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

Case Reference : **LON/00AU/LAC/2013/0015**

Property : **222 Southstand Apartments,
Highbury Stadium, London N5 1FD**

Applicant : **Reicher Holdings Limited**

Representative : **Adelaide Jones – chartered
surveyors**

Respondent : **Highbury Homes Limited**

Representative : **Pembertons Property Management
managing agents**

Type of Application : **Schedule 11 of the Commonhold
and Leasehold Reform Act 2002
(The Act) and section 20C of the
Landlord and Tenant Act 1985**

Tribunal Members : **Mr A A Dutton - Judge
Mr Mr H J R Geddes JP RIBA
MRTPI**

**Venue of
Determination (No
hearing)** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **16th July 2013**

DECISION

The Tribunal determines that the fee payable under the provision of the Fourth schedule of the underlease dated 13th March 2009 made between Highbury Square Management Company Limited (1), the Applicant (2) and the Respondent (3) (the Lease) is not an administration charge and that accordingly the tribunal does not have jurisdiction to determine the matter.

REASONS

BACKGROUND

1. This application was made by the Applicant, Reicher Holdings Limited, on 4th June 2013 seeking to challenge a fee charged by the Respondent, through its managing agents Pembertons, for the registration of a subletting.
2. The lease provides as follows:
Fourth Schedule paragraph 9 " Within fourteen days of the date of every transfer assignment underlease grant of probate or administration assent transfer mortgage charge discharge order of court or other document or event effecting devolution of title to this underlease to give notice thereof in writing to the Management Company or their appointed agents to whom shall be paid a registration fee in respect of each notice of £50 (or such higher sum as the Management Company may from time to time reasonable require) plus VAT at the rate then prevailing".
3. It is the Applicant's contention that the fee requested by the Respondent's managing agents of £91.67 plus VAT is not reasonable, is an administration charge and should be reduced that which is set out in the lease namely £50 plus VAT.
4. The Respondent says that the fee claimed is not an administration charge as it does not fall within the provisions of schedule 11 to the Act. That is to say it does not fall within the definition of an administration charge as set out at paragraph 1 (1) (a) – (d) of the schedule. Accordingly we do not have jurisdiction to determine the issue before us. Further, if they are wrong in that regard the amount of work which has to be done by the managing agents make a fee of £110 including VAT 'reasonable'.
5. The arguments and documentation in support are included in a bundle submitted by Adeliaide Jones under cover of a letter dated 27th June 2013 for the Applicant and a bundle lodged by Peveral Property Management under cover of a letter dated 11th July 2013. We have considered both bundles. In addition we have reviewed the Lease.

THE RELEVANT LAW

6. Schedule 11 to the Act is set out below.

FINDINGS

7. We find that the charge sought by the Respondent's managing agents is not an administration charge. It does not fall within the definition of an administration charge as set out in paragraph 1 (1) of the Schedule to the Act. The providing of details of any new tenant is a helpful management tool. However, no consent is required, nor approval of any sub – letting

of this nature. Whether in fact a short term letting is a 'devolution of title' is a moot point but not raised in this case.

8. In our finding therefore the sum claimed is not an administration charge and we have no jurisdiction to determine the reasonableness of same. As a matter of comment the items of actions undertaken by the managing agents seem somewhat excessive for what is, after all, just the noting of a sub tenant's details. We would have thought that the fee set out in the lease would still hold good but that comment is made as an observation only.
9. The Applicant has been unsuccessful and accordingly we do not make an order under section 20C of the Landlord and Tenant Act 1985.

Andrew Dutton

16th July 2013

Andrew Dutton - Tribunal Judge

The Relevant Law

SCHEDULE 11 ADMINISTRATION CHARGES

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,
- (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.

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.

Notice in connection with demands for administration charges

4(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2)The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3)A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4)Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

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.

(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).

Interpretation

6(1)This paragraph applies for the purposes of this Part of this Schedule.

(2)“Tenant” includes a statutory tenant.

(3)“Dwelling” and “statutory tenant” (and “landlord” in relation to a statutory tenant) have the same meanings as in the 1985 Act.

(4)“Post-dispute arbitration agreement”, in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen.

(5)“Arbitration agreement” and “arbitral tribunal” have the same meanings as in Part 1 of the Arbitration Act 1996 (c. 23).