



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

**Case Reference** : **MAN/OOCB/LAC/2019/0001**

**Property** : **50 Birnam Road Wallasey CH44 9AY**

**Applicant** : **Mr. Richard Webster**

**Respondent** : **Alton Property Management Ltd**

**Type of Application** : **Commonhold and Leasehold Reform Act 2002  
- Sch 11 para 5**

**Tribunal Members** : **Mr John Murray LLB  
Ms. Aisling Ramshaw MRICS**

**Date of Determination** : **17 May 2019**

**Date of Decision** : **13 June 2019**

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**DECISION**

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## **DECISION**

The Tribunal determines that the Administration Charge for consent to assign the lease is £100.

The Tribunal determines that the Respondent shall repay to the Applicant the application fee of £100 within 28 days of this order.

The Respondent is not entitled to recover Administration Fees under the terms of the lease.

## **INTRODUCTION**

1. An application was made by the Applicant on 1 January 2019 to determine liability of the Respondent to pay and the reasonableness of an administration charge under Schedule 11 paragraph 5 of the Commonhold and Leasehold Reform Act 2002, and for an order reducing or extinguishing the Applicant's liability to pay a particular administration charge in respect of costs incurred in connection with these proceedings.
2. A charge of £360 was made by the Respondent, and paid by the Applicant, for the transfer of title from the Applicant's sole name into that of his limited company. The Applicant suggested a fee of £75 was more appropriate and sought a refund of what he considered an excess charge.

## **THE PROCEEDINGS**

3. Directions were made by the Deputy Regional Valuer on 13 February 2019.
4. The parties were directed to provide bundles of specified documentation and statements in support of their positions.
5. Neither party requested a hearing, and the Tribunal convened on 17 May 2019 for deliberations and to make this determination. No inspection of the Property by the Tribunal was considered necessary.

## **THE PROPERTY**

6. The Property is described in the application as a three bedroomed terrace house constructed circa 1920.

## **THE LEASE**

7. The Property is held by the Applicant on a lease, dated 26 June 1987 for a term of 999 years originally between Suburban Homes Limited and Lyn Joinson.

8. In paragraph 5(g) of the Lease, the Applicant covenanted : “not to assign underlet charge or part with possession of the said property without the previous consent in writing of the Lessor at the cost of the Lessee such consent not to be unreasonably withheld”

## **THE LAW**

The relevant legislation is contained in of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 the relevant paragraphs of which read as follows:

- 1 (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.
- (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.

### **Liability to pay administration charges**

- 5 (1) An application may be made to the appropriate 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 the appropriate 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.

## **SUBMISSIONS**

### **THE APPLICANT**

9. The Applicant had received a demand for £360 for a fee to assign his lease. He was looking to assign it from his personal name into a company, also owned by him. He suggested £40 would be a fair price for this exercise, relying on a decision made in Tribunal case MAN/OOCB/LAC/2013/0003 for the same permission.
10. He provided a copy of that decision which involved the same parties on a similar point. In 2013 he had sought permission to charge the Property; was asked to pay £200 plus VAT to do so, and the Tribunal determined that the appropriate price was £40 plus VAT.

### **THE RESPONDENT**

11. In response the Respondent stated that the Applicant underestimated the extent of the work needed, and provided a list of the work involved, which was as follows:
  - i. Carrying out “discreet” internet based enquiries into the Applicant’s background
  - ii. In appropriate cases carrying out a bankruptcy search at the Land Registry
  - iii. In appropriate cases, as here, determining the credit status of a registered company, checking beta records held at Companies House.

- iv. Obtaining and inspecting a copy of the registered title to determine if there is a charge at the property and ascertaining whether any steps are necessary so as to validate the same (because it may not have been approved as is required by the lease or whether the lender should be notified that an application has been received to sublet the property where it might not have given such consent.
  - v. Reviewing the lease to determine what provisions apply, checking if ground rent is due, and preparing a formal consent document for approval.
  - vi. Asking to see insurance document stop confirm that the property is insured in accordance with the lease.
  - vii. “Desktop enquiries” as to the state and condition of the Property, possibly with referral to a surveyor (though not in this case) to consider if the leaseholder is complying with other covenants in the lease for example as to repair.
  - viii. Preparing a copy of the consent document for signature by a director of the client company.
  - ix. Documenting the above process.
12. The Respondent estimated that it’s staff were engaged for “about two hours” dealing with applications of this nature and that as “some of the work” had to be done by a professionally qualified individual, an hourly rate of £120 was applied in arriving at the fee payable for giving the consent.
13. The Respondent stated that the decision in MAN/OOCB/LAC/2013/0003 should be “ignored for the purpose of setting any precedent” as the Respondent “chose not to be involved in the decision”. No explanation was provided for that choice.
14. The Respondent noted that the Applicant had been charged VAT, but this was in error as the Respondent was no longer registered for VAT, and consequently a sum of £60 would be refunded to the Applicant.

## **THE DETERMINATION**

15. The Tribunal determined that the sum charged is a variable service charge falling within Paragraph 1(b) and (d) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and consequently within the Tribunal’s jurisdiction.
16. The Tribunal accept that there is more work involved than consent to a mortgage, but does not accept that any of the work would merit “professional qualification”. No evidence was provided that any of the work was carried out by a professionally qualified person, nor why it would need to be.
17. “Discreet internet enquiries” as to the name of an individual, or in this instance a company, would not be a lengthy process. In this instance it would not be necessary if a search was done at Companies House.

18. There was no evidence in the email chain provided that the Respondent had asked to see the insurance documents to confirm that the property was insured in accordance with the lease as was suggested.
19. There seems little reason for the Respondent to carry out “enquiries on a desktop basis” (whatever they might be) in relation to the repair of a house that will return to their ownership in just under 1,000 years time.
20. Checking a three page house lease with a three line clause for consent would not be an onerous task, nor would it require the attention of a professionally qualified person.
21. The Tribunal notes that the fee is a standard fee charged by the Respondent, and that urgency is not mentioned in those fees. As the original request was made in August and the consent not granted until October, there did not seem to be any degree of urgency applied to the transaction.
22. The Respondent’s best case, that an hourly rate of £120 was justified, for two hours, would result in a fee of £240. The Respondent had charged £360, although subsequently reduced this to £300.
23. In all the circumstances the Tribunal considers that an administration fee of £100 is appropriate.
24. The Applicant had made a further application under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 for an order reducing or extinguishing his liability to pay an administration charge in respect of litigation costs, i.e. contractual costs in the lease.
25. There is however no provision in the lease enabling the Respondent to charge for litigation costs, therefore no such order is required.
26. Given that this is the third application the Applicant has had to make to the Tribunal to reduce administration fees, the Respondent shall reimburse the Applicant the sum of £100 in respect of the application fee paid to the Tribunal within 28 days of this order.

**Mr J Murray**  
**Tribunal Judge**  
**17 May 2019**