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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

# LONDON LEASEHOLD VALUATION TRIBUNAL

**Case Reference: LON/00BE/LAC/2012/0025**

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

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| Applicant: | Mr John William and Mrs Sharon Jeanne Twigg |
| Respondent: | Parkbrace Limited |
| Property: | 701 Antonine Heights, City Walk, London, SE1 3DF |
| Date of Decision: | 21st February 2013 |

**Determination without an oral hearing in accordance with regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003**

Leasehold Valuation Tribunal
Mr I Mohabir LLB (Hons)

*Introduction*

1. This is an application made by the Applicants under Schedule 11, paragraph 5 of the Commonhold and Leasehold Reform Act 2002 (as amended) ("the Act") for a determination of their liability to pay and/or the reasonableness of a variable administration charge claimed by the Respondent under the terms of their lease.

2. The administration charge in issue is a fee of £95 demanded by the Respondent's managing agent, Estates & Management Ltd, by a letter dated 21 April 2012 as a registration fee for registering an assured shorthold tenancy granted by the Applicants to sub-let the premises known as Flat 701, Antonine Heights, City Walk, London, SE1 3DF ("the registration fee").

3. In correspondence, the Applicants argued that the registration fee was excessive. In the absence of the parties being able to agree matters, on 24 October 2012 the Applicants made this application to the Tribunal.

4. On 21 November 2012, the Tribunal issued Directions, which included a direction that this matter be determined solely on the statements of case and documentary evidence filed by the parties pursuant to those Directions and without the need for an oral hearing.

*Decision*

5. The Tribunal determination took place on 20 February 2013. The issues raised by the parties are dealt with in turn below. However, before doing so, it is perhaps convenient to set out here the relevant terms of the Applicants' lease.

6. Paragraph 8(c) of the Fourth Schedule permits the tenant to sub-let the demised premises without the landlord's prior written consent provided that any underletting is for a term greater than 6 months, but less then 3 years in the form of an assured shorthold tenancy or such other tenancy agreement as does not create security of tenure beyond the contractual term of such underletting.

7. Paragraph 8(d) provides:

> *"within one month after the date of every assignment.....sub-lease or other event or document relating to the Term hereby granted to give notice thereof in writing to the Landlord and in the case of a document produce it to the solicitors for the time being of the Landlord for registration and to pay a fee of £25 (or such higher sum as may from time to time be reasonably stipulated by such solicitors) plus Value Added Tax...for each such registration of a document."*

***Jurisdiction***

8. It was submitted on behalf of the Respondent that the Tribunal did not have jurisdiction in this matter because the registration fee was not a variable administration charge within the meaning of Schedule 11 of the Act. The Tribunal did not accept that submission as being correct. It is clear that the registration fee was neither specified as a fixed figure in the Applicants' lease nor calculated in accordance with a specified formula in paragraph 8(d) of the Fourth Schedule. Accordingly, it was caught by paragraph 1(3) of Schedule 11 and the Tribunal concluded that it did have jurisdiction in this matter.

***Contractual Liability***

9. It was submitted by the Applicants' solicitors that they had no liability under paragraph 8(d) of the Fourth Schedule to pay the registration fee for 3 reasons. Firstly, the assured shorthold tenancy was not a sub-lease or other event or document relating to the term. Secondly, that the Applicants were only liable to pay any registration fee to the landlord's solicitors and not the managing agent. Thirdly, only the landlord's solicitors were entitled to stipulate a higher fee and not the managing agent.

10. The Tribunal carefully considered the terms of paragraph 8(d) of the Fourth Schedule and construed it as follows. It was satisfied that the granting of an assured shorthold tenancy fell within the definition of *"an other event or document"* (capable) of affecting the term. The creation of a separate legal interest such as the granting of a sub-tenancy may potentially, have an effect on the term of the lease, for example, by forfeiture proceedings or steps taken by the

landlord following a breach of one or more covenants by the sub-tenant. In the Tribunal's judgement, this is the type of situation envisaged by paragraph 8(d) and the registration of such an interest as an assured shorthold tenancy enables the landlord to protect its interests.

11. As to the production of any relevant document to the landlord's solicitors and the exercise of the discretion afforded by paragraph 8(d) as to the level of any such fee, the Tribunal concluded that to put a literal construction on the word "solicitors" would result in a far narrowing meaning than was intended. If the landlord chose not to retain solicitors the paragraph would be meaningless and it would never be able to recover a registration fee. In other words, it could not have been intended as a condition precedent to recovery. The Tribunal was satisfied that the wider meaning intended by the use of the word "solicitors" was intended to mean any duly authorised agent of the landlord. As such, Estates & Management Ltd was entitled to demand and set the registration fee on behalf of the Respondent.

12. As to the fee of £95, the Tribunal found that it was not reasonable. It did not accept the contention advanced by Estates & Management Ltd that the process of registration was take approximately 6.5 hours. Accordingly, the Tribunal determined that a fee of £50 was reasonable. Estates & Management Ltd do not charge VAT.

***Section 20C & Fees***

13. The Applicants had made a further application under section 20C of the Landlord and Tenant Act 1985 (as amended) for an order that the Respondent be disentitled from recovering all or part of the costs it may have incurred in responding to this application. The Tribunal is also obliged to consider making an order in relation to the fees paid by the Applicants to have the application issued.

14. The Applicants have only partially succeeded in this matter. Applying the general principle that *"costs should follow the event"*, the Tribunal made an order under

section 20C of the 1985 Act that the Respondent shall not be entitled to recover half of any costs it may have incurred in these proceedings. For the same reasons, the Tribunal also ordered the Respondent to reimburse the Applicants one half of the £50 fee paid by them to issue the application.

Dated the 21 day of February 2013

CHAIRMAN.....

Mr I Mohabir LLB (Hons)