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HM COURTS AND TRIBUNALS SERVICE
RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL
MAN/00CX/LAC/2012/0022

An application under Schedule 11 Paragraph 5 of the Commonhold and Leasehold Reform Act 2002 for a determination as to the payability and reasonableness of variable administration charges

Property: 28 Dock Mill Dock Lane Shipley West Yorkshire BD17 7AQ

Applicants: Vincent Grayson and Anthony Grayson

Respondent: Adderstone Group Limited

Date of Application: 18th June 2012

Date of Directions: 12th July 2012

Date of Determination: 24th September 2012

Tribunal: Mrs J.E.Oliver

Mrs S Kendall

Decision

1. The Tribunal determines that the Applicants require consent to sublet the Property and the fee for each consent is £40 plus VAT.
2. The Respondent repay to the Applicant the sum of £25 plus VAT for the consent fee already paid in the sum of £65 plus VAT.
3. The Tribunal further determines that each sublet of the Property by reason of an Assured Shorthold Tenancy does not require registration under the terms of the Lease and consequently no fee is payable for such registration.
4. The administration charges claimed by the Respondent under Clause 3.4 of the Lease in the sums of £130.20, £104.16 and £78 respectively are not payable.
5. The Tribunal makes an order pursuant to Section 20C of the Landlord and Tenant Act 1985 preventing the Respondent from including the cost of these proceedings in any future service charge.
6. The Applicants are not liable to pay the Respondent's costs of the proceedings claimed in the sum of £270.48.
7. The Respondent repay to the Applicant their application fee in the sum of £100.

Reasons

Introduction

8. This is an application made by Vincent Grayson and Anthony Grayson (the Applicants) who are the leaseholders of Flat 28 Dock Mill Shipley (the Property). The Property is held under a Lease dated 13th November 2006 and made between Bowesfield Investments Limited(1), Mandale Residential Management Company (2) and the Applicants (3). The Tribunal was provided with a copy of the Lease. The freehold interest in the Property is now held by UK Ground Rent Estate Limited who acquired the same on 25th July 2008.

9. The Respondent acquired the superior leasehold interest from Mandale Residential Management Company Limited in 2008.

10. The issues for determination by the Tribunal as set out in the application are the charges made by the Respondent under the Lease for the Applicants sub-letting the Property under an Assured Shorthold Tenancy Agreement and whether such charges are payable and/or reasonable.

11. Directions were issued by the Tribunal on 12th July 2012 providing for the matter to be determined without a hearing in the absence of any objection by either party. No request for a hearing was made.

The Lease

12. The Tribunal has been provided with correspondence between the parties, commencing in April 2012, requiring the Applicants to obtain from the Respondent their consent to the sub-letting of the Property, to register each sub-let and to pay the appropriate fees for doing so. In turn the Applicants maintain that the Lease does not provide for such consents/registration and their only obligation is to provide details of the tenancies "as and when they arise".

13. Within correspondence the Applicants also seek to reclaim from the Respondent a fee paid in 2011 for their consent to sub-let on the grounds that this was paid in good faith and at a time they assumed the Respondent's claim was valid. The sum reclaimed is £78.

14. The Respondent relies upon paragraph 31.2 of Schedule 4 of the Lease which provides as follows:

"not to sublet the whole of the Property without the consent of the Landlord (such consent not to be unreasonably withheld or delayed save that it shall be reasonable to withhold consent where the proposed underletting is other than to one family)"

15. Paragraph 32.2 provides as follows:

“within one month after the date of any and every subsequent assignment transfer mortgage charge underlease or tenancy agreement including any immediate or derivative underlease or tenancy Agreement of the Property assignment of such underlease or grant of probate or letters of administration order of court or other matter disposing of or affecting the Property or other devolution of or transfer of title to the same to give to the Landlord notice in writing of such disposition or devolution or transfer of title with full particulars thereof and in the case of an underlease (and if so required by the Landlord) a copy thereof for registration and retention by the Landlord and at the same time to pay to the Landlord such reasonable fees including value added tax for such registration (being not less than £65 plus VAT thereon) in respect of the registration of each such document or instrument so produced”

16. The Respondent has also charged the Applicants further fees arising from their alleged breach of the Lease, such charges being:

- An e-mail sent by Mr Hutton on 31st May 2012 regarding the payment of registration fees in the sum of £130.20
- An e-mail sent by Mr Hutton on 1st June 2012 in the sum of £104.16. It is contended by the Applicant that they did not receive the hard copy of this invoice and the copy sent by e-mail did not contain the statutory notice as required.
- A letter sent by the Respondent dated 19th June 2012 in the sum of £78.00
- The cost of the preparation of the witness statement in connection with the current application in the sum of £270.28.

17. The Respondent, in making these charges relies upon section 3.4 of the Lease which provides for the payment of charges by the Lessee as follows:

“on demand all expenses which the Landlord may from time to time incur in connection with or in procuring the remedy of any breach of the Tenant’s covenants contained in this Lease”

The Law

18. Paragraph 1 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (the Act) defines an administration charge as follows:

“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.”

19. Paragraph 2 of the Schedule provides as follows:

“a variable administration charge is payable only to the extent that the amount of the charge is reasonable”

The submissions of the parties and discussion

20. The Tribunal considered the Lease and whether its terms require the Lessee to obtain the Landlord’s consent to any sublet of the Property under an Assured Shorthold Tenancy Agreement in accordance with paragraph 31.2 of Schedule 4. In their submissions to the Tribunal the Applicants referred to the decision of a Leasehold Valuation Tribunal in **Hill v Flambayor Ltd CAM/00MG/LAC/2011/0002**.

21. The tribunal in that case considered that unless the lease provides for a charge to be made the landlord cannot rely on section 19 of the Landlord and Tenant Act 1927 to levy a charge. However, on appeal, this reasoning was rejected as wrong by the Upper Tribunal. (*Flambayor Ltd v Hill* [2012] UKUT 1 (LC). The Upper Tribunal said that it was a question of whether a landlord who sought to charge for consent, where the lease does not make provision for such, was acting

unreasonably in withholding consent unless payment was made. The Upper Tribunal held that he would not be if the charge was reasonable. Thus the matter for the LVT was as to the reasonableness of the charge, which was not precluded per se by section 19.

22. In that case, and in the case of the other appeals on the point heard at the same time, the Upper Tribunal held that a charge of £40 was reasonable. This tribunal considers that in the present case, having regard to the work involved, a charge of £40 would be reasonable.

23. The Applicants have previously sublet the Property to Mr And Mrs Lever for which they paid the fee demanded by the Respondent in the sum of £65 plus VAT. The Applicants are therefore entitled to a partial refund for the fee paid, in the sum of £25 plus VAT.

24. The Applicants are liable to pay to the Respondent the sum of £40 plus VAT for the further Assured Shorthold Tenancy created on 2nd June 2012 the terms of which were notified to the Respondent on 27th June 2012.

25. The next issue for determination is whether any sublet of the Property requires registration under paragraph 32.2 of the Lease and the payment of a fee. The Tribunal considered the wording of the paragraph and whilst it starts by saying that any tenancy agreement must be notified to the Landlord the words-

“and in the case of an underlease.....a copy thereof for registration.....and at the same time pay to the Landlord such reasonable fees including VAT for such registration...”

26. The Tribunal did not consider that this provides for any sublet to be registered. The paragraph comprises two distinct parts, distinguishes an underlease and a tenancy agreement and specifies that only an underlease requires registration; as such any assured shorthold tenancy agreement need only be notified to the Respondent and not registered. It therefore follows that no fee is payable .

27. The Applicants state that the Assured Shorthold Tenancy to Mr and Mrs Lever subsequently became a statutory periodic tenancy and have queried whether that also gives rise to a requirement to notify the Respondent of the change to the tenancy pursuant to paragraph 32.2. The Tribunal does not consider that the creation of such a tenancy, following on from an Assured Shorthold Tenancy, requires any further notification under the terms of the Lease. A statutory periodic tenancy is not a further tenancy agreement within paragraph 32.2.

28. The Applicants have argued that they are not liable to pay the fees charged by the Respondent for their alleged breaches of the Lease, under Clause 3.2, given that they are not in fact in breach of the Lease. The fees claimed by the Respondent are as follows:-

- 31st May 2012 –the sum of £130.20. This fee relates to an e-mail sent by the Respondent in response to a letter sent by the Applicant dated 28th May, the issue being the consent required for any sublet of the Property and any fee payable for the registration of the sublet. It is stated that this e-mail was subsequently sent hard copy together with a Schedule of the Tenant's Rights and Obligations. This is disputed by the Applicants who state they did not receive the hard copy nor the Schedule. The Applicants maintain that they were not in breach of the Lease at the time of the e-mail in that the new tenancy did not commence until the 2nd June 2012.
- 1st June 2012-the sum of £104.16. This fee is a further charge for an e-mail and copy letter dealing with the same issues as those in the previous e-mail.
- 19th June 2012-the sum of £78. This fee is a charge for further correspondence sent for the alleged breach of the Lease for subletting the Property and the requirement for consent and registration of any tenancy.

- 1st August 2012-the sum of £270.28 being the costs of the Respondent in the preparation of a witness statement in connection with the proceedings before the Leasehold Valuation Tribunal.

29. The Tribunal accepts the argument put forward by the Applicants in respect of those charges dated the 31st May in that the Respondent is purporting to charge fees under clause 3.4 of the Lease which relate to the remedy of any breach under the Lease. On that date the Applicants were not in breach of the Lease having paid the Respondent's charges (at that time for) for the sublet of the Property and no new tenancy having being created at that date. The sum of £130.20 is not payable. The same can be said for those charges made on 1st June. The sum of £104.16 is not payable. The sum of £78 does not appear to be claimed by the Respondent on the statement attached to their witness statement dated 1st August 2012 and is therefore not payable.

30. The charges made on the 1st August are effectively a claim by the Respondent for costs within the current proceedings. However, costs may only be awarded where the applicant has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings or where the application was dismissed as frivolous, vexatiou or an abuse of process. (Commonhold and Leasehold reform Act 2002, schedule 12 para 10. Neither of these circumstances are present in this case and therefore the sum of £270.28 is not payable by the applicants.

31. The Applicants, within their witness statement, have asked the Tribunal to determine upon a number of issues, namely those at paragraph 36(b) to (d) and (f) to (g). The Tribunal does not consider those to be within its jurisdiction and therefore makes no determination upon them.

32. The Applicants seek an order pursuant to Section 20C of the Landlord and Tenant Act 1985 to prevent the cost of the proceedings being recovered by the Respondent within the service charge. The Tribunal considers such an order to be just and reasonable given the success of the application

and further that matters are unlikely to have been resolved between the parties without the application having been made.

33. The Tribunal further determines that the application fee in the sum of £100 be repaid to the Applicants by the Respondent.

Dated this 27th day of October 2012

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Mrs Judith Oliver (Chair)