

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**SOUTHERN RENT ASSESSMENT PANEL**  
**SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

IN THE MATTER OF APPLICATIONS UNDER (A) SCHEDULE 11 OF THE  
COMMONHOLD AND LEASEHOLD REFORM ACT 2002 (ADMINISTRATION  
CHARGES) AND (B) UNDER SECTION 20C OF THE LANDLORD AND  
TENANT ACT 1985 (FOR AN ORDER LIMITING THE LANDLORDS COSTS OF  
THESE PROCEEDINGS)

Case No. CHI/29UD/LAC/2010/0012

Re: 37 Lightermans Way, London Road, Greenhithe, Kent, DA9 9FH

BETWEEN:

Ms G.K. Macdonald & Mr D. Rosenthal  
("The Applicants")

and

Peverel Properties Limited  
(Estates & Management Limited)  
("The Respondent")

Date of Determination: 19<sup>th</sup> November 2010

Members of the Tribunal: Mr J.B. Tarling, Solicitor, MCMI (Lawyer/Chairman)

**THE DECISION OF THE LEASEHOLD VALUATION**  
**TRIBUNAL**

- (a) The reasonable amount payable by the Applicant Lessees to the Respondent in connection with the Granting of Consent for a sub-letting together with any Registration Fee in this case shall be a combined total of £75.00 plus VAT
- (b) The Tribunal makes an Order under Section 20C of the Landlord and Tenant Act 1985 that all of the landlords costs of these proceedings shall not be regarded as relevant costs to be taken into account in determining the amount of any service charges.

**REASONS FOR THE DECISION**

**BACKGROUND TO THE APPLICATION:**

1. This Application is made under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") and asks the Tribunal to determine the reasonableness of the amount of an Administration Charge. The Administration Charge in question is a Fee of £210.00 per sub-let charged by the Freeholders Peverel Properties Limited for consent for a sub-letting and registration.

2. This Application was received at the Tribunal Office on 30<sup>th</sup> September 2010. The matter was reviewed by a Procedural Chairman on 14<sup>th</sup> October 2010 providing for both parties to file written representations and Notice was given to the parties under the LVT Procedure Regulations (as amended) that the Tribunal intended to determine the matter as a paper determination unless any party requested an oral hearing. Neither party requested an oral hearing and the matter was set down for a decision as a paper determination.

### 3. SCHEDULE 11 OF THE 2002 ACT (Administration Charges)

*Meaning of "administration charge"*

*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*

*Liability to pay administration charges*

*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*

4. Section 20C of the 1985 Act. This is an application by a tenant for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by the tenant.

### 5. WHAT THE TRIBUNAL IS BEING ASKED TO DETERMINE

The Applicants completed their Application Form and under the item "grounds for the application" on Page 6 of the Form they say "The charge is £210 per sublet and this charged if the tenant renews. This charge is unreasonable as assured shorthold tenancies are standard worded documents and we pay a managing agent to select tenants and manage the property. Why has this charge been requested after 5 years?"

After considering the wording of the grounds for the application the Tribunal concluded that the Applicant was challenging the liability to pay the Administration Charge, and also the amount of such Charge. Accordingly this determination will deal with both liability to pay as well as the reasonableness of the amount of the Administration Charge.

### 5. THE LEASE

The Lease in question is dated 8<sup>th</sup> December 2005 made between Crest Nicholson (South East) Limited (1) (Lessor) Ingress Park (Grenhithe) Management Limited (2)

(The Management Company) Peverel OM Limited (3) (the Manager) and Gillian Karen Macdonald and Daniel Rosenthal (4) (Lessee) and is a grant of a term of 999 years from 1<sup>st</sup> May 2000. It is noted that the Applicants were the original Lessees. The Lease contains the usual covenants by landlord and tenant that are normal in a modern Lease of a residential leasehold Flat. The covenant which is relevant to the application is as follows:

The Eighth Schedule (Covenants by the Lessee) Part One

25. Not at any time during the Term:

- 25.1 *under-let the whole or any part of the demised Premises save that an underletting of the whole of the demised Premises is permitted in the case of an assured shorthold tenancy agreement (or any other form of agreement which does not create any rights of tenancy for the tenant) with the prior written consent of the Manager or its agents (such consent not to be unreasonable withheld or delayed)*
- 25.2 *grant any under-lease of the whole or any part of the Demised Premises save that an under-lease of the whole of the demised premises is permitted with the prior written consent of the Manager or its agents (such consent not to be unreasonably withheld or delayed)*
- 25.3 *separately assign transfer or part with the possession or occupation of any part or parts of the demised premises but only to assign transfer or part with possession therefore as a whole and not to assign transfer or part with possession or occupation of the whole or parts of the demised Premises during the last seven years of the term without the prior written consent of the Manager or its agents (such consent not to be unreasonably withheld or delayed) and also to pay or cause to be paid to the Manager such reasonable fee at the same time as the granting of every consent.*
28. *Within one month after the date of any and every...tenancy agreement (including any immediate or derivative under ... tenancy agreement aforesaid) of the Demised Premises AND the Management Company notice in writing of such disposition ...with full particulars thereof ...and in the case of an under-lease if required by the manager a copy thereof for registration and retention by it ...and to pay or cause to be paid at the same time to the Manager and the Management Company respectively such reasonable fee appropriate at the time of registration in respect of any such notice perusal of documents and registration affecting the demised Premises..."*

6. Correspondence relating to consent for sub-letting

Before the Tribunal was a letter dated 20<sup>th</sup> September 2010 from the Respondent's Agents, Estates & Management Limited to the Applicants. This letter referred to Clause 25(1) of the Eighth Schedule of the Lease and indicated that written consent to any subletting was required. It further referred to Clause 28 of that Schedule required Notice and payment of a fee "to deal with the registration. The Manager is entitled to charge a fee for issuing consent and to deal with registration".

7. The Applicant's Case:

(a) The Tribunal also had a letter of representation from the Applicants dated 21<sup>st</sup> October 2010. The Applicants said they did not wish to submit any further documents apart from a copy of the Assured Shorthold Tenancy Agreement, which they enclosed. That Agreement was dated 14<sup>th</sup> November 2010 and was for a period of twelve months from that date. The letter went on to say "We think the facts of the case are simple, we wish the Tribunal to adjudicate as to whether the sub letting fee of £210 the managing agents are trying to charge is reasonable as per the terms of the lease. We cannot see how a fee of £210 per tenancy and at each renewal can possibly be reasonable to review a standard legal document, and would refer to the tribunal case in 2009 which we downloaded and sent with our application. We are also puzzled as to why it was 5 years before this fee was requested."

(b) Attached to the Application form was a copy of "Sublet Guidelines" issued by the Managers, Estates & Management Limited. This gave a figure of £135 for consent and another fee of £75 for registration. This made a total of £210.00

(c) In addition, the Applicants had sent to the Tribunal a copy of the LVT's decision in the case of 18 Oxclose Park Gardens, Sheffield (details of which are set out in the Schedule to this Decision). The Applicants maintain that another Tribunal has decided that a reasonable fee for combined Consent for sub-letting and registration is £75.00 plus VAT.

8. The Respondent's Case

(a) The Respondent has filed a Statement dated 7<sup>th</sup> November 2010. That Statement refers to the provisions in the Lease and described the procedures adopted by the Respondents regarding any sublettings. These were described as follows:

"The procedure adopted by the respondents agents when an application is received to sub-let a property is extensive as a subletting affects all the lessees in a block and so the agents will undertake a perusal of a copy of the assured shorthold tenancy to ensure the appropriate covenants are contained within that tenancy, and once completed, registering full details of the tenancy in their records and passing appropriate information to the property managers as a full record of occupants of all flats will be needed by those managers especially in the event of an emergency. The documents will be reviewed by the agent's legal department and once they are satisfied a consent document will be issued. The charge for this work is £135.00 and it is estimated that an administrator would spend approximately two hours in dealing with the application including input of information and the legal department approximately one hour.

(b) In reply to the Applicant's contention that there is no provision in the Lease for a charge for the grant of consent to be made the Respondent refers to Section 19 of the Landlord and Tenant Act 1927 which reads as follows:

*(1) In all leases whether made before or after the commencement of this Act containing a covenant condition or agreement against assigning, underletting, charging or parting with possession of demised premises or any part thereof without licence or consent, such covenant, condition or*

*agreement shall, notwithstanding any express provision to the contrary, be deemed to be subject-*

*(a) to a proviso to the effect that such licence or consent is not to be unreasonably withheld, but this proviso does not preclude the right of the landlord to require payment of a reasonable sum in respect of any legal or other expenses incurred in connection with such licence or consent”*

The Respondent submits that for the above reasons the administration charge is both valid and reasonable and is due and payable before consent to under-let can be granted.

(c) So far as the fee for the notice of registration is concerned the Respondents argue that the Tribunal has no jurisdiction to determine the reasonableness of the registration fee. They refer the two LVT Decisions (which are referred to in the Schedule to this Decision which they claim supports their view that a registration fee of not a “variable administration charge” within the meaning of the definition in Schedule 11 of the 29002 Act. The Respondents conclude that “If the LVT did have jurisdiction it is submitted that the charge of £75 for the registration fee is a reasonable one.”

9. LVT DECISIONS REFERRED TO BY THE PARTIES

Attached to this Decision is a Schedule of other 3 LVT Decisions which the parties referred the Tribunal to in their respective written representations. Copies of the actual LVT Decisions were submitted by the parties and the Tribunal had them before them when they made their Decision.

10. THE TRIBUNALS CONSIDERATION

The Tribunal began by reading through the Application Form, the copy Lease, the written representations made by the parties and the copy LVT Decisions. There were two matters to be considered:

- (a) The liability to pay the fee for consent and the fee for registration
- (b) The reasonableness of the amount of such fees

11. Dealing firstly with the liability to pay, this is split into the two Fees

- (a) the fee for consent and
- (b) the fee for registration

12. The liability to pay the Fee for consent

Clause 25.1 of the Eighth Schedule to the Lease clearly provides for the landlord’s consent to a sub-letting. Even though there appears to be a typing error in the wording in that the word used is “with” instead of “without” immediately before the words “the prior written consent” in that clause, the Tribunal is content to interpret the wording restrictively as the opening words in Clause 25 say “Not at any time...” Whilst the amount of the fee was not set out in the Lease, the Respondents were correct to refer the Tribunal to the provisions of Section 19 (1) of the Landlord and Tenant Act 1927 (see paragraph 7(b) above). The Applicants had not commented upon this proposal in their submissions, but they were aware that the Respondents had referred the Tribunal to those statutory provisions. For these Reasons the Tribunal

concluded that a Fee is payable for consent to sub-letting and the Applicants are liable to pay it to the Respondent.

13. The liability to pay the Fee for registration

(a) Clause 28 of the Eighth Schedule to the Lease clearly provides for a notice of underletting and “such reasonable fee appropriate at the time of registration” is payable. The Applicants in their Application Form do not say exactly why they wish to challenge the liability to pay a registration fee (as opposed to the Fee for consent to sub-letting).

(b) The Respondents in their written submissions refer the Tribunal to the two Eastern Panel Cases (prefixed with CAM in the Case Numbers) listed in the Schedule to this Decision. In both those cases the wording of the Leases were different to the current matter. In one case the Fee was stated to be “not less than £40” and in the other it was fixed at £10. In any event LVT Decisions are not binding on another LVT, although they are sometimes helpful in giving clarity. In this case the Tribunal decides not to follow those decisions for the reasons given.

(c) The Tribunal reminded itself of the wording of various parts of Schedule 11 of the 2002 Act. In particular Paragraph 1(3) of that Schedule defines a variable administration charge as one which is neither (a) specified in his lease or (b) calculated in accordance with a formula specified in his lease. It would appear that the amount of the administration charge in this case is neither specified or calculated according to a formula in this Lease. For that reason the Tribunal finds that the charge is a variable administration charge within the meaning of Schedule 11 of the 2002 Act. Paragraph 5 of that Schedule clearly says that a party may apply to the Tribunal for a determination as to “(c) the amount which is payable.” In interpreting these statutory provisions the Tribunal reminded itself of the “mischief” that these provisions were intended to cure. It seemed to the Tribunal that the whole point of this Schedule was to give the Tribunal powers to reduce the amount of any unreasonable administration charges. That is exactly what the Applicants are asking it to do.

(d) In addition to the LVT Decisions referred to it by the parties, the Tribunal is minded to follow one of its previous Decisions on the point. In the case of 2 Jetty House, Upper Reach, Chertsey (Case Number CHI/43UG/LAC/2009/0013) decided on 23<sup>rd</sup> April 2010, the Tribunal decided that the combined fee for granting consent for sub-letting and for registration would be £75.00 plus VAT. In that case the Respondent did not challenge the Tribunal’s jurisdiction to make a determination.

(e) For the above Reasons the Tribunal determines that the Applicants are liable to pay a registration fee and the Tribunal has jurisdiction to make such a determination on liability to pay as well as the reasonableness of the amount.

14. The reasonableness of the amount of the fees

Having reviewed all the above documents and arguments put forward by the parties, the Tribunal also used their expert knowledge and experience in deciding that there was a level of fees for the granting of consent for sub-lettings in the market generally. The previous LVT Decisions

in the cases of 18 Oxclose Gardens, Sheffield and 2 Jetty House, Chertsey both gave the Tribunal a helpful level of fees for this kind of work. For these reasons the Tribunal concluded that a reasonable fee for both granting consent for sub-letting and for registration in this case would be £75 plus VAT instead of £210.00.

15. Section 20C Application

Following the conclusion of its determination, the Tribunal considered the Applicants Application under Section 20C of the 1985 Act. The Applicants had succeeded in reducing the amount of the fees from £210.00 to £75.00 plus VAT. The Applicants had made their application as there had been no sign of the Respondents being willing to review their fees and this had made the application inevitable. Accordingly, for these reasons, the Tribunal was content to make an Order that the Landlords costs of these proceedings shall not be included in any Service Charge payable by the Tenants.

Dated this 19<sup>th</sup> November 2010

Signed  
John B. Tarling, Solicitor, MCMI  
(Chairman)

ADMINISTRATIONCHARGES37Lightermansway2010

**SCHEDULE OF LVT DECISIONS**  
Case Number CHI/29UD/LAC/2010/0012  
Schedule of LVT Decisions referred to in this Decision

Item	Case Number/Address	Date of Decision	Lease Provisions	Amount decided
1.	CAM/26UJ/LAC/2010/0001 Flat 40 The Quadrant, Rickmansworth, Herts WD3 1GA	1 <sup>st</sup> July 2010	"a reasonable fee (not being less than £40) plus any Value Added Tax.	No determination
2.	CAM/22UQ/LAC/2009/0008 69 Granary Court, Haslers Lane, Great Dunmow, Essex CM6 1BW	1 <sup>st</sup> February 2010	"a fee of £10.00 plus Value added Tax "	No determination (Fixed registration fee)
3.	MAN/00CG/LAC/2008/0006 18 Oxclose Park Gardens, Halfway, Sheffield, S20 8GR	12 <sup>th</sup> March 2009	"such reasonable fee"	Fee for consent and registration £75.00 plus VAT
4.	CHI/43UG/LAC/2009/0013 2 Jetty House, Upper Reach, Chertsey, KT16 8LQ	20 <sup>th</sup> April 2010	"a reasonable fee"	Fee for consent and registration £75.00 plus VAT