



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

**Case reference** : **LON/00AW/LAC/2019/0002**

**Property** : **Flat 63, Campbell Court,  
Queens Garden Gate, London, SW7  
4PD**

**Applicant** : **Ali M H Alrayedh (1)  
Wafeeqa M A Sahi (2)**

**Representative** : **In person**

**Respondent** : **Campbell Court Property Inc**

**Representative** : **Arab Investments Ltd**

**Type of application** : **For the determination of the  
reasonableness of and the liability  
to pay an administrative charge**

**Tribunal members** : **Judge Carr**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **18<sup>th</sup> June 2019**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £1,550 plus VAT is payable by the Applicant in respect of the administration charge demanded in connection with the grant of a licence to sub-let the subject property.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision
- (3) The tribunal makes an order under Paragraph 5A of Schedule 11 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge
- (4) The tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

## **The application**

1. The Applicant seeks a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of administration charges payable by the Applicant in relation to the grant of a licence to sub-let the subject property.
2. At a Case Management Conference on 12<sup>th</sup> February 2019 the tribunal ordered that the matter would be determined without a hearing unless either party makes a written request to be heard before the determination. No such request having been made the matter is now determined on the basis of documents and written representations provided by the parties.
3. The relevant legal provisions are set out in the Appendix to this decision.

## **The background**

4. The property which is the subject of this application is flat within a purpose built block of flats in Kensington.
5. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
6. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

7. The specific provisions of the lease which are relevant to this determination are as follows:
- (i) Clause 2.15.2 Not to underlet or (except as provided in sub-clause 2.15.3 hereof) part with the whole of the Flat or share possession of the whole thereof except that (subject to the provisions of sub-clause 2.15.4 hereof) a furnished or unfurnished underletting of the whole of the Flat for a period not exceeding seven years shall not be deemed to be a breach of this covenant provided that the Tenant shall first obtain the Landlord's written consent to such underletting which consent shall not be unreasonably withheld on proof being furnished of the respectability and financial responsibility of the proposed undertenant.
  - (ii) Clause 2.15.5 Within one month after every assignment transfer underlease assignment of an underlease mortgage charge assent grant of probate or letters of administration Order of Court or other disposition or devolution of title however remote affecting the Flat the Tenant shall give to the Landlord or its Solicitors notice in writing of such disposition or devolution of title with particulars thereof and at the same time produce to the Landlord or its Solicitors the consent effecting or evidencing such disposition or devolution and leave with it or them a true copy thereof and to pay its or their registration fee of not less than fifty pounds (£50) plus VAT for the registration of each such document.
  - (iii) Clause 2.22 To pay all legal costs and surveyors' fees incurred by the Landlord attendant upon or incidental to every application made by the Tenant for a consent or licence of the Landlord required or made necessary by the provisions of this Lease whether the same be granted or refused or proffered subject to an lawful qualification or condition or whether the application be withdrawn.

### **The issues**

8. The Case Management Conference identified the issues to be determined as follows:
- (i) The payability and/or reasonableness of administration charges totalling £4250 relating to the grant of a licence to sub-let the property.
  - (ii) Whether an order under paragraph 5A of Schedule 11 to the 2002 Act should be made

- (iii) Whether an order for the reimbursement of application/hearing fees should be made.
9. Having considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

**The payability and/or reasonableness of administration charges**

10. The chronology of events is as follows:
- (i) On 11<sup>th</sup> October 2018 the Applicant asked for consent for a subletting of the property. On the following day the Respondent's solicitors replied setting out the requirements for the Respondent to consider the application for consent. Those requirements were either a solicitor's undertaking that charges of £3000 plus VAT of £600 would be paid or that the charges be paid in advance. As the Applicant did not instruct solicitors the Respondent required the fee of £3600 to be paid in advance. On 16<sup>th</sup> October
  - (ii) The Respondent subsequently sent invoices totalling £3,450 which were amended to include VAT on 29<sup>th</sup> January 2019 and therefore totalled £3,600.
  - (iii) An invoice of £660 was issued subsequent to the grant of the consent further to additional work carried out by the legal representatives.
  - (iv) The licence to underlet was granted on 16<sup>th</sup> November 2018.
11. The total charges to the Applicant were £4,260.
12. The Applicant argues as follows:
- (i) There is a difference of £150 between the sum of the invoices and the undertaking amount.
  - (ii) The Applicant refers to what is described as 'a binding ruling by the Upper Chamber in 2012 which decreed that following four different cases brought before it, subletting fees should be limited to £40 plus VAT'.
  - (iii) It is not reasonable to charge a total of £4260 for a licence to sublet as it is a short underletting for a term of 1 year.

The rent is £600 per week so the landlord's charges represent 17.5% of the applicant's revenue.

- (iv) The Applicant paid the undertaking costs upfront to avoid losing the undertenant and to satisfy the Respondent's requirement to settle payment prior to the grant of consent. It assumed that the undertaking cost covers everything that could conceivably be expected in connection with the grant of consent. Despite the upfront payment the Applicant is concerned that the Respondent found additional costs to levy by withholding the grant of consent on 14<sup>th</sup> November 2018 denying the undertenant access to the premises and causing losses to the applicant.
- (v) There are duplicate charges in the invoices, for instance the courier charge and disbursement charge are duplicated. The Applicant also argues that the multiple invoices containing different payment instructions and issued from separate parties gave the Respondent the opportunity to exploit the applicant and make a profit.
- (vi) The Respondent uses a costly process in consulting overseas signatories for every underletting application.
- (vii) The Applicant considers that the legal fees of £1,500 plus VAT are reasonable. To be required to pay more than this would mean that the property would have to be taken off the market.

13. The Respondent argues are follows:

- (i) The discrepancy between the original invoices and the charges paid in advance was £150. The Respondent explained that in error VAT relating to £750 courier fees and the costs of execution of the documents had been omitted. A corrected invoice totalling £3,600 including VAT was sent to the Applicants on 29<sup>th</sup> January 2019.
- (ii) The Applicant's argument in relation to binding Upper Tribunal cases does not include case names or references. The Respondent is unaware of any such case that sets a fixed fee for consents for underlettings which applies to all leases. The Respondent argues that each case must be determined on its own facts. Therefore, the Tribunal cannot make any determination that charges should be fixed for all further short underlettings as requested by the Applicants.

- (iii) In relation to Invoice 4203 for £900, the Respondent argues that this relates to a charge of £750 plus VAT for charges by Arab Investments Limited (the Respondent's managing agents). This sum is payable pursuant to clause 2.15.2 of the lease.
- (iv) The charges comprise the managing agent's time in receiving the application to underlet, advising the Respondent (which includes vetting the proposed undertenant) taking instructions from the Respondent and instructing solicitors on behalf of the Respondent to prepare the necessary licence. The sum is standard and reasonable in amount with the meaning of paragraph 2 of Schedule 11 to the 2002 Act.
- (v) In relation to Invoice 7343 – this comprises two charges. The first charge is £750 in relation to courier costs, execution costs and further managing agents' disbursements. These charges are argued to be payable and reasonable in amount because the Respondent is incorporated in Panama. In order for the Respondent to execute documents (such as a licence to underlet) the original documents must be executed by the Respondent in Panama. The £750 plus VAT includes the cost to courier the original documents to and from Panama for their execution, board minutes and time for the officers to execute the documents and also other managing agent's disbursements.
- (vi) The second charge comprised in this invoice is solicitors' costs of £1,500 plus VAT. This is argued by the Respondent to be payable pursuant to clause 2.15.2 of the Lease. The costs relate to the drafting, preparation and negotiation of the licence to underlet. The costs are reasonable in amount. Moreover, the Applicant agrees that these sums are reasonable and therefore the Tribunal does not have jurisdiction to determine the reasonableness of the amount.
- (vii) Invoice 7465 is for £550 plus VAT and relates to two charges. The first is additional solicitors' charges of £500 plus VAT and the second is a registration fee of £50 plus VAT. The additional solicitors' fees relate to the extra time incurred by the Respondent's solicitors above what would normally occur for a licence to underlet. Although the Applicant's agents were chasing the Respondent to complete the licence to underlet, the Applicant delayed in providing their executed counterpart. In consequence the proposed undertenant instructed his own solicitors who

corresponded at a late stage with the Respondent's solicitors and required all the relevant documents to be sent to them.

- (viii) Further the Applicants were in service charge arrears which were required to be paid prior to the grant of the licence and although the Applicants paid their arrears promptly this caused further delay. In consequence requests for access to the property were made by the undertenant prior to the grant of the licence and this caused further time to be incurred by the Respondent's solicitors. The agents were warned that this would cause additional cost, but it was made clear that these costs would not be required as a condition to grant consent so as not to delay completion of the licence to under let. The additional costs of the Respondent's solicitors (capped at £500 plus VAT, although significantly more time was incurred) are payable pursuant to clause 2.22 of the lease and are reasonable in amount.
- (ix) In relation to the £50 plus VAT registration fee, this is payable pursuant to clause 2.15.5 of the Lease. It is a fixed charge and not a variable administration charge and thus cannot be challenged pursuant to paragraph 2 of Schedule 11 to the 2002 Act.
- (x) The witness statement of Fatima Affara asserts that the Building is a high class exclusive and privately owned residential block of flats in an exclusive part of London. With the exception of the £500 plus VAT invoice from the Respondent's solicitors, the remaining fees charged are standard fees which are charged to leaseholders in the Building for every application for consent and have been charged since 2016 with no challenge.

### **The tribunal's decision**

14. The tribunal determines that the amount payable in respect the administration charge is £1550 plus VAT.

### **Reasons for the tribunal's decision**

15. The starting point for the tribunal is the terms of the lease. The lease provides for a registration fee of a minimum of £50 plus VAT. The registration fee of £50 plus VAT is therefore payable by the Applicant and is a reasonable fee for registration.

16. The tribunal does not determine whether the registration fee is a variable or a fixed fee. The wording of the clause appears to allow for a variation in the charge. However in this particular instance as the minimum fee has been charged there is no need for a determination on this issue.
17. The lease also provides that legal costs which are attendant upon or incidental to applications for consent are payable.
18. The applicant has agreed that legal fees of £1500 plus VAT are payable and reasonable. Therefore this sum is payable as an agreement has been reached.
19. The tribunal then has to consider whether any other legal fees are payable and reasonable. For the charges to be payable it would be necessary for them to be attendant upon or incidental to applications for consent. The tribunal determines that the additional work for which the Respondent claims to enable the subtenant to enter the property prior to the grant of consent are neither attendant upon or incidental to the application for consent. They relate to negotiations with the subtenant and do not relate to the consent to the tenant.
20. Even if the tribunal is wrong about this, the tribunal does not consider the additional charges to be reasonable. The sum of £1500 plus VAT for legal fees in connection with a consent is a generous figure and to charge any more for additional work of the nature that the Respondent describes is not reasonable.
21. The remaining charges relate to courier fees, execution costs and further managing agents' disbursements. The lease does not provide for fees other than lawyers' or surveyors' fees and therefore these charges are not payable.
22. The tribunal notes that the invoices provided are not clear on the scope of the charges incurred.

### **Application under s.20C and refund of fees**

23. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/hearing<sup>1</sup>. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169



24. In the statement of case the Applicant applied for an order under Paragraph 5A of Schedule 11 of the 2002 Act. Taking into account the determinations above, the tribunal determines it is just and equitable in the circumstances for an order to be made under Paragraph 5A of Schedule 11, the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** Judge Carr

**Date:** 18<sup>th</sup> June 2019

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## **Appendix of relevant legislation**

### **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).