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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**18 Argyll Court, Sawyers Hall Lane, Brentwood, Essex CM15 9BQ**
Applicant	:	**Victoria Briers**
Respondent	:	**Holding & Management (Solitaire) Ltd.**
Case number	:	**CAM/22UD/LSC/2010/0114**
Date of Application	:	**18th September 2010**
Type of Application	:	**To determine reasonableness of an administration charge (Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the Act"))**
The Tribunal	:	**Mr. Bruce Edgington (lawyer chair) Mr. David Brown FRICS MCIArb**
Date and place of Determination	:	**20th October 2010 at Unit C4, Quern House, Mill Court, Gt. Shelford, Cambs. CB22 5LD**

DECISION

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1. The Tribunal finds that the administration charge of £40 paid in June 2004 for registration of a subletting agreement is reasonable.

2. The Tribunal further finds that the administration/service charge of £80 paid in November 2009 for registration of a subletting agreement and the creation of a deed of covenant is reasonable.

3. The Tribunal further finds that the administration charge of £80 paid in February 2010 for registration of a subletting agreement is not reasonable and that a reasonable figure is £50 so that £30 should now be either refunded to the Applicant or credited to her service charge account.

4. Finally, the Tribunal makes an order under Section 20C of the **Landlord and Tenant Act 1985** preventing the Respondent from including the cost of representation in these proceedings in any future service charge demand.

Reasons

Introduction

5. In her application form, the Applicant explains that the property was her home but she moved to America because of work commitments. She intends to return to live at the property but in the meantime has let the property on assured shorthold tenancies to pay the mortgage. The first of these was in June 2004 when she says that "the sublet agreement was arranged for a fee of £40".

6. It is then explained that in November 2009, she was charged £80 for a deed of covenant and then "in February 2010 a consent to sublet was required with a fee of £80". The Applicant says that she is told that a renewal fee is required every six months in the sum of £75. She then asks whether "these fees can be charged, if so is there any limit of what charges can be introduced and at what level."

7. The Applicant says that she is content for the case to be dealt with on a consideration of the papers only. In giving its Directions on the 15th September 2010, the procedural chair agreed that the case could be dealt with by way of a paper determination and gave notice that the Tribunal would consider its decision on this basis on or after 20th October 2010. It also made it clear that if either party requested an oral hearing in the meantime, then one would be arranged. No such request was made.

The Lease

8. The Applicant provided the Tribunal with a copy of the original stamped lease dated 26th August 1994 which is for a term of 125 years from 25th March 1994. Countryside Properties PLC is the original landlord and developer. The Respondent is the named management company and an agreement is recited that as soon as the last lease of the development has been created, the freehold would be transferred to the Respondent and it is assumed that this took place. It matters not in this case because the clauses governing administration fees are between the Respondent and the lessee.

9. Clause 3 of the lease contains a covenant on the part of the lessee to observe the provisions contained in the Third Schedule.

10. Paragraph 10 of the Third Schedule says that the lessee is:-

> *"Not to....underlet or part with possession of the Flat as a whole without first procuring that the.....underlessee enters into direct covenants with the* (Respondent) *to observe and perform the covenants and conditions herein contained...."*

11. Paragraph 13 says that "*upon every underletting*" the lessee must give notice thereof to the Respondent "*...and produce to the* (Respondent) *certified copies of every document evidencing such disposition and to pay to the* (Respondent) *a reasonable fee (but not less than...£20) for the registration of every such notice".*

12. Oddly enough, there is no provision in the Third Schedule which enables the Respondent to charge for preparing any deed of covenant required under paragraph 10. However, the lessee also covenants to pay the service charges which are defined in the Fourth Schedule to include "*a reasonable sum to remunerate the* (Respondent) *for its administrative and management expenses in respect of the Block (including a profit element)*".

The Law

13. Paragraph 1 of Schedule 11 of the Act ("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...for or in connection with the grant of approvals under his lease, or applications for such approvals...or in connection with a breach (or alleged breach) of a covenant or condition in his lease."*

14. Paragraph 2 of the Schedule, which applies to amounts payable after 30th September 2003, then says:-

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

15. Finally, paragraph 5 of the Schedule provides that an application may be made to this Tribunal for a determination as to whether an administration charge is payable which includes, by definition, a determination as to whether it is reasonable.

The Respondent's Case

16. None of the basic facts outlined by the Applicant are denied by the Respondent which explains, in its written representations dated 7th October 2010, that it cannot assist with regard to the 2004 charge as the

administration of that matter was dealt with "externally" whatever that may mean. With regard to the other charges, it simply says that such charges are reasonable.

17. Regrettably, the Respondent gives no indication as to why it considers that its charges are reasonable save that it had to peruse the application, examine documents, prepare documents, check the lessee's rent and service charge accounts and record all the information on the Respondent's records. There is no indication about what time it spent on each application.

Conclusions

18. In answer to the question raised by the Applicant as to whether the Respondent can charges these fees under the terms of the lease, the answer is that the Respondent can charge fees for both the notice of registration and the preparation of the deed of covenant. Each assured shorthold tenancy has to result in notice being given to the Respondent and a fee can be charged on each occasion.

19. As to whether the fees are reasonable, the Tribunal has very little information about the payment in 2004. Having said that, it was paid at the time presumably without complaint and in the absence of any evidence to the contrary, it would seem to be a reasonable fee.

20. As to the two fees of £80, the evidence produced is somewhat confusing. The Respondent has produced a copy of an assured shorthold tenancy dated 20th March 2008 which is for the period 20th March 2008 to the 20th June 2008 and the tenant is Kenneth Wallis. There is then an application to sub-let dated 3rd November 2009 and under the title 'date of commencement of letting' it says '20th March 2008'. This is followed by a letter to the Applicant dated 17th November wherein the Respondent's agents say that a consent to let has previously been granted to allow a letting to a Mrs. D. Kafali. Perhaps this is how the 2004 fee arose.

21. There is then a letter from the Respondent's agent dated 11th December acknowledging receipt of the £80 fee and enclosing the deed of covenant for signature by the subtenant. The next relevant document is a copy of a letter written by David Briers, presumably on behalf of the Applicant, enclosing the signed deed of covenant. This letter has a date stamp on it indicating that it was received by the Respondent's agent on the 11th February 2010. The deed of covenant is dated 18th January 2010, refers to the subletting of the 20th March 2008 and appears to be signed by Kenneth Wallis.

22. Finally, there is a letter from the Respondent's agents to the Applicant dated 22nd February acknowledging receipt of the second £80 and giving consent to sublet to Mr. Wallis for 6 months from 20th January 2010.

23. The evidence therefore suggests that in respect of the 2008 letting there has been a fee of £80 paid for accepting the notice of subletting and preparing and completing the deed of covenant. These tasks could well have taken upwards of an hour to conclude based on the amount of work set out in the Respondent's evidence.

24. However, in connection with the 2010 letting to the same tenant, there does not appear to have been a deed of covenant but merely an acceptance of the notice of subletting. This would make sense because the deed of covenant already signed contains a promise by Mr. Wallis to observe all the lessee's covenants, obligations and conditions under the lease without time limit and therefore a new deed of covenant would not be necessary.

25. Receiving a copy of the new assured shorthold tenancy agreement and accepting the notice of subletting should not take more than 20/30 minutes and the Tribunal considers that a fee of £50 is reasonable for this task in the absence of any evidence from the Respondent.

26. The Respondent should therefore either refund £30 to the Applicant now or treat this sum as a credit against her service charge account.

27. As to the future, the Tribunal would consider that a fee of £80 would be reasonable for a new subtenant to include preparing the deed of covenant etc. and that £50 would be reasonable just to accept another notice of subletting for a new tenancy with Mr. Wallis. As time goes by, it would not be unreasonable for the Respondent to add to these fees to cover increases in inflation.

28. If the Applicant wants to reduce this liability, perhaps she should consider granting longer assured shorthold tenancies.

29. As far as costs are concerned, the Applicant asks for an order pursuant to Section 20C of the **Landlord and Tenant Act 1985** i.e. that the Respondent's costs of representation in these proceedings should not be regarded as a relevant cost for any future service charge account. The Respondent makes no comment about this. There is no application for the refund of the fee of £50 paid by the Applicant to the Tribunal.

30. The Tribunal considers that as the Applicant has been partially successful, a just and equitable solution would be for the order to be made under Section 20C so that the Respondent is unable to recover the cost of

representation in these proceedings in any future service charge account. However, as the main question asked by the Applicant, i.e. 'can the Respondent make any charges', is something she should have known from looking at her lease, there is no order that the Respondent shall refund her fee.

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Bruce Edgington
Chair
20th October 2010