

9335



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : CHI/00HY/LVA/2013/0003

**The Property** : Flat 4, Audrey House, West Parade, Warminster,  
Wiltshire, BA12 8LZ

**Applicant Representative** : Mr Bob Waller  
: None

**Respondent Representative** : Proxima GR Properties Limited  
: Estates and Management

**Type of Application** : Administration Charges (Sub-Letting Fees)  
Schedule 11 Commonhold and Leasehold Reform  
Act 2002

**Tribunal Members** : Judge J Brownhill

**Date of decision** : 8<sup>th</sup> October 2013

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**DECISION**

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### Determination

- 1 The Tribunal finds (it not being in dispute that a 'consent to let' fee is payable by the Applicant to the Respondent):
  - a. It has no jurisdiction to determine the reasonableness of the fee charged by the Respondent for registering notice of subletting of the Premises (the Registration fee);
  - b. The 'consent to let' fee of £100 is excessive, and that a fee of £69 is reasonable;
  - c. That a determination of the Global Licence fee is not within its jurisdiction.

### Introduction

- 2 On or around the 18/07/2013 the Applicant applied to the Property Chamber for a determination as to the reasonableness of fees sought by the Respondent in relation to their consent to sublet the Property pursuant to paragraph 5 Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (hereinafter referred to as 'CLARA').
- 3 The Tribunal considered that the matter was capable of being dealt with on the basis of written submissions and without an oral hearing. Notice to this effect was given in directions dated 26/07/2013. Neither party objected to this procedure and the matter was set down for a determination without an oral hearing on the 8<sup>th</sup> October 2013.
- 4 The directions issued by the Tribunal on 26<sup>th</sup> July 2013 specifically referred the parties to the decision of the Upper Tribunal (Lands Chamber) [2012] UKUT 3(LC) (Bramoss Limited). A copy was attached to the directions. The directions observed that the current application before the Tribunal was solely in respect of the reasonableness of the amount of any Administration Charge for consent for sub-letting, rather than any argument about the liability to pay it. The parties were expressly requested to limit their written representations to this one issue.
- 5 The relevant lease is dated 25<sup>th</sup> October 1985 and provides for a term of 120 years. The relevant provisions of the lease appear in the fourth schedule at paragraphs 6(i) and 7. The lease provides that:

“6 (i) The Lessee shall not sub-let the whole or any part of the Demised Premises save that an under letting of the whole of the Demised Premises (with the prior consent of the Lessor and any mortgagee of the Demised Premises) is permitted in the case of a term certain not exceeding three years let at a rack rent.

7 The Lessee shall within twenty eight days of the date of every assignment grant of Probate or Administration Assent Transfer Mortgage Charge Discharge Order of Court or other event or document relating to the term (except a mortgage effected simultaneously with the grant of this Lease) give notice thereof in writing to the Lessor and

pay to it a fee for a registration calculated at the rate of 0.1% of the Notice Value of the Demised Premises and in the case of a document produce a certified copy of it to the Lessor for registration with notice.”

The Applicant's case.

- 6 The Applicant simply argues that in his view the “..fees sought for consent to sublet are disproportionate”. The Applicant did not seek to argue that a fee was not payable. The Applicant did not seek to reply to the Respondent's written submissions.

The Respondent's case

- 7 The Respondent filed a statement of case signed and dated 15<sup>th</sup> August 2013. It sought to argue that:
- a. a consent to let fee was payable – though as stated above this was not in doubt or challenged by the Applicant.
  - b. A Registration fee was payable to register any subletting but a determination of the reasonableness of such fee was not within the jurisdiction of the Tribunal;
  - c. A consent to let fee of £100 was reasonable; and
  - d. The alternative option of a Global Licence at a cost of £350 was not within the jurisdiction of the Tribunal or alternatively it was reasonable.

The Law

- 8 Paragraph 5 of Schedule 11 to CLARA provides that:  
“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.”
- 9 By virtue of paragraph 2 of the same Schedule it is provided that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.
- 10 Following the Transfer of Tribunal Functions Order 2013 (SI 2013 No 1036) the functions of the Leasehold Valuation Tribunal were transferred to the First Tier Tribunal Property Chamber (Residential Property) on the 1<sup>st</sup> July 2013.
- The Registration Fee
- 11 The Tribunal concluded that it did not have jurisdiction to determine the reasonableness of the Registration fee sought to be recovered by the Respondents for registering any sub-letting. The Tribunal's jurisdiction is to determine the reasonableness of **Administration Charges**. These are defined in paragraph 1(1) of Schedule 11 of CLARA as being:

“...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....
- (c) In respect of a failure by the tenant to make a payment by the due date....
- (d) In connection with a breach (or alleged breach) of a covenant or condition in his lease....”

- 12 While the consent to an under letting falls within the definition at (a) in paragraph 11 above, the mere registration of a notice of under-letting does not. A notice of under-letting is not an approval. Nor does it fall within paragraphs (b) to (d) above. The Tribunal cannot make a determination concerning a matter over which it does not have jurisdiction. It cannot therefore determine whether or not a Registration fee is payable or whether £75 is a reasonable fee to pay.

The reasonableness of the consent to let fee.

- 13 The Respondent argues that its fee of £100 for consent for an individual subletting is reasonable. The Respondent’s fees or ‘sublet guidelines’ appear at page [13] of the Applicant’s bundle and include:
- a. £100 for consent for an individual sub-let. This is described at paragraph 19 of the Respondent’s statement of case as a ‘one off consent fee’;
  - b. £75 for a registration fee. Every time a new tenant takes up occupation a registration fee is payable. As stated above the Tribunal does not have jurisdiction in relation to such Registration fees;
  - c. Alternatively the Respondent offers to enter into a Global Licence for a fee of £350. This licence is “...granted for all sub-letting arrangements meeting the requirements of the terms of the lease, for a maximum period of five years,....the benefit of obtaining a Global Licence is that renewal fees are only applicable whenever a tenant changes and not upon expiry of each Tenancy Agreement. Upon a tenancy change a reduction of 50% will be offered from our current notice of under-letting fee.”
  - d. Other charges are referred to therein including a deed of covenant if required by the terms of the lease, but so far as the Tribunal has been able to see, this does not apply on the current facts.
- 14 The Tribunal further noted that if the global licence arrangement is not entered into that the Respondent’s terms state: “If the same tenant continues to reside at the property the consent will need to be renewed and we only renew this for a further fixed term. The fee payable is 50% of the Registration fee”.
- 15 The Respondent sets out at paragraph 21 of their statement of case what they describe as “..some of the possible stages of the consent application procedure...”. There then follows an extensive list of possible ‘actions’ by the Respondent, its servants or agents when dealing with an application for consent to under let. It is clear from reading this list that not all steps listed will need to be taken every time consent to an under letting is

applied for. It is also, in the Tribunal's view likely (on the balance of probabilities), that many of the letters, notices and certificates of consent etc. will be in a proforma or standard form, and will not need drafting afresh in every case.

- 16 At paragraph 21.2 of the Respondent's statement of case, the Respondent sets out a 'list of common complications'. Again it is clear that such complications will not arise every time consent to an under-letting is sought. The Respondent did not provide details as to how often complications arise, saying only that 'a considerable number of applications are not dealt with promptly'. The Tribunal concluded, looking at the type and nature of the 'complications' relied on by the Respondent that in the majority of cases any complications are likely to be dealt with relatively easily and quickly.
- 17 The Respondent has detailed at paragraph 21.5 of its statement of case the steps it has taken in this case thus far in dealing with the consent to under-let issue. The Respondent also makes the point that at present consent has still not be provided to the Applicant. Below is a short summary only of steps taken by the Respondent:
  - a. *Reviewing lease and inputting key terms regarding consent and registration on the computer system.* This does not appear to have been done in relation to any application concerning consent for under-letting but rather as an unconnected process by which the Respondents are placing details and key terms of their leases into a computer system;
  - b. *Drafting letter of September 2011.* A copy of this letter has not been provided.
  - c. *Receiving a phone call and updating computer system.* No file note of this phone call has been provided nor note of the calls length recorded;
  - d. *Obtaining copy of lease and drafting letter of 12/10/2011.* This is a short letter confirming matters discussed in a phone call and attaching the excerpt from the lease relied upon;
  - e. There then appears to be a significant gap of approximately 17 months, during which period no action was taken. No explanation is given for this.
  - f. *Receiving phone call on 8/03/2013 and updating computer system.* Again the Tribunal have not seen a copy of any file note relating to this call, nor any record of the call's length;
  - g. *Drafting letter 13/03/2013.* This appears to be a standard letter;
  - h. *Receiving letter dated 03/04/2013 (enclosing 2 letters). Searching through previous correspondence received on file. Updating supervisor and computer system.* All three letters are very short and the only relevant matter referred to is the bald allegation that the fees charged for consent for sub-letting are disproportionate;
  - i. *Drafting letter 11/07/2013.* The Tribunal have seen a copy of this letter. It is clearly a standard pro-forma letter where save for insertion of details of the address, the date of correspondence received and the Applicant's details, no specific additional drafting was undertaken.

The Respondent stated that the above actions took 1 hour and 55 minutes. They claim at paragraph 21.3 of their submission that applications can take between 3 and 10 hours work with the average time taken being 6.5 hours. According to paragraph 21.4 "...the hourly rate for dealing with sublet applications is £55 based on labour costs."

- 18 In the Tribunal's view, such work as has been undertaken by the Respondent in dealing with this application could reasonably have been dealt with in 45 minutes, and the application concluded and consents produced with an additional 30 minutes work, resulting in a total of 1 ¼hour's worth of work.
- 19 The Tribunal has had regard to a number of first instance decisions referred to it by the Respondent, (and in which the Respondent has been a party). In those decisions different Tribunals have found £135 (January 2012); and £95 (July 2012) to be reasonable fees for providing consent to under-letting.
- 20 However, no one Tribunal is bound by the decision of another, and while the Tribunal noted that the decisions referred to it were all relatively recent it was able to reach its own conclusions based on the documents before it and evidence about what had in fact been done in the current case.
- 21 The Tribunal has also been referred by the Respondent to a decision of Upper Tribunal (Lands Chamber) [2012] UKUT 241 (LC) in Freehold Managers (Nominees) Limited v Piatti. There consent to subletting was being sought where the lessee had failed previously to obtain consent to earlier sub-lettings, and an allegation of nuisance was made. The Upper Tribunal found £165 was, in those circumstances, reasonable. It was specifically stated at paragraph 25 of that Judgment that the conclusion was reached upon the particular facts of that case. In the Upper Tribunal (Lands Chamber) case [2012] UKUT 3(LC) (Bramoss Limited) from February 2012, £40 plus VAT (£48) was found to be a reasonable fee, and £135 fee (in addition to a £75 fee for registration) was found to be excessive.
- 22 Taking into account all of these matters the Tribunal finds that the consent to let fee of £100 is unreasonable. Applying the hourly rate of £55 (which the Tribunal finds to be reasonable), the Tribunal finds £69 to be a reasonable fee for the consent to under-letting on these facts.

#### The Global licence fee

- 23 This is an option offered by the Respondent to the Applicant, in relation to both its registration and consent fee charges. It is not an option referred to under the terms of lease, and the Applicant is not obliged to sign up to this option if he does not consider it to be value for money. As stated above the Tribunal does not have jurisdiction in connection with assessing the reasonableness of registration fees. Further given that this is a voluntary contract which the Applicant can chose whether or not to enter into: it is a matter of negotiation between the parties and it is not, in the Tribunal's view, a matter over which it has jurisdiction.

### Appeals

- 24 A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 25 The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
- 26 If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
- 27 The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge J Brownhill (Chair)

Dated; 8<sup>th</sup> October 2013