

9/655



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

Case Reference : **LON/00AC/LAC/2014/0003**

Property : **23 Juniper Heights, Canberra Close, London, NW4 4SZ**

Applicant : **Mr A A Oyenuga & Mrs L Oyenuga**

Representative :

Respondent : **Freehold Managers PLC as agent for Freehold Managers (Nominees) Limited**

Representative :

Type of Application : **For the determination of the reasonableness of and the liability to pay an administration charge**

Tribunal Members : **Mrs F J Silverman DipFr LLM
Mr I G Thompson BSc FRICS**

Date and venue of Hearing : **7 April 2014 ,10 Alfred Place, London WC1E 7LR**

Date of Decision : **7th April 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the Respondent's charge for registering a notice of sub-letting is an administration charge pursuant to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") and that it has jurisdiction to determine the reasonableness of such a charge.
- (2) The tribunal determines that the sum of £60.00 inclusive of VAT is payable by the Applicants in respect of the administration charge made by the Respondent.
- (3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. By an application dated 6th February 2014, the Applicants seek a determination pursuant to the 2002 Act as to the amount of an administration charge payable by the Applicants in respect of a charge of £120.00 inclusive of VAT imposed by the Respondent for receipting a notice of sub-letting.
2. The relevant legal provisions are set out in the Appendix to this decision.
3. The Tribunal issued directions on 13th February 2014 indicating that the Tribunal would, in the absence of a request from the parties to the contrary, determine the matter on the basis of written representations. No such request was subsequently made. The Applicants' case was sufficiently particularised within their application and supporting documents. The Respondent, pursuant to the directions, submitted a Statement with supporting documents on 26th February 2014.

The background

4. The Applicants are the lessees of the property dated 3rd November 1986. At clause (17) of Part 1 of the Fourth Schedule, the lessees have covenanted "*upon every underletting of the Demised Premises and upon every assignment or charge thereof and upon the grant of*

probate of letters of administration affecting the term hereby granted and upon the devolution of any such term under any assent or other instrument or otherwise howsoever or by any Order of the Court within one month thereafter to give to the Landlord and the Company or to their respective solicitors for the time being notice in writing of such underletting assignment transfer charge grant assent or Order with full particulars thereof and to produce to the Landlord and the Company or their respective Solicitors every such document as aforesaid and to pay to the Lessor a reasonable fee for the registration of the said notice (not being less than £10) plus any Value Added Tax...”.

5. On 3rd October 2013 the Respondent wrote to the Applicants requesting the completion and return of a registration form for sub-letting and payment of £120 for “Retrospective Notice of Registration”.
6. Correspondence ensued between the parties and from a letter dated 24th January 2014, the Respondent indicated that an offer of £40 from the Applicants for the required registration fee would not be accepted.

The issues

7. The Applicants’ case is that a charge of £120 is excessive for registering a notice of sub-letting and they consider that £40 is a reasonable fee which they have offered and had declined. They state that “this appears to an arbitrary figure which does not correlate with the work required”.
8. The Respondent’s reply raised two issues: jurisdiction of the tribunal and the reasonableness of the charge itself. On the question of jurisdiction, the Respondent argued that the charge made did not fall within the definition of an administration charge pursuant to s1(1) of Part 1 of Schedule 11 to the 2002 Act. To support that contention it relied upon three previous tribunal cases (CAM/00MF/LAC/2009/0003, BIR/00FY/LAC/2011/0013 and LON/00BJ/LAC/2011/0013). All three cases dealt with similar facts and similar lease clauses and concluded that a fee charged for registering a notice of sub-letting neither amounted to a charge in connection with the grant of an approval (definition (1)(a)) or the provision of information or documents (definition (1)(b)).
9. In any event and “by way of clarification” the Respondent set out the work undertaken to justify the charge made which, it stated, was undertaken by its subletting team. That team, stated the Respondent, reviewed the lease terms, reviewed the tenancy agreement, drafted and issued documents (including the Notice of Registration), recorded details on its database and so forth. The Respondent contended that, notwithstanding its primary position on lack of jurisdiction, the fee charged was reasonable having regard to the services provided and duties performed.

The tribunal's decision

10. Whilst the tribunal has found the three cases drawn to its attention helpful, it is not bound by the previous decisions. The facts in those cases and the lease terms are similar. However, the Tribunal concludes that the charge made by the Respondent for the registration of the notice to sub-let is an administration charge as defined within the 2002 Act. Clause (17) of the Fourth Schedule to the lease requires two operations to be performed. Firstly, the tenant is required to give notice to the lessor that he has sub-let the property. He is required to do so in writing. If that was the end of the matter, clearly the definitions of administration charges in the 2002 Act would not be engaged. However, the lessee is then required to pay a fee to the lessor for "the registration of the said notice". The tenant is entitled to receive proof from the lessor that his notice has been received and registered. He may require such proof to satisfy, for example, mortgagee requirements or may be required to produce a notice of registration in event of an assignment of the lease. Furthermore, and presumably in recognition of this, the Respondent, in its document entitled "Leaseholder Sublet Guidelines" states that it will issue a "Notice of Registration Certificate" and charge £120.00 for the issue of this certificate.
11. As previous Tribunals have pointed out, the lessor's consent to the sub-letting is not required and therefore the definition of an administration charge under s(1)(a) is not engaged as that sub-section deals with charges in connection with the granting of consents. However, the Tribunal determines that the issue of a notice of registration certificate is the provision of a document by the landlord to the tenant as defined with s1(b) of Schedule 11 of the 2002 Act and that it does accordingly have jurisdiction to determine the reasonableness of a charge arising from the issue of such a document.
12. The tasks outlined by the Respondent in receiving and receipting a notice of sub-letting are simple administrative functions that can be fulfilled by non-qualified personnel with the appropriate training. Such tasks should take no more than 1 hour at the most. The Tribunal finds that a fee of £120 (£100 + VAT) to be excessive and having regard to its own experience and judgement and having regard to the tasks involved, determines that a reasonable fee is £60 inclusive of VAT.

Application under s.20C and refund of fees

13. The Applicant has made an application under s20C. Having made its decision on the primary application in favour of the Applicant, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Judge F J Silverman as
Chairman

Date: 7th April 2014

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

Schedule 11, 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,
 - (b) 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,
 - (c) 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
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (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.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate 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.

- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).