



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

Case Reference : **BIR/37UD/LAC/2013/0003**

Property : **21 Douglas Court, Toton, Nottingham, NG9 6ER**

Applicant : **Suresh Mason (lessee)**

Representative : **Not represented**

Respondent : **Bernard Vinycomb and Frances Vinycomb**

Representative : **Abbott Ltd**

Date of Application : **17th September 2013**

Type of Application : **Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the Act).**

Tribunal : **R. T. Brown FRICS
D R Salter LLB Hons**

Date of consideration : **6th January 2014**

Hearing : **On the papers submitted**

Dated : **19 FEB 2014**

DECISION

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1. The Tribunal determines that the lease contains no provision for the recovery of an administration charge in respect of the grant of a licence to underlet the property nor does it contain a formula for calculating such a charge. As a consequence, the administration charge to which this Application relates is a variable administration charge.
2. The Tribunal finds the sum of £40.00 plus VAT (where appropriate) would be reasonable as an administration charge in respect of the grant of a licence to underlet the property.
3. Section 20C. The Tribunal makes an order preventing the Respondents from recovering the costs of these proceedings by way of the service charge provisions in the lease.

REASONS FOR DECISION

The Application and Introduction

4. The Applicant, who is lessee of the subject property, whilst conceding the liability to pay an administration charge in respect of the grant of a licence to underlet the property seeks a determination as to the reasonableness of the following administration charges:
 - (a) For underletting £545.00
 - (b) Licence to assign £545.00
 - (c) Notice of Assignment £95.00
 - (d) Notice of Charge £95.00.
5. The Tribunal has jurisdiction to determine the liability to pay an administration charge in respect of an application for a licence to underlet the property and the reasonableness or otherwise of that charge.
6. The Applicant also seeks an order under Section 20C of the Landlord and Tenant Act 1985 that the Respondents shall not be entitled to recover any of the costs incurred in these proceedings by way of the service charge.
7. The Applicant applied for this matter to be considered on the papers submitted and the Respondents agreed to a determination without an oral hearing.
8. The papers submitted by the Applicants comprised:
 - (a) The Application and attachments (including the Lease)
 - (b) Submissions (in accordance with Directions) dated 12th November and 12th December 2013.
9. The papers submitted by the Respondents comprised:
 - (a) Submissions (in accordance with Directions) dated 12th November and 14th December 2013.

10. A further submission was received from the Respondents also dated 14th December 2013 but not received until 24th December. The documents in this submission appear to be a replication of the Respondents' second statement and copies of pages 30 – 38 which had already been submitted.

The Property and the Tribunal's inspection

11. The members of the Tribunal did not inspect the property.
12. The property is described in the Application as a purpose built two bedroom flat.

The Law

13. The relevant law is set out below:

Commonhold and Leasehold Reform Act 2002 Schedule 11

Part 1 Reasonableness of administration charges

Meaning of "administration charge"

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...

(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.

Reasonableness of administration charges

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

3 (1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that–

(a) any administration charge specified in the lease is unreasonable, or

(b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3) The variation specified in the order may be—

(a) the variation specified in the application, or

(b) such other variation as the tribunal thinks fit.

(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made...

Liability to pay administration charges

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...

Landlord and Tenant Act 1985

Section 20C Limitation of service charges: costs of proceedings

- (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 or leasehold valuation tribunal, or the Lands 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;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Lands 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.

The Lease

14. The Tribunal was provided with a copy of the Lease dated 6th February 1979. Unfortunately, the copy provided is missing pages 12 and 13 but this is not in issue between the parties.
15. The relevant parts of the Lease are:

Clause 2: THE Lessee HEREBY COVENANTS with the Lessor as follows:-

- (16) To use and occupy the Flat solely and exclusively as a self-contained residential flat in one occupation only and not to use said Flat or Garage for any business purposes whatsoever

Clause 4:

- (A) The Lessee shall not assign demise or underlet or otherwise part with possession of part of the Flat (here meaning part only and not the whole thereof) for all or any part of the said term
- (B) The lessee shall not assign demise or underlet or otherwise part with possession of the whole of the Flat for all or any part of the said term without the previous written licence of the Lessor which shall not be unreasonably withheld

The Applicant's Case

16. The Applicant seeks determination of the matters listed in paragraphs 4 and 6 above.
17. The Applicant states that the Respondents through their agent, Abbott Ltd, demanded the sum of £545.00 for the grant of a licence to underlet. A similar sum would be demanded for the grant of a licence to assign. In addition, a charge of £95.00 would be levied for the registration of either a Notice of Assignment or a Notice of Charge.
18. The Applicant concedes that the Respondents are entitled to impose an administration charge, but considers the administration charge levied for the licence to underlet is unreasonable.
19. The Lessee's covenants require a written licence from the Lessor for the underletting of the property, but there is no provision for the payment of a fee or charge for the grant of such a licence.
20. The Applicant states that if an administration charge is not referred to in the Lease and there is no formula contained in the Lease to work out such a fee then it is a variable administration charge. A variable administration charge is payable but it should only cover administration costs and must be reasonable.
21. The grant of a licence to underlet is a straightforward and uncomplicated procedure and the document used is generic and not specific to a particular property or lease.
22. As requested by the Tribunal, the Applicant made enquiry of both the Respondents agent and the Land Registry as to the availability of a complete copy of the lease. But the missing pages have not been located.
23. The Applicant referred the Tribunal to two cases: MAN/00EW/LAC/2011/0022 - *Sheldon v Proxima GR Properties Ltd* [2012] UK UT (LC). The latter case was an appeal against a determination by the Eastern LVT and included the conclusion of George Bartlet QC, President of the Upper Tribunal, that in respect of an administration charge for the grant of a licence to underlet in similar circumstances '*a fee greater than £40.00 plus VAT could not be justified*'.
24. In line with above decision of the Upper Tribunal, the Applicant submits that in this case a reasonable administration charge for the grant of a licence to underlet would be around £40.00 plus VAT.

Further submission (in accordance with Directions)

25. The Applicant accepts that the missing pages to the Lease are not relevant to determination of this Application.
26. The Applicant agrees that there was a duty of care on his solicitors to advise him, amongst other matters, as to the payment of administration charges
27. The Applicant acknowledges that the document dated 'Oct 11' (setting the terms on which licences may be granted) sent by Abbott Ltd on behalf of the Respondents stated that it was valid until noon on the 20/09/2012.
28. The Applicant paid the administration charge (£545.00) that was demanded for the licence to underlet dated 15th March 2012 to Adam Szarvas under protest. A further application for a licence to underlet made on 8th November 2013 did not lead to a demand from the Respondents or their agent, Abbott Ltd, for the payment of an administration charge.
29. A licence to underlet (copy not provided to the Tribunal) was granted by the Respondents on 19th November 2013 without, as indicated in paragraph 28, the imposition of an administration charge. The Applicant contends that the decision not impose the administration charge in this instance was influenced by the making of this Application, although it is uncertain whether this practice of not charging an administration charge will be maintained in respect of future applications for licences to underlet.
30. The Application is to determine the reasonableness of the administration charges specified by the Respondents through their agent, Abbott Ltd, in respect of those matters referred to in paragraph 4 above. The Tribunal should be able to determine the reasonableness of such charges.
31. The Respondents have not explained why their fees are reasonable. The Respondents are also directors of Abbott Ltd and so Abbott Ltd is not an independent managing agent.
32. The Applicant's main contention relates to the reasonableness of the administration charge for the grant of the licence to underlet, but the same issue arises in relation to other fees (see paragraph 4 above). The Applicant accepts that a refund of £510.00 was made by the Respondents in respect of the administration charged for the grant of the licence to underlet so that the administration charge was £35.00.
33. The Applicant asks the Tribunal to interpret the Lease together with the supporting documentation and make a determination of the reasonableness or otherwise of the administration charges specified by the Respondents through their agent, Abbott Ltd, and which are specified in paragraph 4 above.

Section 20C of the Act

34. The Applicant does not wish the Respondents to recover their costs relating to these Tribunal proceedings from the service charge.

The Respondent's Reply

35. The Respondents confirm that they are unable to locate a complete copy of the Lease.
36. The Respondents indicate that the letter from Abbott Ltd dated 'Oct 2011' referred to in paragraph 27 (above) which sets out various administration charges is no longer valid as it states: 'ABOVE TERMS SUPERCEED ALL PREVIOUS TERMS AND REMAIN VALID TILL NOON 29/09/2012'.
37. Neither the Respondents nor Abbott Ltd are currently demanding any administrative charge in respect of any applications for a licence to underlet.
38. The Respondents accept that the administration charge of £545.00 was paid by the Applicant 'under protest'. A refund of £510.00 was made to the Applicant's solicitor on 20th February 2013. The net charge was thus £35.00.
39. The Applicant has confirmed that the flat is still underlet to the original tenant. Accordingly, no current terms for the grant of a licence to underlet have been made available.
40. There is no legal requirement to predict/advise on future fees, if any. Considerable work is entailed pursuant to a request for a licence to underlet. Current legislation provides for a reasonable charge to be made for such work.
41. Neither the Respondents nor Abbott Ltd have been advised that the Applicant requires a licence to assign or that the Applicant is proposing to remortgage or charge the property.
42. The Respondents put forward the same argument in respect of the licence to underlet and comment that the Applicant was represented by a firm of solicitors in the purchase transaction which implies a duty of care, amongst other matters, to advise about the payment of an administration charge.

Further submission (in accordance with Directions)

43. In their submission the Respondents confirm that no administration charge has been raised for the licence to underlet in respect of the current occupant.
44. The Respondents further confirm that there are no outstanding amounts due from the Applicant in respect of administration charges.

Section 20C of the Act

45. There is no submission from the Respondents in respect of their costs relating to these proceedings.

The Tribunal's Deliberations

46. The Tribunal considered all the relevant written evidence presented (as summarised above) in its deliberations.
47. The Tribunal did not have the benefit of pages 11 and 12 of the Lease. However, the Applicant states they are not relevant to his Application and the Respondent makes no submission on the point. The Tribunal therefore proceeds to consider the Application on the rather unsatisfactory basis of the incomplete lease. However and relevant to this Application is the fact that all the lessee's covenants with the lessor appear to be included within the pages available to the Tribunal.
48. The Tribunal was assisted by the reference to recent decision of the First-tier Tribunal to which it was referred but is not bound by that decision. It is also took cognisance of the decision of the Upper Tribunal decision in *Sheldon* (above) but noted that the lease in that case contained a clause entitling the Landlord to make a charge for the granting of consent to let.
49. The Tribunal considered the terms of the Lease in connection with the raising of administration charges for licences to underlet/assign and the registering notices of assignment, mortgage and charging the property. The only charging provision is contained in clause 2(21) which has no bearing on the issue in this case.
50. The Tribunal finds that the Lease contains a restriction on under letting the property for which a written licence is required under Clause 4 (A) of the Lease (see, paragraph 15 above).
51. After considering the Application and submissions, the Tribunal concluded that the only matter before it which could be determined was the amount actually charged for the 1st licence to underlet no other charges having been incurred at this stage.
52. There is no covenant by the Lessee to pay an administration charge or a charge calculated by reference to a formula for the grant of such a licence to underlet.
53. The questions for the Tribunal are therefore:
 - (a) Is the Lessor entitled to make a charge for the granting a licence to underlet?
 - (b) If the Lessor is so entitled how much is he entitled to charge?
54. On the evidence (without the benefit of pages 12 and 13 of the Lease), the Tribunal finds that the Lease contains no covenant (specific or implied) requiring the Lessee to make any payment for the grant of a licence to underlet.
55. In the absence of provision in the Lease (imposing a formula for calculating an administration charge) the Tribunal considers the administration charge to be variable. Therefore matter to be determined is the reasonable amount of a variable administration charge for the granting of a licence to underlet.

56. The nature of the work in considering an application for a licence to underlet is straight forward and without evidence to the contrary the Tribunal can see no reason to depart from the decision in *Sheldon* and accordingly determines that £40.00 plus VAT is reasonable.

Section 20C of the Act

57. The Tribunal concluded that the Applicant was justified in making the Application. Accordingly, it is appropriate that an Order is made under section 20C preventing the Respondent, so far as provision is contained in the Lease for recovering any costs of these proceedings by way of the service charge provisions in the Lease.

Appeal Provisions

58. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Robert T Brown
Chairman

19 FEB 2016