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LONDON RENT ASSESSMENT PANEL

**DECISION AND REASONS OF THE LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER SCHEDULE 11 PARAGRAPH 5 TO THE
COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

Case Reference: LON/00AR/LAC/2011/0021

Property: Flat 16, Marwell Close, Romford, RM1 2TE

Applicant: Mr M Linton

Respondent: Proxima G R Properties Ltd

Date of hearing: 30 January 2012

**Leasehold Valuation
Tribunal:** P M J Casey MRICS
T Sennett

Date of decision: 27 February 2012

The Application

1. On 4 December 2011 the Applicant, Mr Michael Linton, applied to the Leasehold Valuation Tribunal ("the Tribunal") under paragraph 5(1) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination of his liability to pay administration charges in connection with his tenancy of Flat 16 Marwell Close, Romford, RM1 2TE ("the Property").
2. By directions issued by a Procedural Chairman on 9 December 2011 the Tribunal directed that the application be dealt with on the basis of written representations without an oral hearing unless either or both parties requested an oral hearing. No such request was received, and the Tribunal accordingly met to determine the application on 30 January 2012. Written representations

had been received from the Respondent through its agents, Estates and Management Limited, and these had been copied to the Applicant. Additional representations were received from the Applicant on 4 January 2012 which had been copied to the Respondent, Proxima G R Properties Ltd.

The Background

3. The Applicant is the leasehold proprietor of the Property and holds the residue of a 125 year term granted by a lease ("the Lease") dated 2 July 1988. Both the Applicant and the Respondent are successors in title to the original parties to the Lease.
4. The Applicant has underlet the Property to a third party under tenant without first obtaining the Respondent's consent. The Respondent's managing agents have apparently written to him on several occasions inviting him to regularise the position in accordance with the terms of his lease.
5. The managing agents had included with the correspondence "Sublet Guidelines" which explained how to obtain consent and set out a menu of charges which would be required in that connection. There were two alternative packages offered. Firstly for a standard consent a leaseholder would be required to pay, £95.00 for each and every letting plus £95.00 for registration of every new tenant, and £45.00 if the tenant is granted a further fixed term. The alternative offered was a global licence for £350.00 for a five year period.
6. In his application, Mr Linton said he wanted to pay just a one off fee of £75.00 no matter how many new tenants as he only paid £50.00 a few years ago in respect of another property. He said his lease made no mention of fees and believed the Respondent was making up unreasonable fees to obtain extra revenue and were inventing unnecessary and bureaucratic procedures to justify them. He repeated his case in his reply to the Respondent's statement of case.

7. For its part, the Respondent, through its agents in that statement referred to the relevant lease clauses, explained the nature of the work involved in the granting of consent and registration, enclosed copies of two LVT decisions which had found its charges to be reasonable and quoted S19(1)(a) of the Landlord and Tenant Act 1927 to support its entitlement to claim such charges. As to the charge itself the Respondent said it was £135.00 to cover the granting of consent and registration. So far as the “global licence” was concerned this was said to involve a voluntary contract and was not a variable administration charge.

The Issues

8. An “administration charge” is defined in paragraph 1(1) of Schedule 11 to the Act as:

“an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly -

- (i) For or in connection with the grant of approvals under his lease, or applications for such approvals,
- (ii) 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
- (iii) 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
- (iv) In connection with a breach (or alleged breach) or a covenant or condition in his lease”

9. Paragraph 2 states that “A variable administration charge is payable only to the extent that the amount of the charge is reasonable”. A “variable administration charge” means “an administration charge payable by a tenant

which is neither – (a) specified in his lease, nor (c) calculated by reference to a formula in his lease” (paragraph 1(3)).

10. Paragraph 5(1) provides that “An application may be made to a leasehold valuation 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.”

11. Sub-paragraph (2) and (4) make it clear that the Tribunal has jurisdiction in this regard whether or not any payment has been made unless, inter alia, the matter has been agreed or admitted by the tenant.

The Tribunal’s Determination

12. The Property is a dwelling for the purposes of the Act.

13. Having considered the provisions of the Lease, the Tribunal noted that the Applicant is bound by the lessee’s covenants set out in the Eighth Schedule thereto. Paragraph 24(a) of that Schedule provides that the Applicant is:

“not at any time during the said term to sub-let the whole or any part of the Demised premises save that an underletting of the whole of the Demised Premises (with the prior written consent of the Lessor and any mortgagee of the Demised Premises) is permitted in the case of a term certain not exceeding three years let at a rack rent”

The lease makes no mention of any charge in connection with the granting of such consent.

14. Paragraph 26 provides that within one months of any such underlease notice in writing with a copy of the lease is to be given to the landlord's solicitors and to pay a fee reasonable at the time of registration but not being less than £10.00

15. The lease does not say that the landlord's consent is not to be unreasonably withheld but S19(1)(a) of the Landlord and Tenant Act 1927 provides
 - “(i) In all leases whether made before or after the commencement of this Act containing a covenant condition or agreement against assigning, underletting, charging or parting with possession of the demised premises or any part thereof without licence or consent, such covenant condition or agreement shall, notwithstanding any express provision to the contrary be deemed to be subject –
 - (a) to a proviso to the effect that such licence or consent is not to be unreasonably withheld, but this proviso does not preclude the right of the landlord to require payment of a reasonable sum in respect of any legal or other expenses incurred in connection with such licence or consent.”

16. We have had the benefit of reading two recent decisions given by the President of the Upper Tribunal (Lands Chamber). They are *Holdings and Management (Solitaire) Limited v Cherry Lillian Norton, Samnas Limited v Jessica Rudway, Flambayor Limited v Andrew Hill and Holdings and Management (Solitaire) Limited v James Knight* (heard together) and *Bradmoor Limited* (no respondent) UT Neutral citation numbers [2012] UKUT1(LC) and [2012] UKUT3(LC). In *Samnas, Flambayor and Bradmoor* the leases made no provision for a fee to be charged for granting consent. Nevertheless the President held that whilst S19(1)(a) did not confer a right to charge fees in connection with the grant of consent to sublet if that right were not in the lease it did mean it would not be unreasonable to refuse consent if the tenant refused to pay his reasonable costs in connection with the grant. He went on to find that such a fee, provided that it is reasonable, is a variable

administration charge for the purposes of Schedule 11 to the Act payable only to the extent that the amount charged is reasonable. This is the issue which the Tribunal is to decide. The President's decision on the proper meaning of S19(1)(a) is binding on us.

17. The Tribunal accordingly finds that:
 - (a) The Lease requires the Applicant to obtain the Respondent's consent to underlet the property.
 - (b) Subject to the provisions of the Act, the Respondent is entitled to require the Applicant to pay its reasonable legal costs in connection with the grant of consent to underlet.
 - (c) The applicant is required to register any underletting with the Respondent. Subject again to the provisions of the Act, the Respondent is entitled to require the Applicant to pay a fee in respect of each registration.
18. The Respondent's charge for both granting consent and registration is £135.00 presumably exclusive of VAT. It is not broken down between the two actions and we can only therefore consider it in total. The "menu of charges" and the "global licence sums" do not assist us as the former is not relied on by the Respondent in its statement of case and we agree that latter is not a variable administration charge over which we have jurisdiction.
19. We are satisfied that the registration fee included in the £135.00 is an administration charge for the purposes of the Act. This was not an issue in the appeals heard by the President referred to above and whilst it is not immediately apparent that this is an amount which is payable for or in connection with the grant of approvals under the Lease (because registration of an underletting should not occur until after the question of consent has been addressed), there is a sufficiently close nexus between the requirement

to obtain consent to underlet and the registration requirement of the latter to be regarded as flowing from, and connected with, the former.

20. The fee sought of £135.00 exclusive of VAT is in our opinion a reasonable amount to charge as a variable administration charge for the granting of consent for a subletting and the registration of the subletting and is payable on each new letting for which consent and registration is required under the terms of the lease but we do not consider it reasonable to make any further charge when an approved tenant is granted a lease renewal or holds over on the existing agreement as all that the managing agents need know in such circumstances is that the same tenant is still in the property.

Chairman:



Mr P M J Casey

Date:

27 February 2012