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

Case Reference : **LON/00AH/LVA/2014/0001**

Property : **65 Muggeridge Close, South
Croydon CR2 7LB**

Applicant tenant : **Mrs Penelope Pocock**

Representative : **Mr Andrew L I Pocock**

Respondent landlord : **Reverter Plus Ltd and FIT Nominee
Ltd**

Representative : **Freehold Managers Ltd**

Type of Application : **Liability to pay administration
charges**

Tribunal Members : **Judge Adrian Jack**

**Date and venue of
determination** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **25th March 2014**

DECISION

Background

1. By an application dated 30th December 2013 the tenant sought a determination of (a) the reasonableness of an underletting consent fee paid in March 2007, (b) reimbursement of any consent fee paid in excess of what is determined as a reasonable consent fee, (c) frequency of payability of the consent fee (whether once only, or otherwise such as annually) and (d) the reasonableness of the “notice of underletting” registration fee.
2. Directions were given by the Tribunal on 13th January 2014 and these were substantially complied with by the parties. The Tribunal determined that the matter was suitable for determination on paper and both parties agreed to this procedure.

DISCUSSION

3. The lease in this matter is dated 23rd May 1996 and grants a term of 125 years from 1st January 1995. By clause 2(8)(b) the tenant covenants “not to underlet the whole of the Premises without first obtaining the written consent of the Lessor such consent not to be unreasonably withheld.” By clause 2(9) the tenant further covenants “[w]ithin Twenty-eight days of the date of every... underletting... (a) to give notice thereof in writing to the Lessor and pay to it a reasonable fee for registration subject in any event to a minimum fee of Twenty-five pounds (£25.00).”
4. In March 2007 the landlords’ managing agents demanded a fee of £99.88 (£85.00 plus VAT) for subletting the flat. The reasonableness of this sum is in dispute and no issue under the Limitation Act 1980 is taken by the landlord. The tenant submits that £40.00 would be reasonable.
5. In December 2009 the tenant paid the agents £126.50 to obtain renewed consent to the subletting of the property. The landlord has reimbursed this sum and no issue remains in relation to it.
6. In relation to the frequency with which a consent fee needs to be demanded, the landlord now concedes that only one consent fee to an underletting is required.
7. In relation to the registration fee, the landlord submitted that the Tribunal had no jurisdiction. The tenant submits that the registration fee is presented in the managing agent’s literature as part and parcel of the procedure for giving consent to the underletting.

DETERMINATION

8. The tenant’s submission that £40 for the 2007 grant of consent is based on the decision of Mr Bartlett QC, the then president of the Lands Chamber of the Upper Tribunal, in *Holding and Management*

(Solitaire) Ltd v Norton [2012] UKUT 1 (LC) para [17]. In that case, however, the landlord had no discretion to refuse a subletting: the landlord's function was limited to seeing that the subtenant entered a deed of covenant to observe the terms of the head lease. In the current case, the landlord has a much wider discretion whether to grant or refuse permission to sublet (such discretion to be exercised reasonably, however). In particular the landlord is entitled, and will often in fact, want to satisfy itself that the proposed subtenant is a suitable person to occupy a flat in the block.

9. In my judgment, the work in checking the sub-tenant's suitability is done reasonably. The figure of £85.00 plus VAT in my judgment reasonable.
10. The £126.50 issue no longer arises for determination.
11. As regards the frequency, I agree with the landlord that it is entitled to charge for each fresh underletting, but not for renewals to the same sub-tenant. It is not clear whether the tenant is actually challenging this. The Tribunal has no jurisdiction to direct the managing agents or the landlords to inform other lessees in the block of this decision.
12. As regards the registration fee, in my judgment this is not an administration charge within the meaning of the Commonhold and Leasehold Reform Act 2002. Paragraph 1 of Schedule 11 to the Act defines "administration charge" as meaning
 - "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 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."
13. The only sub-paragraph which could sensibly found an argument in favour of the tenants is (a), but the registration fee is in my judgment simply a consequence of the making of the underletting. It is not made "in connection with" the granting of permission to underlet. It would be payable even if the landlord unreasonably refused even to consider an application for permission to underlet.
14. Accordingly I have no jurisdiction to make any determination in relation to registration fee. This does not leave the tenant without a remedy. She can simply refuse to pay anything more than what she considers a reasonable fee. It would then be for the landlord to issue proceedings in the County Court for the balance.

15. As to costs, the tenant has recovered £126.50 but lost on the other issues. The fees payable to the Tribunal are £65.00. I have a discretion as to the party on whom liability should fall. Looked at overall, in my judgment the landlord should reimburse the tenant £20.

DECISION

- (a) The fee of £85 plus VAT charged for consenting to underletting in March 2007 was reasonable.
- (b) No issue now arises in relation to the fee of £126.50 charged in 2009.
- (c) The landlord is entitled to charge for each fresh underletting, but not for renewals to the same sub-tenant.
- (d) The Tribunal has no jurisdiction to determine the reasonableness or otherwise of the fee for registration sought to be charged by the landlord.
- (e) The landlord shall pay the tenant £20 in respect of the fees payable to the Tribunal.

Name: Adrian Jack

Date: 25th March 2014