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BIR/00CN/LVA/2006/0002

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE MIDLAND LEASEHOLD VALUATION TRIBUNAL

Schedule 11, Commonhold and Leasehold Reform Act 2002

Property: **28 Wynfield Gardens, King's Heath, Birmingham B14 6EY**

Applicant: Mr Richard Lewins (leaseholder)

Respondent: Elliott Land Company Limited (landlord)

Determination without a hearing under regulation 13 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003

Tribunal:

Lady Wilson

Mr S Berg FRICS

Date of the tribunal's decision: 24 May 2006

Background

1. This is an application by a tenant under paragraph 5 of Part I of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the Schedule") for a determination whether a variable administration charge demanded of him by his landlord is payable.

2. 28 Wynfield Gardens is a ground floor flat in a two storey development of similar flats. A small garden to the front and rear of the flat is also demised to the applicant, Mr Lewins, who will be referred to as "the tenant" in this decision. The flat is subject to a lease dated 21 June 1973 for a term of 99 years. The tenant purchased the residue the term in May 2001, and the survey which he obtained prior to his purchase shows that at the date of the purchase a small aluminium lean-to greenhouse, measuring 244 cm by 197 cm, had been constructed to the rear of the flat. Paragraph 12(A) of the Fourth Schedule to the lease contains a tenant's covenant:

> *Not to build or permit or suffer to be built or erected on the Demised premises any building or structure nor to make any structural alterations in or additions to any buildings which shall at any time be erected upon the Demised Premises except in accordance with plans elevations sections and specifications previously approved by the Lessor and to pay to the Lessor a fee to cover the administrative expenses and any surveyors fees of the Lessor in relation to any application for such approval.*

3. The landlord acquired the freehold before the tenant purchased his flat. On 16 May 2005 Mr R E G Scrivenor, the managing director of the landlord, who gives his qualifications as FCIOB FRSH FASI MRICS, wrote to the tenant to say that he understood that the tenant had constructed a conservatory without a licence, in breach of the lease, whereupon the tenant wrote to ask for retrospective consent. On 12 August 2005, Mr Scrivenor wrote to say that the size and method of construction of the lean-to was "acceptable to us" and that the landlord was prepared to grant

retrospective permission "subject to payment of the current fee based upon our licence fee tariff" which was said to be £650, "including administration and surveying costs". The letter said that failure to pay the fee within two months would lead to removal of the structure at the tenant's cost. In a further letter dated 12 September 2005 Mr Scrivenor said that the "licence fee" comprised £400 consideration for increase in the size of the dwelling space, and £250 surveyor/administration costs and disbursements, and that any further work in connection with the matter "would increase the costs concerned". Under cover of a letter dated 21 September 2005 the tenant sent a cheque for £250 for the surveying and administration costs, to which Mr Scrivenor responded on 6 October 2005 that the licence would not be granted until the balance of the sum demanded was paid. Having received advice, the tenant then wrote to say that he considered the claim to be statute barred and requested either the licence or the return of the £250 which he had paid. On 1 March 2006 Mr Scrivenor demanded what he called the "balance of cost" of £400, plus £30 for the costs of the correspondence, and added "Should the monies never be paid and the structure be therefore razed to the ground, then all costs and expenses will be as shown in any future Notice of Removal".

4. Having received this letter, the tenant made the present application to the tribunal.

5. Pre-trial directions were made on 12 March 2006. These included provision for a determination without an oral hearing if the parties agreed, and (at paragraph 1) required the landlord to include with its statement in answer to the application a particularised list of any expenses which it had incurred or will incur in connection with the proposed grant of permission for alterations, and to attach to the statement any relevant documents, including any notices or correspondence served with or after the demand for payment.

6. Both parties have agreed to a determination without a hearing, and the tribunal is satisfied that justice can be done without an oral hearing.

The tenant's case

7. The tenant said in his application that the Limitation Act applied because the lean-to was built more than 12 years ago, and at least eight years before he and his wife bought the flat. He said that a charge for an increase in the dwelling space was not covered by the lease. In his statement in reply to the landlord's case he confirmed that the structure had been in place for 12 years, that during the whole of the time it could be clearly seen. He said that he wished for the £250 he had already paid to be refunded because he did not believe that he had been legally obliged to pay it.

The landlord's case

8. For the landlord, Mr Scrivenor said that the landlord's claim was for £680, being the licence fee identified in the letter dated 12 September 2005 to which reference is made in paragraph 3 above, together with the additional sum of £30 claimed in the landlord's letter dated 1 March 2006, also referred to in paragraph 3. He said that the lease was silent as to how any licence should be valued, but that his company had in November 2001 granted eight licences for porches about 1.76 square metres in size at licence fees of £485 (each) inclusive of surveying and administration charges, and that, allowing for retail price inflation from November 2001 and May 2005 and for the larger size of the lean-to which is the subject of the present dispute, the licence fee in the present instance should be £1443, so that the licence fee demanded had been "severely mitigated" by the landlord. He added that the landlord's fee cost for dealing with the application to the tribunal was £282 and he asked for reimbursement of that sum.

Determination

9. It is clear that the sums which the landlord has claimed from the tenant as a licence fee and associated costs are variable administration charges within the meaning of the Schedule, paragraph 1(1) of which provides that "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*
>
> ....
>
> *(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.*

It has not been and could not be disputed by the landlord that the proposed charges fall within one or both of these sub-paragraphs.

10. By sub-paragraph 1(3) of the Part I 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 sub-paragraph 2, *a variable administration charge is payable only to the extent that the amount of the charge is reasonable.*

11. By virtue of the Commonhold and Leasehold Reform Act 2002 (Commencement No 2 and Savings (England) Order 2003, the Schedule came into force on 30 September 2003 in respect of administration charges payable on or after that date.

12. By sub- paragraph 4(1) of Part I of the Schedule:

> *A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.*

Sub-paragraph 4(2) provides for the making of regulations prescribing the form of such summaries, although no such regulations have yet been made.

Sub-paragraph 4(3) provides:

> *A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.*

13. The landlord has been directed to provide a copy of any notices served with or after the demand for payment. It has not provided anything which could be regarded as a summary of rights and obligations within the meaning of paragraph 4, and accordingly no administration charge whatsoever is payable by the tenant.

14. It is, however, possible that the landlord may decide to make a fresh demand, accompanied by a statement of rights and obligations which complies with sub-paragraph 4, and we will therefore now consider whether the charges demanded are reasonable and payable, and, if not, what amount, if any, would be reasonable and

payable.

15. The lease provides that the fee to be paid in respect of alterations or additions to the demised premises is to cover "the administrative expenses and any surveyor's fees ... in relation to any application for ... approval". There is no provision for a fee to be paid for the increase in dwelling space which the structure in question affords, nor would such a fee be, in our view, reasonable. The landlord was directed to particularise the landlord's expenses in connection with this matter, but none have in our view been established apart from, it would appear, the time spent by Mr Scrivenor in writing letters which we regard as quite intimidating and unpleasant and which contain demands which are in our view extortionate. It does not appear that a structural survey has been carried out or is necessary, and, indeed, it appears inconceivable that the lean-to could compromise the structure of the building or detract from its value in any way. A reasonable fee for granting a retrospective licence for this modest structure would, we consider, be no more than £100. If no licence is granted, it would not be reasonable for any fee to be charged.

16. We do not agree with the tenant's submission that the claim is statute-barred, because time runs from the date when the cause of action accrues, which is the date when the tenant's breach of covenant was discovered, which, it appears, was not until 2005.

17. Accordingly we determine that, at present, no administration charge is payable for the grant of a licence because the demand for payment was not accompanied by the required notice. If a fresh demand is made, accompanied by an appropriate notice, and if a licence is granted, we determine that a reasonable fee for granting it will be £100 to cover the landlord's costs of preparing the licence.

18 The tenant has asked for an order under section 20C of the Landlord and Tenant

Act 1985 to prevent the landlord from placing on any service charge its costs in connection with these proceedings. Applying the principles set out by the Lands Tribunal in *The Tenants of Langford Court v Doren* (LRX/37/2000), we have concluded that an order should be made under section 20C, since the landlord's stance in this matter has been wholly unreasonable.

19. The landlord has asked for its costs to be paid by the tenant, but the tribunal has no power to award costs other than by a determination under paragraph 10 of Schedule 12 to the 2002 Act. Had we such a power, we would not have exercised our discretion in the landlord's favour in the circumstances of this case.

20. The tribunal has power under regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 to order reimbursement of the whole or part of any fees paid by a party in respect of the proceedings. Notice was given in paragraph 5 of the directions that the parties could make submissions on this issue, and the landlord was accordingly on notice that reimbursement might be considered by the tribunal. We determine that the whole of the fee paid by the tenant, which appears from the application form to be £70, should be reimbursed by the landlord.

CHAIRMAN: Lady Wilson

DATE: 24 May 2006