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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM
ACT 2002**

Case Reference: LON/00BD/LAC/2013/0010

Premises: 28 Richmond Hill Court, Richmond, London TW10
6BD

Applicants: (1) Richard Tarek Shrayh
(2) Jonathan Ramsey Shrayh

Respondent(s): Danstock Limited

**Date of paper
Determination:** 20 June 2013

**Leasehold Valuation
Tribunal:** Ms M W Daley
Lady Davies FRICS

Date of decision: 20 June 2013

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £200.00 plus VAT is reasonable and payable by the Applicant for Administration charges, in respect of the licence for consent to sub-let the premises known as 28 Richmond Hill Court, Richmond, London TW10 6BD.
- (2) [The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 [so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge
- (3) The Tribunal make no determination in respect of the reimbursement of the Tribunal fees paid by the Applicants.

The application

1. The Applicants pursuant to an application made on 29 April 2013, sought a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of administration charges payable by the Applicant in respect of the grant of a licence to sublet the premises.

The background

2. The property which is the subject of this application is a two bedroom flat in a purpose built block of flats.
3. *The Applicants holds a long lease granted on 26 February 1986 (for 125 years) pursuant to an assignment granted on 15 September 2000. The lease states at clause 2 (x) b Not to assign transfer underlet or part with possession of the Demised Premises as a whole without the previous consent in writing of the Lessor provided however that if the Lessee shall comply with the provisions of sub-clauses (xi) (xiii) and (xiii) of this clause such consent shall not be unreasonably withheld...*

(xviii) To pay to all reasonable costs and expenses of the Lessor (including all solicitors' and surveyors' costs and fees) incurred in granting any consent under this Lease...

The issues

4. A pre-trial review was held on 2.5. 2012 at which the Tribunal identified the relevant issues for determination as follows:

- (i) Whether the charge is recoverable as an admin charge under the terms of the lease.
 - (ii) Whether the charge is reasonable.
5. The relevant legal provisions are set out in the Appendix to this decision.

The written submissions of the Applicants and the Respondent.

6. The detailed submissions of the Applicants are set out in their application form (29.04.2013) and their reply to the Respondent's Statement of Case (13.06.2013). The Respondent's case is set out in Respondent's statement of case (11.06. 2013).
7. The factual background to the dispute is set out in the Application which states as follows-*"...As the lessees we were recently required by the Respondent to pay £600 for a licence to sublet our flat. We consider this amount to be unreasonable and have repeatedly queried it prior to this application... In email correspondence and a subsequent letter before action, we asked the Respondent to set out what work was performed in relation to the licence which is a short template document. We do not see how significant time could have been spent on the standardised administrative task of printing and sending the licence. We also asked why the Respondent landlord required two sets of expensive professional advisers to process such a simple request. We did not receive a satisfactory explanation for the costs of the licence..."*
8. The Respondent's in their Statement of Case, prepared by solicitors acting on their behalf (Ashford's Solicitors) at paragraphs 7 and 8, respond by setting out that the Applicants are wrong in their opinion that the grant of a licence is a "standardised administrative task" and criticise the Applicants by stating that, they (the applicants), provide no evidence for their assertion and do not provide any comparable evidence.
9. The Respondent's state-: *"... the granting of a licence is not an administrative task of printing and sending the Licence. It is necessary to review the relevant documents specific to each individual set of facts and requests. In particular the Respondent's Managing Agent... responded to the Applicants' initial request to sublet the property. Farrar then requested references for the proposed sub-tenants, in addition to other details and the general reason for subletting the property before approving the same on the Respondent's behalf. Farrar liaised at all times with the Respondent and their Solicitors giving instructions for a licence to be drafted. Farrar the executed the Licence on the Respondent's behalf. The Respondent instructed solicitors to liaise with the*

parties concerned and draft a licence reflective of the agreement between the parties...

10. It appears to the Tribunal that it is common ground between the parties that the lease does provide for the payment of a charge for the grant of consent to sublet, and that such a charge is an Administration charge in accordance with the terms of the lease. The only real issue in dispute is the reasonable of the sum claimed.
11. The Respondent in their statement set out that the charges were broken down in the following ways- There were two fee earners involved Caroline Frampton a partner in Ashford's solicitors who has an hourly rate of £365.00 per hour (her total time in this matter cost £255.00) and Danielle Bessant a trainee solicitor who's time was charged at £150 an hour (her chargeable time was £135.00. The full breakdown of fees included the managing agent's fees of £150.00. The total time spent by the solicitors was 1hour and 36 minutes.
12. Both parties refer the Tribunal to the case of *Holding and Management (Solitaire) Limited and Cherry Lillian Norton and Semnas Limited and Jessica Rudnay (2012) UKUT 1 (LC)* (" The Solitaire case")
13. From this case the Applicant relies upon the following principles (1) that the lease was in similar terms (2) that the charge for licence is an administration charge which is only payable to the extent that it is reasonable. (3)That in response to submissions as to the work undertaken for the payment sought the President of the Lands Tribunal at paragraph 17 stated-: *"The appellants seek to justify the consent fee in terms that apply to all consents they do so by setting out a list of work that, it is claimed, their agents do. It looks to me to be a list of all the things that could conceivably be done in connection with the grant of consent rather than the things that would need to be done in a typical case or were in fact done in the cases under consideration..."* (4)The President of the Land's Tribunal awarded £40.00 plus VAT for each case, which the Applicant's rely upon in claiming that £40.00 is the reasonable amount payable in this case.
14. The Respondent's unsurprisingly do not accept this as a precedent on sum payable as reasonableness in this case. The Respondent state that-: (12) the determination is made in respect of the charge made by the landlord purely in consideration if its own cost in granting consent to an under letting ...of the Solitaire Decision does not concern the recoverability of the professional fees incurred by the Landlord in granting licence to sublet...
15. The Respondent's solicitor also states at paragraph 18 of the Statement of Case, that the Respondent made no charge in respect of its own costs incurred in granting the Licence, and that the Applicant is seeking to extent the ambit of the Upper Tribunal's decision.

The Tribunal's decision

16. The Tribunal consider that insofar as the law is concerned, the case referred to by the parties has a limited relevance to the matters before this Tribunal, as the issues in this case, fall to be determined in accordance with the wording of the lease.
17. The Tribunal noted the wording at clause 2 (xviii) which states:- *To pay to all reasonable costs and expenses of the Lessor (including all solicitors' and surveyors' costs and fees) incurred in granting any consent under this Lease.*
18. The Tribunal find that the Respondent's legal costs under the terms of the lease are permissible. However the Tribunal determine that there is a clear distinction to be drawn between managing agent's fees, and that of a surveyor. A surveyor might reasonably be required when there was a proposal for a structural alteration, which is not the position in this case.
19. The Tribunal also considered the ambit of the work undertaken by the managing agent. The Tribunal noted that the work carried out, was akin to the work normally undertaken where agents were required to make checks of tenant's prior to the landlord's approval of a letting to an assured tenant. It did not appear to the Tribunal that this was properly a function of the managing agents in this case. Accordingly the Tribunal determine that the sum of £150.00 in connection with the work undertaken by the managing agents is not reasonable or payable.
20. The Tribunal noted that the work undertaken by the solicitor was relatively straightforward, and was properly delegated to a trainee solicitor. The Tribunal noted that in the normal course of such work being undertaken there would be an allowance for a degree of supervision. The Tribunal considers however that it would be wholly disproportionate for the Applicant to bear the full cost of this, and accordingly allows £50.00, in addition to the hourly rate payable for the Trainee solicitor to provide for this. The Tribunal do not accept that the cost associated with a partner in the sum of £255.00 is reasonable or payable.
21. Accordingly the Tribunal find the sum of £150.00 at the rate of £150.00 is reasonable, and also award £50.00 for supervision. The Reasonable Administration cost payable is £200.00 plus VAT.

Application under s.20C and refund of fees

22. In the application form the Applicants applied for an order under section 20C of the 1985. Having read the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Chairman: Ms M W Daley

[name]

Date: 20 June 2013

Appendix of relevant legislation

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).

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).