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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AY/LAC/2016/0002**
Property	:	**Ground Floor Flat, 219 Norwood Road, London SE24 9AG**
Applicant	:	**Mr S Keeler and Mrs A. Keeler (Leaseholders)**
Representative	:	**Mrs A. Keeler**
Respondents	:	**Demprotas Enterprises Limited (Landlord)**
Representative	:	**D & J Yianni Ltd (Managing Agents)**
Type of Application	:	**Administration Charges – Schedule 11, Commonhold and Leasehold Reform Act 2002**
Tribunal Members	:	**Judge Lancelot Robson** **Mrs A. Flynn MA MRICS**
Date and venue of Paper Determination	:	**1st March 2016** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**1st March 2016**

DECISION

Decisions Summary

(1) In respect of the costs issues raised by the Applicants, the Tribunal determined that;

a) The sum of £250 (inclusive of VAT), already paid by the Applicants to the Respondent, is a reasonable sum for the work done by the landlord and its agents in connection with the application for licence to alter the premises by adding a garden room.

b) The Applicants shall pay £500 (inclusive of VAT) towards the Respondent's legal costs in connection with the grant of a formal licence to assign, if one is requested by the Applicants.

(2) The Tribunal granted the application made under Section 20c of the Landlord and Tenant Act 1985 to limit the landlord's costs of this application chargeable to the service charge to NIL.

(3) The Tribunal made the other determinations as set out under the various headings in this decision.

The application

1. By an application received on 7th January 2016 the Applicant sought a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 as to whether the administration charges demanded by the Respondent for a licence to carry out alterations were reasonable, reasonable in amount, and payable pursuant to a lease dated 4th August 2008 (the Lease).

2. Directions were given by the Tribunal in this case on 11th January 2016 for a determination on the papers. The issues noted there were:

   a) demand for £250 made on 23rd October 2016 towards the managing agent's fees, and paid on 27th October 2016.

   b)`demand for a further £3,000 payable to the Respondent, and sum of £500 towards the Landlord's legal costs.

3. None of the parties requested an oral hearing.

4. The Applicants sent their written statement of case with the application. The Respondent sent its reply on 20th January 2016. The Applicants sent their Response on 26th January 2016. The Respondent sent a further statement denying the allegation of a connection between the Respondent and the Managing Agent on 1st February 2016. The Tribunal considered and determined the case at a meeting on 1st March 2016. At that meeting the Tribunal noted that the copy lease provided was dated 27th September 1985 and sought clarification from the Applicants through the case officer. It was informed that that the Lease had been

varied by a further lease dated 4th August 2008, on substantially similar terms. As the submissions and references given by both parties accord with the copy lease in its possession it was satisfied that it had seen the relevant terms of the Lease dated 4th August 2008. For ease of reference extracts of relevant legislation are set out in the Appendix below.

Paper Determination

Applicants' Case

5. The Applicants in their Statement of Case and Response submitted that they had initially sought permission to erect a garden room for personal use in the garden of their property on 22nd October 2015. The Respondents managing agents, D & J Yianni Ltd (Yiannis) replied on 23rd October 2015 requesting an administration fee of £250 to obtain all relevant documentation, present it to the freeholder and negotiate with the freeholder regarding consent. This sum was paid on 27th October 2015. On 5th November 2015 Yiannis requested details of the building, which were supplied the same day. On 27th November 2015 Yiannis requested a further fee of £3,000 for the consent, and a further fee of £500 for the legal costs of a "deed of variation". It was suggested that if they used their own solicitors, the legal costs would be waived. Yiannis stated that "once we receive the sum of £3,000 in our account below the consent will be given". No further conditions were made.

6. After seeking legal advice that only a reasonable administration charge was payable, the Applicants disputed the proposed additional charges. Yiannis informed them that the £3,000 was a fee to the freeholder to give consent to build on the land. The Applicants informed Yiannis on 3rd December 2015 that they wished to apply to this Tribunal to settle the matter.

7. On 4th December 2015 Yiannis informed the Applicants that they would write to all the lessees and surrounding neighbours "regarding you erecting a large commercial office at the back of the garden", and stating that the office "might devalue the lessees and neighbours property". Despite the Applicants contacting Yiannis by return to remind them that the office was for personal study, and that they had already approached the other leaseholders, Yiannis contacted the other leaseholders by phone and by email informing them that the Applicants would be building a "large commercial office, and asking them to sign a waiver for Yiannis that they would not be liable for any reduction in their property value. Despite requests, Yiannis had given no reason for the need for these waivers. The Applicants protested on 9th December 2015, stating that they would proceed with an application to the Tribunal.

8. On 10th December 2015 Yiannis emailed again to state that the freeholders had sought legal advice, and that the fee for consent would now be an additional £300 plus legal fees for the deed of variation. However if a deed was required, the Respondent's solicitor must be used, and the Applicants would pay their legal fees. The Applicants considered that a total fee of £550 plus legal fees of £500 was an unreasonable charge. They attempted to negotiate with Yiannis, but their offer was rejected, on the basis that the time already spent by Yiannis on this

matter exceeded £250. The Applicants considered that much of such time had been spent on questioning of the demand for £3,000 and the legal fees.

9. The Applicants sought a determination of a reasonable administration charge for the consent, and as to whether the deed of variation could be produced by the Applicant's solicitor. They referred to two Tribunal cases, MAN/00CY/2006/0004 and MAN/00BQ/LAC/2010/0006 (one in 2006, the other in 2010, and both in the Northern Panel area) for guidance on reasonable amounts.

10. In their Response, the Applicants submitted that there was in fact a close connection between the Respondent and Yiannis, including the sharing of staff. Also they denied having received the letter dated 23rd October 2015 in the form produced by Yiannis in their Reply. They also drew attention to certain discrepancies in the lease provisions set out by the Respondent (see below).

Respondent's Case

11. The Respondent's submission relating to the chronology of events did not differ greatly from that of the Applicants. However the following differences were noted;

a) Yiannis had made it clear on 23rd October 2015 that their fee was for approaching the Respondent, and was totally separate from the fee the freeholder would charge. The Applicant's email of 23rd October 2015 also made it clear that the fee was not the "consent fee" from the freeholder. Yiannis did not mention anything about the freeholder's time to consider the consent. Yiannis considered that their emails of 22nd October and 4th December 2015 made it clear that the freeholders fees were going to be stated at a later date. Nine hours of Yiannis time had been spent. £250 was not even enough to pay their staff costs. They disputed the Applicant's claim in their statement that they had not been served with a statutory summary of their rights on 23rd October 2015. However a further copy had been sent on 16th December 2015 on the same day that the Applicants had raised this matter with them.

b) Clause 3c of the Lease provided that the lessee was "*not to make structural alterations or structural additions to the flat nor to erect any new building thereon or remove any of the landlord's fixtures without previous consent in writing*".

c) Cluse 3d) provided; "*to pay all costs charges and expenses including solicitors' costs and surveyor's fees reasonably incurred by the lessor*"

d) The proposed building was approximately three times bigger than the existing structure. It resembled an office rather than a place for storage. The fee of £3,000 was to reflect this, and the fact that building a garden office indicated some commercial activity. It was a breach of the First Schedule to the Lease - "*not to use the flat nor permit the same to be sued for any purpose whatsoever other than a private dwelling house in the occupation of one*

family one". However they now accepted that the building was for residential use only and thus had reduced the fee to £300 for the consent, for the freeholder's time to consider the consent. Also once the building was completed they would send a representative to check that the building was in accordance with the plans. This would cost up to £150.

e) The reason they had written to the other lessees asking for a disclaimer was to protect the interest of Yiannis and the Respondent.

f) The freeholder had on 16th December 2015 offered to reduce its costs to £250, and no deed of variation was now deemed necessary. If one was required by the Applicants it would cost £600 as shown in the estimate attached.

g) The only persons interested in the rear garden were the freeholder, and the Applicants, as it formed part of the original lease dated 27th September 1986.

h) They asked for an order from the Tribunal for Yiannis' costs of £275 for this application.

Determination and Decision

12. The Tribunal considered the documents and evidence.

Clause 3c of the Lease imposes a covenant on the Lessee:

"not to make structural alterations or structural additions to the flat nor to erect any new building thereon or remove any of the landlord's fixtures without previous consent in writing **which shall not be unreasonably withheld"***(emphasis added).*

Clause 3d) provides;
"to pay all costs charges and expenses including solicitors' costs and surveyor's fees reasonably incurred by the lessor **for the purpose of or incidental to the preparation and service of a notice under Section 146 and/or 147of the law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court**" (emphasis added).

13. The Tribunal thus found that the Respondent's view of the Lease was erroneous, to say the least. Clause 3d) in particular is not a general covenant to pay all charges, only those connected with Section 146 notices. No such notice has been served in this case. The Tribunal considered the Lease at some length. While the 4th Schedule imposes a service charge, the charge is restricted to "physical" matters at the property (such as repairs and cleaning), costs in connection with those physical items, and insurance. Other fees are not mentioned (other than in connection with Section 146 notices as noted above), and therefore prima facie are not recoverable. The parties had each received legal advice which presumably was founded on Section 19(2) the Landlord and Tenant Act 1927 (which applies to all leases). It is useful to set out that provision:

Section 19(2)

"In all leases whether made before or after the commencement of this Act containing a covenant condition or agreement against the making of improvements without a licence or consent, such covenant condition or agreement shall be deemed, notwithstanding any express provision to the contrary, to be subject to a proviso that such licence or consent is not to be unreasonably withheld; but this proviso does not preclude the right to require as a condition of such licence or consent the payment of a reasonable sum in respect of any damage to or diminution in the value of the premises or any neighbouring premises belonging to the landlord, and of any legal or other expenses properly incurred in connection with such licence or consent nor, in the case of an improvement which does not add to the letting value of the holding, does it preclude the right to require as a condition of such licence or consent, where such a requirement would be reasonable, an undertaking on the part of the tenant to reinstate the premises in the condition in which they were before the improvement was executed".

14. The Tribunal decided that in this case it was beyond doubt that the new structure would add to the letting value of the property, and is therefore an improvement. It also decided that no reasonable case could be made out for a claim for damage to or the diminution in value of the landlord's neighbouring property.

15. As a result, the Respondent is only entitled to its reasonable expenses of considering the consent. The Respondent's case put to the Tribunal has two major problems. Firstly the terms of the (disputed) letter dated 23rd October 2014 do not in fact make it clear that the Respondent's costs will be added. That point is just not mentioned there. Also the Applicants' reply to that letter, also relied upon by the Respondent on this point, does not, on a reasonable reading, imply knowledge or acceptance of a separate fee payable to the landlord. Secondly, despite Yiannis' denial of a connection, it appears from emails from the Respondent in the bundle that D. Yianni had sent an email from the email address of the Respondent. It is also noteworthy that the Applicants had been unable to contact the Respondent directly, that Yiannis instructed lessees not to do so, and that none of the correspondence from the Respondent mentions the name of any person on its notepaper or as signatories to letters. The letters also have no internal references. The Tribunal decided that on the balance of probabilities, there was a significant connection between the Respondent and Yiannis. In that case, the reasonable charges of Yiannis in considering the consent are appropriate, but without further information, any additional charges from the Respondent appear unreasonable, as reconsidering the documents already considered by Yiannis on their behalf would be needless duplication.

16. The Tribunal noted that Yiannis had spent a great deal of time attempting to get payment of fees which were not properly chargeable, and found no reasonable explanation for Yiannis' approaches to other lessees. The explanation offered was vague and appeared to lack any legal basis. In any event, that exercise seemed to have been abandoned after 10th December 2015.

17. The Tribunal noted that the cases relied upon by the Applicants on reasonable amounts were some years old, and related to cases well outside the South East of England. The Tribunal decided that these cases did not greatly assist it.

18. In the circumstances the Tribunal decided that a sum not exceeding £250 inclusive of VAT was a reasonable sum for the Respondent's costs in considering the application and giving consent.

19. While a formal licence for alterations for a temporary structure seems unnecessary it may be desirable. On close inspection, it is clear that the estimate relied upon by the Respondent (p56 of the bundle) in fact proposes a charge of £500 for a deed of variation, which is usually a more complex document than a licence for alterations. If the Applicants wish to obtain a formal licence the Tribunal decided that the sum not exceeding £500 inclusive of VAT would be a reasonable contribution to the Respondent's legal charges.

20. The Tribunal informs the parties that it has no jurisdiction to order any party to use any particular solicitor to prepare the licence to alter. It may be more appropriate for each party to retain its own solicitor, although this will add to the cost.

Costs

21. The Applicant made an application under Section 20c of the Landlord and Tenant Act 1985 to limit the landlord's charges in connection with this application. The Respondent applied for its costs of this application, but without identifying any statutory basis for doing so.

22. Dealing with the Respondent's application, the only legal basis for such a claim would be under Rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. This applies only in cases of unreasonable behaviour by a party. The Applicants have been substantially successful in the application, and there is no evidence that they have behaved unreasonably in bringing the application. The Tribunal decided to make NO order.

23. Dealing with the Applicants' application, the Tribunal decided that the Lease gave the landlord no power to charge for its costs of this application, but if it is wrong on that point, then the considerations in paragraph 22 above apply. The Respondent (which is professionally advised) had not sufficiently informed itself of the legal position prior to acting as it did, leading to a great deal of wasted costs. In that case the Tribunal decided to grant the Section 20C application thereby limiting the landlord's costs of this application chargeable to the service charge to NIL.

Judge Lancelot Robson
1st March 2016

Appendix

Commonhold and Leasehold Reform act 2002 Schedule 11,

(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 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.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(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.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(1) 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.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
  (a) has been agreed or admitted by the tenant,
  (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  (c) has been the subject of determination by a court, or
  (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or
  (b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

Landlord and Tenant Act 1985

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
  (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
  (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
  (c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances