10029

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BG/LAC/2014/0008**
Property	:	**Flat 8 Florin Court, 8 Dock Street, London E1 8JR**
Applicant	:	**Mr Matthew Thorogood** **Ms Veronika Mitanova**
Representative	:	**In person**
Respondent	:	**Guinea Florin Limited**
Representative	:	**In person**
Type of Application	:	**Liability to pay administration charges**
Tribunal Judge	:	**Ms N Hawkes**
Date and venue of paper determination	:	**24.6.14 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**24.6.14**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that a reasonable fee for providing consent pursuant to clause 2(4) of the applicants' lease in the present case would be £45 + VAT and that the fees which have been demanded by the respondent are unreasonable.

(2) 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 respect of a request for the respondent's consent to proposed alterations to the property pursuant to clause 2(4) of the applicants' lease.

2. The relevant legal provisions are set out in the Appendix to this decision.

The paper determination

3. On 23rd April 2014, the Tribunal directed that this application would be determined on the papers in the week commencing 23rd June 2014 unless either party requested an oral hearing within 28 days.

4. Neither party has requested an oral hearing. Accordingly, this matter will be determined on the papers. By letter dated 4th June 2014, the respondent requested an extension of time and this request was refused by the Tribunal on 10th June 2014.

5. By email dated 23rd June 2014, Mr Grace, a director of the respondent company, informed the Tribunal that the respondent's former solicitors, Nairnsey Fisher Lewis have been dis-instructed. He also put in some written submissions.

6. The directions of 23rd April 2014 gave the respondent until 16th May 2014 to send a Statement of Case to the applicants and they make provision for the applicants to send the Tribunal a supplementary Reply by 30th May 2014.

7. By email dated 23rd June 2014 to the Tribunal, the applicants state that following their conversation with the case officer that morning they

understand that the respondent has written to the Tribunal with points of response to their case. They state that they have not received a copy of this correspondence and so are unable to reply.

8. It therefore appears that not only are the respondent's written submissions over five weeks out of time; the respondent has also failed to comply with the Directions of 23rd April 2014 in that it has entirely failing to serve its submissions on the applicants.

9. It is stated in bold the heading to the directions, "Failure to comply with Directions could result in serious detriment to the defaulting party e.g. the Tribunal may refuse to hear all or part of that party's case ..."

10. It is also stated in bold in the heading to the directions, "Whenever you send a letter or email to the tribunal you must also send a copy to the other parties and note this on the letter or email."

11. I find that the applicants would be prejudiced if I were to admit the respondent's late written submissions because they have had no opportunity to consider them and to respond. I also note, having read the respondent's late written submissions, that even if they had been formally admitted they would not have affected the outcome of this determination.

The background

12. The property which is the subject of this application is a one bedroom flat in a purpose built block which the applicants intend to convert into a two bedroom flat.

13. 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.

The issues

14. The applicants holds a long lease of the property and clause 2(4) of the lease provides:

THE Lessee HEREBY COVENANTS with the Lessor and the Company and with each of them as follows:-

...

(4) Not to make any structural alterations or structural additions to the demised premises or the internal arrangements thereof or to

remove any of the Landlord's fixtures without the previous consent in writing of the Lessor such consent not to be unreasonably withheld.

15. By email dated 13th November 2013, Mr Grace of the respondent company refers to a meeting with the applicants at the property and states: "In principle I do not see an issue with the planned alterations provided you follow the planning and building control regulations. I will also be in touch again once the permissions process has been completed by ourselfs" [sic].

16. The applicants state that they subsequently received a letter from the respondent's former solicitors on 14th March 2014 stating that permission would only be granted in exchange for (i) payment equivalent to 10% of the added value of the conversion (ii) £750 + VAT for a licence (iii) valuation fees estimated to be £500 (v) a Deed of Variation at a cost of £500 + VAT (vi) additional and unspecified costs and disbursements.

17. There was further correspondence between the parties and, by email dated 31st March 2014, Mr Grace sets out what is described as the freeholder's final offer:

"1 – Points, 1 to 7 as per solicitors letter dated 14th March 2014 fully Apply (less, the valuation and fee of £500.00 which is no longer necessary).

2 – An increase in your ground rent by £75 per year (Inclusive of vat).

3 – A fee of £2,750 payable to the freehold company. (Inclusive of vat).

4 – Legal fees as estimated by solicitor at £1250.00 plus vat (I can not do anything about these – and feel they are very reasonable for the amount of work required)."

18. The applicants rely upon the authorities set out at pages 4-5 of their application and submit that a reasonable fee for the grant of consent under clause 2(4) of their lease would be £45 + VAT, in the present circumstances.

The determination

19. By Schedule 11 of the 2002 Act Part 1 paragraph 1(1), an administration charge is 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.

20. By 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 specified in his lease and, by paragraph 2, a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

21. In *Proxima v McGhee [2014] UKUT 0059 (LC)*, in considering the reasonableness of a fee in respect of granting consent for the underletting of a flat, the Upper Tribunal stated at paragraph 36 of the decision: *"care should be taken to ensure that any such standard fee is not an inflated or unreasonable fee for a routine and unobjectionable application. It is necessary to consider the work required to deal with a particular application."*

22. Further, it was noted that in *Bradmoss Ltd [2012] UKUT 3 (LC)* the Tribunal (George Bartlett QC, President) considered a landlord's claim that administrative work taking two hours and legal work taking one hour were required to process an application for consent and that a fee of £135 was justified. The Tribunal held that in the absence of any information as to what had actually been done, by whom and how long it took, it was not satisfied that a fee at that level was justified or that consent could reasonably have been refused in the event that the tenant had refused to pay it. The Tribunal substituted a fee of £40 plus VAT as the amount payable.

23. The Upper Tribunal stated at paragraph 39 of the decision in *Proxima* that the covenant could not be used as a source of profit for landlords or their managing agents. In my view, this principle is equally applicable to the covenant which is under consideration in the present case.

24. In the present case, the applicants contend that a reasonable fee for the grant of consent by the respondent pursuant to clause 2(4) of their lease would be £45 + VAT. For the reasons set out above, I have refused to formally admit the written submissions of the respondent which were sent to the Tribunal (but not the applicants) over five weeks after the date on which they should have been served on the applicants.

25. However, having read Mr Grace's email of 23rd June 2014, I note that even in these late submissions the respondent has not provided any evidence of what had actually needs to be done administratively in order to process the applicants' request for consent; by whom this work would be done; and how long it would take.

26. In the absence of any evidence to the contrary, I accept the applicants' contention that a reasonable fee for providing consent in the present case would be £45 + VAT and I find that the fees which have been demanded by the respondent are unreasonable.

Application under s.20C and refund of fees

27. In the application form, the applicants applied for an order under section 20C of the 1985 Act. Having regard to the respondent's failure to comply with the direction of 23rd April 2014 and to the determination above, the I find that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the applicants' service charge.

Judge Naomi Hawkes

23rd June 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).