

8756



HM COURTS AND TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

**Application for a determination as to liability to pay and reasonableness of
a variable administration charge under Schedule 11 to the Commonhold
and Leasehold Reform Act 2002**

Case number	BIR/00FN/LAC/2012/0016
Property	Flat 4, Fosse Road North, St Nicholas Apartment, Leicester LE3 5ER
Applicant	Mr Abbas Siwji
Respondent	UK Ground Rent Estates Ltd
Respondent's agent	Forte Freehold Managers Ltd
Tribunal	Mr C J Goodall, LLB, MBA Chairman Mr C Gell FRICS
Date decision issued	- 6 FEB 2013

Background

1. The Applicant is the leasehold owner of the Property. The lease is dated 11 May 2006 and is for a term of 125 years from 1 January 2004. The Applicant has to pay a ground rent of £195.00 every year to the Respondent, who is now the landlord under the lease. The Applicant also has to pay a separate service charge to a management company for maintenance of the building and other items. The Respondent insures the building in which the Property is situated, and the Applicant pays 4% of the premium incurred for this insurance to the Respondent.
2. There is an additional obligation upon the Applicant "to pay to the Landlord ... on a full indemnity basis all costs and expenses incurred by the Landlord ... in enforcing the payment by the Tenant of any Rent ... or other monies payable by the Tenant under the terms of this Lease".
3. There is also an obligation upon the Applicant to obtain consent for underletting the Property in some circumstances (for which the Respondent makes a charge) and to register any such underletting with the Respondent, for which, again, a charge is made.
4. The Respondent has appointed Forte Freehold Managers Ltd ("Forte") to be its agent for collection of rent and any other payments due under the lease to the Respondent. Forte has also been the Respondent's agent for the conduct of this case.
5. Forte has raised invoices upon the Applicant for what it claims are charges incurred to enforce payment of insurance premiums and other sums due, and for underletting the Property. The Applicant disputes that the charges levied in these invoices are due and has applied to this Tribunal for a determination of that issue.
6. Both parties indicated that they wished the Tribunal to make its determination without an oral hearing. The Tribunal has not considered that an inspection of the Property is necessary. This determination has considered the Applicant's application form and the documents submitted with it, the subsequent party and party correspondence which has been provided to the Tribunal, the correspondence between the Tribunal and the parties, and the statements submitted by the parties in accordance with the Tribunal's directions dated 30 October and 19 December 2012. In that respect, the Tribunal has three statements from the Applicant, dated respectively 22 November 2012, and 6 January 2013 (2 statements). There is one statement from Forte dated 18 January 2013.

The Law

7. The Tribunal's jurisdiction to consider this case is derived from Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the Act"), the relevant parts of which provide as follows:

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.

...

(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.

...

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

...

4 (1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

5 (1) 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.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation 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.

The Lease

8. Clause 3.1 of the lease obliges the Applicant to pay 4% of the total amount the Respondent shall from time to time expend in effecting and maintaining insurance of the building.

9. Paragraph 2.2 of the Third Schedule obliges the Applicant "to pay to the Landlord ... on a full indemnity basis all costs and expenses incurred by the Landlord ... in enforcing the payment by the Tenant of any Rent ... or other monies payable by the Tenant under the terms of this Lease".

10. Paragraph 9 of the Third Schedule to the lease (Tenant's covenants) is a covenant relating to assignment and underletting. The provisions relating to underletting (which is an issue in this case) are:

"9.1 Not to underlet ... part ...

9.2 ...

9.3 Not to underlet the [Property] as a whole (except a Permitted Letting) without:-

9.3.1 The consent of the Landlord (not to be unreasonably refused) and

9.3.2 Unless it is on terms that the underlessee will be liable to pay throughout the term of the underlease not less than the aggregate of the Rent Interim Charge Service Charge and Special Contribution and

9.3.3 without including in every underlease (whether mediate or immediate) a covenant by the underlessee with the Landlord and the Management Company and with the Tenant to observe and perform all the covenants and conditions in the Lease contained (except the covenants for the payment of Rent Interim Charge Service Charge and Special Contribution) with a condition permitting re-entry in case of breach of any of the said covenants or conditions

9.3.4 Without complying with the provisions of sub paragraph 9.4 and paragraphs 10 and 12 of this Schedule.”

11. There is then a further covenant at clause 9.4:

“Not to assign or underlet the [Property] as a whole without first procuring that the assignee or underlessee enters into a separate deed of covenant with the Landlord and the Management Company to observe and perform the covenants and conditions herein contained and to pay the reasonable costs if the Landlord’s Solicitors for the preparation of such a deed of covenant provided that no such deed of covenant will be required in respect to a Permitted Letting.”

12. Paragraph 10 of the Third Schedule provides:

“On every underletting (except for a Permitted Letting) of the [Property] and on every assignment or transfer thereof and on the creation of every mortgage or charge thereon and on the grant of probate or letters of administration affecting the Term and on the devolution of the 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 Solicitors to the Landlord notice in writing of such underletting assignment transfer charge grant assent or underlessees of the person or persons in whom the Term has become vested or to whom it has become charge or mortgaged as aforesaid and to pay to the Landlord 0.05% each of the value of the transaction (but not less than fifty pounds) together with VAT on such sum for the registration of every such transaction”

13. Paragraph 12 of the Third Schedule relates to permitting entry for repairs and has no particular bearing on this case.

14. The definition of Permitted Letting is in clause 1.8 of the lease and is "an underletting for not more than 12 months which constitutes an Assured Shorthold Tenancy Agreement in accordance with the provisions of the Housing Act 1988".
15. The effect of these provisions of Paragraphs 9 and 10 of the Third Schedule is that neither consent nor registration is required for a Permitted Letting, but both consent and registration is required for any underletting that is not a Permitted Letting.

The facts as they appear from the letters and emails

16. The Tribunal finds the following facts, derived from the emails and correspondence that the parties have provided.
17. The Statements of Account provided to the Tribunal do not show any failure or delay by the Applicant to pay any sum due to Forte throughout 2011.
18. On 9 December 2011 Forte emailed one or two invoices (it is not entirely clear) to the Applicant ("the Insurance Invoices"). One was for a valuation in the sum of £55.00 (which Forte said later (on 28 May 2012) was for an insurance reinstatement valuation). The other was for insurance between 29 September 2012 and 31 December 2012, in the sum of £34.65. The two invoices totalled £89.65. The second invoice indicates the charge arose on 29 September 2012, but there is no evidence that it had been sent to the Applicant before 9 December. Both invoices were incorrectly addressed to Abbas Amirali Siwji and Mehboob Dossa, despite the fact that Mr Dossa, who had previously been a joint tenant of the Property, transferred his share to the Applicant alone in June 2011, notice of which had been properly given to and accepted by Forte on 10 June 2011. It is not clear to the Tribunal that either invoice contained the summary of rights and obligations required by paragraph 4 of Schedule 11 to the Act, but this is not an issue the Applicant has raised. Although the invoices indicated there could be a VAT charge, the figure claimed was a gross figure with the VAT figure given as nil.
19. By an immediate email reply, the Applicant immediately objected to at least one of the invoices, being the invoice relating to the insurance charge. It is unclear what the outcome of these email exchanges was (the Tribunal appears to have an incomplete copy of the emails of 9 December 2011).
20. In either January or February 2012, Forte invoiced the Applicant for his ground rent and 2012 insurance charge, and these charges were paid in full.
21. There is no evidence of any further communication between the parties about the Insurance Invoices until 23 May 2012. No reminder letter has been produced, nor any warning letter about the consequences of non-payment.

22. On 23 May 2012, Forte wrote to the Applicant saying the Insurance Invoices were unpaid and that a further sum of £67.20 had therefore been added to the Applicant's (and Mr Dossa's) account. An invoice for that sum accompanied this letter, as did a summary of rights document. The sum claimed in that letter was £156.85 (£89.65 plus £67.20).
23. The Applicant responded to the letter of 23 May by emailing Forte on 27 May. All Forte emails at this point were from Diane Fletcher, a para legal working for Forte. The Applicant said "Following your letter dated 23 May, this was the 1st letter I have received from you and normally you also issue an email communicate. The letter you have sent does not specify the reason for the charge and the invoice amount is inconsistent to the amounts in the main body of the letter. The invoice charge is for £67.20 in respect to 'arrears' but again what are the charges for. I had paid all my fees due to you at the beginning of the year in respect to ground rent and insurance."
24. On the 28 May there were 6 emails. Diane Fletcher said, at 9.39am, that she had sent a statement of account showing there was an insurance rent invoice outstanding along with the reinstatement valuation fee. At 10.47 the Applicant replied that the statement was confusing to read and had many entries that have been added and omitted numerous times. [This is true – the statement shows a number of reversed entries]. He asked for a phone number so he could speak to Diane Fletcher.
25. The Applicant emailed again at 11.53 to acknowledge the two missing items were for 'valuation' and 'insurance' from 2011. He says "I seem to recall I queried the insurance last year via email as you posted a bill for the insurance premium post the date of cover which makes little or no sense". The Applicant then said "For the sake of ease and to put this matter to bed once and for all especially since it's the 1st I have heard of this I can forward a cheque out today for 89.65."
26. Diane Fletcher notified the Applicant in an email at 12.29 that she would halve the cost of the arrears letter but could not waive the charge. The Applicant would not accept this. He complained, in his reply timed at 14.09, that "You never responded to my emails last year and you just add a charge without contacting myself but just send me an arrears invoice...". He complained that Forte were providing a poor service. Diane Fletcher replied at 15.38 by suggesting that the Applicant needed to take some advice as Forte did not offer a service. They were simply employed to collect the rents and they required full settlement of the Insurance Invoices and the new arrears invoice raised on 23 May.

27. The Applicant responded again on 29 May and refused to pay the 23 May arrears invoice, but he said he would pay the Insurance Invoices and that he had sent a cheque.
28. The next communication is a letter dated 26 June 2012 from Forte to the Applicant and Mr Dossa saying that they had previously written to them about the sub-letting of their flat (the Tribunal was not given copies of these earlier letters) and now considered that the Applicant was in breach of the terms of the lease. The letter stated that the procedure when sub-letting was that the Applicant's must:

"obtain your landlord's consent and/or register any tenancy. Our earlier letter will have advised on whether consent and registration, or just registration is required".

It then said that a charge of £65 plus VAT had now been added to the Applicant's account to cover the cost of this 26 June letter as Forte considered there had been a breach of the lease. An invoice for £78 was enclosed with this letter.

29. Six more emails followed on 3 July 2012 about the underletting, no doubt because of the 26 June letter. The Applicant asked for forms to complete regarding the underletting. Diane Fletcher said there would be a fee of £75 for consent to underlet, plus a fee of £78 for registration of the underletting plus the fee of £78 for the 26 June letter in relation to the alleged breach.
30. In the fourth email of that day, the Applicant asked "Who is your supervisor and what telephone number can I reach them on?" The reply was:
- "I'm the manager and I'm afraid that we do not take incoming calls"
31. The final email of that day, from the Applicant, said that he was trying to resolve this amicably "but it seems you have no interest to."
32. Also on 3 July 2012, Forte wrote to the Applicant returning his cheque for £89.65, which had been dated 27 May 2012, as their policy is not to accept part payment of the account.
33. On 4 September 2012, Forte wrote again to the Applicant (and Mr Dossa) a letter before action to inform them that their account was now in arrears in the sum of £455.05 and that legal action would be commenced within 14 days unless full payment was made. An additional charge for this letter of £67.20 was made. The sum of £455.05 was made up as follows:

Insurance invoices	£89.65
23 May letter	£67.20

26 June letter	£78.00
Subletting consent	£75.00
Subletting registration	£78.00
4 September letter	£67.20

34. On 7 September 2012, the Applicant wrote to Forte confirming that he accepted the Insurance Invoices (and had tried already to pay them) but he could not accept the charge for the arrears letter, which he said he had not received. He said that in his view the actions by Forte were very aggressive and were an attempt to extort cash. He offered to pay £167.65 to settle the account and sent a cheque for that sum. He said that non-acceptance would result in him applying to the Leasehold Valuation Tribunal.
35. On 13 September, Forte returned the Applicant's cheque for £167.65, which had been dated 7 September.
36. There were five open emails (i.e. not marked "without prejudice") exchanged between the Applicant and Forte (Diane Fletcher and Nicola Williamson) on 25 September in which the Applicant sought to persuade Forte to negotiate a settlement, but Forte were sticking to their guns and required payment in full as per their letter before action of 4 September. In his final email of that day, the applicant said he would take his case to the Leasehold Valuation Tribunal.
37. On 26 September 2012, Forte wrote again to the Applicant (and Mr Dossa) stating that they believed there had been an unauthorised underletting of the Property, which was a breach of the lease, and warning that they intended to bring an action, without further notice, for an order that the lease had been breached preparatory to forfeiture proceedings. Accompanying this letter was a further invoice to cover the cost of it, of £78.00. It is not apparent to the Tribunal whether the summary of rights and obligations accompanied this invoice. This therefore increased the amount now demanded by Forte from the Applicant to £533.05.
38. On 2 October 2012, the Applicant made this application to the Leasehold Valuation Tribunal. In space marked for "grounds", he wrote:

"Predatory tactics to send an arrears letter. When you dispute it they refuse payment. Then they send another letter. Again when I dispute it, they then send another arrears letter. I have tried many times to pay and settle this amicably but every time they refuse".

He continued in the next section of the form:

"My suggestion to solve this is payment of i) £55 – valuation fee ii) £34.65 insurance rent iii) sub-let registration fee and iv) £20 nominal administration

fee for any mix-ups. I cannot pay admin fee 3 x for the same thing / letters, especially when I have tried many times to solve this and make payment."

39. On 12 October 2013, Forte, in their own name, commenced proceedings against the Applicant in the Northampton County Court. Their claim was for £579.45, made up of:

The Insurance Invoices	£89.65
23 May letter	£67.20
4 Sept letter	£67.20
Court fee	£60.00
Solicitors county court costs	£225.40
Solicitors costs N1 claim	£70.00

40. There is nothing in the County Court claim for any cost or fee relating to underletting.

41. In his Defence, copied to the Tribunal by Forte, the Applicant admits the sum of £89.65 but denies he owes any further sum to Forte.

42. On 29 November 2012, Forte requested that the Tribunal allow further time to try and settle the LVT proceedings. On the same day, they emailed the Applicant an open offer to compromise the proceedings by indicating they would accept £187.65. This offer was expressly marked to the effect that it was not without prejudice and would be put before the LVT. Negotiations took place between the parties. The Tribunal has unfortunately been copied in on some without prejudice correspondence and has disregarded all documentation regarding this negotiation. Ultimately, it appears that the negotiation was unsuccessful as the Applicant emailed the Tribunal at 16.22pm on 13 December 2012 to say that the parties had not agreed a settlement and the matter would be left to the Tribunal to make a decision. There was further negotiation on 14, 18 and 19 December relating to settlement, but no agreement could be reached. The final open position of the parties was that the Applicant would settle for a payment by him of £117.65 but the lowest sum Forte would accept was £167.65.

43. Also, on 13 December 2012, Forte requested that the County Court proceedings be stayed. There has been no transfer of the proceedings to this Tribunal pursuant to paragraph 3 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002.

44. Neither party confirmed in any of the open communications regarding settlement precisely what claims were to be settled. The Tribunal does not know therefore whether these discussions included all aspects of all claims (including withdrawal of the County Court proceedings and settlement of all underletting

issues), and all other fees or costs currently standing on the Applicant's account, or whether any or all of these issues would have remained unresolved.

45. In an email dated 14 December 2012, Forte claimed that an agreement to settle had been reached. However, Forte has not pressed this point, by raising the question of whether there is a binding agreement that effectively compromises and settles these proceedings, in their lawyers subsequent statement, and this issue is not therefore considered further in this decision.
46. As the parties eventually failed to reach any settlement of the matters in dispute, the case has now proceeded to determination.

The Applicant's stated case

47. The first of the Statements provided by the Applicant is dated 22 November 2012. This one page Statement is essentially a commentary on the documentation attached to it which has been included in the review of correspondence and emails conducted above. The Applicant says that the documentation shows that he has made many attempts to resolve the dispute with Forte, but he is critical of what he describes as "inconsistencies" in the original Insurance Invoices, and he reinforces the point that he had no contact from Forte about the Insurance Invoices prior to the 23 May letter. He asks for compensation for the time he has spent on this case.
48. The Applicant's second statement is dated 6 January 2013. It presents the story which is evident from the correspondence and emails from the Applicant's perspective. It is clear the Applicant feels that for an initial charge of £67.20 to increase to over £500 is extraordinary and unreasonable, and the Applicant sees it as his role to stand up to Forte out of principle. He also strongly asserts that he has behaved reasonably in seeking to resolve the dispute, and he argues that his LVT application fee of £50 should be refunded.
49. The third of the Applicant's statements is also dated 6 January 2013. IT is a short document. An important part of it is the first paragraph, in which the Applicant states that:

"On 9th December 2011 ... I had queried invoices received by Diane Fletcher via email. The items of the invoices were dated as 29th September 2011 ..., almost 3 months late. I was told I would receive additional details of the communication and invoices via post. This I did not receive."

Forte's stated case

50. Forte have provided a witness statement from Rachel Blandford-Newson, a legal executive in the employ of the Respondent. She says that the Insurance Invoices were correctly served, and she has provided copies in the bundle of

attachments to her statement. The copy invoices provided contain no reference to the summary of rights and obligations that should be provided with an invoice for an administration charge. The statement then confirms the actions taken by Forte as identified in paras 22,32,33 and 39 above.

51. The statement then dealt with underletting. It confirmed that:

“Consent and registration of subletting is required for tenancies except for assured shorthold tenancies under 12 months (“Permitted Letting”).

The statement confirms that the Respondent and Forte do not know whether the Applicant’s underletting is a Permitted Letting or not.

52. A statement of the current balance of the Applicant’s account is attached as an appendix. This shows the sum of £917.55 outstanding. The sum comprises the whole of the sum claimed by Forte in the County Court proceedings (£579.45 – see para 39 above) plus two further sums for legal costs incurred in connection with this LVT application, one of £144.90 and a second of £193.20. Curiously, none of the sums relating to underletting are shown on this statement despite a statement of account dated 4 September 2012 including two charges of £78 and one of £75 in relation to underletting.

53. The statement concludes by saying that the Respondent’s and Forte’s case is that they have acted fairly and reasonably and they should not be penalised for the Applicant’s non/late payment of rent.

54. For convenience, the Tribunal now records all the charges which, at some point or other from 9 December 2011 until this determination, it appears from the documents perused by the Tribunal, Forte has levied upon the Applicant, and which are or may be unpaid and/or still be in issue between the parties:

In relation to the Insurance Invoices

The Insurance Invoices	£89.65
23 May letter	£67.20
4 Sept letter	£67.20
Court fee	£60.00
Solicitors county court costs	£225.40
Solicitors costs N1 claim	£70.00

In relation to underletting

26 June letter	£78.00
Subletting consent	£75.00
Subletting registration	£78.00
26 Sept letter	£78.00

In relation to these LVT proceedings

Legal fees re LVT (1)	£144.90
Legal fees re LVT (2)	£193.20
Total	£1,226.55

The Tribunal's deliberations

55. The Tribunal considers that there are five issues:

- a. Which charges are within the scope of this application?
- b. Are all the charges within the scope of this application variable administration charges?
- c. Have the variable administration charges within the scope of this application been reasonably incurred?
- d. Should the Tribunal make an order that the Applicant's fees be refunded by Forte or the Respondent?
- e. What order should the Tribunal make under section 20C of the Landlord and Tenant Act 1985?

a. Which charges are within the scope of this application?

56. At the date of this decision, the total charges have increased as set out in Para 54 above. But the Tribunal considers that the only charges it can consider are those that existed at the point of the Applicant's application on 2 October 2012, which are:

The Insurance Invoices	£89.65
23 May letter	£67.20
4 Sept letter	£67.20
26 June letter	£78.00
Subletting consent	£75.00
Subletting registration	£78.00
26 Sept letter	£78.00

b. Are all the charges levied by Forte variable administration charges?

57. Paragraph 7 above sets out the definition of an administration charge, from paragraph 1 of Schedule 11 to the Act. In the view of the Tribunal, the Insurance Invoices themselves are not administration charges. The sums claimed in those invoices are not for consent or approvals, or the provision of information, or arising from a failure to make a payment due, or because of an alleged breach of the lease. Neither is the purported charge for registration of an underletting an administration charge, as this is not for a consent or approval, but just to register a transaction.

58. This does not mean that the Applicant may not challenge these charges, but any challenge would need to be brought within County Court proceedings and be determined according to the contractual obligations in the lease.
59. All the other charges listed in paragraph 56 above are, in the opinion of the Tribunal, administration charges. They are also all variable, as the sums charged are neither specified in the lease nor calculated in accordance with a formula in the lease. They are therefore all subject to the reasonableness test set out in paragraph 2 of Schedule 11 to the Act.

c. Have the variable administration charges within the scope of this application been reasonably incurred?

60. The Tribunal has to consider whether the variable administration charges are reasonable under paragraph 2 of Schedule 11 to the Act.
61. There are two categories of administration charge in this case. The first is the charges that have been levied as a result of non-payment of the Insurance Invoices. The second is the charges relating to underletting.
62. Dealing with the first category, the Tribunal considers that the 23 May 2012 invoice for £67.20 was not reasonably incurred, for the following reasons:
- a. There was no history of the Applicant having a poor payment record prior to December 2011.
 - b. There is some doubt about whether the postal version of the Insurance Invoices was delivered. The Applicant complained to Forte that he had not received letters at least twice in his emails of 27 & 28 May 2012, and his position is confirmed in his second statement of 6 Jan 2013. It is not clear which letters he was saying were not received, but Forte ought reasonably to have investigated this before imposing a charge.
 - c. The invoices themselves were incorrectly addressed to both the Applicant and Mr Dossa, which, while not invalidating the charge, causes some concern about the efficiency of Forte's systems.
 - d. No reminder seems to have been sent between 9 December 2012 and 23 May 2013.
 - e. No warning was provided to the Applicant that the consequence of failure to pay would be the imposition of a charge.
 - f. Invoices raised in early 2012, were paid in full and on time, so the Applicant has a good payment record.
 - g. The covenant upon which Forte relies does not cover the cost of collection of charges, but only the enforcement of them. The first letter subsequent to an invoice cannot, in the view of the Tribunal, be said to be a step taken in enforcing payment; rather it is a step in relation to collection and administration.

63. Taking all of these factors into account, the Tribunal consider that submitting an invoice at all for writing the letter of 23 May 2012 was not reasonable. The reasonable step would have been to send a reminder and warn that failure to pay would result in a charge being levied. Alternatively, it was not reasonable to insist on full, or even partial payment, as a result of the email exchanges of 27 and 28 May and the points made by the Applicant in them.
64. Dealing with the second category of administration charges, relating to underletting, the Tribunal does not consider that it was reasonable to impose any charge. Forte (and the Respondent) are only entitled to charge for the enforcement of payments due to the Respondent, or for the fees resulting from an application for consent to underlet or to register an underletting which is not a Permitted Letting. They have not provided any evidence to establish that the Applicant has an obligation to ask for consent or to register the underletting. There is no evidence that any application for consent to underlet either was made, or should have been made. It is true that the Applicant has underlet, but if that underlet is a Permitted Letting, the lease does not require either consent or registration, or even notification. There is no provision in the lease, so far as the Tribunal can see, which requires the Applicant to inform the Respondent or Forte of the terms of any underletting.
65. The Tribunal notes that the letter of 26 June incorrectly told the Applicant that a fee had to be paid for registration of an underletting even when the letting was a Permitted Letting.
66. It is possible that the Applicant is in breach of the lease because there is an unauthorised underletting that is not a Permitted Letting. The Tribunal consider that it would be necessary for Forte or the Respondent to establish a breach before enforcement costs (which would be administration charges) could reasonably be claimed. If a breach were established, the costs of establishing that might reasonably also be charged. But no such breach has been established in this case.
67. The Tribunal therefore determines that it was not reasonable for Forte to impose administration charges for any of the letters dated 23 May, 26 June, 4 Sept, or 26 Sept 2012. Neither was it reasonable for Forte to impose a charge for consent to underlet (as there is no evidence consent was sought or granted).
68. Whilst the Tribunal has no jurisdiction to deal with the charge for registration of an underletting, should Forte seek to claim that charge in court proceedings, they would have to establish that it became payable even when there was no evidence that any underletting was registered. That might be a difficult task. Similarly, whilst this decision makes no determination in relation to charges levied after the application was brought, as those subsequent charges arose only because of the dispute about the charges the Tribunal is deciding, it is

difficult to see how Forte can maintain that these remain due. However, that would be a matter for a further application and the Tribunal does not make a determination on those subsequent charges.

69. The Tribunal notes that the Applicant has accepted that the Insurance Invoices are due, and indeed he attempted to pay them on 27 May 2012 and again on 7 September 2012.

d. Should the Tribunal make an order that the Applicant's fees be refunded by Forte or the Respondent?

70. Under paragraph 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003, the Tribunal has a discretion to order that the fee paid by the Applicant in respect of this application to the Tribunal, should be reimbursed to the Applicant by the Respondent. The Applicant has wholly succeeded in this application. The Tribunal determines that the Respondent should reimburse the Applicant his fee of £50.

e. What order should the Tribunal make under section 20C of the Landlord and Tenant Act 1985.

71. The Applicant has applied for an order preventing the Respondent or Forte from seeking to recover any of its costs of this application from him via the service charge payable under the lease. The Tribunal has a discretion to make such an order under section 20C of the Landlord and Tenant Act 1985.

72. Bearing in mind the outcome of these proceedings, the Tribunal considers that it would not be right for either the Respondent or Forte to be able to recover any of its costs via the service charge. However, the Tribunal is hard pressed to see any basis in the lease allowing the costs of these proceedings to be passed on via the service charge. It is in some doubt that an order is necessary.

73. Just for the avoidance of any doubt however, the Tribunal determines that none of the costs incurred by the Respondent or Forte in these proceedings shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

Summary of decision

74. The Tribunal determines that the following charges are the variable administration charges which are in dispute within these proceedings.

23 May letter	£67.20
4 Sept letter	£67.20
26 June letter	£78.00
Subletting consent	£75.00

26 Sept letter

£78.00

75. The Tribunal determines that none of these variable administration charges set out in paragraph 74 above were reasonably imposed, and none of them are payable by the Applicant.
76. Forte and the Respondent are to refund the Applicant's fee for bringing these proceedings in the sum of £50.00.
77. None of the costs incurred by the Respondent or Forte in these proceedings shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

Dated 6 FEB 2013

C. Goodall

Christopher Goodall
Chair
Leasehold Valuation Tribunal