



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case Reference : **CAM/00MG/LAC/2015/0004**

Property : **21 Troutbeck,
Peartree Bridge,
Milton Keynes,
MK6 3ED**

Applicant : **Andrew Hill**

Respondent : **O M Property Management**

Date of Application : **20th March 2015**

Type of Application : **To determine reasonableness and
payability of variable administration charges**

The Tribunal : **Bruce Edgington (lawyer chair)
David Brown FRICS**

DECISION

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1. The variable administration charge imposed by the Respondent on behalf of the landlord of £108.00 on the 18th July 2014 for an initial approval of the sub-tenancy to Fernando Alonso and Joana Pereira is reasonable and payable.
2. The variable administration charge requested by the Respondent of £38.40 for approval of an extension of that sub-tenancy in January 2015 is reasonable and payable.

Reasons

Introduction

3. This application is made because the Applicant received a demand for fees of £108 for approval of the subletting referred to in the decision above in July 2014 which was paid under protest. It was known that the sub-letting was due to expire in January 2015. The Applicant had not contacted the Respondent and they therefore contacted him. It was discovered that the sub-tenancy had been extended and a request was made for the further fee of £38.40 for that further sub-tenancy to be approved. In a letter to the Applicant from the Respondent dated 17th March 2015, that fee seems to have increased to £40 including VAT.

4. The Applicant considers that a fee of £40 would be reasonable for the original approval but there should be no fee for the extension.
5. By a directions order dated 13th April 2015, it was said that the Tribunal would not inspect the properties and would be prepared to deal with the determination on the basis of the papers and written representations made. It pointed out that a determination would not be made before 27th May 2015 and either party had the opportunity to both ask for an inspection of the property and have an oral hearing if they so requested. No request was made for either.

The Law

6. Paragraph 1 of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** (“the Schedule”) defines an administration charge as being:-

“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 (the) 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 a 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 a 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”*

The Lease

7. There was what appeared to be a copy of the lease in the bundle provided to the Tribunal. It is for 120 years from 1st January 1983 with an increasing ground rent. The tenants’ covenants are in Schedule 4. In paragraph 8, the tenant covenants with the landlord as follows:-

“The Lessee shall not sublet the whole or any part of the demised premises save that an underletting of the whole of the demised premises (with the prior consent of the Lessor and any mortgagee of the demised premises) is permitted in the case of a term certain not exceeding three years let at a rack rent”

Discussion

8. It does not seem to be disputed that a fee for the consent referred to would be payable so long as it is reasonable. The Applicant says that he was involved in “the Cherry Lillian Norton case. The decision was in my favour on the 05/01/2012”. He then refers to the case of Hill v Flambayer and expresses the hope that the Tribunal will agree with the then President of the Upper Tribunal, George Bartlett QC.

9. The difficulty with this is that Mr. Bartlett does not appear to have ruled in favour of Mr. Hill. There is a document in the bundle which appears to be a transcript of part of the judgment from which it is clear that although the Leasehold Valuation Tribunal ruled that no fee was payable for a consent to sublet on a legal technicality, the Upper Tribunal allowed an appeal against that decision. It said that a fee was payable and clearly this Tribunal is bound by that decision. Unfortunately the part of the judgment dealing with what Mr. Bartlett ruled as being a reasonable fee was not included.

10. There are other Upper Tribunal decisions in the cases of **Proxima GR Properties Ltd. v McGhee** [2014] UKUT 59 (LC) and **Crosspate Ltd. v Sachdev** [2012] UKUT 321 (LC) in the bundle which confirm that a fee is payable and the only issue is therefore 'what is reasonable?'. As has been said by the Respondent, this depends on the circumstances. In the Crosspate case, for example, His Honour Judge Gerald concluded:-

"Whilst the LVT was entitled to apply its own robust common sense to whether the work would really take as long as was alleged, they were not entitled to impose some sort of charging bracket especially on a transaction which was outside the norm and failed to take account of the fact that this was not a straightforward consent to underletting. The LVT erred in finding that £165 was unreasonable. On the basis of the evidence before the LVT, in my judgment the only reasonable conclusion the LVT could properly and reasonably have reached was that the appellant had discharged its burden of showing that the £165 was reasonable in the circumstances of this case".

11. In this case, the Respondent has provided clear evidence of the length of time it normally takes to approve a sub-letting to include the tasks it undertakes. It is far less time than in some of the reported cases and the Applicant has not provided any evidence of alternative charges from other managing agents or landlords. The Tribunal concludes that the average time of about an hour is reasonable for a new underletting. The amount of the charge is also reasonable based on the evidence before the Tribunal.

12. It is also of note that there is an acknowledgement of the reduced work in a subsequent re-letting to the same sub-tenant by the reduction in the charge. Quite how or why the original demand for £38.40 has been increased to £40 is not known.

Conclusions

13. It is clear to this Tribunal that the lease makes provision for the Applicant to obtain prior approval before sub-letting. It appears that he failed to do so originally and does not explain why. He then says that he thought that the approval he did obtain would cover any renewals whereas the letters he was sent at the time explained otherwise. The lease also makes it clear that each sub-

letting, to the same sub-tenant or not, requires consent. It really is a great shame that he has not obtained legal advice on these issues.

14. The Tribunal concludes that whatever the Applicant may think about the need to approve sub-lettings, he bought the lease knowing what the terms were and he is bound by them. The fees of £108 and £38.40 are reasonable and payable.

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Bruce Edgington
Regional Judge
27th May 2015