



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

Case reference : **LON/00BA/LAC/2014/0016**

Property : **Flat 4, 6 Wilton Road, Colliers Wood, London SW19 2HB**

Applicant : **Zoe Abrahams and Michael Allan**

Representative : **N/A**

Respondent : **Raleigh Close Ltd**

Representative : **Pier Management Ltd**

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

Tribunal members : **Ms L Smith (Tribunal Judge)
Mrs J Davies, FRICS**

Date and venue of hearing : **10 Alfred Place, London WC1E 7LR
Decision on papers**

Date of decision : **30 September 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £300 + VAT is payable by the Applicants in respect of the administration charge claimed.
- (2) It is not clear that the Tribunal has any jurisdiction in relation to the remaining charges which are the subject of the application but in any event the application in that regard is premature since the Respondent is not claiming those amounts at present
- (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. The Applicants seek a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of administration charges payable by the Applicants in relation to an application for a licence to alter the property known as Flat 4, 6 Wilton Road, Colliers Wood, London SW19 2HB ("the Property"). The Property is a 2 bedroomed flat on the first and second floors of a converted building. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
2. The Applicants hold a long lease of the Property ("the Lease"). The relevant provisions of the Lease are referred to below, where appropriate.
3. The relevant legal provisions are set out in the Appendix to this decision.

The background to the determination

4. By directions dated 31 July 2014, the Tribunal indicated that it was minded to determine the matter on the papers unless either party requested an oral hearing within 28 days of the directions. No such request was made and the Tribunal has therefore proceeded to determine the application on the basis of the documents before it which comprise a copy of the Lease, the application and supporting documents, the Respondent's reply to the application and the Tenant's response to that reply.
5. The application relates to a licence sought by the Applicants from the Respondent for consent to alter the Property by moving a bathroom

upstairs and so erecting 2 stud walls, removing a current stud wall and the bathroom. None of the work is structural. The Respondent's agent has sought the payment of £300 + VAT in order to progress the application for consent. That has been paid but still forms part of the application on the basis that it is not payable under the Lease and is unreasonable in amount. The application also seeks a determination of the sums of £7000 and £450 +VAT being a premium for the consent and legal costs of the consent. However, the Respondent has not indicated as yet that this will be sought and such is presumably dependent on whether consent is forthcoming. The Respondent has also indicated in its reply that the only administration charge is the £300 + VAT. It is not clear on what basis the Respondent would seek to recover the £7000 and £450 + VAT but at present it does not appear that the Tribunal has jurisdiction if that is not sought as an administration charge and the application is premature since it is not clear that this amount is or will be the amount sought. The parties may though wish to note what the Tribunal says below about payability.

6. In its reply to the application, the Respondent has asked the Tribunal to strike out the application on the basis that the Applicants have failed to serve the right landlord at the right address. The Respondent draws attention in that regard to the CPR and the requirement for service on a limited company at its registered address. The Tribunal is not bound by the CPR but by The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013. The power to strike out is contained in rule 9. None of the reasons stated in that rule apply in this case. Rule 16 provides for service. That does provide that the address for service of an incorporated company is the address of the registered or principal office of the company or alternative address notified to the Tribunal. However, rule 16(6) provides that the Tribunal may assume that the address provided by a party is correct unless notified to the contrary with an alternative address and the overriding objective in rule 3 countenances against unnecessary formality in the proceedings. It is patently clear that the Respondent has had notice of the application via its managing agents. Accordingly, the Tribunal refuses to strike out the application.
7. Having considered the written submissions of the parties and all of the documents provided, the Tribunal has made the following determination in relation to payability and reasonableness of the administration charge claimed in the sum of £300 + VAT.

The tribunal's decision

8. The tribunal determines that the sum of £300 + VAT is payable and reasonable in relation to the administration charge as claimed.

Reasons for the tribunal's decision

9. In relation to payability, the Applicants claim that there is no provision in the Lease for payment of a charge for consent to alterations. The Respondent points to clause 2(5) of the Lease which requires the Lessee to seek consent to alterations. The Applicants do not dispute that consent is required. In relation to a charge for that consent, the Respondents point to paragraph 5 of Part VI of the Schedule to the Lease which provides that the Lessor may employ "*such staff ... as may be reasonably necessary to carry out any duties which the Company may require (b) retain the services of Managing Agents (c) employ from time to time such contractors as may be necessary to enable the Lessor to meet its obligations hereunder and (d) enter into such service or maintenance contracts as may be necessary in regard to the maintenance and repair of any apparatus or equipment now or hereafter within the Building but not within any individual flat for which the Lessor may be responsible*".
10. The Tribunal is of the opinion that this paragraph does not assist the Respondent. It is clear that this is an obligation placed on the Lessor to which a corresponding provision for payment in the Lease must be found. The only such corresponding provision for payment is found in Part VII of the Schedule which is the service charge provision. The Lessor can recover for the obligations in Part VI but may only do so via the service charge for which the Lessee must pay only a proportion. In the opinion of the Tribunal there is no provision in the Lease for payment of an administration charge save under clause 2(6) which relates to costs and expenses of forfeiture proceedings which clause does not apply here.
11. The Tribunal has though had regard to the decision of the Upper Tribunal in the case of ***Holding and Management (Solitaire) Limited v Norton (and others) [2012] UKUT 1 (LC)***. That decision concerned consents to underletting and therefore the part of the decision which relates to section 19 of the Landlord and Tenant Act 1927 has no bearing here. The Tribunal also notes that in those cases, the provision in the leases for consent to underletting also provided that the consent could not be unreasonably withheld. That wording is not included in the clause of the Lease in this case.
12. However, the Tribunal considers that paragraph 10 of the decision has a bearing in this case. That states as follows:-

"Under paragraph 1(1) of Schedule 11 to the 2002 Act "administration charge" for the purposes of the Schedule is defined as an amount payable by a tenant as part of or in addition to the rent which is payable, directly or indirectly, (inter alia) for or in connection with the grant of approvals under his lease. The charge for consent to the 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. Under paragraph 1(3) a "variable administration charge" is an administration charge payable by a tenant which is neither specified in his lease nor calculated in accordance with a formula in the lease. If the charge for consent to the underletting is an administration charge it is thus a variable administration charge for the purposes of the Schedule. Paragraph 2 provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable. My conclusion, for the reason that I have given, is that the LVT was wrong to conclude in each case that the appellant was not entitled to make a charge for the costs incurred in consenting to underletting."

13. For those reasons, the Tribunal considers that the administration charge is payable on the basis of application of that case law and because it is an administration charge for the purposes of Schedule 11 to the 2002 Act and not because there is any provision under the Lease for payment. This may be relevant to any other charges which the Respondent may contend are payable at a later date, particularly if the Respondent seeks to recover those under the Lease as opposed to as an administration charge for consent, payable outwith the Lease.
14. As noted in the above decision, the administration charge is only payable so far as is reasonable. In the "Holding and Management" case the administration charge was reduced to £40 + VAT. However, the Tribunal is not assisted by that decision in relation to this application as the charge concerns a consent to alterations and not a consent to underletting. The Respondent's agent has set out in its reply what is covered by that charge as follows:-

a. Review of the proposed plan, works and identifying all structural alterations

b. Review of proposed contractors, their qualifications, public liability insurance and likely risks to other occupiers and visitors to the property and communal areas

c. Review of the lease and title information

d. Review of planning permission/listed building requirements and consent/building control regulations

e. Liaising with professional advisors to both the landlord and tenant

f. Drafting and serving any letters in relation to party wall agreements

g. Notifying agents and other tenants where services and/or access to the communal areas may be hindered or restricted during the works”

The Respondent has not provided particulars of the amount of time which would be spent in carrying out those functions or the hourly rate charged. The Tribunal also notes that the alterations are not said to be structural. However, the Tribunal considers that the extent of the work required of the managing agent to check whether consent should be given are more wide ranging than in relation to a consent for underletting and considers that a charge of £300 + VAT to cover those functions is reasonable. The same might not be said of the other sums which might be claimed later, if the Respondent were to claim those also as administration charges and particularly if the charge covered the same functions as already carried out for the charge which has been paid. However, as indicated above, the Tribunal does not deal with those charges now since they have not been claimed and the basis for payment of them and the amount which might be claimed are as yet uncertain.

Application under s.20C and refund of fees

15. In the application form, the Applicants applied for an order under section 20C of the 1985 Act. The Tribunal has decided that the administration charge is reasonable and payable. It did so, however, not on the basis contended for by the Respondent but on the basis of case law to which the Tribunal was not referred by the legal representative for the Respondent. Further, it appears from the correspondence that the Respondent has not responded to the reasonable queries from the Applicants as to the basis on which the charge was claimed. Accordingly, the Tribunal makes an order under section 20C so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge

Name: Ms L Smith

Date: 30 September 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20C

- (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 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 any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

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).