



HM Courts
& Tribunals
Service

7647

LEASEHOLD VALUATION TRIBUNAL
Case no. CAM/00MC/LAC/2011/0008

Property : 17 New Bright Street,
Reading,
Berks. RG1 6QQ

Applicant : Tarek Roshdy Amer

Respondent : Proxima GR Properties Ltd. (through
its agent Estates & Management Ltd.

Date of Application : 30th November 2011

Type of Application : To determine reasonableness and
payability of administration charges
(Schedule 11 of the Commonhold and
Leasehold Reform Act 2002 ("the 2002
Act"))

The Tribunal : Mr. Bruce Edgington (lawyer chair)
Mr. David Brown FRICS MCI Arb

Date of Decision : 29th February 2012

DECISION

1. The Tribunal finds that the administration charge of £135.00 claimed for permission to sublet is unreasonable. A reasonable fee for such a consent would be £30.00.
2. The Tribunal further finds that £85.00 claimed for registration of any sub-letting by way of assured shorthold tenancy is not payable under the terms of the lease.
3. The Tribunal makes an order under Section 20C of the **Landlord and Tenant Act 1985** preventing the Respondent from including the cost of representation in these proceedings in any future service charge demand.
4. The Tribunal does not make an order requiring the Respondent to pay any costs to the Applicant.

Reasons

Introduction

5. In his application form, the Applicant explains that he owns a long leasehold interest in the property and is being charged fees for obtaining permission to sub-let (£135.00) and for registration of the sub-letting (£85.00). He claims that the fees claimed are both not payable and unreasonable.
6. There has been correspondence between the parties, the substance of which is that the Applicant did not agree the fees and the Respondent's managing agent says that they are reasonable and payable.
7. This application was then made for the Tribunal to determine the payability of the landlord's agent's claims for fees and, if payable, their reasonableness. It appears from the correspondence that the property has been sublet since its purchase in 2001. It was bought as an investment property and the then owner/management company was aware of this and did not suggest that the Applicant needed permission to sublet.
8. On the 9th January 2012, a directions order was made timetabling this case to determination. It stated that the Tribunal was of the view that the matter could be determined on the basis of a perusal of the documents and written representations. It said that it would do so on or after 28th February 2012 unless anyone wanted an oral hearing in which case, one would be arranged. No request for a hearing has been made.
9. A bundle of documents has been filed by the Applicant in compliance with the directions order which did not include the Respondent's unattributed statement of case dated 7th February 2012. The Applicant says that this statement should be disregarded as it was late. The Applicant also asks the Tribunal to reimburse him for money spent on print cartridges, paper and special delivery costs totalling £57.90.

The Lease

10. The Applicant provided the Tribunal with a copy of the lease dated 18th August 1988 which is for a term of 999 years from 29th September 1987 with an increasing ground rent. The relevant provisions relating to any consent to sub-let or the registration of transactions are contained in clauses 10 and 12 of Part I of the 3rd Schedule as follows:-

"10. Not at any time during the said term to sublet the whole or any part of the Property save that an underletting of the whole of the Property (with the prior written consent of the Vendor or the Management Company and any mortgagee of the Property) is permitted in the case of a term certain not exceeding three years let at a rack rent.

“12. At all times during the said term to deliver or cause to be delivered to the Management Company a notice in writing of every assignment mortgage charge disposition or devolution of or transfer of title to the Property within one month after execution of any deed or document or after the date of any Probate Letters of Administration or other instrument or Order of Court by which such assignment mortgage charge disposition devolution or transfer may be effected or evidenced such Notice to specify the name address and description of the person or persons to whom or in whose favour the assignment mortgage charge disposition devolution or transfer shall be made to take effect and will pay to the Management Company such reasonable fee appropriate at the time of registration but not being less than £15.00 and VAT thereon for such registration.”

The Law

11. Paragraph 1 of Schedule 11 of the 2002 Act (“the Schedule”) defines an administration charge as being:-

“an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable...for or in connection with the grant of approvals under his lease, or applications for such approvals...or in connection with a breach (or alleged breach) of a covenant or condition in his lease.”

12. Paragraph 2 of the Schedule, which applies to amounts payable after 30th September 2003, then says:-

“a variable administration charge is payable only to the extent that the amount of the charge is reasonable”

13. Finally, paragraph 5 of the Schedule provides that an application may be made to this Tribunal for a determination as to whether an administration charge is payable which includes, by definition, a determination as to whether it is reasonable.

14. Sub Section 19(1)(a) of the **Landlord and Tenant Act 1927** (“the 1927 Act”) permits a reasonable charge to be made for the granting of consent to sublet.

15. In this case, it is clear from the application and the Applicant’s subsequent comments that he relies upon earlier decisions of this Tribunal that Section 19(1)(b) of the 1927 Act prevented any requirement to obtain consent for a subletting. Those decisions have been overturned by the Upper Tribunal (Lands Tribunal) in 3 appeals commencing with **Holding and Managameent (Solitaire) Limited v Norton** [2012] UKUT 1 (LC).

Conclusions

16. The first decision for this Tribunal to make is to ~~consider~~ whether the statement filed on behalf of the Respondent should be accepted and considered. This is an unusual situation because the appeals, which are crucial to this decision, were heard and decided whilst this application was being processed. The Respondent wanted to make representations which took account of those appeals. In the circumstances, the Tribunal does not consider this to be unreasonable. The statement from the Respondent was filed well before this determination and the Applicant has taken the opportunity to respond to it.
17. The Applicant's response is to say, in effect, that he still supports this Tribunal's earlier decisions and considers that they should be followed. Unfortunately, the Upper Tribunal is a court of record and this Tribunal considers itself bound by its decisions in this case. Thus, on the question of the consent to sublet, the only issue is the amount of the charge.
18. The next point to make is that the requirement to obtain consent to sublet is in the lease, which is a deed. The fact that a previous landlord/management company did not bother to enforce this provision is not relevant.
19. On the question of the amount of the charge claimed, the Agents assert that dealing with an application takes a total of two hours between an administrator and the legal department. The Tribunal has not been provided with a copy of the subletting tenancy agreements in this case, but assuming that they are standard assured shorthold tenancies, (no evidence to the contrary having been presented to us), the Tribunal cannot see how it can possibly take that length of time to give consent. An experienced administrator should be able to read through a standard assured shorthold tenancy agreement in no more than five or ten minutes. There seems to be no logical reason why the agreement needs to be examined by an administrator and also by the legal department; that is unnecessary duplication. Registering the details on a modern management system would not take more than a few minutes, neither would passing the information to the property manager. The consent form is presumably in a standard format and its completion should also be only a few minute's job. Overall, we consider that an allowance of one hour rather than two hours per application would be generous and that a reasonable charge for a Standard Consent would therefore be £30.
20. The next question to be decided is whether the lease does allow for either a notice of sub-letting or for a fee to be charged for the registration of such notice. There is clear provision for the registration of a list of transactions affecting the title to the property which must be registered. A sub-letting is not mentioned. The words used clearly only deal with some event which devolves the title, i.e. the long leasehold interest to a third party. The Tribunal cannot see how any reasonable person could interpret that as including a sub-letting by way of an assured shorthold tenancy.

21. The Respondent asserts that a registration fee is not an administration fee in any event. Whether that is a correct interpretation of the law is not a matter for this Tribunal. If it were payable under the terms of the lease, it could certainly be argued that it was *“payable...indirectly...in connection with the grant of approvals under the lease.”* The two clauses are close together in the lease and one would certainly seem to follow from the other.
22. As far as the Respondent's costs of representation are concerned, the Respondent has said, very fairly, that no charge would be added to the service charges in any event. To give the Applicant peace of mind, the Tribunal concludes that it would be just and reasonable to make an order preventing such costs from being included in any service charge demand. The Lessee has succeeded to a certain extent and would not have achieved this position without this application.
23. As far as the Applicant's claim for costs is concerned, the Respondent's behaviour in connection with these proceedings has not crossed that high threshold of being 'unreasonable' in legal terms. No order is made.

.....
Bruce Edgington
Chair
29th February 2012