HM Courts & Tribunals Service

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Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002 and SECTION 20C OF THE LANDLORD AND TENANT ACT 1985

Case Reference	:	**LON/00AU/LAC/2012/0006**
Premises	:	**Flat 33, Millennium Heights, 1 Britton Street, London EC1M 5NW**
Applicant	:	**Ms S.Thornton**
Respondent	:	**Regisport Limited**
Date of Application:		**10 March 2012**
Date of Decision	:	**15 June 2012**
Tribunal	:	**Mr Robert Latham (Barrister)** **Mrs Evelyn Flint DMS FRICS IRRV**

Decision of the Tribunal

(1) That the sums of £250 + VAT for legal fees and the preparation of a licence for consent to remove a section of stud wall and install an air source heat pump unit is reasonable; together with the further sum of £350 + VAT for the landlord's surveyor to approve the said works are reasonable.

(2) That any additional sums demanded in respect of the said works, including a one off fee of £9,750 for the structural alterations are manifestly unreasonable.

(3) The Tribunal determines that the Respondent shall pay the Applicant £200 within 28 days of this decision, in respect of the reimbursement of the tribunal fees paid by the Applicants.

The Application

1. The Applicants seek a determination pursuant to Paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to whether the charges levied by the Respondent in connection with the grant of a licence to remove a section of stud wall which currently divides the kitchen and living room, and to install an air source pump unit are reasonable. The

premises are Flat 33, Millennium Heights, 1 Britton Street, London EC1 which the Applicant occupies pursuant to a 999 year lease.

2. At different dates, the Respondent has sought to require the payment of various sums:

(i) On 24 March 2011, the Respondent required the payment of £250 + VAT for legal fees and the preparation of a licence. This was stated to include all legal costs for the preparation of the licence. The Applicant does not dispute this sum.

(ii) On 19 May 2011, the Respondent required the payment of a further sum of £350 + VAT for the landlord's surveyor to approve the said works. Again the Applicant does not dispute this sum.

(iii) On 12 October 2011, the Respondent required a further one off fee of £9,750. This is said to be an indemnity to cover any future liability that might arise. Alternatively, the Respondent indicated that this fee would be waived were the Applicant to be willing to enter into a deed of variation increasing the nominal ground rent to £350pa, thereafter increasing in line with inflation every ten years.

3. The application was issued on 10 March 2012 and is Item 1 in the Bundle.

4. Directions were given on 15 March 2012. Pursuant to these directions:

(i) The Respondent's statement of case (2.4.12) is at Item 30.

(ii) The Applicant's statement of case (13.4.12) is at Item 2. The Applicant provides a Timeline which seems to be uncontentious.

The Background

5. On 22 March 2010 (at Item 4), the Applicant first sought the consent of the Respondent to install an air-conditioning/heating unit. A technical specification was provided. Consent was sought from Pier Management Ltd who are managing agents for Regisport Limited who are both freeholder and landlord.

6. On 24 March, the Respondent replied (Item 7) requiring the payment of an administration fee of £250 + VAT, which was to be paid in advance before the application could be processed.

7. The lease is Item 32 of the Bundle. The term granted is one of 999 years from 1 January 1997. It is common ground that Clause 3.11 requires the tenant to seek the prior written consent of the landlord before making internal alterations

to the premises. That consent is not to be unreasonably withheld. The other clauses to which we are referred are 3.14; 3.29; .30; 3.37; 4.2; and 4.3,

8. There was then a gap in the correspondence of some twelve months as the Applicant had been diagnosed with cancer and was undergoing treatment. It is unclear when the Respondent became aware of this.

9. In about March 2011 (the date of 19 May on the letter at Item 8 is said to be wrong), the Applicant resurrected her application for consent and enclosed plans and a builder's estimate. A cheque for £293.75 (£250 + VAT) was enclosed. The Respondent replied (Item 9) pointing out that the rate of VAT had increased from 17.5 to 20%. A cheque for £300 was requested. This was paid.

10. On 19 May (Item 10) the Respondent requested a further fee of £350 + VAT to cover the cost of a visit by a surveyor. The sum demanded was paid and a surveyor visited the premises on 24 August 2011.

11. On 12 October (Item 13), the Respondent specified the model of the unit which should be installed. The Respondent further required a one off fee of £9,750. On 16 November (Item 19), the Respondent described this as "an indemnity to cover any future liability which may arise from the installation of the air conditioning unit". Alternatively, the Respondent indicated that this fee would be waived were the Applicant to be willing to enter into a deed of variation increasing the nominal ground rent to £350pa, thereafter increasing in line with inflation every ten years.

12. On 2 November (Item 11), the Applicant notified the Respondent that she was not willing to pay this additional sum. This led to the current application to the Tribunal.

13. We have had regard to the Statements of Case filed by both the Respondent (Item 30) and the Applicant (Item 2). The Respondent complains that insufficient details have been provided of the proposed unit. The Applicant responds that a specification was sent in March 2011. The Respondent complains that it has not yet been given access to carry out a survey. The Applicant responds that the landlord's surveyor inspected in August 2011. Thereafter, the managing agent specified the model that was to be installed. The Applicant states that she is content for the consent to be subject to reasonable conditions. It is apparent that this has been her position throughout.

14. On 27 April 2012, the Respondent notified the Tribunal that it had now agreed to provide the Applicant with a licence for the proposed alterations. A Consent Order was enclosed. It would seem that the Respondent was now satisfied that the sums of £250 + £350 + VAT which had already been paid was a reasonable charge for the requisite consent. The Consent Order provided that each side should bear their own costs. A draft licence was attached. Clause 6

gave the landlord the discretion to require the reinstatement of the premises at the end of the 999 year term.

15. On 30 April, the Applicant e-mailed the Respondent indicating that she was not willing to agree to the proposed settlement. In particular, she was not willing to commit herself to any further costs in relation to her application. We can well understand her concerns given Clause 8 of the draft licence as then drafted.

16. On 30 May, the Tribunal notified the parties that the application had not been withdrawn and that the application would proceed.

17. On 11 June, when the Tribunal convened to determine the application on the papers, the issues appeared be very narrow:

(i) The Applicant accepts that the payment of £250 + VAT for legal fees and the preparation of a licence is reasonable. That sum has been paid.

(ii) The Applicant accepts that the payment of a further sum of £350 + VAT for the landlord's surveyor to approve the said works is also reasonable. Again that sum has been paid.

(iii) It is apparent from the proposed Consent Order that the Respondent is no longer seeking the payment of the further "one off fee of £9,750". Had this remained a live issue, we would have had no hesitation in concluding that this demand was manifestly unreasonable.

18. However, on 11 June, the matter took a new turn. At 12.39, Laura Cleasby, a Solicitor employed by Pier Legal Services, faxed a letter to the Tribunal suggesting that the Applicant had been manifestly unreasonable in refusing to withdraw her application. Additional costs of £220 + VAT are now sought under Schedule 12, paragraph 10 of the 2002 Act. A draft "Licence to Carry Out Works" was enclosed. The Respondent stated that the licence was in a standard form and that clauses 8.1 and 8.2 would only apply were the landlord to require the tenant to reinstate the premises and make good any damage at the end of the 999 year term of the lease.

19. At 20.35 on 11 June, the Applicant e-mailed the Respondent pointing out that the licence which had been sent to the Tribunal was not the version which had been enclosed with the Consent Order. Clause 8 of the original version had read as follows:

"8.1 On completion of this licence the Tenant must pay the reasonable costs and disbursements of the Landlord, its solicitors, surveyors and, where relevant, managing agents in connection with this licence, in considering and approving the Works, obtaining the consent or approval of, or information from, any other person in the supervision of the carrying out of the Works and the costs of giving a notice to extend the validity of Licence.

8.2 The Tenant must pay on demand any further reasonable costs and disbursements of the Landlord, its solicitors, surveyors and managing agents incurred in connection with the Works or any removal of them and reinstatement of the Property or in making good any damage to any land or building, plant or machinery (other than the Property) which is caused by the carrying out of the Works or by the removal of them or the reinstatement of the Property.

20. Clause 8 of the revised version read as follows:

"8.1 The Tenant must pay on demand any further reasonable costs and disbursements of the Landlord, its solicitors, surveyors and managing agents incurred in connection with the removal of the Works and reinstatement of the Property or in making good any damage to any land or building, plant or machinery (other than the Property) which is caused by the carrying out of the Works or by the removal of them or the reinstatement of the Property and pursuant to clause 6 of this licence.

8.2 The obligations in this clause extend to costs and disbursements assessed on a full indemnity basis and to any value added tax in respect of those costs and disbursements except to the extent that the Landlord is able to recover that value added tax."

21. The differences between these two versions speak for themselves. In her e-mail, the Applicant expressed her exasperation at the manner in which the Respondent had approached her application:

"As you know I am not a lawyer, and acting on my own. When I received the Licence you sent on 27th April, and read it in detail, I was dismayed that you expected me to sign it, as it would have made me open to further costs - eg thru the clauses above. I consulted with LEASE and I also spoke with a property lawyer. The advice of both was that in the circumstances I should wait for the LVT decision, and then ensure suitable documentation drafted in line with the guidance LVT would provide. I duly informed the LVT and yourselves of that on 30th April and await their judgment. I am aghast that after over a year of frustrating dialogue with you, during which amongst others you have been unresponsive, forgotten that your surveyor did a survey (for which I have paid), wrongly claimed I withheld access and information, made claims to levy money from me for various rationales - which shifted when I pointed out problems with them, and then attempted to pressure me to sign a document which would leave me open to more claims for payments from yourselves - which have now miraculously disappeared in the version you send to the LVT - you now claim that I am being frivolous.

22. At 09.45 on 12 June, Ms Cleasby responded in these terms:

"The second version of the licence was prepared at the beginning of May. It removed the earlier clause 8.1. The original 8.2 has become 8.1 of version 2. The other paragraphs in clause 8 have to remain as they cover the eventuality that if the works are not carried out to a satisfactory standard etc. that the reinstatement costs are covered by yourself. I would assume that the exercise of this clause would be unlikely but the freeholder does need this protection. I would be obliged for any other

issues you have with the Licence with a view to reaching an agreed form of document."

Tribunal's Decision

23. The Tribunal have read all the papers and the written submissions of the parties. We are satisfied that the total of £600 + VAT which the Applicant has now paid is all that the Respondent is entitled to recover in respect of the grant of a licence to remove the section of stud wall and to install the air source pump unit. The Respondent has specified the unit that is to be installed. The Applicant is willing to install this unit. The Applicant is happy to comply with any other condition that the Respondent might reasonably impose as a condition to the grant of a licence.

24. As this is a paper determination, we are cautious about saying more than is strictly necessary. However, we should record that we are both surprised and concerned about the conduct of the Respondent in this matter. The Applicant occupies the premises pursuant to a term of 999 years. The proposed works are likely to enhance the value of her flat. When the Applicant first applied for consent for the proposed works, the managing agents should have been in a position to provide her with a draft licence and a reasonable estimate of the total administrative charges that she would be expected to pay were she minded to proceed with her proposal. A managing agent such as Pier Management Limited should have standardised procedures to deal with such applications. Rather, the Respondent seem to have sought to erect one obstacle after another, demanding on additional fee after another.

25. We can see no justification whatsoever for the demand for the one of fee of £9,750 to cover any future liability that might arise. There is nothing to suggest that the Applicant would not install a suitable unit or fail to make good any damage that might be caused by the works. Neither is there anything to suggest that a suitable unit properly installed would cause any nuisance or annoyance to neighbours. Nor that the Applicant would fail to comply with her obligations towards her neighbours under her lease. Equally, there is no justification in law for the Respondent to seek to extract an increase in ground rent as a condition to granting their consent. This is a tenant's improvement.

26. Landlords and their managing agents must recognise that they must be able to justify administrative charges for the granting of such consents as being reasonable. Standardised procedures and fees should be adopted. A tenant is entitled to know at the earliest stage what fees they are likely to be charged. Additional charges over and above these must be justified having regard to the facts of the particular case. The Respondent would be well advised to study the recent decisions of the President of the Upper Tribunal (Lands Chamber) in *Holding and Management (Solitaire) Limited v Cherry Lilian Norton and others [2012] UKUT 1 (LC) and an Appeal by Bradmoss Limited* [2012] UKUT 3 (LC).

Further Matters

27. It is apparent from the Consent Order that the Respondent is content that each party should bear its own costs in respect of this application. Had the Tribunal been required to make a determination under section 20C of the 1985 Act (as was envisaged when Directions were given in this matter), the Tribunal would have had no hesitation in concluding that, having regard to the outcome in this case, it would have been just and equitable in the circumstances for an order to be made, so that the Respondent may not pass on any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

28. In their letter of 11 June 2012, the Respondent ask us to make a costs order against the Applicant in the sum of £220 + VAR under Schedule 12, paragraph 10 of the 2002 Act. We can only make such an order if satisfied that the Applicant has acted "frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. There is no evidence that the Applicant has acted unreasonably. It would be quite wrong to make the order sought.

29. We understand that the Applicant has paid a fee of £200 in respect of this application. Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 permits us to direct that the Respondent refund to the Applicant that fee. The Applicant has been successful in her application. We are satisfied that the Applicant had no option but to issue this application given the Respondent's conduct in this matter. We are satisfied that she is entitled to a refund of the fee that she has paid.

Chair: Robert Latham

Date: 15 June 2012

Appendix of Relevant Legislation

Commonhold and Leasehold Reform Act 2002

Section 158 – Administration charges

Schedule 11 (which makes provision about administration charges payable by tenants of dwellings) has effect.

Schedule 11

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 service 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.

Notices 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 Service 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).

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—
(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
(a) £500, or
(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.

Section 175

(1) A party to proceedings before a leasehold valuation tribunal may appeal to the Upper Tribunal (Lands Chamber) from a decision of the leasehold valuation tribunal.

(2) But the appeal may be made only with the permission of

(a) the leasehold valuation tribunal, or
(b) the Upper Tribunal.

(4) On the appeal the Upper Tribunal may exercise any power which was available to the leasehold valuation tribunal.

Landlord and Tenant Act 1927

Section 19 Provisions as to covenants not to assign, &c. without licence or consent.

(1) In all leases whether made before or after the commencement of this Act containing a covenant condition or agreement against assigning, underletting, charging or parting with the possession of demised premises or any part thereof without licence or consent, such covenant condition or agreement shall, notwithstanding any express provision to the contrary, be deemed to be subject—

(a) to a proviso to the effect that such licence or consent is not to be unreasonably withheld, but this proviso does not preclude the right of the landlord to require payment of a reasonable sum in respect of any legal or other expenses incurred in connection with such licence or consent; and

(b) (if the lease is for more than forty years, and is made in consideration wholly or partially of the erection, or the substantial improvement, addition or alteration of buildings, and the lessor is not a Government department or local or public authority, or a statutory or public utility company) to a proviso to the effect that in the case of any assignment, under-letting, charging or parting with the possession (whether by the holders of the lease or any under-tenant whether immediate or not) effected more than seven years before the end of the term no consent or licence shall be required, if notice in writing of the transaction is given to the lessor within six months after the transaction is effected.

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;
(aa) 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).