

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
SOUTHERN LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF AN APPLICATION UNDER SCHEDULE 11 OF THE
COMMONHOLD AND LEASEHOLD REFORM ACT 2002
(Administration Charges)

Case No. CHI/43UG/LAC/2009/0013

Re: 2 Jetty House, (Plot 135), Upper Reach, Chertsey, Surrey, KT16 8LQ

BETWEEN:

Andrew D.W.Smith
("The Applicant")

and

Peveler OM Limited
("The Respondent")

Date of Determination: 20th April 2010

Members of the Tribunal: Mr J.B. Tarling, Solicitor, MCMI (Lawyer/Chairman)
Mr K.M. Lyons FRICS

Date Decision issued: 23rd April 2010

THE DECISION OF THE LEASEHOLD VALUATION
TRIBUNAL

The reasonable amount payable by the Applicant Lessee to the Respondent in connection with the Granting of Consent for a sub-letting together with any Registration Fee in this case shall be a total of £75.00 plus VAT

REASONS FOR THE DECISION

BACKGROUND TO THE APPLICATION:

1. This Application is made under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") and asks the Tribunal to determine the reasonableness of the amount of an Administration Charge. The Administration Charge in question is a Fee of £100 plus VAT charged by the Managers, Peveler OM Limited for consent for a sub-letting.

2. This Application was received at the Tribunal Office on 10th December 2009. The matter was reviewed by a Procedural Chairman on 11th December 2009 and the

Applicant was asked to provide a full copy of his Lease. This was received by the Tribunal on 5th February 2010. Directions were given on 8th February 2010 providing for both parties to file written representations and Notice was given to the parties under the LVT Procedure Regulations (as amended) that the Tribunal intended to determine the matter as a paper determination unless any party requested an oral hearing. Neither party requested an oral hearing and the matter was set down for a decision as a paper determination.

3. SCHEDULE 11 OF THE 2002 ACT (Administration Charges)

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

Liability to pay administration 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*

4. WHAT THE TRIBUNAL IS BEING ASKED TO DETERMINE

The Applicant completed his Application Form and under the item "grounds for the application" on Page 7 of the Form he says "Peverel OM are demanding £100 plus VAT to grant permission for each sub-letting (or renewal of same) when I believe that their actual costs for registering such details as they require are under £30 per permission. Accordingly I do not agree that the sum of £100 plus VAT is reasonable."

After considering the wording of the grounds for the application the Tribunal concluded that the Applicant was not challenging the liability to pay the Administration Charge, but purely the amount of such Charge. Accordingly this determination is restricted solely to the amount of the Administration Charge.

5. THE LEASE

The Lease in question is dated 15th December 2003 made between Laing Homes Limited (Lessor) Peverel OM Limited (the Manager) and Andrew Donald William Smith (Lessee) and is a grant of a term of 150 years from 1st June 2003. The Lease contains the usual covenants by landlord and tenant that are normal in a modern Lease of a residential leasehold Flat. The covenant which is relevant to the application is as follows:

The Eighth Schedule (Covenants by the Lessee) Part One

26. Not at any time during the Term:

- 26.1 *under-let the whole or any part of the demised Premises save that an underletting of the whole of the demised Premises is permitted in the case of an assured shorthold tenancy agreement (or any other form of agreement which does not create any rights of tenancy for the tenant) with the prior written consent of the Manager or its agents (such consent not to be unreasonable withheld or delayed) and also to pay or cause to be paid to every manager such reasonable fee at the same time as the granting of every such consent*
- 26.2 *grant any under-lease of the whole or any part of the Demised Premises save that an under-lease of the whole of the demised premises is permitted with the prior written consent of the Manager or its agents (such consent not to be unreasonably withheld or delayed) and also to pay or cause to be paid to the manager such reasonable fee at the same time as the granting of every such consent*
- 26.3 *separately assign transfer or part with the possession or occupation of any part or parts of the demised premises but only to assign transfer or part with possession therefore as a whole and not to assign transfer or part with possession or occupation of the whole or parts of the demised Premises during the last seven years of the term without the prior written consent of the Manager or its agents (such consent not to be unreasonably withheld or delayed) and also to pay or cause to be paid to the Manager such reasonable fee at the same time as the granting of every consent.*

6. Correspondence between the parties relating to consent for sub-letting

Before the Tribunal were two items of correspondence in respect of the matter of consent for sub-letting. The first is a letter dated 29th September 2009 from Peverel Property Management Group to Ms Manning-Smith c/o 1st Asset Management, who are the Applicant's letting agents. The second is a letter dated 30th November 2009 from Peverel OM Limited to Ms Manning-Smith. Both letters are very similar and set out the arrangements by which a Lessee should apply for consent for a sub-letting. The letters draw attention to the need for such consent and offer two options.

Option 1. "Consent for each sub-letting, renewal/re-letting, subject to the enclosed guidance notes, for a fee of £100.00 plus VAT (£115.00), payable to Peverel OM Limited. In the case of a company tenancy the fee is payable on an annual basis."

Option 2 is consent for a Global Licence to sub-let, for which a Fee of £295 plus VAT is charged.

The Tribunal reviewed the documents and concluded that the Application referred only to the Fee of £100 plus VAT and that for that reason this determination would only deal with that aspect of the matter. This Determination does not deal with the matter of any "Global Licence" as the Tribunal has not been asked to make a determination in that respect.

7. The Applicant's case

In support of his case the Applicant submitted a bundle of documents. These comprised a Witness statement dated 15th February 2010 made by Samantha Anne Manning-Smith. She is a director of the property management business called 1st Asset Management and she is the property manager for the Applicant Mr Smith. Paragraph 1 of her Witness Statement says "I make this statement in support of Mr Smith's application to vary the administration fee payable under the terms of his lease." The Application Form which Mr Smith completed does not contain any application to *vary* the administration charge. The Tribunal considered this statement to be an error and what Ms Manning-Smith probably meant was that Mr Smith was challenging *the amount* of the Administration Charge.

8. In summary, the Witness Statement of Ms Manning-Smith makes the following written representations on behalf of the Applicant:

(Para 5) "To register a subletting the Respondents are required to verify the confirmation of owner details, input 6 fields of data from a form completed by the Applicant and bank a payment.

(Para 6) The tasks required to process the consent application seem to her to be as follows:

- a. Print & post out request letter (Estimate £0.50 printing £0.50p postage)
- b. Input data received (Estimate admin wage = £7 ph + NI contribution = £7.70, X 30 mins = £3.85)
- c. Allocate and bank payments
- d. (estimate credit controller wage £9.40ph + NI contribution = £10.41 X 30 mins = £5.20)

She concludes that this is a total maximum of £10.06 direct costs to process the consent. Allowing for a 150% uplift to cover overheads and profit, a reasonable sum would seem to be no more than £30 + VAT.

(Para 7) She has asked the Respondents to justify their fees and they have responded that their costs are in line with other companies and that the higher fee is justified where sublets are granted because for these leaseholders they are called upon to deal with noise complaints, parking issues, mis-use allegations as well as giving lease and letting advice. In support of this she exhibits copies of some emails between her and the Respondents.

(Para 8) She does not request an amendment to the text of the lease, but for the Tribunal to set the level of a reasonable fee for consent. She refers the Tribunal to previous similar cases such as CAM/42UD/LAC/2008/0001 where a fee of £25 was determined.

No other documentary evidence or Statement by the Applicant was before the Tribunal.

9. The Respondent's Case

The Respondent has filed a Witness statement by Eyvind Normann Andresen who is a Solicitor in the employ of the Respondent. In her Witness Statement she summarizes the application, the terms of the Lease, the statutory provisions and the practical options offered by the Respondents regarding consents for sub-lettings. The relevant parts of the Witness Statement so far as it relates to the reasonableness of the amount of the Fee are as follows:

Para 10. She challenges the analysis of the figure made by the Applicants Witness. She says in reply that the fee charged by the Respondent is reviewed against other management companies who carry out similar functions to ensure that the fees charged as not unreasonable in the market. There is a reference to other tribunal decisions.

Para 12. In summary she has obtained an estimate from the manager overseeing the department that an average single application for consent/registration involves around one hours work.

Para 13. This Paragraph lists seven tasks which are performed by the person dealing with the consent for sub-letting.

Para 15. The fee of £100 plus VAT covers both elements of fee charging allowed by Clauses 26.1 and 28 of the Lease.

Paras 17-19 refers to other tribunal decisions

There are no other items of correspondence or written representations made by the Respondents that are before the Tribunal.

10. LVT DECISIONS REFERRED TO BY THE PARTIES

Attached to this Decision is a Schedule of other LVT decisions which the parties referred the Tribunal to in their respective written representations.

Copies of the actual LVT Decisions were submitted by the parties and the Tribunal had them before them when they made their Decision.

11. THE TRIBUNALS CONSIDERATION

The Tribunal began by reading through the Application Form, the copy Lease, the written representations made by the parties and the copy LVT Decisions.

The Tribunal noted some apparent confusion on the part of the Applicant as to exactly what he was asking the Tribunal to decide. The Applicant had apparently ticked the box on Page 7 of the Application Form to appear to indicate that he was asking the Tribunal to vary the administration charge. On Page 7 of the Application Form, no details of any variation was requested.

Paragraph 8 of the Witness Statement of Ms Manning-Smith she says "I do not request an amendment to the text of the Lease, but instead that the tribunal set the level for such a "Reasonable" fee for the processing of this consent." As this was a clear written representation made by the Applicant's authorised representative, the Tribunal decided that no such variation was being requested.

12. The also seems some confusion in the minds of the Respondent as to the difference between the requirements of Clause 26.1 and Clause 28 of the Lease. Clause 26.1 of the Lease deals with "Consent" for the proposed sub-

letting. Clause 28 of the Lease deals with “Registration” of the Assured Shorthold Tenancy Agreement. Both those Clauses contained in the Lease require the Lessee to pay a Reasonable Fee for each of these functions. The Application Form which the Respondents have prepared is entitled “Application Form for *Registration* of and/or *Consent* to Grant a Shorthold Tenancy” Part 4 of that document is a “Notice” that the Lessee “has today sublet the premises... We enclose a cheque or £100 plus VAT ... to cover the *registration fee*...” Part 6 of that form contains the words “We confirm registration of and/or consent to the grant of an Assured Shorthold Tenancy..” In Paragraph 10 of the Witness Statement filed on behalf of the Respondent, the evidence given to the Tribunal is “The one off fee charged by the Respondent for registration/consent for a single underletting is a variable administration charge...” In Paragraph 15 of the same Witness Statement the evidence given is “As explained above, the fee of £100 plus VAT charged for consent and registration of a single subletting covers both elements of fee charging allowed by Clauses 26.1 and 28 of the Lease.” From this evidence the Tribunal came to the firm conclusion that there was one Fee being charged for both functions of Consent and Registration, despite what the Lease provided for. It is entirely a matter for the person charging the fee to decide whether to charge two fees or one, but in this case despite what the Lease says, the Respondent has decided to charge just one fee.

13. Having determined what the Tribunal was being asked to decide, the Tribunal then went on to consider the amount of the fee. It started by reviewing the evidence provided by the parties. In Paragraph 6 of the Witness Statement filed on behalf of the Applicant an attempt had been made to cost the tasks required to process the application for Consent. This had been costed to “no more than £30 plus VAT.” No evidence was given by the Applicant as to what a reasonable fee might have been in the property management “market” or any evidence of what other managing agents were charging.
14. Paragraph 11 of the Witness Statement filed on behalf of the Respondents says that the Applicant’s analysis of the figure is misconceived. It says “The fee charged by the Respondent is reviewed by the Group against other management companies who carry out similar functions to ensure that the fees are not unreasonable in the market.” However no actual evidence was given to the Tribunal of exactly what enquires or investigations had taken place, how many management companies had been asked to supply information and exactly what functions those fees had been charged for under what covenants in which Leases. A helpful list of tasks was given at paragraph 13 of that Witness Statement which gave a summary of was involved. But no costings of hourly rates or other information to enable the Tribunal to accurately calculate the cost of performing these tasks.
15. The Tribunal then worked through the four LVT decisions which the parties had referred to in their respective submissions. The Tribunal reminded itself that these LVT decisions were not binding on the Tribunal. In some cases the facts might be different, the terms of the Leases might be different and the work involved in giving consent or carrying out registration might be different.

Having said that, similar LVT decisions can sometimes be helpful in indicating a general level of fees, rather than deciding a precise amount of a similar fee.

16. (a) In the case of the decision in 38 Maude Street, Ipswich the Tribunal was asked to determine the amount of just the registration fee, and was not asked to determine any fee for granting consent. The Tribunal in that case determined a fee of £35 plus VAT for the registration fee.
(b) In the case of 25 Aura Court, London SE15 the Tribunal was asked to determine the amount of a Global Licence fee and determined on the facts of that case that a reasonable amount should be £188 plus £25 plus VAT for every subsequent letting.
(c) In the case of 18 Oxclose Park Gardens, Sheffield, which involved the same Respondent and where the lease covenants appeared to be the same if not very similar, the Tribunal determined a fee of £75 for granting consent and which included the Registration fee.
(d) In the case of 24 Glenmuir Close, Manchester the Tribunal decided it had no jurisdiction to determine a Global Licence fee as it was not an administration charge. In determined that a reasonable registration fee should be £25 plus VAT.
17. From the above analysis of the LVT Decisions that were before the Tribunal, the case which was most similar to the current case was the Decision in the case of 18 Oxclose Park Gardens, Sheffield. The Lease terms were the same or very similar as the current case, the Manager was Peverel, the same Respondent, and the work concerned appeared to be the same or very similar to the current case. The Explanation given by the Respondent in Paragraph 18 of their Witness Statement of the “increase” in their fee from £75 to £100 was that “the Tribunal was influenced by the fact that the fee had only recently been increased.” The Decision of the Tribunal in that case is set out in Paragraphs 22 to 29 of its Decision document dated 12th March 2009. The Tribunal can find nowhere in those paragraphs any suggestion that the Tribunal in that case “were influenced by the fact that the fee had only recently been increased.” That is certainly an argument put forward by the Respondents in Paragraph 19 of that Decision, but it does not seem to have been accepted by the Tribunal as a good reason for any increase. Indeed the Tribunal in that case reduced the fee from £100 to £75.
18. Having reviewed all the above documents and arguments put forward by the parties, the Tribunal also used their expert knowledge and experience in deciding that there was a level of fees for the granting of consent for sub-lettings in the market generally. In general a fee of £100 for granting consent was on the high side. There had been no significant increase in fees in the property management market in the last year. The previous LVT decision in 18 Oxclose Gardens, Sheffield, decided in 2009, gave the Tribunal a helpful level of fees for this kind of work. For these reasons the Tribunal concluded that a reasonable fee for granting consent for sub-letting in this case would be £75 plus VAT. In this particular case as the Respondent had decided to charge just one fee for both granting consent and registration then the total

liability of the Applicant was to pay to the Respondent one fee for both functions of £75.00 plus VAT.

Dated this 23rd April 2010


 John B. Tarling, Solicitor, MCMI
 (Chairman)

ADMINISTRATIONCHARGES2JettyHouse2010

SCHEDULE OF LVT DECISIONS
 Case Number CHI/43UG/LAC/2009/0013
 Schedule of LVT Decisions referred to by the parties

Item	Case Number/Address	Date of Decision	What was decided	Amount decided
1.	CAM/42UD/LAC/2008/0001 38 Maude Street, Ipswich	10 th March 2008	The amount of the REGISTRATION FEE	£35 plus VAT
2.	LON/OOBE/LAC/2008/0009 25 Aura Court, London SE15 3GW	24 th October 2008	Global Licence Fee	£188 (Global fee) plus £25 (plus VAT) per letting
3.	MAN/OOCG/LAC/2008/006 18 Oxclose Park Gardens, Sheffield	12 th March 2009	The amount of the landlords fee for granting consent to sub-let (Same lease covenants/ Peverel as the Manager)	£75.00 (Includes registration fee)
4.	MAN/00BU/LAC/2008/0003 24 Glenmuir Close, Manchester	5 th January 2009	(a) No jurisdiction to determine a "global licence fee" as it is not an administration charge (b) The amount of the registration fee	(a) – (b) £25 plus VAT