

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/21UH/LAC/2009/0008

DECISION AND REASONS

Application : Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as amended (“the 2002 Act”)

Applicant/Leaseholder : Ms Johanna Henderika Jacoba Maltha

Respondent/Landlord : Sinclair Gardens Investments (Kensington) Limited

Building : Fernbank, Tollwood Park, Crowborough, East Sussex, TN6 2SX

Flat 36 : the Applicant/Leaseholder’s flat in the Building

Date of Application : 18 September 2009

Date of Directions : 24 September 2009

Hearing : determined on the papers without a hearing

Members of the Tribunal : Mr P R Boardman JP MA LLB (Chairman), and Mr A J Mellery-Pratt FRICS

Date of Tribunal’s Decision and Reasons : 20 November 2009

Introduction

1. The Applicant/Leaseholder stated in her application that the grounds of her application were :
 - a. that late administration charges were being applied but the Respondent/Landlord was refusing to offer a standing order service as specified by the lease for rent payment
 - b. high licence charges (£150 [sic] and £100) for replacing wood windows by UPVC windows and permission to let Flat 36
2. However, by a letter to the Tribunal dated the 15 October 2009 the Applicant/Leaseholder stated that the Respondent/Landlord had offered to reimburse the late payment charges and that the Applicant/Leaseholder could set up a standing order, and that the only remaining issue before the Tribunal was now the licence charges

The Applicant/Leaseholder’s lease

3. The material parts of the lease dated the 25 January 1985 were as follows :

2 [Tenant’s covenants] :

(7) Not without the licence in writing of the Lessor to make.....any addition or alteration in the demised premises.....

(17) Not to assign or underlet.....the demised premises without first obtaining from the intended assignee or underlessee the execution of a mutual deed of covenant (such deed to be produced by the Lessor's solicitors whose reasonable costsshall be borne by the Tenant).....

Applicant/Leaseholder's letter 12 August 2005

4. The Applicant/Leaseholder stated that she intended to change the current windows for UPVC double glazed windows. She stated that she was enclosing sketches of the current situation and of the new design, a floor plan, and a £140 [sic] cheque

Licence for alterations 26 September 2005

5. A deed between the Respondent/Landlord (1), the Applicant/Leaseholder (2), and Southern Managing Agents Limited (3), granted, subject to a consideration of £140 [sic], licence to the Applicant/Leaseholder to replace the existing windows and frames at Flat 36 with double glazed UPVC windows and frames, subject to various conditions
6. The document comprised three A4 pages and a site plan

Applicant/Leaseholder's letter 7 April 2009

7. The Applicant/Leaseholder stated that she was requesting licence to let Flat 36. In accordance with advice from one of the Respondent/Landlord's staff, she was enclosing a cheque for £100 for the licence, but was paying it under protest as she thought it was a disproportionate fee

Licence to sub-let 17 April 2009

8. A deed between the Respondent/Landlord (1) and the Applicant/Leaseholder (2) granted, subject to the Applicant/Leaseholder paying the Respondent/Landlord's "reasonable costs and expenses in granting this Licence in the sum of £100", licence to the Applicant/Leaseholder to create sub-tenancies as she should see fit, subject to various conditions
9. The document comprised three pages

Applicant/Leaseholder's letter 1 October 2009

10. The Applicant/Leaseholder stated that the administration charges were not specified in the lease. Although a reasonable fee would be accepted, she did not think that £140 and £100 respectively were a true reflection of time and expertise involved

Statement by Mark Kelly 10 November 2009

11. Mr Kelly stated that he was a director of First Management Limited, trading as Hurst Managements, which managed the Building on behalf of the Respondent/Landlord

12. With regard to the fee for the licence for alterations, the Respondent/Landlord's managing agent was required to :
- a. consider the tenant's request to undertake alterations and seek instructions from client
 - b. send a letter advising the tenant of the landlord's requirements and confirm the costs associated with the licence
 - c. upon receipt of a response to this letter consider the documentation (to include drawings) received to confirm that the landlord's requirements have been met
 - d. receive and process the cheque covering the licence fee
 - e. receive the lease from distant archive
 - f. peruse the lease to confirm the relevant clause to undertake alterations of the demised premises is applicable in this instance
 - g. draft the licence
 - h. forward the licence to the tenant for approval and execution
 - i. arrange for the licence to be executed by the landlord
 - j. return the original licence to the tenant
 - k. lodge the counterpart licence with the counterpart lease
 - l. arrange for the lease to be returned to the distant archive
13. The time taken to undertake the work "would be approximately 2 hours", and "in the circumstances the charge of £140 is reasonable"
14. With regard to the fee for the licence to sublet, the Respondent/Landlord's managing agent was required to :
- a. consider the tenant's request to sublet and seek instructions from client
 - b. send a letter advising the tenant of the landlord's requirements and confirm the costs associated with the licence
 - c. receive and process the cheque covering the licence fee
 - d. retrieve the lease from distant archive
 - e. peruse the lease to confirm the relevant clause to sublet is applicable in this instance
 - f. draft the licence
 - g. arrange for the licence to be executed by the landlord
 - h. return the original licence to the tenant
 - i. lodge the counterpart licence with the counterpart lease
 - j. arrange for the lease to be returned to the distant archive
15. The time taken to undertake the work "would be approximately 1.5 hours", and "in the circumstances the charge of £100 is reasonable"

The Tribunal's findings

16. The Tribunal finds that it is clear from Mr Kelly's statement that his lists of work "required" and for which the amount of time "would be approximately [2 hours and 1.5 hours respectively]" indicate a general assessment of what might be required in cases of this kind, rather than constituting evidence of what was actually done in the Applicant/Leaseholder's case on each occasion, and that there is no evidence, whether in the form of timesheets or otherwise, of :

- a. the actual amount of time, if any, spent by the Respondent/Landlord's managing agent on each of the items of work listed in Mr Kelly's statement in relation to the two licences granted to the Applicant/Leaseholder, or
 - b. the managing agent's hourly charging rate on the respective dates when the two licences were granted, namely September 2005 and April 2009

17. The Tribunal, drawing on its collective knowledge and expertise in these matters, makes the following findings

18. A managing agent would, on taking initial instructions from a landlord on being appointed managing agent of a block of flats, amongst other matters :
 - a. obtain copies of samples of each different form of lease of flats in the block
 - b. make a note of which flats had which form of lease
 - c. obtain instructions on the landlord's policy on granting licences to assign and sublet and on granting licences to make alterations
 - d. draft a standard form of wording for each type of licence
 - e. note where the counterpart leases are held on behalf of the landlord

19. It is accordingly not reasonable for a managing agent to make a charge to any individual lessee for any of those items of work, whether on an application for licence to assign, sublet or to make alterations, or otherwise

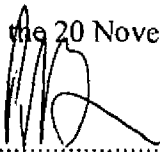
20. In relation to the 2005 licence to make alterations, it is reasonable for the following items of work listed by Mr Kelly to have been charged to the Applicant/Leaseholder, and for the following amounts of time in each case :
 - a. advising the tenant of the landlord's requirements and confirming the costs associated with the licence : 5 minutes
 - b. receiving and processing the payment of the licence fee : 5 minutes
 - c. considering the proposed works and any conditions to be attached to the grant of the licence : 10 minutes
 - d. drafting the details to be added to the standard draft licence, including considering, if there was more than one, which form of lease was held by the Applicant/Leaseholder : 15 minutes
 - e. arranging for the licence to be executed by the landlord : 5 minutes
 - f. obtaining the Applicant/Leaseholder's signature : 5 minutes
 - g. sending the original licence to the Applicant/Leaseholder : 5 minutes
 - h. lodging the counterpart licence with the counterpart lease : 5 minutes
 - i. total : 55 minutes

21. In relation to the charging rate, the Tribunal notes Mr Kelly's suggestion that the time taken to undertake the work "would be approximately 2 hours", and "in the circumstances the charge of £140 is reasonable", from which the Tribunal infers that the managing agent's charging rate at that time was £70 an hour

22. The Tribunal has found that it was reasonable for 55 minutes of time to have been charged to the Applicant/Leaseholder. 55 minutes at £70 an hour would amount to £64.17

23. However, having considered all the evidence in this case in the round, the Tribunal finds that a reasonable figure was £70, and finds that the amount payable in respect of the licence for alterations was therefore £70
24. In relation to the 2009 licence to sublet, it is reasonable for the following items of work listed by Mr Kelly to have been charged to the Applicant/Leaseholder, and for the following amounts of time in each case :
 - a. advising the tenant of the landlord's requirements and confirming the costs associated with the licence : 5 minutes
 - b. receiving and processing the payment of the licence fee : 5 minutes
 - c. drafting the details to be added to the standard draft licence, including considering, if there was more than one, which form of lease was held by the Applicant/Leaseholder : 15 minutes
 - d. arranging for the licence to be executed by the landlord : 5 minutes
 - e. sending the original licence to the Applicant/Leaseholder : 5 minutes
 - f. lodging the counterpart licence with the counterpart lease : 5 minutes
 - g. total : 40 minutes
25. In relation to the charging rate, the Tribunal notes Mr Kelly's suggestion that the time taken to undertake the work "would be approximately 1.5 hours", and "in the circumstances the charge of £100 is reasonable", from which the Tribunal infers that the managing agent's charging rate at that time was £66.67 an hour
26. The Tribunal has found that it was reasonable for 40 minutes of time to have been charged to the Applicant/Leaseholder. 40 minutes at £66.67 an hour would amount to £44.45
27. However, having considered all the evidence in this case in the round, the Tribunal finds that a reasonable figure was £50, and finds that the amount payable in respect of the licence to sublet was therefore £50
28. There is no evidence before the Tribunal that VAT has been added to either of the licence fees charged to the Applicant/Leaseholder

Dated the 20 November 2009



.....
P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor