rd October 2013 at10 Alfred Place, London WC1E 7LR
Date of Decision	:	23rd October 2013

DECISION

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The application

1. The Tribunal was dealing an application by the Applicant with an seeking a determination pursuant to Schedule 11 of the 2002 Act as to whether the administration charges of £400 and £450 for approval of sublettings was reasonable and payable by the Respondent. The application relates to Flat 36a Hanover Gate Mansions Park Road London NW1 4SL ("the Flat"). The Respondent is a tenant owned company where the shareholders are the long leaseholders and the Respondent is the freeholder of the Hanover Gate Mansions ("the Building") and the Respondent is the long leaseholder of the Flat.

2. The Applicant also seeks an order for the limitation of the Respondent's costs in these proceedings under Section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act").

3. Proceedings were originally issued against Mr N Turner, the then secretary of the Respondent. The Tribunal made directions on 8th August 2013 in which the Respondent was named as the respondent. This was quote correct as the obligation to pay administration charges is to the Respondent and not the secretary. In any event, Mr Turner is no longer the secretary of the Respondent, having resigned in September 2013.

4. The relevant legal provisions are set out in the Appendix to this decision.

5. In view of the nature of the claim it was determined that an inspection was not necessary.

The Evidence

6. The Tribunal has before it a bundle of papers. These included the application by the Applicant with a statement and supporting documents. There is also a letter from Farrer & Co acting for the Respondent and giving background to the case and making submissions and the Tribunal carefully considered these papers before coming to a decision.

7. The issues before the Tribunal were as follows:

    - Whether the charge of £400 (to increase to £450) for the approval of a subletting was reasonable and payable by the Applicant.

- Whether the Tribunal should make an order under Section 20C of the 1985 Act in relation to the costs of these proceedings.

8. The Applicant stated that Mr Turner had formed a Residents' Association many years ago and became secretary. He created a number of rules and regulations. One of these related to the granting of consent to long leaseholders to sublet their flats, normally on short term assured shorthold tenancies.

9. The long leaseholders purchased the freehold of the Block in 2007 through the Respondent Company and Mr Turner became Director and appointed new managing agents. The cost of approval for subletting increased to £400 and now to £450 and this sum is paid on each tenancy. The Applicant sublets on six monthly agreements and the result is that the charges will be £450 twice a year. According to the Applicant, most blocks charge between £45 and £60 for subletting

10. The Applicant wrote a letter to the Tribunal on 5th September 2013 in which he refers to a charge of £400 being added to the service charge account in the invoice from July to September 2013 and that this was far in excess of the actual cost. There were some attachments that were apparently not received by Farrer & Co but these were a copy of the October demand, a letter from Mr Turner explaining that if there were to be three sublettings within a year, then three charges of £450 would be made and an unsigned, undated statement from an unknown person.

11. The Applicant made a number of complaints about Mr Turner's alleged behaviour towards him and his family but any such issues are outside the jurisdiction of the Tribunal.

12. Farrer & Co submitted that Mr Turner spent a great deal of time on the affairs of the Block over a period of 25 years, first as secretary to the Residents Association and then Director and Secretary of the Respondent. He has in particular spent a considerable length of time vetting applications to sublet in order to ensure that there are suitable residents in this high class Block.

13. The leases under which the various flats are held provide in Clause 2 (N) (ii) that a Deed of Covenant in the form stipulated under the lease be entered into if there is a subletting. The Respondent also wishes to see the form of sub lease and valid gas and water certificates and also reserves the right to see references (save in specific cases). This takes time.

14. A Deed of Covenant was entered into on 13th February 1975 that added a new Clause 2 (N) (iii) to the leases. This stated as follows:

"To pay indemnify or reimburse the reasonable profession and management costs of the Landlords in respect of:

(a) The approval of every Deed of Covenant under Clause 2 (N) (ii) hereof and any stamp duty payable thereon; and

(b) All and any other services in respect of the Flat which the Landlord shall from time to time incur or be called upon to pay and which arise directly or indirectly by such use and occupation by the Tenant of the Flat"

15. Farrer & Co submitted that the residents took great care to ensure that there were suitable subtenants in the light of difficulties in the past. There have been no complaints from other long leaseholders and the board of directors determines the level of fees. In the light of the substantial charges incurred recently, it has been determined that the increase to £450 will not take place at present. Farer & Co submitted that an estimate of £450 for a subletting fee is reasonable in the circumstances.

THE TRIBUNAL'S DECISION

16. The Tribunal considered the terms of the lease under which the Flat is held and it is clear that the Applicant has an obligation to meet the costs incurred by the Respondent in relation to any application for subletting. Similarly, the lease makes it clear that landlord's consent must be obtained and a deed of covenant entered into. The Applicant has stated that other blocks charge far less for the service but he has provided no evidence to support this claim. In any event, it would depend on the terms of the lease and the extent of the obligations to be met when an application for subletting is made. It is within the knowledge of the Tribunal that there are some leases where all that is required is the name of the subtenant where the work involved by the landlord would be minimal.

17. Farrer & Co have made it clear that there is not to be an increase to £450 as originally intended so it is only the question of the fee of £400 to be considered by the Tribunal.

18. In the Tribunal's view, it is a simple task to review existing references and gas certificates. The Tribunal does not understand the reference to a water certificate as these are only required if there is a communal water supply and would be obtained by the Respondent in any event. The appropriate fee would in the Tribunal's view be £200 and there should be only a nominal fee of £25 if the same tenant were to renew his or her tenancy for a further period. The sum of £400 is excessive and disallowed as to half of it.

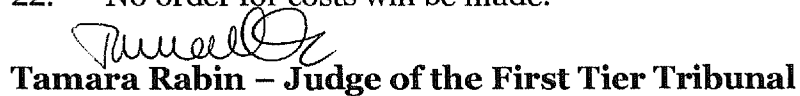
SECTION 20C OF THE 1985 ACT and REFUND OF FEES

19. The Applicant made an application under Section 20C of the 1985 Act requesting that the costs of these proceedings should not be considered relevant costs for the purpose of calculating the service charge.

20. In the light of the Tribunal's decision the Tribunal considers it appropriate to make such an order. Accordingly the Tribunal makes an order under Section 20C of the 1985 Act.

21. For the same reasons the Respondent is ordered to refund the Applicant with the fees paid for this application

22. No order for costs will be made.



Tamara Rabin – Judge of the First Tier Tribunal

23rd October 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 20C

(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, residential property tribunal or the Upper 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;
  (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  (c) in the case of proceedings before the Upper 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 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.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(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.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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 matter of an application under sub-paragraph (1).