



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

**Case Reference** : **MAN/00DA/LVA/2018/0001**

**Property** : **330 Greenhouse, Beeston Road,  
Leeds LS11 6AE**

**Applicant** : **Mrs Louise Lindsay**

**Respondent** : **Greenhouse Ground Rents Ltd**  
**Representative** : **Braemar Estates**

**Type of Application** : **Commonhold and Leasehold Reform Act  
2002 Schedule 11 paragraph 5**

**Tribunal Members** : **K M Southby (Judge)  
S A Kendall (Valuer Member)**

**Date of Determination** : **4 September 2018**

**Date of Decision** : **27 September 2018**

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**DECISION and REASONS**

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## **DECISION**

1. The charge claimed from the Applicant for a notice of subletting is not a variable administration charge, which means that the Tribunal has no jurisdiction. The application in respect of that charge is therefore dismissed.
2. The Tribunal does not make an order pursuant to section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") or paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") preventing the Respondent from including costs of representation in these proceedings in any future service charge demand or administration charge.

## **BACKGROUND**

1. The application is for the Tribunal to determine the reasonableness and payability of a variable administration charge. The Applicant is the long leaseholder of Apartment 330, Greenhouse, being a former Victorian hostel which was redeveloped approximately 8 years ago and now comprises 176 apartments together with some commercial units.
2. The Applicant has sublet her apartment and as a consequence has been asked to pay charges which she now queries as unreasonable variable administration charges. The two elements which she challenges are as follows:
  - a) She has been asked to pay £126, submit a copy of the sub tenancy agreement and complete a form
  - b) She has been asked to pay a further £126 annually irrespective of whether the details of the sub tenancy alter.
3. It is clear that the charge is not a fixed charge as the only mention of the amount of the charge in the lease is at clause 3.13 which refers to 'a reasonable fee'. The Respondent argues that the charge is not a variable administration charge as defined in the legislation and therefore the Tribunal does not have jurisdiction to determine its reasonableness and payability.
4. A directions order was made by the Tribunal on 21 June 2018 which ordered the parties to file and serve evidence. The order said that the Tribunal would not inspect the property and would be prepared to deal with the matter on the basis of the papers and written representations. It pointed out that a determination would not be made before 13<sup>th</sup> August 2018 and either party had the opportunity to both ask for an inspection of the property and have an oral hearing if they so requested. No request was made for either an inspection or an oral hearing.

## **THE LAW**

5. Paragraph 1 of Schedule 11 of the 2002 Act 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...in connection with the grant of approvals...or the provision of information or documents by the landlord or a person who is a party to his lease other than as landlord or tenant...or a breach (or alleged breach) of a covenant or condition in his lease.”*
6. Paragraph 2 of this Schedule, which applies to amounts payable after 30<sup>th</sup> September 2003, then says:  
*“a variable administration charge is payable only to the extent that the amount of the charge is reasonable”*
7. Paragraph 5 of the Schedule provides that an application may be made to this Tribunal, as successor to the LVT, for a determination as to whether an administration charge is payable which includes a determination as to whether or not it is reasonable.
8. The Applicant has asked for orders under section 20C of the 1985 Act and paragraph 5A of Schedule 11 of the 2002 Act preventing the Respondent from recovering its costs of representation in these proceedings from the Applicant as either a service charge or an administration charge.

## **THE LEASE**

9. The Tribunal has been supplied with a copy of the lease in this case. It is dated 21 December 2012 and is for a term of 125 years expiring on 18 January 2137. Clause 3.13 deals with subletting and states that the tenant has to produce evidence of every subletting to the Landlord's solicitors within one month of the subletting taking place, and also provide a certified copy or duplicate of the relevant document, together with paying a 'reasonable fee' for each registration.

## **DISCUSSION**

10. The Applicant is unhappy as in their view the charge is unreasonably high, both for initial registration and for the annual payment which is demanded even if the details of the subletting remain unchanged. The charges appear to have arisen as a consequence of the passing of the Insurance Act 2015, and the Respondent states that the charges are a) in respect of registration

of new sub tenancies, and b) in respect of maintaining their obligations to keep the insurer fully informed of risks, and that a failure to maintain an annually updated register of subtenants would be contrary to their obligations to keep the property properly insured. They also suggest that the tenant's obligations under clause 3.11 'not to do anything which prejudices or invalidates any insurance policy in respect of the Premises...' means that they are required under the terms of the lease to provide the requested information.

11. This Tribunal is limited in its jurisdiction by the statute which gives it jurisdiction to deal with administration charges. If the charges are not administration charges according to the 2002 Act, then the Tribunal has no power to consider them.
12. We therefore considered whether the charge imposed is in connection with the grant of an approval, and the answer to that question in respect of both charge a) and charge b) is 'no'; is it in connection with the failure to make payment or any other breach of covenant? The answer in respect of both charge a) and charge b) is again 'no'.
13. The final element of the statutory test under the 2002 Act is whether it is 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 a landlord or tenant? In this case the information is being provided **to the landlord** rather than **by the landlord** both in respect of charge a) and charge b), and therefore the answer to this question is also 'no'. We accept that the purpose of registration is to gather and provide information to the insurers in order to comply with the requirements of the Insurance Act 2015 and therefore the landlord will be themselves providing information to the insurer but we do not consider that this takes the charge within the definition of an administration charge in paragraph 1 of Schedule 11 of the 2002 Act.
14. We also note that in respect of charge a) which is clearly a registration charge, it has already been decided in the Upper Tribunal case of Proxima Properties Ltd v Dr Thomas D McGhee [2014] UKUT 59 (LC) that a registration fee is not an administration charge. Whilst charge b) is referred to as a registration fee by the Respondent, it is unclear whether this is the case, as the fee appears to apply in the event that the information has been already registered and remains unchanged. However, we do not make any ruling on this, having already determined that in any event charge b) is not an administration charge.

## **CONCLUSIONS**

15. As the Tribunal has no jurisdiction, it has to dismiss the application. Any remedy may be in the county court where any allegation that the fee is not reasonable, or not recoverable under the terms of the lease can be considered accordingly.
16. In the circumstances and taking into account the conclusion reached, the Tribunal does not make orders pursuant to section 20C of the 1985 Act or paragraph 5A of Schedule 11 of the 2002 Act.

**Judge K Southby**  
**Tribunal Judge**  
**27 September 2018**