10064

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**: CHI/29UH/LAC/2013/0015**
Property	**: 10, Robin House, Springvale, Maidstone, Kent ME16 0AT**
Applicant	**: Mr Darren Nesbitt**
Representative	**:**
Respondent	**: Chancery Lane Investments Limited**
Representative	**: Moreland Estate Management**
Type of Application	**: Administration charges under Schedule 11 Commonhold and Leasehold Reform Act 2002**
Tribunal Members	**: Judge D Agnew Judge M Tildesley OBE**
Date and venue of Hearing	**: No hearing: paper determination**
Date of Decision	**: 18th February 2014**

DETERMINATION

Background

1. On 23rd September 2013 the Applicant applied to the Tribunal for a determination as to the reasonableness of an administration charge that had been required by his former landlord for retrospective consent for alterations he had carried out to his flat. These alterations consisted of replacement of the single glazed windows for double glazed units.

2. At the time of carrying out the works, the Applicant had been unaware of the requirement in his lease for landlord's consent to be given and it was only when he came to sell the property that this came to his attention, the buyer insisting that such consent be obtained in order for the sale to be completed.

3. The amount specified by the landlord as being the fee for giving its consent was £500 plus costs. The total figure came to £860.

4. For this fee the landlord produced a licence to alter granted in the name of the Applicant's buyer. The mechanics of the transaction were that the Applicant paid the money for this licence through his solicitors to the buyer's solicitors on completion. On the same day, the 6th September 2013 the buyer's solicitors sent the £860 to the landlord's agents. Seventeen days later, the Applicant issued his application to the Tribunal.

5. On 10th October 2013 the Tribunal issued Directions for a determination of the matter on the basis of written representations without an oral hearing under Rule 31 of the Tribunal Procedure (First-tier tribunal) Rules 2013. Neither party objected to the adoption of that procedure and both parties filed statements of case.

6. The matter first came before the Tribunal for a determination on 11th December 2013. At that stage the Tribunal considered that it needed further information in order to make its determination and Further Directions were issued. Further statements of case were filed on behalf of both parties in response to those Further Directions and the case came before the Tribunal again on 18th February 2014.

Agreed matters

7. There was a certain amount of agreement between the parties. It was agreed that the lease required the tenant to obtain landlord's consent before carrying out alterations to the property and that the Applicant had omitted to obtain this before replacing the windows at his property with double glazed units. It was also agreed that the landlord required a payment of a total of £860 for giving retrospective consent for the alterations, that such a payment had been made and a formal licence to alter issued by the landlord.

Disputed matters

8. The Respondent disputed that the Applicant was entitled to make this application as he had ceased being the tenant of the property prior to making the application and that the licence had been issued to his buyer and not to him.

9. The Landlord's agent in its statement of case on behalf of the landlord did not seek to provide details of the work done to justify the charge contrary to the requirements of the Further Directions but simply stated that these were costs levied by the freeholder (£500) the balance of £360 being "associated legal costs".

10. The Applicant maintained that he was entitled to make the application because it was his solicitors who had requested the landlord's consent and he had paid the fee indirectly through the purchaser's solicitors. If he had not done so he would not have been able to complete his sale.

11. As far as the amount of the fee was concerned, the Applicant maintained that this was unreasonably high and pointed out that the Respondent had not complied with the Further Directions in stating why a deed was necessary, what work was done by whom and the basis upon which the charge for the work was calculated in order to justify the charge. The Applicant also cited two previously decided Tribunal cases where charges for consent to alter had been reduced to £200 plus vat in one case and £250 plus vat (if applicable) in the other. The Applicant accepts that this Tribunal is not bound by those previous decisions.

The Lease

12. The lease in question is dated 22nd December 1988 and is made between Gorgerealm Limited (1) and Robert Brian Anscombe (2) and is for a term of 99 years from 25th March 1988. The lessee's covenants are set out in Part 1 of the Fifth Schedule. Paragraph 12 of that Schedule states:-
" Not at any time without licence in writing of the Lessor first obtained or except (if such licence shall be granted) in accordance with plans and specifications previously approved by the Lessor and to the Lessor's reasonable satisfaction and in compliance with all relevant statutory or local authority regulations and requirements to make any alteration or addition whatsoever in or to The Demised Premises either externally or internally....."

13. By paragraph 21 of the said Fifth Schedule the tenant undertook "To pay the Lessor's proper legal and Surveyor's costs incurred in connection with applications for any consent under the term (sic) of this Lease whether or not such consent is granted".

The Law

14. Paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("CLARA") states that in that part of the 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"....

15. By paragraph 2 of the said Schedule to CLARA it is provided that "A variable administration charge is payable only to the extent that the amount of the charge is reasonable."

16. Paragraph 5(1) of the same Schedule states that "An application may be made to a leasehold valuation tribunal (now the First-tier Tribunal (Property Chamber)) 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

17. Paragraph 5(2) provides that sub-paragraph (1) applies whether or not any payment has been made.

The Tribunal's Decision

18. The Tribunal first considered the Respondent's point that as the application to the Tribunal had been made after the assignment of the lease to the Applicant's purchaser and the licence having been granted to the purchaser the applicant was not entitled to make the application. The Tribunal decided that the Applicant was not precluded from bringing the application. The request for retrospective consent was made by the Applicant's solicitors and the landlord's terms for giving that consent were given to those solicitors. It was a matter of practical convenience for everything to be synchronised with completion of the sale and the consent issued in the name of the purchaser. It is clear that it was the Applicant who paid the fee, albeit via the purchaser's solicitors, and the purchaser would have been unable to make the application as she had not actually paid for the consent. Furthermore, the Applicant submitted his application to the Tribunal reasonably swiftly (within three weeks) of the completion.

19. The substantive question for the Tribunal to determine, therefore, was whether the fee totalling £860 was a reasonable fee for the landlord's consent for these alterations. The Tribunal decided that it was not a reasonable fee.
The Landlord's agents who represented the Respondent in these proceedings did not help their principal's cause by failing to provide an explanation of the work carried out by or on behalf of the landlord in responding to the request for consent or in failing to explain who carried out the work and at what charging rate. There was no invoice from any third party to justify the "associated legal costs" on top of the basic £500 fee or any breakdown of that extra cost if carried out by in-house lawyers.

20. The Tribunal decided that there was no requirement in the lease for the landlord to produce a formal licence to alter in the form that was produced. All that the lease required was the landlord's consent in writing which could quite easily have been given in a simple letter. There was no evidence that the landlord considered any plans or specifications for the works. These were, in any event, a straightforward replacement of single glazed windows for double glazed windows.

21. The Tribunal considered the document that was produced by the landlord. This appeared to the Tribunal to be a standard form document with simply the

first page (the Particulars page) tailored to this particular request. The problem with this document is that it is a standard document that could be expected to be produced for works that had yet to be carried out and not for a retrospective consent. It contains a host of conditions that the licensee should abide by when carrying out the works. In this case, however, the works had already been carried out. The Tribunal therefore finds that this document was totally inappropriate for the consent that was required and almost totally unnecessary.

22. The mere fact that the £860 has been paid does not preclude an application being made. (Paragraph 5(2) of CLARA).

23. The Tribunal finds, therefore, that in this particular case a reasonable fee for giving written consent to the straightforward alterations that had already been effected and where there is no evidence that the landlord sent out a surveyor to check the alterations is a fairly nominal sum. Doing the best it can and using its own knowledge and experience the Tribunal finds that a reasonable fee in the circumstances of this case would have been £50.

24. The consequence of the Tribunal's decision is that the Applicant has overpaid the Respondent the sum of £810 and is entitled to re-imbursement. If the Respondent does not voluntarily re-imburse the Applicant within 28 days of the date hereof, regrettably it will be necessary for the Applicant to enforce this decision in the County Court.

Dated the 21st February 2014

D Agnew (Judge)

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) 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.

2. 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.

3. 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 allow the application for permission to appeal to proceed.

4. 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 the party making the application is seeking