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

Case Reference : **LON/00AG/LAC/2013/0025**

Property : **22A Camden High Street London
NW1 0JH**

Applicant : **Kate Percival**

Representative : **In Person**

First Respondent : **Independent Developments
Limited**

Representative : **Woodroffes Solicitors**

Type of Application : **Determination of liability to pay
administration charges**

Tribunal Members : **Judge Peter Leighton LLB**

Date of Decision : **13th November 2013**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the Applicant is required to pay a registration fee of £10 pursuant to Clause 3(7) (b) of the lease
- (2) The tribunal determines that in the event of the Applicant granting a tenancy in excess of 12 months then she would be liable to pay a fee to the landlord for the preparation of a deed of covenant in addition to the registration fee.
- (3) The tribunal further determines that the fee for the deed of covenant is an administration charge for the purposes of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").
- (4) The tribunal determines that a reasonable fee for the preparation of a deed of covenant such as that required in this case should not exceed £100.

The application

1. The Applicant seeks a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"] as to the amount of service charges) administration charges] payable by the Applicant in respect of the property known as 22A Camden High Street London NW1 0JH.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. Directions were given for the matter to be determined by way of a paper determination without an oral hearing. The Applicant prepared a bundle of documents for the tribunal and the Respondent submitted a witness statement from John Oliver Bellasis of Woodroffe's solicitors

The background

4. The property which is the subject of this application is the upper part of a property let to the Applicant under a 99 year lease from March 1987
5. 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.

6. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
7. Clause 3(7)(b) of the lease provides as follows:-

Not at any time to assign or sublet the whole of the demised premises for a period exceeding twelve months or part with possession of the whole of the demised premises or permit or suffer the same to be done unless there shall previously have been executed at the expense of the tenant and delivered to the lessors and for retention by them a deed expressed to be made between the lessors of the first part and the tenant of the second part and the person or persons to whom it is proposed to assign sublet or part with possession as aforesaid of the third part whereby the person to whom it is proposed to assign sublet or otherwise part with possession shall covenant directly with the lessor to observe and perform throughout the said term the covenants on the part of the tenant herein contained including the covenant contained in this sub clause but excluding in the case of subletting the covenant to pay the rents hereby reserve. Provided always that the lessors shall not themselves be required to execute such deed.

Clause 3(8) of the lease provides:

“within 4weeksnextafter any (disposition of tile)including an underletting of the demised premises to give notice in writing of such (underletting) and of the name address and description of the (subtenant) and to pay to the lessor’s solicitor a fee of ten pounds for the registration of every such notice together with value added tax payable thereon “

8. It later transpired that the sub letting in question was for a term of 6months and therefore no deed of covenant was required.
9. The Applicant has paid the sum of £12 and the fees for the deed of covenant have not been requested but Mr Bellasis in his statement contend that the landlord has the right to charge it in accordance with the terms of the lease in a proper case of a sub tenancy exceeding 12 months. He maintains that if the tribunal were to seek to find otherwise it would have the effect of varying the lease and would be beyond the tribunal’s jurisdiction.

The issues

10. The essence of the dispute between the parties has now been resolved as the landlord was of the opinion that the proposed letting by the Applicant was for a term in excess of 12 months and thus required a deed of covenant. In fact the letting is solely for a period of 6 months

and no deed of covenant is required but merely the payment of a registration fee of £100.

The Applicant has however sought the decision of the tribunal on the following question namely

- (i) whether under the lease the landlord is entitled to instruct his solicitor to prepare a deed of covenant and charge the tenant for the costs and:
- (ii) if such charge is an administration charge and whether the proposed sum of £2500 would have been reasonable or what would be a reasonable charge.

The facts

11. On 24th July 2013 the Applicant approached Pelham Associates the landlord's managing agents indicating she proposed to underlet the flat and requested a draft of the proposed deed of covenant.
12. The managing agents approached Woodroffe's solicitors to enquire about the preparation of a deed and were told that the costs would amount to £250 plus VAT. The managing agents reported this to the Applicant.
13. Having considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The tribunal's decision

14. The tribunal determines that the amount payable in respect of both the registration fee under Clause 3(8) and the costs of the deed of covenant are administration charges for the purposes of Schedule 11 of the 2002 Act. They clearly fall within Clause 1(i)(a) of the Schedule as being conditions for approvals.
15. The costs for the deed of approval are in the view of the tribunal a variable administration charge since they are neither fixed by the lease nor calculated in accordance with the lease as specified in Clause 1 (i) (3) of Schedule 11. The £10 registration fee is fixed.
16. Accordingly the tribunal is entitled to determine whether the variable administration charge is reasonable for the purposes of Schedule 11(2).
17. The tribunal determines that the amount payable in respect of the costs of preparing a deed of covenant in the sum of £250 plus VAT are excessive and have considered a letter produced by the Applicant from

Urbanpoint Property Management in which they state they would charge £50 plus VAT for a deed of covenant.

18. The deed of covenant is in very simple terms and should only require the details of the parties and the property to be inserted. If any special clauses were required this might involve a higher degree of work.
19. However the tribunal is satisfied that the costs of preparing deed of covenant of this kind should not exceed £100 plus VAT though it must be stressed that in the case of a variable administration charge each case must be considered on its own facts.

Application under s.20C and refund of fees

20. The tribunal has decided not to make an order under section 20C in this case.
21. The Respondent made clear at an early stage that there was really no dispute between the parties. The decision of applicant to press forward for a decision from the tribunal has resulted in the Respondent incurring more costs than were necessary and it would not just and equitable for it to be deprived of those costs.
22. The tribunal is prepared to order reimbursement of the Applicants application fee of £65 as the proceedings were started in August when it appeared that the matter might be disputed and the tribunal has found that the variable fee for the deed of covenant would have been excessive if the Respondent had insisted upon it.

Name: Peter Leighton

Date: 13th November 2013

Appendix of relevant legislation

Landlord and Tenant act 1985

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 leasehold valuation 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;
 - (a) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (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 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 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.
- (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).