

9306



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

Case Reference : CHI/OOML/LVA/2013/0001

Property : 24 Bodiham House, Davigdor Road, Hove,
East Sussex, BN3 1WQ

Applicant : Mr C Delaney.

Representative : Not represented

Respondent : Leasehold Property Management Limited.

Representative : Not represented

Type of Application : Schedule 11 Commonhold and Leasehold Reform
Act 2002 and Section 20C Landlord and Tenant
Act 1985.

Tribunal Members : Judge S Lal (Legal Chairman)

**Date and venue of
Hearing** : 27th August 2013, Chairman's home.

Date of Decision : 27th August 2013.

DECISION

Application

1. On 11th March 2013, the Applicant applied to the Tribunal under section 11 of the Commonhold and Leasehold Reform Act 2002 (the "Act") for a determination as to whether an administration charge is payable under a lease and if so, the reasonable amount payable. The Applicant has also applied for an order for costs under Section 20C of the Landlord and Tenant Act 1985.

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2. The Tribunal issued Directions on 22nd May 2013. The Directions made it clear that the Application is to be dealt with on the paper track on the basis of written representations without a formal Hearing. Neither party has objected to this procedure. In accordance with the Directions, on 10th June 2013 the Respondent sent to the Applicant and the Tribunal its Statement in Reply to the Applicant's Statement of Case together with supporting documentation. The Applicant has not filed a Reply document.

Applicant's Case

3. The Property comprises a second floor flat held on a long lease dated 22nd May 2000 between (1) Alfred McAlpine Homes Southern Limited and (2) the Applicant (the "Lease"). The Respondent is acting on behalf of the current lessor, Freehold Estates Limited (the "Lessor").

4. Since 2009, the Applicant has sublet the Property on 6 monthly terms. In accordance with clause 7(c) of the Sixth Schedule to the Lease, the Applicant sought the consent of the Respondent to the sub-letting and paid the sum of £86.25 to the Respondent. The Applicant claims that he has been paying a renewal fee to the Respondent for their consent on an annual basis. However, the Applicant has been recently advised that it should not be necessary to pay an annual renewal fee once consent has been granted and the sub-tenants remain the same.

5. The Applicant has provided copies of correspondence from the Respondent demanding fees of £90 in 2012 and £120 in 2013 (including a breach fee). The Applicant claims that the actions of the Respondent amount to a "scam" and a "revenue generating exercise" and therefore asks the Tribunal to determine whether the administration charge should be payable on an annual basis and, if so, the reasonableness of such a charge.

The Respondent's Case

6. The Respondent claims that the Applicant is obliged to pay an annual fee for the consent to sub-let in accordance with clauses 7(c), 8 (a) and 9(a) of the Sixth Schedule to the Lease. The Respondent notes that the Lease does not give any indication in relation to the period of time for which consent should be granted. The Respondent states that the annual charge is applied for the benefit of the Applicant who has been sub-letting on a 6 monthly basis. The Respondent states that an annual review of all Assured Shorthold tenancies is required for administrative and insurance purposes. The Respondent further states that the application fee of £75 plus VAT is reasonable and asks the Tribunal to determine that the Applicant should pay administration costs of £90 plus VAT.

The Law

7. Paragraph 5 (1) of Schedule 11 to the Commonhold and Leasehold Reform Act 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.*

8. Section 20C of the Landlord and Tenant Act 1985 provides that:

“(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal or the Upper Tribunal or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or an other person or persons specified in the application. “

The Tribunal’s decision

9. The Tribunal has considered all of the evidence before it, including the Application Form provided by the Applicant and accompanying correspondence, the Statement of Reply from the Respondent with accompanying documentation and the terms of the Lease, in particular clauses 7(c) and 9 (a) of the Sixth Schedule to the Lease. The Tribunal has also considered the recent decisions of the Upper Tribunal (Lands Tribunal) in Case Number (2012) UKUT 1 (LC) and Case Number (2012) UKUT 3 (LC) and exercised its own independent judgement.

10. The Tribunal accepts that the Applicant is unable to sub-let the Property without first obtaining the prior written consent of the Lessor or its managing agents (clause 7(c) of the Sixth Schedule to the Lease). The Tribunal also acknowledges that the Applicant is obliged to pay the reasonable and proper legal and surveyor’s costs in connection with application for any such consent, whether or not the consent is granted (clause 9 (a) of the Sixth Schedule to the Lease). The question before the Tribunal is whether the administration fee should be charged on an annual basis, whether or not there has been a change in the sub-tenant or sub-tenants and whether the amount of the administration fee is reasonable.

11. The Tribunal has determined that it is not reasonable for the Respondent to claim an administration fee from the Applicant on an annual basis in circumstances where the sub-tenant or sub-tenants have not changed. An administration fee should only be charged when the Applicant intends to enter into a sub-tenancy with a new party or parties and the consent of the Lessor to the new party or parties is required.

12. As to the amount of the administration fee, the Tribunal has considered the information provided by the Respondent in its Statement of Reply but notes that the Respondent has not provided details of relevant charging rates, the qualifications of the persons carrying out the work and exactly what work is done before giving a consent in the first instance (as specified in the Directions).

13. The Respondent has concentrated on the work that is carried out when the initial sub-tenants remain in the Property (i.e. the annual review). In the absence of further information, and in the light of recent case law on this issue, the Tribunal considers that an administration fee of £40 plus VAT is reasonable in the circumstances and only payable to the Lessor or its managing agents when a new sub-tenant or sub-tenants are intending to sub-let the Property.


14. The Tribunal, therefore, finds in favour of the Applicant in this case.

15. Having regard to the guidance given by the Land Tribunal in the Tenants of Langford Court v Doren LRX/37/2000, the Tribunal considers it just and equitable to make an order under s.20C of the Landlord and Tenant Act 1985. The Applicant has succeeded in respect of the submissions and therefore it would be appropriate to make such an order.

16. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

17. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

18. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.


..... 27/8/13

Judge S Lal (Legal Chairman)