



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case Reference : CAM/42UD/LAC/2014/0003

Property : Flat 4, 17 Willoughby Road,
Ipswich,
IP2 8AP

Applicant : Spencer Wade

Respondents : Orchidbase Ltd.

Date of Application : 25th April 2014

Type of Application : To determine reasonableness and
payability of variable administration charges

The Tribunal : Bruce Edgington (lawyer chair)
Mr. David Brown FRICS

DECISION

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1. The variable administration charges claimed from the Applicant by the Respondent for the preparation and completion of a deed of covenant in the total sum of £300 for legal and administration fees are unreasonable. A reasonable fee would be £80 which is the amount which is payable in this case. The Respondent must therefore return £220 to the Applicant within 28 days of the date of this decision.
2. The application for the Respondent for an order that the Applicant pays undisclosed and unquantified legal fees because of unreasonable behaviour on the part of the Applicant is refused.

Reasons

Introduction

3. This is an application for the Tribunal to give 'a view' about whether a claim for £300 for a deed of covenant is reasonable or payable.
4. The fee is claimed because the Respondent discovered that the property was

being sublet and a letter was written to the Applicant on the 6th December saying that there would be a legal and administration fee to pay of £300 to cover the cost of dealing with the deed of covenant.

5. By a directions order dated 1st May 2014, it was said that the Tribunal would not inspect the property and would be prepared to deal with the determination on the basis of the papers and written representations made. It pointed out that a determination would not be made before 24th June 2014 and either party had the opportunity to both ask for an inspection of the property and have an oral hearing. No request was made for either.

The Law

6. Paragraph 1 of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("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... directly or indirectly for or in connection with the grant of approvals under (the) lease, or applications for such approvals."

7. 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"

8. Paragraph 5 of the Schedule provides that an application may be made to this Tribunal, as successor to the Leasehold Valuation Tribunal ("LVT"), for a determination as to whether an administration charge is payable which includes, by definition, a determination as to whether it is reasonable.

The Lease

9. There was a copy of the lease in the bundle provided to the Tribunal. It is for 99 years from 25th December 1999 with a ground rent. There is no dispute between the parties that clause 3(7)(b) provides that where a lessee proposes to sublet, a formal deed covenant is to be prepared so that the subtenant agrees directly with the landlord to comply with the terms of the lease. There is also no dispute that the deed of covenant must be "*at the expense*" of the lessee.

The Respondent's case

10. The Respondent freeholder was ordered to file a statement setting out its justification in principle and in law for its demand. It is clear that the £300 claimed is a standard fee payable for a deed of covenant. It was not some especially large fee because of the breach of covenant on the part of the Applicant in not arranging for the deed of covenant before the subletting. It also did not include any 'extra' fee for amending the draft deed of covenant at the behest of

the Applicant.

11. In order to justify the amount, it is said by the Respondent that it is the cost of its 'in house' legal and administrative team in 'reading the lease, reading the tenancy agreement, preparing the draft deed of covenant, reviewing and responding to any correspondence in connection with the draft deed of covenant, engrossing the deed and reporting to the management, administrative and accounting teams'.
12. It is said that the work 'would ordinarily have been carried out by one of the legal assistants' under the supervision of an in-house solicitor but the management and accounting teams were also involved in view of the breach of covenant. There is also mention of further work for the amendments to the draft deed suggested by the Applicant. As the fee claimed is a standard fee for a deed of covenant, the Tribunal is not sure why these additional matters are mentioned. After all, if the deed of covenant had been signed immediately and returned without comment, the fee would have been the same.
13. As further justification, it is said that one of their solicitors is a Grade A fee earner who would normally expect to claim an hourly rate of £260 in outer London and the assistant is Grade C and would be able to claim £165. Again, the relevance of this is not entirely clear because these members of staff are in-house. The starting points for the Grade A and Grade C rates shown are for solicitors in private practice. Whilst there is clear authority for the proposition that in-house solicitors can use an hourly rate in the same way as solicitors in private practice, those hourly rates used by the courts are based on data obtained from the solicitors' profession about the cost of running a solicitors' practice.
14. In-house solicitors do not have to pay for professional indemnity insurance (several tens of thousands of pounds in most cases), a reception and secretarial staff to deal with members of the public and, as is self evident from the Respondent's submissions, a complex time costing system and accounts department to comply with the Solicitors Accounts Rules. Thus the actual hourly rates they should be awarded would not be the figures quoted because it would be unreasonable for a landlord with in-house staff to make excessive profits from lessees.
15. The draft deed of covenant sent to the Applicant on the 18th December 2013 is a single page, double spaced standard template document with the dates of the lease and the tenancy and the names and addresses of those involved having been inserted. It would have taken just a few minutes to complete. It would have taken a competent legal assistant with, it is claimed, 14 years' experience, no more than a few minutes to identify and consider the relevant clauses in the lease and assured shorthold tenancy. Anyone with a legal background knows that it is not necessary to trawl through the whole document in detail in each case.

The Applicant's case

16. The Applicant simply considers that the fee is excessive and is in some doubt about whether it is payable. It was actually paid and seems to be accepted that it was paid under protest in order to ensure that matters proceeded. In answer to the point that the deed was to be obtained at his expense, he says that he could have dealt with the provision of the deed of covenant himself. Unfortunately for him, the fact is that he didn't. The time to do this was when the correspondence first started. Instead of telling the Respondent that he would deal with the matter himself, he allowed the Respondent to proceed with the work.
17. He also mentions the case of **Holding and Management (Solitaire) Ltd. v Norton** (and other cases) [2012] UKUT 1 (LC) but, as the Respondent points out, that case dealt with fees for consents and registrations. The fees for deeds of covenant were not in issue in that appeal.

Conclusions

18. There does not appear to be any dispute that the charge claimed is 'directly or indirectly in connection with a grant of approval' and therefore comes with the definition of a variable administration charge. The £300 fee claimed is a standard fee. There is some attempt on the part of the Respondent to justify the amount in general terms but there is absolutely no indication given as to the time actually spent on the work for this deed of covenant.
19. The Respondent seems to have found out about the subletting, to have written to the Applicant and obtained a deed of covenant without much trouble or time having been spent. The Upper Tribunal in the **Holding and Management** case referred to above seems to have come to the view that £40 plus VAT for granting consent and £30 plus VAT for registration were reasonable in 2012. Interestingly, the fee for a deed of covenant claimed by Holding and Management in the lead case was £75.
20. Whilst there is no suggestion that the Respondent is seeking any other fee apart from the subject fee for the deed of covenant, any additional fees would be difficult to justify because the correspondence confirms that consent is given and dealing with the deed of covenant obviously means that the transaction has been noted or 'registered' by the Respondent.
21. One is then left with a situation where, in the experience of the Tribunal, no more than about half or three quarters of an hour of time would have had to be spent on this case if the matter were being managed efficiently and competently by the Respondent's in-house team. It is clear that they do this sort of work day in and day out. Their statement says that they deal with "*very many hundreds of similar matters*".
22. In these circumstances and in view of the very simple nature of this task, the Tribunal concludes that £80 is a reasonable charge for the deed of covenant.

Costs and fees

- 23. The Respondent has requested an order that the Applicant pays its costs for dealing with this application. In view of the result of the application, the Respondent will not be surprised that such application is refused.

- 24. The Tribunal did consider whether an order should be made that the Respondent reimburse any fee paid by the Applicant for this application but decided that as this whole matter arose from a breach of covenant on the Applicant's part, it would not be reasonable to make such an order. The terms of the lease are clear and if he had obtained the deed of covenant himself before the subletting started, this application would not have been necessary.

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Bruce Edgington
Regional Judge
24th June 2014