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

Case Reference : **CHI/19UD/LAC/2013/0012**

Property : **46 and 54 Cuthbury Gardens,
Wimborne, Dorset, BH21 1YB**

Applicant : **Mr James Taylor**

Representative : **-**

Respondent : **Proxima GR Properties Limited**

Representative : **Estates & Management Limited**

Type of Application : **Administration charges : schedule 11
to the Commonhold and Leasehold
Reform Act 2002 ("the 2002 Act"),
and section 20C of the Landlord and
Tenant Act 1985 ("the 1985 Act")**

Tribunal Members: **Judge P R Boardman**

**Date and venue of
Hearing** : **26 November 2013
Decided on the papers without a
hearing**

Date of Decision : **26 November 2013**

DECISION

Introduction

1. This is an application by the leaseholder for a determination about the liability to pay an administration charge
2. The Tribunal has decided the application on the papers pursuant to rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, neither party having made any objection following the Tribunal's directions in that respect dated 13 September 2013

The grounds for the application

3. The Applicant stated that his lease of 46 Cuthbury Gardens was dated 12 October 1984, and his lease of 54 was dated 20 December 1984 and was for a term of 99 years
4. The relevant parts of each lease were paragraphs 6(i), (ii), and (iii) of the fourth schedule
5. The managing agents had asked in their letter dated 25 February 2013 for fees for consent to sublet of £100, £75, and £350, "requiring tenant's details, not in lease". He had proposed £50 for each registration on 4 August 2013, which they had rejected in a letter dated 7 August 2013
6. In a separate application, the Applicant also applied for an order under section 20C of the 1985 Act

The leases

7. Paragraph 6 of the fourth schedule in each case provides as follows :

6(i) The Lessee shall not sublet the whole or any part of the demised premises save than [sic] an underletting of the whole of the demised premises (with the prior consent of the Lessor and a mortgagee of the demised premises) is permitted in the case of a term certain not exceeding 3 years let at a rack rent
(ii) The Lessee shall not assign part only of the demised premises
(iii) The Lessee shall not assign the whole of the demised premises without giving prior written consent of his intention so to do to the Lessor and on receipt of such notice the Lessor shall acknowledge in writing receipt of such notice and such acknowledgement shall be in sufficient terms so as to comply with the provisions of clause 8 hereof in the main body of this deed

8. Paragraph 7 of the fourth schedule in each case provides as follows :

7 The Lessee shall within 28 days of the date of every

assignment grant of probate or administration assent mortgage charge discharge order of court or other event or document relating to the term (except a mortgage effected simultaneously with the grant of this lease) give notice thereof in writing to the Lessor and pay to it a fee for registration calculated at the rate of 0.1% of the notice value of the demised premises and in the case of a document produce a certified copy of it to the Lessor for registration with notice

The Respondent's statement of case 4 October 2013

9. The Respondent stated that Estates & Management Limited was agent for the Respondent, the freehold owner of the flats. Estates & Management Limited dealt with the administration of the freehold interest and also with the management company's function of the granting of approvals under the terms of the leases
10. In February 2013 the property managers informed Estates & Management Limited that the applicant was subletting each flat. Estates & Management Limited wrote to the Applicant advising him of the requirements of the leases and enclosing a form to fill in with instructions how to comply with the terms of the leases. Estates & Management Limited also enclosed a sheet entitled "sublet guidelines" and one entitled "administration charges - summary of tenants' rights and obligations"
11. The fee charged for consent to sublet was £175 a flat
12. The Applicant had contended that the fees for consent were unreasonable
13. The Respondent contended that the £175 fee for consent to sublet was payable and reasonable. The reasonableness of the Global Licence fee of £350 could not be determined by the Tribunal as this was an alternative voluntary contract lasting for 5 years and potentially covering several consents and registrations, which the tenant might or might not choose to enter into
14. Paragraph 6(i) of the fourth schedule to each lease clearly stated that the Applicant was required to obtain prior written consent for subletting. The Respondent was also entitled to check the rent and the length of the sub-tenancy proposed to ascertain whether it was 3 years or less and at a rack rent
15. The fact that the fee was not expressly stated under paragraph 6 of the fourth schedule did not mean that the Applicant was not liable. Schedule 11 of the 2002 Act defined a variable administration charge as:

"..... 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”*

16. Section 19(1)(a) of the Landlord and Tenant Act 1927 permitted the requirement of payment of a reasonable sum incurred in connection with a licence or consent
17. The Applicant had not stated that consent was not required, expressly stating that it was in his letter dated 4 August 2012. He only disputed the requirement to supply any information to the Respondent about the tenancy. The Applicant did not state that a fee was not payable, suggesting a fee of £50 per flat in the same letter of 4 August 2013. The Applicant had effectively admitted liability to pay a fee, but was disputing quantum
18. The Respondent submitted that the sum charged, £175, represented a reasonable charge for the work required. The fees were necessary for the Respondent and its agent to recoup the cost incurred with dealing with the application and issuing consent in accordance with the lease terms
19. Although paragraph 4b of the Tribunal’s directions requested details of the fee earner, including rates and client care letter, the work carried out on the granting of consent was substantially administrative. The administrative procedures of the sublet team had been set up under the advice and supervision of the in-house legal team who also assisted daily in a general advisory role but who were not typically involved with the execution of individual consent-to-let applications. Because Estates & Management Ltd managed the freehold interest of a vast number of properties, it was more efficient, and economical for the tenants, to charge a flat rate for all applications
20. Although some applications might be completed promptly, a considerable number were not. Common complications encountered by the Estates & Management Limited sublet team were :
 - a. the form was not returned or responded to
 - b. an incomplete form was returned
 - c. no tenancy agreement was sent in
 - d. an incomplete tenancy agreement was sent in where it was not possible to see the term
 - e. a tenancy agreement not allowed under the terms of the lease was sent in
 - f. cheques for the wrong amount were sent in and had to be returned
 - g. ground rent was outstanding and had to be investigated for breach of lease and resolved before consent could be issues
 - h. service charges were outstanding and had to be investigated for breach of lease and resolved before consent could be issued
21. Estates & Management Limited had estimated that applications might

take between 3 and 10 hours of work, depending on the complexity or issues encountered. Therefore the average time taken by an application was 6.5 hours

22. Estates & Management Limited had calculated that the hourly rates for dealing with sublet applications was £55 per hour on labour costs, and including infrastructure costs, overheads, IT systems, the archives and legal departments
23. Estates & Management Limited had further estimated that the time spent on this particular application so far (not including the legal work for the LVT application) was :

Task undertaken	Time taken (minutes)
Reviewing leases for IT system	30
In February 2013, liaising with property manager to ascertain current sublet status of the 2 flats	10
Preparing 14 February letter and enclosures and checking Applicant's current address	15
Preparing 25 February letter and enclosures and checking Applicant's current address	15
Receiving telephone call 26 February 2013 enquiring about sublet requirements and appropriate fees and general queries about the freeholder. A member of the sublet team advised him of the requirements as per the previous letters sent Updating computer system	10
Receiving telephone calls 28 February 2013 requesting a lot of clarification about the form sent for retrospective consent. Applicant agreed to send tenancy agreement and completed sublet application in the next few weeks Updating computer system	15
Sourcing official documents relating to the name change of the freeholder company, preparing 28 February 2013 letter and sending Updating computer system	30
Considering 4 August 2013 letter claiming that although his lease does stipulate that and under letting is permitted with the less	10

<p>sore's consent there was nothing in the clause to stipulate they needed to supply any tenancy details and suggesting a fee of £50 for consent per flat</p> <p>Discussing letter with supervisor</p> <p>Updating computer system</p>	
<p>Requesting particular lease from archives to check sub let provisions and discussing with the in-house legal department</p>	30
<p>Drafting 7 August 2013 letter explaining that consent is granted on an individual basis for every sub tenant and that consent could not reasonably be granted without sight of the tenancy details. The Respondent also explained Estates & Management Limited's procedures and work which must be undertaken in the granting of the sub tenancy and therefore the reason for the one-off consent fee of £175 a flat</p> <p>Updating computer system</p>	15

24. This breakdown showed that 3 hours had been spent and consent had not been granted, documents had not been produced to record consent, and the transaction had not been registered
25. The consent fee of £175 was a one-off payment. If a new tenant was registered, a registration fee of £75 only would be applicable and, if the same tenant renewed his tenancy once it had expired, this would be charged at 50% of the registration fee, i.e. £37.50
26. The Respondent did offer the alternative of a "global licence" for a five-year period at a fee of £350
27. Given the work the Respondent was required to carry out in the context of subletting, the Respondent considered that the sum demanded was both payable and reasonable. Such fees had been deemed reasonable and standards across the industry. The Respondents relied on the Upper Tribunal Decision LRX/170/2011 where £165 was determined to be a reasonable fee for consent to sublet even where the lease did not expressly provide for this, based on section 19(1)(a) of the Landlord and Tenant Act 1927. The Respondent also relied on the prior Tribunal decision BIR/00CN/LAC/2010/0003 which had approved consent fees ranging from £150-£180
28. The Respondent submitted that £175 a flat was payable and reasonable as a variable administration charge for assuring consent to sublet

Documents attached to the Respondent's statement of case

29. The documents were :

- a. the letter from Estates & Management Limited dated 25 February 2013, with enclosures
- b. the letter from Estates & Management Limited dated 28 February 2013 and documents relating to the change of name of the Respondent
- c. the letter from the Applicant dated 4 August 2013
- d. the letter from Estates & Management Limited dated 7 August 2013
- e. the decision of the Upper Tribunal (Lands Chamber) in **Freehold Managers (Nominees) Ltd v Piatti** [2012] UKUT 241 (LC)
- f. the decision of the Midland Leasehold Valuation Tribunal dated 31 August 2010 BIR/00CN/LAC/2010/0003

The Applicant's response 18 October 2013

30. The Applicant stated that although consent to sublet was required according to both leases, there was nothing in either lease requiring copies of tenancy agreements. Estates & Management Limited seemed to include reviewing tenancy agreements as costs which were not stated under the terms of the leases
31. In relation to the table of tasks undertaken, the Applicant had never been made aware of costs to Estates & Management Limited, telephone conversations et cetera. The Applicant could not see how he could be liable for costs incurred by Estates & Management Limited for communication regarding this matter
32. The Respondent had stated that the consent fee of £175 was a one-off payment and that if a new tenant were registered a registration fee of £75 only would be applicable and at the same tenant renewed his tenancy once it had expired this would be charged at 50% of the registration fee, i.e. £37.50. However, the Leasehold Advisory Service had advised that a fee of about £45 was given as reasonable in nearly all of these cases

The Respondent's reply 4 November 2013

33. The Respondent stated that a copy of the proposed tenancy agreement was required by Estates/Management Limited to review and ascertain whether the proposed sub tenancy was for a term not exceeding 3 years at rack rent, prior to providing written consent. Also, paragraph 7 of the fourth schedule to both leases clearly required the tenant to deliver up a copy of the tenancy document to the lessor upon registration
34. Paragraph 6 of the fourth schedule to both leases confirmed the tenant's need to obtain prior written consent from the landlord where

the whole of each flat was to be underlet for a term not exceeding 3 years at a rack rent. Section 19(1)(a) of the Landlord and Tenant Act 1927 permitted the requirement of payment of a reasonable sum incurred in connection with this consent

35. The itemised costs had been provided on a review of the internal records to demonstrate the work which had been undertaken in relation to these applications and how the fee of £175 per application was justified, and in compliance with paragraph 4b of the Tribunal's directions
36. The Respondent could not comment on the advice which the Applicant had obtained from the Leasehold Advisory Service, save to say that it was not legally binding or relevant to the issues before the Tribunal. There was no "set fee" in law, and each case had to be determined on its own facts

Subsequent correspondence

37. By letter dated 8 November 2013 the Applicant advised the Tribunal that the Respondent had sent him an e-mail on 4 November 2013 which had included a file. The Applicant had been unable to open the file. He assumed that it was in reply to his points of dispute, as directed in paragraph 6 of the Tribunal's directions, which stated that any reply should be in writing to the Applicant no later than 5 November 2013. The Applicant had therefore been unable to see any further evidence or points of dispute by the Respondent. If there were any points of dispute, they should have been sent to him in writing. As he had not received any reply by post from the Respondent he was unable to respond to any further possible evidence by the Respondent
38. By letter dated 11 November 2013 the Tribunal sent to the Applicant a copy of the letter from the Respondent dated 4 November 2013 and pointed out that the Tribunal's directions did not offer any further replies
39. By telephone and letter dated 12 November 2013 the Applicant asked for the Respondent's further evidence to be removed from the case as it should have been sent by post and received by him by 5 November 2013, but the Respondent had not complied with the Tribunal's directions in that respect. If that evidence were not removed from this case, he would have to request that the case be aborted and started again
40. By letter dated 13 November 2013 the Tribunal indicated to the Applicant that the Tribunal had now sent the Applicant's letter dated 12 November 2013 to the Respondent for its comments within 5 working days, and for the Respondent's comments to be copied to the Applicant, following which the judge appointed to deal with the case would make a decision on his request to strike out the evidence

41. By letter dated 22 November 2013 the Applicant stated that he had received no response from the Respondent within the 5 working day period given by the Tribunal's letter, and asked that the evidence in question which he had not seen should be struck out from this case
42. By letter dated 20 November 2013 Estates & Management Ltd stated that the Respondent's reply had been sent to the Applicant by email and first class post on 4 November 2013, in accordance with paragraph 6 of the Tribunal's directions dated 13 September 2013 (namely, to reply in writing to the Applicant no later than 5 November 2013)

Legal background

43. The material parts of part I of schedule 11 to the 2002 Act are as follows:

Meaning of "administration charge"

1(1) "administration charge" means an amount payable by the tenant of the dwelling as part of or in addition to the rent is payable, directly or indirectly-

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals

(b)

(c)

(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

The Tribunal's decision

44. The Tribunal, having considered all the evidence before the Tribunal in the round, and drawing on the Tribunal's knowledge and expertise in these matters, makes the following findings
45. In relation to the Applicant's application for the Respondent's submissions dated 4 November 2013 to be excluded, the Tribunal finds that :
- a. the contents of the letter, with respect to the Respondent, add little to the submissions already made by the Respondent in its statement of case, to which the Applicant had already had the opportunity of responding, and did respond on 18 October 2013
 - b. if the Applicant did not receive the submissions dated 4 November 2013 direct from the Respondent by e-mail or post,

he did receive them from the Tribunal with the Tribunal's letter dated 11 November 2013, so that, even if the Applicant did not receive them by 5 November 2013 as required by the Tribunal's directions, he did receive them before the date of the Tribunal's decision

- c. in any event, the Tribunal's directions did not give the Applicant the right to reply to any further submissions
 - d. in all the circumstances the Tribunal has decided to admit the further submissions
46. In relation to the substance of the application, it is clear from the Applicant's grounds of application, the correspondence, and the Applicant's response dated 18 October 2013 that the only matters in issue before the Tribunal are the payability of the sum of £175 for the Respondent's fees for granting licence to sublet in relation to each flat, and the application for an order under section 20C of the 1985 Act
47. In relation to the fee of £175 for each flat, the Tribunal has taken into account of :
- a. the fact that the Upper Tribunal in **Freehold Managers (Nominees) Ltd v Piatti** found that on the facts of that case a substantial amount of work had been carried out by the landlord and that a fee of £165 inclusive of VAT was payable for consent to a subletting
 - b. the work which the Respondent claims has been carried out to date in processing the Applicant's application for consent, as set out in the table in that respect, and totalling 3 hours
 - c. the additional work which the Respondent claims will have to be carried out, namely granting consent, producing documents to record consent, and registering the transaction
 - d. the suggestion by the Respondent that an application may take between 3 hours and 10 hours of work depending on complexity, and that the average time is "therefore" 6.5 hours
 - e. the fact, as the Tribunal finds, that the Applicant has not challenged the hourly rate adopted by the Respondent for dealing with sublet applications, namely £55 an hour
 - f. the Applicant's submission that there is no requirement in the lease for the Appellant to submit a copy of the tenancy agreement when applying for licence to sublet
48. However, the Tribunal makes the following findings :
- a. the Respondent's fees for licence to sublet must satisfy the test of reasonableness in order to be payable by the Applicant
 - b. the Respondent's statement of case makes it clear that it does not charge for time for each application, but charges a flat rate for all applications; however, a flat rate for all applications does not of itself satisfy the test of reasonableness, and the fee demanded of £175 is not so small as to be of itself reasonable
 - c. the Respondent's statement of case also makes it clear that the time given by each item in the table is an estimate, and is not the result of accurate time recording

- d. the Tribunal is not persuaded that the Respondent or its agents have spent 3 hours so far in processing the Applicant's application, or that the application might take as long as 3 hours in all, let alone "between 3 hours and 10 hours of work depending on complexity", or that the average time is "therefore" 6.5 hours (which, as the Tribunal finds, would suggest that there were equal numbers of applications taking 3 hours and 10 hours respectively, before the average could be 6.5 hours)
- e. on the contrary, the Tribunal finds that the suggested hourly rate of £55 an hour is high enough to indicate a competent caseworker with experience in dealing with applications for consent to sublet, in whose hands :
- the Applicant's application for consent in respect of one lease would take no more than 2 hours from start to finish, including registration of the subletting and updating the Respondent's computer records
 - the Applicant's application for consent in respect of the other lease would take no more than an additional 30 minutes, in light of both applications being made at the same time, being in relation to the same Applicant, and being in relation to two leases in materially the same terms
 - in particular, checking that the tenancy agreement complies with paragraph 6 of the fourth schedule to the lease, namely that the underletting is to be *permitted in the case of a term certain not exceeding 3 years let at a rack rent*, and then drafting a licence to sublet, should take relatively little time within the overall time of not more than 2 hours
- f. in respect of the Respondent's requirement for the Applicant to supply a copy of the tenancy agreement as part of the application for consent, it is reasonable for the Respondent to impose that requirement because it is reasonable for the Respondent to check that the tenancy agreement complies with the provision that it is for a term certain not exceeding 3 years and is at a rack rent; however, as has already been said, the checking exercise should take relatively little time
- g. there is no provision in the lease requiring the Applicant additionally to register the subletting with the Respondent after receiving consent; on the contrary, paragraph 7 of the fourth schedule:
- requires the lessee to give written notice of any *assignment grant of probate or administration assent mortgage charge discharge order of court or other event or document relating to the term (except a mortgage effected simultaneously with the grant of this lease)*
 - does not apply to an underletting by the lessee, in that :
 - the list of matters requiring notice to be given is a long one, with, as the Tribunal finds, the consequent implication of being comprehensive
 - there is no express reference to underlettings in that list

- in any event, the words *assignment grant of probate or administration assent mortgage charge discharge order of court or other event or document relating to the term (except a mortgage effected simultaneously with the grant of this lease)* are, in the context of the lease as a whole, more appropriate for dispositions of the whole term rather than for an underletting
 - h. although the Tribunal has noted the findings of the Midland Leasehold Valuation Tribunal dated 31 August 2010 BIR/00CN/LAC/2010/0003, the Tribunal does not draw any assistance from those findings in the light, as the Tribunal finds, of the different terms of the lease in that case, and the different evidence presented
49. The Tribunal has found that in relation to the applications for consent to subletting it is reasonable on the facts of this case for no more than 2 hours time to be charged to the Applicant in respect of the first flat and no more than an additional 30 minutes in respect of the other flat, which, when multiplied by the Respondent's suggested charging rate of £55 an hour, produces a fee of £110 and £27.50 respectively. There is no mention of VAT in the submissions from the Respondent, and the Tribunal finds that it is reasonable for all the figures to be inclusive of VAT
50. Having considered all the evidence and submissions in this case in the round, the Tribunal finds that the amount payable in respect of the consents to underlet would therefore be £110 and £27.50, respectively, inclusive of VAT in each case
51. In relation to the Applicant's application under section 20C of the 1985 Act, the Tribunal finds that :
- a. there is no evidence before the Tribunal that any costs incurred by the Respondent or its agent in these proceedings are costs which can be included in a future service charge
 - b. in any event, in the light of the Tribunal's findings, it is inappropriate that any costs incurred by the Respondent or its agent should be included in a future service charge
52. The Tribunal accordingly orders that none of the costs incurred by the Respondent or its agent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant


Appeals

53. A person wishing to appeal against this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case
54. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons

for the decision

55. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to admit the application for permission to appeal
56. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result which the person is seeking

Dated 26 November 2013


.....
Judge P R Boardman
(Chairman)