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**HM COURTS & TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Commonhold and Leasehold Reform Act 2002 - Schedule 11

Property: 50 Birnham Road, Wallasey CH44 9AY
Applicant: Richard William Webster
Respondent: Fee Simple Investments Limited
Date of determination: 19 April 2013
The Tribunal: Laurence Bennett
Elizabeth Thornton-Firkin

Application

1. Mr Richard William Webster applies for a determination under Paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 of his liability to pay and reasonableness of administration charges relating to 50 Birnham Road, Wallasey, CH44 9AY (the Property).

Preliminary

2. The Applicant and the Respondent are the respective owners of the Lessors and Lessees interest in the Property created by the lease specified below.
3. The application was received 15 January 2013.
4. Directions dated 21 January 2013 by a Vice President of the Tribunal included: "It is considered that this matter is one that can be resolved by way of submission of documentary and other written evidence leading to an early determination." The directions gave opportunity for the parties to request a hearing. No request was made.
5. The Applicant provided further details and documents in accordance with the directions. The Respondent did not submit a response.
6. The Tribunal convened on 19 April 2013 without the parties to determine the application.

The Law

7. Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the Act) provides that:-
 - 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 application for such approvals,
- (b) for or in connection with the provisions 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.

- 1(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

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

5 (1) An application may be made to a leasehold valuation tribunal for 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

8. The operation of the Act was brought into effect by SI 2003 No 1986. Paragraph 8 of Schedule 2 of that instrument states:

Paragraphs 2-5 of Schedule 11 shall not apply to an administration charge that was payable before the first commencement date.

9. The first commencement date was 30 September 2003

The Lease

10. The Applicant holds the leasehold interest in the property created by a lease dated 26 June 1987 made between Suburban Homes Ltd (1) Lyn Joinson (2) for a term of 999 (the Lease).

11. Paragraph 5(g) of the Lease contains the Leaseholders covenant:

"Not to assign underlet charge or part with the possession of the said property without the previous consent in writing of the Lessor at the cost of the Lessee such consent not to be unreasonably withheld."

Facts and Submissions

12. The Applicant requested consent to charge the Property by email to the Respondent's agent Alton Property Management Limited. The response consisted of an application form and a request for a fee of £200 + VAT. The Applicant considers a sum of £75 + VAT as determined by the Tribunal in respect of an application to sublet the Property is appropriate.

Tribunal's conclusions with reasons

13. Noting the provisions of the Lease and the request made by the Applicant to the Respondent we are satisfied that the sums requested are a variable service charge falling within Paragraph 1 (b) and (d) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and are within the Tribunal's jurisdiction.
14. We have considered the likely work in responding, processing and granting a consent to charge the Property and accept that this would merit a fee. We consider the work routine and have not identified issues which would require other than brief administrative tasks.
15. Following 14 and bearing in mind recent decisions of the Lands Tribunal in respect of applications for consent in similar but not identical circumstances we conclude that the work involved would reasonably give rise to a fee of £40 + VAT.
16. The Applicant has been successful against the Respondent for payment for consent to sublet the same property in circumstances where a previous order limiting payment for consent to a sum was substantially less than the £200 + VAT requested in the instant case. For that reason we order that the Respondent shall reimburse the Applicant the application fee of £50 paid to the Tribunal.

Order

17. The sum payable to Fee Simple Investments Limited by Mr Webster for consent to charge the Property shall be £40 + VAT.
18. Fee Simple Investments Limited shall reimburse Mr Webster the sum of £50 in respect of the application fee paid to the Tribunal within 28 days of this order.

L J Bennett
Chairman of the Leasehold Valuation Tribunal
19 April 2013