HM Courts & Tribunals Service

LEASEHOLD VALUATION TRIBUNAL

Case number : CAM/42UD/LBC/2012/0008

Property	:	Flat 3, Burnham Lodge, Oakstead Close, Ipswich IP4 4HJ
Application	:	For determination that the Respondent is in breach of a covenant or condition in a lease between the parties [Commonhold and Leasehold Reform Act 2002, s.168(4)]
Applicant	:	HND Investments Ltd, 1st floor office, 43–45 High Road, Bushy Heath, Herts WD23 1EE
Respondents	:	Dr Rajiv Chhabra & Mrs Hema Chhabra, 1 Maple Grove, Barham, Ipswich IP6 0PH

DECISION

handed down 1st February 2013

Tribunal	:	G K Sinclair (chairman), G F Smith MRICS FAAV REV & C Gowman BSc MCIEH MCMI
Hearing date	:	Thursday 24th January 2013 at Ipswich Magistrates Court
Representation	*Applicant*	Harry Gold (retired solicitor) & Mrs Kemp
	Respondents	Christopher Storey MRICS & Mrs Hema Chhabra

Summary

1. By application dated 6th August 2012 the Applicant landlord alleged, in summary, that the Respondents were in breach of covenant by :
   a. Carrying out work to the flat by adding an outlet pipe and extractor fan without having sought and obtained the previous formal licence of the Applicant, contrary to clause 8 of the Third Schedule to the lease; and
   b. Underletting the whole of the flat without the previous consent of the Applicant, contrary to clause 9 of the Third Schedule to the lease.

2. By letter dated 29th August 2012 (to which the tribunal consented) the solicitors acting for the Applicant sought to amend the application by adding a further allegation of breach of covenant, viz
   c. using an area within the common parts of the building outside the flat for the

storage of a wheelchair, mobility frame, mobility scooter and shopping trolley, in apparent breach of clause 19 of the Third Schedule to the lease.

3. The Applicant much later gave notice that it intended to apply at the conclusion of the hearing for an order that the Respondents make a contribution to its costs, relying upon paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. In turn, Mr Storey for the Respondents asked that the tribunal make an order under section 20C of the Landlord and Tenant Act 1985 to prevent the Applicant from adding the costs of these proceedings to the annual service charge.

4. For the reasons set out below the tribunal determines as follows :
   a. In breach of clause 8 of the Third Schedule to the lease the Respondents carried out work to the flat by adding an outlet pipe without having sought and obtained the previous formal licence of the Applicant. The tribunal regards this as a minor breach which has since been remedied.
   b. By clause 9 of the Third Schedule the leaseholder must not (inter alia) underlet the whole of the flat without the previous consent of the Applicant, such consent not to be unreasonably withheld. In fact the Applicant sought to impose such onerous conditions, including the payment of substantial legal fees, as to make the withholding of consent unreasonable, and the Respondents proceeded without. The tribunal determines that in granting an assured shorthold tenancy to Mr & Mrs Neilds the Respondents were not in breach. If the tribunal is wrong in its finding then it records that any breach has already been remedied by evicting the sub-tenants from the flat.
   c. While it is common ground that Mr & Mrs Neild did use part of the hallway immediately outside the flat for the storage of a wheelchair, mobility frame, mobility scooter and shopping trolley, the tribunal is not satisfied on the evidence presented that this did actually "hinder or prevent the free access of others over... the entrance hall staircases passages or lifts of the building" in breach of clause 19 of the Third Schedule. Again, if the tribunal is wrong in its finding then it records that any breach has already been remedied by evicting the sub-tenants from the flat.

5. The tribunal does not consider it appropriate to order the Respondents to pay anything towards the Applicant's costs under paragraph 10 of Schedule 12 to the 2002 Act. An oral hearing was needed in this case, the Respondents have largely succeeded, and the Applicant has not shown that any costs were the result of the Respondents' conduct in connection with the proceedings.

6. As the Applicant has so far shown no interest in recovering its costs other than directly from the Respondents under paragraph 14 of the Third Schedule to the lease it is not yet appropriate to make an order under section 20C of the 1985 Act.

Relevant legislation

7. Section 168 of the Commonhold and Leasehold Reform Act 2002 provides :
   (1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2)

is satisfied.

(2) This subsection is satisfied if –

(a) it has been finally determined on an application under subsection (4) that the breach has occurred,

(b) the tenant has admitted the breach, or

(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(4) A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

(5) ...

8. Section 169 contains supplementary provisions which this decision need not record.

9. The question whether a lease is forfeit therefore remains one for the court, as is the exercise of its discretion to grant relief against forfeiture; an issue which in the context of a long lease is likely to be of considerable concern to any mortgagee of the tenant's leasehold interest.

10. A material element in this case is the amount demanded by the lessor for the giving of consent to underlet. Schedule 11 to the 2002 Act, given effect by section 158, provides in 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,

... [or]

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

...

(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.

11. Paragraph 2 then provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

12. A charge for consent to an underletting is thus an administration charge, provided that it is reasonable. If it is not reasonable, it would be unreasonable to withhold consent if the charge was not paid; and the charge would not be payable.[1]

[1] *Holding & Management (Solitaire) Ltd v Norton (and other cases)* [2012] UKUT 1 (LC), at [10]

The lease

13. Mr Gold informed the tribunal that as the then tenant wanted an extended term[2] this was dealt with by way of surrender and re-grant, but although the lease is therefore quite modern (being dated 8th January 2008) almost all of its terms were lifted directly or with the slightest modification from the original underlease dated 23rd September 1976. This certainly applies to the covenants relied upon in this application.

14. There are three parties named in the current lease : Plintal SA (a Panamanian company) as "lessor", Samnat Management Ltd as "the maintenance company", and Timothy Stuart Reeves as "the lessee". The interest of Plintal SA as lessor is now held by the Applicant company. That of Mr Reeves as lessee was assigned to Mr & Mrs Chhabra on the same date as the surrender and re-grant, although they did not appear on the registered title until May of that year.

15. By clause 5 of the lease the lessee covenants with the lessor and with the maintenance company to observe and perform the obligations set out in the Third Schedule. The relevant clauses of that Schedule which are relied upon are 8, 9 (and with it 10) and 19. The material parts of these read as follows :

Clause 8 – Not to alter the internal planning or the height elevation or appearance of the flat nor at any time make any alterations or additions thereto nor cut maim or remove any of the party or other walls or partitions... without the previous formal licence of the lessor...

Clause 9 – Not to assign underlet or part with possession of any part (meaning a portion only and not the whole thereof) of the flat and not to assign transfer underlet or part with possession of the whole of the flat without the previous consent in writing of the lessor such consent not to be unreasonably withheld and to be subject to compliance by the lessee with the provisions of clause 10 of this Schedule

Clause 10(i) – To cause to be inserted in every underlease (whether mediate or immediate) a covenant by the underlessee with the lessor the maintenance company and with the lessee to observe and perform all the covenants and conditions in this lease contained (except the covenants for payment of rent or maintenance contribution) with a condition permitting re-entry in case of any breach of any of the said covenants or conditions (except as aforesaid)

Clause 19 – Not to do or permit anyone under his control to do anything which might hinder or prevent free access of others... over the entrance hall staircases passages or lifts of the building...

16. The Applicant also relies upon clause 14 of the Third Schedule, which requires the lessee to pay to the lessor on demand :

> ...all costs charges and expenses (including legal costs and surveyor's fees) which may be incurred by the lessor or which may become payable by the lessor... under or in contemplation of any proceedings in respect of the flat under

2 125 years from 24th June 2007, instead of 99 years from 24th June 1976

sections 146 or 147 of the Law of Property Act 1925 or in the preparation or service of any notice thereunder respectively notwithstanding that forfeiture is avoided otherwise than by relief granted by the court.

Inspection and hearing

17. The tribunal inspected the premises at 10:00 on the morning of the hearing. Present on site were Mr Gold, Mrs Kemp, Mrs Chhabra and Mr Storey. Burnham Lodge is the first building one reaches when entering Oakstead Close from Nelson Road. By foot or car it is perhaps several hundred metres at most from the junction with Spring Road, from which it is a direct route into the centre of Ipswich from the east. The building sits on sloping ground, slightly below the level of Oakstead Close but high above Spring Road immediately to the south. The building is of mid-1970s brick construction under a flat roof. The grounds are laid to lawn, and on the eastern side concrete steps lead down to the rear of the building.

18. Flat 3 is described as a ground floor flat. That is true if one approaches from the rear, as it is down one flight of stairs if approaching through the street entrance at the front. The flat is accessed from quite a wide but short corridor or hallway, which it shares with a lift and access to the stairs (and rear exit) at one end and flat 4 at the other. The door to flat 3 is on the "lower" side of the hallway, with that for flat 4 towards the same side but on the end. Opposite flat 3 are several large cupboards. The doors to these were locked, the lessor's representatives were unable to explain their purpose, but it was said that no lessee had access to them. Another unusual feature is that at either side of flat 3, between the hallway and the rear external wall, a narrow louvred door gives access to a narrow corridor, at the end of which is an upper glazed panel and a lower louvred one. The walls have been left unplastered. These features effectively insulate flat 3 from flat 4 at one side and the stairwell at the other.

19. By reference to the rather poor quality photographs at pages 72–74 in the hearing bundle Mrs Kemp showed the tribunal where the wheelchair, etc had been left in the common hallway.

20. On inspection flat 3 was unfurnished and unoccupied. At the end of a short entrance hall is the doorway to the kitchen, which has at some time recently been refurbished. By the rear wall, under a large window, is a modern sink and drainer unit with worktops. It is thought that the previous gas boiler may have been located under the sink, for there had been a grille in the rear wall under the window (evident in the photograph at page 84 in the hearing bundle but since skilfully removed and blocked up by bricks and mortar which match the existing finish remarkably, despite an interval of nearly 40 years).

21. To the left of the entrance hall is a door into a living room with large window to the rear. In the corner, by the rear external wall and the kitchen wall, a small wood and laminate cupboard has been constructed to conceal a new gas boiler, from which a combination flue and inlet pipe gains access to the outside by a new opening in the wall, to one side of the kitchen window. As shown in the photograph at page 84, a hole had been drilled for a plastic water outlet pipe at just below window level, from where it was clipped to the brick exterior down to a gravel soakaway. By the date of the inspection this had also been removed and bricked up skilfully, leaving no trace.

22. The hearing commenced at 11:20. Mr Gold, who had indicated that he was a retired solicitor, spoke on behalf of the Applicant, with Mrs Kemp by his side. He made periodic reference to documents that had not been disclosed, were not in the hearing bundle and which he found in his original files. Mr Storey represented the Respondents, of whom only Mrs Chhabra was present. He had produced and filed with the tribunal office a small bundle of some additional correspondence between the parties that had either been left out of the main bundle or post-dated it (the original hearing date in November 2012 having been vacated). He said that the Applicant would have these documents in its files, but it would have been far more helpful if the bundle had not only been filed with the tribunal but served on the other party, so that everyone could follow exactly what was going on.

23. The application had, in accordance with directions, been supported by a short witness statement by Mrs Kemp, verified by a statement of truth. Mr Gold observed, correctly, that the Respondents had filed merely a letter from Dr Chhabra which contained no such verification. The bundle contained the application, lease, witness statement, directions, Dr Chhabra's letter/Statement of Case, some poor photographs, a copy of the original 1976 underlease and correspondence.

24. In view of the flurry of correspondence since the earlier hearing date had been vacated the tribunal began by asking where the parties stood on each alleged breach. Mr Storey began by agreeing that the old flue had been replaced and a new one put in. No consent had been applied for, because the Respondents had not understood what was going to be carried out by the engineer. In written submissions which he handed in Mr Storey commented that the relocation of the central heating boiler was necessitated by changes to the regulations governing gas boilers. This was carried out as routine maintenance and, although it involved alteration of the flue position, no detriment to the reversion was caused.

25. However, a new water overflow pipe routed outside in an insulated pipe had since been relocated internally and any damage made good. He accepted that there had been a technical breach. Mr Gold later commented that the Applicant was not concerned about the flue but the white plastic overflow pipe. The tribunal also noted that the alleged breach was stated as being "adding an outlet pipe and extractor fan". There is and was no such fan.

26. As for the third alleged breach, of blocking the corridor as dimly seen in the photographs at pages 72–74, he accepted that this was a breach of the terms of Mr & Mrs Neilds' assured shorthold tenancy The sub-tenants' health had deteriorated during the period of their occupation, they needed mobility equipment which they could not put inside the flat, and so notice was given as soon as possible. They did not want to leave the flat, even though it was not the most suitable for them. The issue had now been resolved. However, he queried whether this equipment had been obstructing the corridor. The new neighbours said that they had no problem, but he didn't know if previous tenants had complained. There was no correspondence on the subject.

27. Mr Gold stated that he was relying upon the photographs taken by Mrs Kemp and a short e-mail at page 71, from Burnham Lodge Residents Association to the maintenance

company. It is dated 11th August 2012[3] and reads :

> Hello Helen,
>
> A new leaseholder has moved into Flat 4. Inevitably they have commented upon the state of the lower ground floor outside Flat 3. (Why are these things never sorted before they move in?)
>
> At the moment there is the usual smogsbord (sic) : wheelchair, mobility frame, mobility scooter and a shopping trolley.
>
> Are you able to remove these items?
>
> Regards,
>
> Nick

28. No correspondence with the Respondents on this issue was produced. According to Mr Gold Mrs Kemp would say in evidence that it impeded the caretaker (twice per week), and would impede those visiting flat 4, but there was no actual evidence of that.[4] No-one had said that this equipment in a wide corridor would hinder or impede free access. All that Mrs Kemp actually said on the subject, in paragraph 4.3 of her witness statement at page 56 of the bundle, was :

> I am aware from notifications which I have received from the Chairman of the Residents' Association at Burnham Lodge that a number of leaseholders at the property are concerned by the fact that Mr & Mrs Neild use the area immediately outside of Flat 3 (i.e. an area falling within the common parts of the building, namely one of the passages) for storage of various items.

She then referred to and exhibited the e-mail quoted above, concluding that

> It is implicit from the email that this problem has been ongoing and continues.

29. The crux of this case is the issue of sub-letting without consent. Mr Storey referred to some of the correspondence from Samnat, in particular a letter to Dr Chhabra dated 12th May 2009[5] in which a number of conditions were set out but no specific figures were mentioned. This is an important part of the history and the material parts read :

> You will require a written consent of our clients and this is dealt with by way of a Licence and our clients usual requirements with regard thereto are as follows
>
> 1. A solicitors written undertaking to pay our solicitors costs and disbursements including our fees thereon whether or not the matter proceeds to completion.
> 2. A bank, employer and personal reference in respect of prospective assignees, or under-tenants.
> 3. Details of Assignees/under-tenants full names and addresses and conformation (sic) that they are fully aware of the car parking prohibition on the estate and the availability of parking spaces to rent and require if any in this connection (sic).
> 4. The discharge of any arrears of Ground Rent and Service Charge prior to the grant of any Licence.

[3] The letter from Kerseys asking to amend the application by adding this as a further alleged breach was dated 29th August 2012, just over two weeks later

[4] The chairman made the point to Mr Gold that no-one sensibly advised would ask Mrs Kemp any questions, as this would merely allow her to bolster her evidence by introducing fresh material in re-examination

[5] The letter concerned both this flat and another at Beverley Court, to be mentioned later in this decision

You would be well advised to instruct solicitors to deal with this and to apply for a Licence to Shelagh Mason at Mason & Co, Richmond House Les Banques St Sampson Guernsey GY2 4BP.

30. Mr Storey also referred to a letter in his additional bundle, dated 7th December 2012, on this occasion from Samnat to himself. It rejected his suggestion of a fee of £180 for the grant of consent to a sub-letting and explained, in essence, that this was a complicated task requiring just over three hours preparation and correspondence time, at the rate of £375 per hour charged by its Guernsey solicitors, Spicer & Partners, who held all the deeds documents and property records. This rate was said to be in line with London solicitors. The letter went on to note that the amount of costs which the tribunal could normally award was limited, but that there was no such limit on the costs for which the Respondents would be responsible under clause 14 of the Third Schedule of the lease.

31. Mr Storey referred to the figure of £575 plus VAT mentioned on page 2 of Dr Chhabra's letter to the tribunal, at page 80, which he said was the result of meetings with the Residents' Association at which discussions had been held about the amount that has been charged. One other tenant, he state, had recently paid £350 plus VAT (£420). The figure of £575 plus VAT had also been mentioned. Dr Chhabra would not just make it up.

32. Mr Storey also, in his closing submissions, drew the tribunal's attention to the decision of another Leasehold Valuation Tribunal in a dispute concerning flats at Beverley Court, Ipswich (held on leases in which the material provisions were the same) between Dr Chhabra and others against the same lessor and maintenance company[6],and to a later decision of the Upper Tribunal (Lands Chamber) in *Holding & Management (Solitaire) Ltd v Norton* (and three conjoined cases)[7]. These, he said, confirmed the Respondents' belief that the fees being sought by the lessor as a condition of the grant of consent for the sub-letting on an assured shorthold tenancy were unreasonable. He said that the figure of £180 which he suggested was based on the £175 determined as reasonable in the earlier LVT decision, to which he had added a further £5. Since the later decision of the Lands Chamber he now considered even that figure to be too high.

33. In response, Mr Gold said that £375 per hour is the rate at partner level, as that is what this job entails. It is that important. Referring to clause 10(l) of the Schedule, he said that clauses have to be inserted in every sub-lease. In response to questioning by the tribunal he expressed the firm view that the freeholder has the final say as to whether a proposed sub-tenant is suitable or not, and that it was usual to ask for references. It was put to him that this was not only unnecessary for assured shorthold tenancies, where the lessee was still liable on the lease covenants, but that these days most banks would not provide any written references, let alone employers.

34. Mr Gold stated that in the last four sub-lettings the charge had been £350, on the last occasion with the addition of VAT (due to a change in the regulations). He strongly denied the allegation that sub-lettings had taken place without consent being applied for,

6 Case No. CAM/42UD/LSC/2009/0139

7 [2012] UKUT 1 (LC)

and that Dr Chhabra was being singled out. In this case, because of difficulties envisaged, he had been told that the fee would be not more than £400. He disputed the figure of £575 plus VAT. Questioned by the tribunal about the hourly rate of £375 plus VAT mentioned in the most recent letter, he was asked how in these circumstance (and with no figure being referred to in the May 2009 letter) he could say that the fee was £350.

35. Mr Gold then said that he had found a letter in the old file referring to figure of £400. This letter, which had not previously been disclosed, was dated 8th February 2010 and was written by Mason & Co to Ross Coates, the Respondents' former solicitors. It was admitted in evidence, and copies were made. The letter did indeed refer to solicitors' costs of £400 (with no VAT), but went on to add a managing agents' fee of £100 inclusive of VAT and a fee for registration of the sub-letting of £30 — i.e. a total of £530 (which now, according to Mr Gold, would have VAT added to the Guernsey solicitors'costs as well).

36. In his final submissions on the alleged breaches Mr Gold said that the application is for a declaration that there have been breaches of covenants in the lease. In terms of papers before the tribunal all the breaches are admitted. One only had to look at Dr Chhabra's letter to the tribunal of 17th September, at pages 79–81. He said that they admit that their tenants' possessions were in the corridor; admit the work done in respect of the boiler; and he said that he confirmed that those items had been remedied. But because the breaches have occurred the lessor is entitled to a declaration to that effect. This was only a preliminary step, followed by service of a section146 notice and, if necessary, court.

37. The main point in the dispute concerned the underletting. With regard to that this was not the first time that the Respondents had underlet without consent, and without even making in the first case an application until after the first breach had occurred (in 2010) and not even making an application about the tenancy of Mr & Mrs Neilds. Again, this breach was also admitted in the letter. In the third line they admit that they are tenants. The rest of that paragraph confirms their presence there. Whether or not they were actual tenants, the lease talks of parting with possession. His final point on this aspect was that the Respondents had admitted in the fourth paragraph of Dr Chhabra's letter being prepared to pay the going rate. This Mr Gold understood as meaning the rate usually charged by the Applicant, not the going rate charged by landlords in the locality. His parting shot was that if Dr Chhabra applied for consent so that he could re-let the now-empty flat a fee of £350 would be acceptable to the Applicant.

Findings

38. The tribunal has considered the limited evidence properly given, and the documentary evidence disclosed – including that disclosed on the day. It also takes into account the findings made by a previous tribunal in a dispute between the same parties about a flat in a different building but where the lease terms are practically identical. The findings of another tribunal are not technically binding, but unless this tribunal were of the opinion that the previous one had gone seriously wrong then it would be unfortunate if there were conflicting decisions on exactly the same legal point of construction of a clause in the lease. The tribunal also took into account the observations made in the later Lands Chamber decision in *Holding & Management (Solitaire) Ltd v Norton*, accepting of course

that the lease terms in that case may have differed.

39. *Outlet pipe & extractor fan.* There is no extractor fan. There is a balanced flue. No permission was sought before installing this and the water overflow pipe (the latter now removed). At the hearing Mr Gold made it clear that it was the old redundant grill which was a cause for complaint (but as an existing feature that is not a breach) and the pipe. These had since been removed after consultation with the Applicant's surveyor and its managing agent, Ms Kemp. Insofar as the white plastic outlet pipe is concerned there was a breach of covenant, but it was technical and since been remedied. The Applicant says this is not a "minor" breach. When questioned Mr Gold said the Applicant was happy with the balanced flue, but not with how the previous vent had been left. All he wanted was a declaration, as the next step is service of a section 146 notice.

40. Section 146(1) of the Law of Property Act 1925 provides that :

> A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice –
>
> (a) specifying the particular breach complained of; and
>
> (b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and
>
> (c) in any case, requiring the lessee to make compensation in money for the breach;
>
> and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

41. In this case the breach has already been remedied before a notice has been drafted, and one wonders what **reasonable** compensation might be sought (where Samnat did not respond to Mr Storey's proposed schedule of repair works). This is to be contrasted with the extraordinary terms of a proposed Declaration and Undertakings annexed to Samnat's letter dated 7th December 2012, which required the Respondents

> to remove all the unauthorised alterations and additions to the said flat and to the external wall of the building and to repair reinstate and make good the same as speedily as possible to the satisfaction of the Applicant's surveyor whose fees will be paid by the Respondent.

Did the Applicant really intend that the new, regulation-compliant boiler and balanced flue be removed and the old one be reinstated? In these circumstances is service of a section 146 notice really warranted?

42. *Storage of goods in the corridor.* Did these items "hinder or prevent" free access over the corridor, which is unusually wide (not measured at the inspection but assessed as at least 1.5 metres) and more of a hallway serving only flats 3 and 4? The tribunal finds that the Applicant, despite producing some murky photographs, has not proved that this was regarded as an infringement, that it was ever drawn to the lessee's attention informally, or that anyone was hindered or prevented in obtaining free access. The assertion by Mr Gold that the caretaker would be hindered in cleaning the hallway was not supported by any evidence to that effect and is merely his assertion. The tribunal therefore finds this alleged breach not proven.

43. *Consent to sub-letting*. Despite the points made in closing by Mr Gold, the only alleged breach here is the subletting to Mr & Mrs Neilds. Any previous sublettings (of which there was no evidence given) are irrelevant to this enquiry.

44. At paragraph 1.9 of the LVT decision involving these parties in connection with Beverley Court, 72 Christchurch Street, Ipswich there are quoted the terms of a letter from Kerseys dated 10th November 2009. This sought to impose as conditions the same four points mentioned in the letter from Samnat to Dr Chhabra dated 12th May 2009 [see paragraph 29 above]. In that case, unlike here, evidence was given of differential charges for assignment and sub-letting. At paragraphs 5.43 and 5.44 the tribunal said this :

> 5.43 In the judgment of the Tribunal, £550 is an unreasonable fee to charge for granting licence to assign. The process is relatively straightforward from the landlord's point of view and the processes involved are repetitive. Given that assignments are a fairly common event, the landlord and the landlord's solicitors should be familiar with the process and have the relevant template letters, licence document and information readily to hand. In the judgment of the Tribunal, a reasonable fee for the whole process would, unless some unusual difficulty was encountered, be no more than £300 plus VAT (if applicable).
>
> 5.44 in the case of licence to sublet, the landlord is not required to provide information. All that is required is to send a couple of standard letters, draft a standard licence deed to include direct covenants to be entered into by the subtenant, check references and receive the executed deed from the subtenant. This will be routine repetitive work not requiring a high level of legal skill. Most of the work will be done by the leaseholder and the subtenant. In the judgment of the Tribunal, a reasonable fee, unless some unusual difficulty was encountered, would be £175 plus VAT (if applicable).

45. In *Holding & Management (Solitaire) Ltd v Norton*, in a further decision on quantum at [17], the President of the Lands Chamber (George Bartlett QC) said :

> The appellants seek to justify the consent fee in terms that apply to all consents, and they do so by setting out (see paragraph 13 above) a list of work that, it is claimed, their agents do. It looks to me to be a list of all the things that could conceivably be done in connection with the grant of consent rather than the things that would need to be done in a typical case or that were in fact done in the cases under consideration. I agree with Mrs Norton that in relation to her shorthold tenancy agreement there was no need for the lease to be perused and that, in view of the covenant, there was no need for the tenancy agreement to be examined or for the documentation to be reviewed by the legal department. I am wholly unpersuaded by the appellant's assertion that it would have been necessary for an administrator to spend approximately two hours dealing with the application and the legal department about one hour. In the absence of any information on the part of the appellant as to what was actually done, by whom and how long it took, I am not satisfied that a fee of £105 for the grant of consent in addition to fees for the covenant was justified or that consent could reasonably have been refused in the event that Mrs Norton had refused to pay it. The same goes in relation to Dr Rudnay. Doing the best I can on what is before me, I conclude that a fee greater than £40 plus VAT could not be justified, and I

determine that this amount is payable. In relation to the other two cases a fee of £135 was sought – higher than the £105 because, it was said, the consent was a retrospective one. The appellants have done nothing to show that in these two cases extra costs were incurred. I therefore determine that the amount payable in each case is £40 plus VAT.

46. The tribunal is mindful in the present case that the relevant lease clauses are expressed differently to those four considered in *Norton*, but it takes fully into account the terms sought to be imposed by the letter dated 12th May 2009 (which declined to be specific about the cost), the fees totalling £530 mentioned in that dated 8th February 2010, and the detailed explanation for charging £375 per hour in Samnat's post-dispute letter dated 7th December 2012. In this tribunal's view the conditions sought to be imposed in the earlier correspondence were unreasonable, and a figure of £175 plus VAT (together with a registration fee of £30) is the most that could legitimately be charged. Perhaps to allow for inflation Mr Storey, on behalf of the Respondents, had offered £180. Having since read the Lands Chamber's decision in *Norton* he now considered this too generous.

47. Strictly, this tribunal is not seised of an application to determine the reasonableness and amount of an administration charge under Schedule 11 to the 2002 Act; it has merely to determine whether or not the Respondents are in breach of covenant by subletting without the written consent of the Applicant, such consent not to be unreasonably withheld. As was said in *Norton*, at [10] :

> A charge for consent to an underletting is thus an administration charge, provided that it is reasonable. If it is not reasonable, it would be unreasonable to withhold consent if the charge was not paid; and the charge would not be payable.

48. In the circumstances the tribunal finds that by ignoring the Applicant's unreasonable demands and proceeding to sublet without written consent the Respondents are not in breach of clause 9 of the Third Schedule to their lease.

Costs

49. At the conclusion of the hearing Mr Gold was invited to pursue his application for costs against the Respondents under paragraph 10 of Schedule 12 to the 2002 Act, on the grounds that they had behaved frivolously, vexatiously or otherwise unreasonably in connection with the proceedings. The points he sought to make were that :

a. It was unreasonable to pursue their defence to a full hearing in the light of the admissions which they have made in Dr Chhabra's letter/Statement of Case
b. It did not contain a Statement of Truth
c. It contained matters which were untrue ; all other sublettings in Burnham Lodge were in fact made with consent
d. The Respondents had failed to serve the additional letters on the Applicant and had refused to produce copies of the tenancy agreement.

50. Mr Gold said that Kerseys' costs since the bringing of the application exceed £500. They made the application, put bundles together, and engaged in subsequent correspondence. The tribunal was prepared, without formal proof, to accept the likelihood that legal costs exceeded that figure.

51. The tribunal considers that Mr Gold was wrong to equate an admission that they had let the flat to Mr & Mrs Neild with an admission that the Respondents were in breach of clause 9. The tribunal has found otherwise. It has also found that the alleged breach by hindering access in the hallway has not been proved by the Applicant. It also notes that the first step taken by the Applicant was not to approach the Respondents informally about its concerns but to issue this application. The addition of a third alleged breach seems to have been in response to a brief e-mail dated 12th August 2012, again without first approaching either the Respondents or their subtenants about the clutter.

52. The tribunal does not consider that the Respondents have acted in a manner that would justify an award of costs under paragraph 10, in particular as the findings in their favour demonstrate that a hearing was useful. Further, the tribunal wishes to record that the medical reasons advanced for seeking a last-minute adjournment of the earlier planned hearing date are considered by it to have been reasonable. (Mr Gold had not sought to argue otherwise, but the tribunal wishes nonetheless to place this finding on record.)

53. Mr Gold's application for costs is therefore refused.

54. As the Applicant has so far shown no interest in recovering its costs other than directly from the Respondents under paragraph 14 of the Third Schedule to the lease the tribunal considers that it is not yet appropriate to make an order under section 20C of the 1985 Act. If necessary, that can be considered in the context of a challenge to service charges actually demanded under section 27A, by when detailed particulars may be available.

Dated 1st February 2013

Graham Sinclair – Chairman
for the Leasehold Valuation Tribunal