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First-tier Tribunal
Property Chamber
(Residential Property)

Case Reference	:	**CAM/38UC/LAC/2015/0002**
Properties	:	**21 & 44 Gordon Woodward Way, Oxford OX1 4XL**
Applicants	:	**Patrick Grant & Karen Logan**
Respondents	:	**Q. Dime Ltd. and Hazelvine Ltd.**
Date of Application	:	**22nd January 2015**
Type of Application	:	**To determine reasonableness and payability of variable administration charges**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **Mr. David Brown FRICS**

DECISION

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1. The charges claimed from the Applicants for registration of sub-lettings are not 'variable administration charges' as defined by the relevant statute and the Tribunal therefore has no jurisdiction to assess their reasonableness.

2. The Tribunal does not make an order pursuant to Section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") preventing the Applicant from recovering its costs of representation before this Tribunal from the Respondent as part of any future service charge demand.

Reasons

Introduction

3. This application is made because the Applicants have received demands for fees for sub-letting the properties going back over a number of years. In fact those fees have been demanded by one managing agent on behalf of both the landlord and the management company.

4. By a directions order dated 2nd February 2015, it was said that the Tribunal would not inspect the properties and would be prepared to deal with the determination on the basis of the papers and written representations made. It pointed out that a determination would not be made before 24th March 2015 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.

The Law

5. Paragraph 1 of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the Schedule") 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... directly or indirectly—*
>
> *(a) For or in connection with the grant of approvals under* (the) *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 a 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 a 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"*

The Lease

6. There were what appeared to be copies of the contract for a lease and the lease itself relating to 21 Gordon Woodward Way in the bundle provided to the Tribunal. It is assumed that the 2 leases are in the same terms. It is for 125 years from 1st January 2004 with an increasing ground rent. It is in modern form with a freeholder landlord (Linden Homes Chiltern Ltd.), a management company (Rivermead Park Management Ltd.) and the Applicants. The first named Respondent has presumably acquired the freehold reversion.

7. The tenants' covenants are in Schedule 4. In Part 2, paragraph 9, the tenants covenant with both the landlord and the management company as follows:-

> *"Upon every underletting of the Demised Premises....within one month thereafter to give to the Landlord and the Company or their respective solicitors for the time being notice in writing of such underletting....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 Landlord and the Company each a reasonable fee for the registration of the said notice (not being less than £50) plus and Value Added Tax..."*

Discussion

8. It is clear the neither Applicant complied with the terms of the leases because both properties have been sublet since 2006 but no notices were given by the Applicants of the said sublettings within one month and no copies of the tenancy agreements were produced at the time. The Applicants say that the managing agents, Hazelvine Ltd., sent a 'Residents Information Form' to them for the first 4 years which they completed and returned. There was a question 'Are you subletting?' to which they answered 'yes'. Copies of those forms are in the

Tribunal's bundle for 2006, 2007 and 2008. The 2006 forms do not ask that question.

9. In any event, it seems that Hazelvine Ltd. failed to notice these answers and it is only now that they are seeking to recover all the fees for the years they were not paid in the sums of £65 for the Landlord and £78 for the Management Company for each subletting.

10. It is noted that the management company is not a Respondent. The reason is that the Applicants did not name it as Respondent in their application form. They named Hazelvine Ltd. as the only Respondent but Hazelvine Ltd. has no contractual relationship with the Applicants at all. For this reason, the Tribunal itself added the named landlord as a Respondent. In normal circumstances, the Tribunal would have added the management company as Respondent within this determination because it now knows all the facts, but in the circumstances, there is no point.

Conclusions

11. It is clear to this Tribunal that the registration fees claimed do not come within the definition of a variable administration charge as defined in the Schedule. The Upper Tribunal determined in the case of **Proxima GR Properties Ltd. v McGhee** [2014] UKUT 0059 (LC) that such charges do not fall within the wording of the Schedule and are thus not administration charges.

12. They are contractual obligations under the terms of the leases and it is only the county court which can determine what is a 'reasonable' registration fee. Thus, this application must fail because the Tribunal simply has no jurisdiction. The Applicants may find this irritating but if they had taken legal advice, they would have known that.

13. In view of this, the Tribunal cannot see how it would be just or equitable for it to make an order under section 20C of the 1985 Act.

What is a reasonable fee?

14. The Respondents' primary case is that the application should be dismissed. However, they do ask the Tribunal to give an indication of what they would have found was a reasonable fee if there had been jurisdiction.

15. They say that an hourly rate approach is inappropriate in every case. The Tribunal would agree because it is much better that tenants know fees in advance. However, any reasonable scale of fees must be based upon some logical premise which will involve a calculation of the time taken for an average case. The Respondents say that the work would include:-

> *"assessing the lease, contacting owners, responding to correspondence, reviewing any notices of subletting provided, updating records, updating any other interested parties records, reviewing the insurance position, receipting notices, saving copy tenancies, and providing instructions to the Landlord and*

solicitors where any notice is not provided"

16. It is then said that all this 'would reasonably take an hour'. The Tribunal considers that this assessment is generous, to say the least. On each development, the terms of the leases as to such things as subletting will be known, as will the insurance provisions which will almost always be standard landlord's insurance allowing subletting. This information should be readily available and would not involve the individual leases and insurance policies being looked at in detail on each occasion.

17. Any experienced case worker should be able to deal with everything within half an hour. Having said that, £65 for an average commercial organisation is not unreasonable for that sort of time taken to include the odd case where there may be complications e.g. people giving notice but not including a copy of the tenancy.

18. The areas where the Tribunal has some difficulty in agreeing with the Respondents are:-

- If there is only one managing agent dealing with both the landlord and the management company, there is simply no justification for charging a total of £143. If £65 is justified for the registration on behalf of the landlord, the only additional work will be notifying the management company.
- Where the subtenant is the same as before and the tenancy is simply being renewed, there will be a reduction in the work which should be reflected in the fee.
- The managing agents clearly failed to pick up earlier sublettings after being told about them. It is obviously necessary for them to do all the work necessary to register the current sublettings, but what work have they actually done to deal with all the earlier ones? It is difficult to see what work would have been required. If the process of recording all the earlier sublettings was gone though, it would have all happened at the same time with obvious cost savings.

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Bruce Edgington
Regional Judge
24th March 2015