FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HX/LAC/2019/0002
Property	**:**	5, Rigel Close, Swindon, Wiltshire SN25 2LH
Applicant	**:**	Mr Martin Fawcett
Representative	**:**	
Respondent	**:**	Furatto Limited
Representative	**:**	Pier Management Limited
Type of Application	**:**	Administration charges
Tribunal Member(s)	**:**	Judge D. Agnew
Date of Decision	**:**	10th April 2019

DECISION

Application and Background

1. The Applicant seeks a determination under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("CLARA") as to whether certain charges levied by or on behalf of his landlord, Furatto Limited are payable.

2. Directions were issued on 31st January 2019 which provided for a determination of the application on the papers without an oral hearing unless either party objected within 28 days. Neither party did object. I will return to these directions later in this decision.

3. Statements of case have been filed and served.

The Applicant's case

4. The Applicant is the lessee of Flat 5, Rigel Close, Swindon, Wiltshire SN25 2LH ("the Property"). His lease is dated 25th June 2007 and was made between Bovis Homes Limited (1) Martin Fawcett and Maralyn Fawcett (2) and The Oaks (Swindon) Management Company Limited (3).

5. Under paragraph 17 of the Fourth Schedule of the lease, headed "Conditions on alienation" there is the following requirement:-
" To give to the Landlord and the Management Company notice of every dealing with or subletting of the legal estate in the Demised Premises including all mortgages or Legal charges of the Demised Premises within twenty one days after the same shall occur and to pay to each of the Landlord and the Management Company such reasonable registration fees (but being not less than £50.00) and any vat properly chargeable thereon as the Landlord and Management Company and the Estate Management Company respectively shall from time to time determine". There is no provision requiring the lessee to seek the landlord's consent to underlet.

6. In every year since 2011 the Respondent's representative Pier Management Limited has requested a copy of the tenancy agreements with the subtenants and has charged a fee. In return Pier Management Limited issued the Applicant with a Licence to Sublet stating: "The Company hereby gives its licence and consent to the leaseholder to sublet the property on an assured shorthold tenancy agreement" and has charged a fee of £100 plus vat.

7. In 2015 the Applicant complained about this charge. Initially he thought it unnecessary to notify the landlord or management company about extensions of an existing assured shorthold agreement but on further research he has discovered that this would constitute a new dealing and so would attract a fee.

8. On 11th March 2015 a Ms Donaldson of Pier Management's subletting department gave the Applicant the company's justification for charging the aforesaid fee and she referred to paragraph 17.4 referred to in paragraph 5 above.

9. When asking for the fee Pier Management have asked for copies of the tenancy agreement and other information "for registration purposes and in order for us to update our records".

The Respondent's case

10. The Respondent accepts that the fee charged is for registration of the sublettings and not for consent to sublet (although this is at variance with the documentation it has issued which refers to applications for consent to sublet and licences to sublet).

11. The Respondent points out that from 2011 to 2015 the Applicant paid the charges without protest. The Respondent contends that there has to be a clear dispute at the time of payment for the same not to have been taken as admitted or agreed. The Tribunal does not accept that interpretation. Paragraph 5(5) of Schedule 11 of CLARA states that "the tenant is not to be taken to have agreed or admitted any matter by reason only of having made a payment".

12. The Respondent says, somewhat surprisingly, that it considers that the payability and reasonableness of the charges is not the real dispute but the frequency of the charge. The Tribunal, on the contrary, considers that the Applicant has made it quite clear that it is the amount of the charge that is disputed and the fact that he seems to be being charged for obtaining the landlord's consent to sublet when this is not required under the lease.

13. The Respondent maintains that the charge of £100 plus vat is both payable and reasonable for each and every subletting. It says that "the Respondent would call witness evidence of the subletting staff in support of their work done" but no such evidence was submitted with the Respondent's representations other than the assertion that the fee would not only cover registration but would include a "full review of the tenancy agreement, to ensure it complies with the user covenants of the lease and any building insurer's requirements".

Discussion and decision

14. Both parties have supplied a number of decisions of various tribunals in support of their case but neither has properly addressed the issue that I flagged up in Directions which were issued on 31st January 2019. That issue was whether the Tribunal has jurisdiction to determine the reasonableness of a registration fee simpliciter when it is not connected with a consent to sublet. This is because a registration fee is not an "administration charge" as defined in Paragraph 1(1) of Schedule 11 to CLARA. "Administration charge is there defined as "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** (emphasis added) under his lease, or applications for such approvals
    (b) to (d) not relevant"

    As there is no requirement in the lease to seek approval for subletting, mere registration of the subletting does not come within the definition of administration charge. If the registration fee is not an administration charge then the tribunal has no jurisdiction to determine whether it is reasonable.

15. The Respondent does cite the case of **Proxima GR Limited v Dr Thomas D McGhee [2014] UKUT 0059 (LC)** in which the Deputy Chamber President, Martin Roger QC said :-

"Whilst the tenant had not cross-appealed this point, the LVT was correct to conclude that it had no jurisdiction to determine the reasonableness of the registration fee, because this was not a variable administration charge. The written notice required to be given by the tenant under the lease was not a request for approval , nor was the charge one for the grant of an approval".

16. Some previous decisions have determined registration fees where there is a connection between the landlord consenting to underletting and the registration of that underletting. In the instant case, however, there is no requirement for the lessee to obtain consent of the landlord or management company to an underletting and therefore there can be no nexus between such a registration fee and a fee required for consent to sublet.

17. I am therefore compelled, reluctantly, to dismiss the application because the Tribunal has no jurisdiction to determine the reasonableness of a registration fee which is not connected to a consent of any kind under the lease. I accept that this is unfortunate from the Applicant's point of view. It means that he will need to commence proceedings in the County Court for such a judgment. He would have to do this in any event has he seeks repayment of monies paid out over the last few years but, again, this Tribunal has no jurisdiction to order repayment: that is a matter for the County Court. Ironically, once issued in the County Court the Court might transfer the case to this Tribunal for a Tribunal Judge such as myself to determine the case sitting as a County Court Judge under the Judicial Deployment Project, but in order for this to happen proceedings have to be initiated in the County Court. This rigmarole is unfortunate and undesirable but unfortunately that is the state of the law at the present time. If the Applicant is to commence proceedings in the County Court he will need to plead the situation in respect of each property in respect of which he seeks a refund, not just in respect of Flat 5 as he has done in the Tribunal proceedings.

18. In conclusion I would urge the parties to try to negotiate a settlement of this case rather than to compel the Applicant to go to the expense and trouble of starting proceedings afresh in the County Court. If the fee of £100 (twice that set as the minimum under the lease) erroneously includes producing an unnecessary licence to sublet then the charge as made would seem to be too high. If it is meant to cover a registration fee only then the Respondent will need to prove that it is a reasonable charge just for registration of a subletting. These concluding comments are meant to be helpful in steering the parties to try to reach an agreement. They cannot be taken as binding the decision of the County Court in any way if it comes to proceedings in that forum.

19. The Applicant has made an application under section 20C of the Landlord and Tenant Act 1985 for an order that the costs of these proceedings should not be regarded as costs to be included in the amount of any future service charge. The Respondent has not responded to that application. In view of the fact that the Respondent has not properly addressed the jurisdiction point which could have cut short the proceedings before the Tribunal and in view of the fact that documentation issued on behalf of the Respondent has clearly led the Applicant to consider that he has been charged for an unnecessary consent to sublet I consider that it is just and equitable for an order to be made under section 20C notwithstanding that the Applicant's application has been dismissed.

20. The Applicant has also, in his application form, sought an order under Paragraph 5A of Schedule 11 to CLARA seeking to reduce or extinguish his liability for contractual costs under the lease (paragraph 9 of the Sixth Schedule to the lease would appear to apply). Again, the Respondent has not responded to this application. I direct that if the Respondent intends to seek an order for costs against the Applicant that by **25th April 2019** the Respondent's representative shall send to the Tribunal and to the Applicant a schedule of costs for summary assessment together with a statement of case containing a statement of truth setting out why the Tribunal should not make an order under this provision. By **23rd May 2019** the Applicant shall respond to the Respondent's submissions and the Tribunal will then make a decision on the basis of the written representations without a hearing.

Dated the 10th April 2019

Judge D. Agnew.

PERMISSION TO APPEAL

1. A person wishing to appeal the 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.

2. 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.

3. 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.

4. 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.