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

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| **Case Reference** | : | **LON/00BA/LAC/2014/0026** |
| **Property** | : | **24 Vista House, 2 Chapter Way, Colliers Wood, London SW 19 2RY** |
| **Applicant** | : | **Vanessa Lenie** |
| **Representative** | : | **C L Clemo & Co, solicitors** |
| **Respondent** | : | **Ground Rents (Regisport) Limited** |
| **Representative** | : | **Pier Management Limited** |
| **Type of application** | : | **For the determination of the tenant's liability to pay a variable administration charge** |
| **Tribunal members** | : | **Margaret Wilson**<br>**Duncan Jagger FRICS** |
| **Date of determination** | : | **21 January 2015** |

## DECISION

### Introduction and background

1. This is an application by a leaseholder ("the tenant") of a flat in a purpose-built block of flats under paragraph 5 of Part I of Schedule 11 ("the Schedule") to the Commonhold and Leasehold Reform Act 2002 to determine the tenant's liability to pay a variable administration charge to the landlord, Ground Rents (Regisport) Limited. The application was wrongly made against the managing agent, Pier Management Limited, but the landlord is hereby substituted as respondent. The determination is made on the basis of the written material alone and without an oral hearing in accordance with the procedure set out in rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, neither party having asked for an oral hearing.

2. The tenant holds a long lease dated 7 April 2006. Paragraph 11 of the third schedule, so far as is relevant, obliges the tenant:

> *Not to transfer or assign ... the [flat] ... without first procuring that the assignee ... enters into the deed of covenant [annexed to this lease] (in duplicate) with the lessor subject to compliance by the lessee with the provisions of paragraph ... 13 of this schedule and to pay the reasonable costs of the lessor's solicitors for the preparation of such a deed of covenant*

By paragraph 18 of the third schedule, so far as is relevant:

> *Upon every ... assignment or transfer of the property or the creation of any mortgage or charge thereon ... within one month thereafter to give to the lessor or its solicitors a notice in writing with full particulars thereof and to produce to the lessor certified copies of every document evidencing such disposition and to pay to the lessor a reasonable fee (but not less than £25 together with VAT thereon) for the registration of every such notice and the lessor covenants with the lessee that on receipt of such notice duly given as aforesaid and upon payment of all unpaid rent and service charge and service charge adjustment it shall give to the person lodging the same a certificate in accordance with the restriction contained in the form RX1*

3. On 9 May 2014 the tenant completed the purchase of the lease from her predecessor in title. In a letter dated 14 May 2014 the tenant's solicitors, C L Clemo & Co, gave notice that the flat had been mortgaged and enclosed a certified copy of the legal charge and also a copy of the deed of covenant and asked the landlord to consent to registration for Land Registry purposes. By a letter dated 27 May 2014 the landlord's pre-sales enquiries team demanded payment of its notice fee of £110 per notice plus VAT, deed of covenant fee of

£125 plus VAT and consent fee of £120 plus VAT "as advised in our pre-sales package". The tenant's solicitors, in a letter dated 2 June 2014, assert that a reasonable fee would be £40 plus VAT per notice and accordingly enclose a cheque for £80 plus VAT for two notices. They say that if the landlord considers that it is entitled to more it should provide further details of the time taken, experience and hourly charges of the person who carried out the work. With a further letter dated 15 August 2014 they enclose a copy of a draft application to the Tribunal which they say they propose to issue if the landlord's consent for Land Registry purposes is not immediately forthcoming and a "more intelligent" proposal is made in respect of the amount of the notice fees. The letter continues:

> *In the event that you would prefer to proceed along the tribunal route please find enclosed a cheque covering the charges that you requested, these charges being paid to ensure that our client may be registered at H M Land Registry but are sent without prejudice to all and any rights of our client against you.*

4. The letter dated 15 August 2014 does not specify the amount of the cheque but a letter from the landlord's pre-sales enquiries team dated 21 August 2014 acknowledges receipt of the tenant's cheque for £408 "in settlement of the notices and certificate of compliance fees" and encloses the receipted notice and signed certificate, and also, as what is described as a "pro gratis payment", a cheque for £100.

5. It seems therefore that the charges demanded were in respect of two notices, each at £110 plus VAT (£264) and one consent fee of £120 plus VAT (£144) a total of £408 of which the landlord already refunded£100.

**The statutory framework**

6. Administration charges are defined by paragraph 1 of the Schedule to include *an amount which is payable, directly or indirectly (a) for or in connection with the grant of approvals under [a] lease, or applications for such approvals.* By paragraph 3 of the 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.* By paragraph 2 of the Schedule, a variable administration charge is payable only *to the extent that the amount of the charge is reasonable*, and by paragraph 5, an application may be made to the 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.*

7. It is clear, and is not disputed, that the charges which the landlord claims fall within paragraph 1(a) of the Schedule and that the tribunal has jurisdiction to determine their reasonableness.

**The arguments**

8. For the tenant, Mr Clemo says that the deed of covenant, a draft form of which is at pages 21 - 23 of the bundle, was the standard one produced by the landlord and supplied as part of the initial sales pack, the cost of which was met by the vendor's solicitors, and that the certificate of compliance (copy at page 24 of the bundle) was an extremely brief document which clearly required very little work. He says that it was for the landlord to justify the fees and that it had not done so, and that the lease did not make provision for a charge to be levied either in respect of the registration of the deed of covenant or for the provision of a certificate. He relied on an Upper Tribunal decision in cases of *Holding and Management (Solitaire) Limited v Norton and others* (LRX/33, 34, 76 and 102/2011) in which the then President of the Upper Tribunal, George Bartlett QC, upheld fees for similar work of £40 for registration of an assignment, and on a decision of the leasehold valuation tribunal for the Eastern Rent Assessment Panel (CAM/11UF/LAM/002) in which administration fees were reduced.

9. For the landlord, David Bland LLB MIRPM Assoc RICS appears to say that the correspondence shows that the dispute has been settled because the tenant accepted the landlord's refund of £100. He says that the tenant waited four months between accepting the cheque and issuing the application which, he suggests, relying on dicta in *Standard Bank plc v Agrinvest International Inc* [2010] EWCA Civ 1400, was insufficiently prompt. He says that the burden of proof is on the tenant to show that the charges are unreasonable, and that she has not discharged the burden.

10. Mr Bland says that the Upper Tribunal decision cited by Mr Clemo supports the view that the charges made by the landlord in the present case are industry standard, and he asserts, surprisingly, that the leasehold valuation tribunal decision on which Mr Clemo relies did not determine that the charges were unreasonable, but only that they were "on the high side". He concludes that if the tenant genuinely had concern over the reasonableness of the fees she would have made the present application at the time of the transfer or immediately thereafter.

## Decision

11. We are satisfied, first, that the tenant did not, by paying the sum sought, £408, and accepting the ex gratia payment of £100, intend to admit that the remaining £308 was a reasonable administration charge or to abandon her right to apply to the Tribunal. The tenant's payment was expressly made without prejudice to her rights and we do not regard her acceptance of a refund as in any way affecting her rights to apply to the Tribunal under paragraph 5 of the Schedule.

12. We are also satisfied that the tenant has not unduly delayed in making the application. The landlord's partial refund was made under cover of a letter dated 21 August 2014 and the application is dated 20 November 2014. We do not regard that as undue delay.

13. As to Mr Bland's suggestion that the tenant has not discharged the burden of proof by providing evidence, we do not accept that. Mr Clemo has clearly stated his submissions and has provided authorities in support of his submissions and we, as an expert Tribunal, while we must not stray from the point put before us, are entitled and, indeed, bound to deploy our own experience in evaluating the arguments.

14. We are surprised that Mr Bland asserted that the leasehold valuation tribunal on whose decision Mr Clemo relied did not hold that some of the administration charges were unreasonable. It could not have reduced the charges, as it did, on any other basis, but in any event we prefer to rely on the decision of the Upper Tribunal in the *Norton* case.

15. As in that case, the landlord in the present case has not provided any basis for charges which appear, from the documents we have seen, to have been levied for work which required little or no professional expertise and very little time. We do not necessarily regard as determinative the fee of "not less than £25" plus VAT for the registration of notices stipulated in the lease dated 7 August 2006, although it provides some indication that the work involved would normally be expected to be very limited. In the *Norton* cases a fee of £40 for each registration was accepted as reasonable, but that decision is dated 2011. Doing the best we can, and having regard to the amount of work which we consider to have been required by the landlord, we determine that fees amounting, in all, to £100 plus VAT, or £120, would be reasonable, and that the balance paid, £188, was overpaid.

**Costs**

16. Any submissions which the tenant wishes to make as to costs and the reimbursement of fees must be sent to the landlord and to the Tribunal within fourteen days of receipt of this decision, and any submissions which the landlord wishes to make in answer must be sent to the tenant and to the Tribunal within 14 days of receipt of the tenant's submissions, if any. The Tribunal will issue its decision on any questions of costs within 14 days of receipt of submissions from both parties.

**Judge: Margaret Wilson**