

3649

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

Case number : CAM/42UD/LAC/2008/0001

**Property** : 38 Maude Street, Orwell Quay, Ipswich, Suffolk IP3 0AU

**Applications** 1 For determination of liability to pay an administration charge for registration of notice of an underletting [CLRA 2002, s.158 & Schedule 11, para 5]

2 Limitation of landlord's costs [LTA 1985, s.20C]

**Applicants** : Michael Leslie Smith & Jacqueline Susan Smith, 38 Maude Street, Orwell Quay, Ipswich, Suffolk IP3 0AU

**Respondent** : Simarc Property Management Limited, Elstree House, Elstree Way, Borehamwood, Herts WD6 1SD  
(as managing agent for the landlord, Freehold Properties GR Limited)

**DECISION**

following a paper determination

Handed down 10<sup>th</sup> March 2008

**Tribunal** : G K Sinclair, R Thomas MRICS, R S Rehahn

**Summary**

1. For the reasons which follow the tribunal determines that :
  - a. The registration fee payable under clause 3(11)(d) of the lease, viz "a reasonable fee of not less than thirty pounds (excluding VAT)" is a variable administration charge within the meaning of Schedule 11 to the Commonhold and Leasehold Reform Act 2002
  - b. A variable administration charge is payable only to the extent that the amount of the charge is reasonable
  - c. The charge demanded by the Respondent on 20<sup>th</sup> November 2007 of £85 plus VAT (or £99.88 inclusive) is neither reasonable nor payable
  - d. A reasonable charge would be £35 plus VAT
  - e. The costs incurred by the landlord in respect of this application shall not be regarded as relevant costs when calculating the service charge for this or any future year payable by the Applicants or any other leaseholder of the building in question.

**Jurisdiction**

2. By paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 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.

3. Paragraph 1 of the same Schedule provides, inter alia :

- a. That “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... for or in connection with the grant of approvals under his lease, or applications for such approvals; and
- b. That “variable administration charge” means an administration charge payable by a tenant which is neither specified in his lease, nor calculated in accordance with a formula specified in his lease.

4. Paragraph 2 provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

5. Also pertinent in the instant case is paragraph 4, which provides as follows :

- (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.

6. On 1<sup>st</sup> October 2007 the Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007<sup>1</sup> came into force. These provide that the summary of rights and obligations which must accompany a demand for the payment of an administration charge must be legible in a typewritten or printed form of at least 10 point, and must contain the title "Administration Charges-Summary of tenants' rights and obligations" and a prescribed statement comprising eight numbered paragraphs.

#### **The relevant lease provision**

7. The lease in question is dated 29<sup>th</sup> September 2004, a date which the tribunal regards as being of some significance. The parties are Brazier Homes Ltd (landlord), Orwell Quay (Ipswich) Management Company Ltd (the management company) and Michael Leslie Smith (tenant). The term granted is 125 years from 1<sup>st</sup> June 2003, also a date regarded

by the tribunal as significant.

8. Amongst the tenant's covenants in clause 3 are those, at sub-clause (11) concerning the assignment, underletting or parting with possession of the demised premises. Sub-clause (11)(d) provides :

Upon every assignment charge transfer underlease or other instrument effecting or evidencing any transmission or devolution of the demised premises or of any term estate or interest therein to give to the landlord or to the landlord's solicitors and separately to the solicitors or secretary to the company notice in writing of such transmission or devolution and to pay a reasonable fee of not less than thirty pounds (excluding VAT) for each such registration.

**The relevant charge(s)**

9. By letter dated 20<sup>th</sup> November 2007, written in response to one from the tenant dated 14<sup>th</sup> November, the Respondent wrote :

Please be advised that on 29/03/07 the Notice of Underletting fee of £99.88 inclusive of VAT was made by credit card. A 2.5% card payment charge was added on bring the fee paid (sic) to £102.38, invoice number 164946. This payment was made for your tenant Mr David Jones and no further payment has been made.

Therefore, in order to register your new tenant Kerry Sillett the Notice of Underletting fee is payable again, this is £99.88 inclusive of VAT.

I hope this clarifies the situation and look forward to receiving the fee and paperwork in this relation.

Nothing in this letter waives our client's current rights in respect of this property and this letter is neither a demand nor a letter before action.

10. By letter dated 30<sup>th</sup> July 2007 the Applicants' solicitors wrote to the Respondent. While this letter is marked "Without Prejudice" it was produced by the Applicants as part of their case, and is referred to here simply as confirmation that the fee levied in March 2007 is also subject to challenge in this application.

**Evidence**

11. The Respondent's Statement of Case, dated 1<sup>st</sup> February 2008, sets out in some detail what the landlord's managing agents regard as the process involved, with appropriate timings, in the handling of a notification by a tenant of a transfer, assignment, underlease, etc. The fee claimed is not, however, based on any such timings, merely on an appreciation that significant work is involved and a comparison with the fees or charges levied by a variety of banks and other large financial institutions for allegedly similar tasks. In every case the fee charged was higher than that claimed here on behalf of the landlord.
12. The Applicants responded by letter dated 5<sup>th</sup> February 2008. This made the point that Simarc actually produced a form for registration of sublettings, comprising three sections. The first asks for a "correspondence/agent's address"; the second requests the tenant's

details,<sup>2</sup> commencement date of the subletting, and (by box ticking) whether its duration is 6 months, 12 months or some other period. The third section merely asks for details of how payment will be made, noting (in small print) that an additional 2.5% will be added to cover any charges levied by credit card companies, and an additional 50 pence for debit cards. Typed at the top of the document is the heading "Application to sublet" and the address of the flat in question.

13. The Applicants also annexed a letter from Simarc dated 27<sup>th</sup> April 2007, making the point that the landlord will have no objection to sublettings but on certain conditions – which were listed – and concluding with the observation that  
...this authorisation is for one sub-letting for a period of 6 months only to Mr David Jones, to commence on 12 August 2008 (sic) and to expire no later than 6 February 2007. If you wish to sublet the property again then our clients must be informed.
14. In reply to a letter from JSM, the Applicants' letting agent, Simarc replied on 10<sup>th</sup> July 2007 to the effect that if a subtenancy was initially registered for a period of 6 months then it would be renewed every 6 months, and that Notice of Underletting needs to be served on every underlease (i.e. each renewal). A renewal fee of £58.75 inclusive of VAT was then requested.
15. Under cover of a letter dated 8<sup>th</sup> February 2008 the Respondent's solicitors submitted further documents, including detailed information on fees charged for work by "other similar institutions to the Respondent", viz NatWest, Norwich & Peterborough Building Society, Barnsley Building Society, Scarborough Building Society, Northern Rock, the Woolwich, and Bristol & West.

#### **Findings**

16. On the basis of the information supplied by the Applicants it would seem :
  - a. That the work undertaken by the landlord's managing agents does not follow the four-stage approach set out in the Respondent's Statement of Case. Instead, it would seem that an initial notification by a tenant would be met by the printing of an application to sublet form, with the identity of the premises printed at the top. The form asks only the most basic information.
  - b. The landlord appears to charge two different levels of fees, with the renewal of existing sub-tenancies charged at £50 plus VAT.
17. The tribunal regards the content of paragraph 4 of the Respondent's Statement of Case as telling :
  - A It is the position of the Respondent that £85.00 plus VAT is an entirely reasonable fee for the work involved in receiving processing and dealing with a Notice of Underletting in respect of this block of flats.
  - B. It therefore follows that if a leaseholder enters into say a 5-year fixed term tenancy with an under tenant, during that 5-year period the landlord, Freehold

<sup>2</sup> It is unclear whether this is a request for the name of the long leaseholder who is doing the sub-letting or of the new sub-tenant

Portfolios GR Limited will simply be entitled to receive on Notice of Underletting fee only of £85.00 plus VAT during the entire 5-year period.

18. The information disclosed by the Applicants tends to suggest that the managing agents, if not the landlord itself, are under the impression that the landlord's consent is required for underlettings. It is not. Nor can conditions be imposed, such as maximum or minimum letting periods. The managing agents do not appear to understand the concept of a periodic tenancy, where no formal, regular renewal is required. paragraph 4B gives the game away. Fees are regarded by Simarc not as reasonable recompense for the work necessarily involved in maintaining an accurate record of interests in the demised premises but rather as a source for generating income for the landlord.
  19. The tribunal notes in particular that :
    - a. The charges sought rely on linkage with those levied by banks and other large financial institutions, the reasonableness of whose charges are currently subject to on-going High Court litigation brought, on the consumer's behalf, by the Office of Fair Trading
    - b. The Respondent has not sought to justify the charges sought by reference to rates levied by other landlords or managing agents
    - c. The work claimed to be involved bears little relation with reality, and involves the managing agents duplicating work on both computer and paper records
    - d. No hourly rate, or table of charges, were produced
    - e. No explanation was given why, in the period of only 3 years since the lease was granted (and just over 4½ since the commencement date of the term, around when this standard lease was probably first drafted), the fee of "not less than thirty pounds" (plus VAT) should increase by nearly 200%
    - f. No explanation was offered for the differential rates for new and renewing sub-tenants, although in the tribunal's view the work involved in each case is virtually the same.
  20. The tribunal considers that the amount of time involved in noting the details supplied and entering the data on the system is about 15–20 minutes maximum; a data input task not requiring any significant management skill.
  21. Application of an RPI uplift since September 2004 to date produces a figure of £30.37 plus VAT, or £34.72 from 1<sup>st</sup> June 2003 (the commencement date of the 125 year term).
  22. The tribunal determines that an appropriate rate of charge in late 2007 would be £35 plus VAT, which equates to a charging rate of £105–140 per hour, depending on whether the task requires 20 minutes or only 15. This is the sort of rate which one would expect a landlord's solicitors to charge for employing relatively senior clerical staff experienced in office accounts.
  23. This determination applies both to the fee or charge levied in November 2007 and also to that paid by the Applicants for the subletting to Mr David Jones.
- Section 20C application**
24. The production of voluminous material showing the fees charge by allegedly comparable

bodies (no doubt expensively) by the landlord's solicitors, but which was regarded by the tribunal as largely irrelevant, was not in the tribunal's determination justified, and is not to be treated as relevant to the calculation of the service charges levied for this building which are recoverable from the Applicants or from any other leaseholder in this or any other year.

Dated 10<sup>th</sup> March 2008



Graham Sinclair – Chairman  
for the Leasehold Valuation Tribunal