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MAN/00BR/LAC/2012/0038

HM COURTS & TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL
OF THE NORTHERN RENT ASSESSMENT PANEL

COMMONHOLD AND LEASEHOLD REFORM ACT 2002
SCHEDULE 11 PARAGRAPH 5
and
SECTION 20C of the LANDLORD and TENANT ACT 1985

- Premises:** Nos. 1,4,5,6,9,10,11a,12,14,15,16,18,20,21a,22,23,24,
26,28, and 30, Apple Blossom Grove, Cadishead,
Manchester M44 5FX
- Applicants:** As detailed in the Application (as amended in paragraph
4 of the witness statement dated 5 November 2012 of
Ms.R.Blandford-Nelson for the Respondent ("the
Respondent's Statement"))
- Respondent:** UK Ground Rent Estates (2) Limited
- Tribunal:** Mrs.C.Wood
Mrs.E.Thornton-Firkin
- Date of decision:** 7 December 2012

APPLICATION

1. By an application dated 30 July 2012 ("the Application"), the Applicants applied to the Leasehold Valuation Tribunal: (i) under paragraph 5(1) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") for a determination as to liability to pay, and the reasonableness of: (i) a charge of £78 for registration of the sub-letting of his/her property; (ii) various legal costs incurred in connection with the recovery of such charges from the Applicants; and (ii) a determination pursuant to section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") in connection with the Respondent's costs in connection with the Application.
2. Directions dated 16 October 2012 provided that :
 - (i) the application be dealt with on the basis of written representations without an oral hearing unless any party requested an oral hearing; and,
 - (ii) that the Respondent shall within 21 days of the Directions produce a full detailed response to the Application;
 - (iii) within 14 days of receipt of the Respondent's statement, the Applicants shall submit any comments in response.

3. No request was received from any of the parties for a hearing to be held.
4. Both the Respondent's Statement and the witness statement dated 21 November 2012 of Ms.L.Hallett for the Applicants, ("the Applicants' Statement") were received in accordance with the Directions.
5. The submissions made in the Respondent's Statement included the following:
 - (i) that the obligation to pay the registration fee of £78 arose under paragraph 10 of the Fourth Schedule of the Lease to which each of the Applicants was a party. (Exhibited to the Respondent's Statement was a copy of a lease dated 22 February 2007 in respect of No. 4 Apple Blossom Grove and it was confirmed that all of the Leases were in similar form.);
 - (ii) that paragraph 10 refers to a "disposition" which it was submitted, by reference to various legislative provisions, included the granting of an assured shorthold tenancy;
 - (iii) that the obligation to pay the legal costs arose under paragraph 4 of the Fourth Schedule under which each of the Applicants had covenanted to pay "...all costs charges and expenses (including legal costs...) which may be incurred by the Landlord in connection with the recovery of arrears of Rents or for the purposes of or incidental to the preparation and service of any notice or proceedings under Section 146 and 147 of the Law of Property Act 1925..." It was submitted that, if the Applicants had not made the Application, the Respondents next course of action would have been the institution of possession proceedings.
6. The submissions made in the Applicants' Statement included the following:
 - (i) that the Lease does not include any provision entitling the Respondent to charge a registration fee on a sub-letting of a property on an assured shorthold tenancy: there are express provisions in paragraphs 9.1, 9.2 and 9.3 referring to sub-letting, and to include a sub-letting within the term "disposition" is to strain the interpretation of that paragraph;
 - (ii) that where there is any ambiguity, this should be construed against the Landlord in accordance with the contra proferentum rule;
 - (iii) that the previous Landlord did not charge a registration fee on a sub-letting nor were any of the Applicants advised, on purchase of their property, that such a fee was chargeable;
 - (iv) that, if it were determined that a fee is payable, this would not be the case on the expiry of the initial term of any assured shorthold tenancy or on the commencement of each period under a periodic tenancy;
 - (v) that the fee of £78 is not reasonable;
 - (vi) that legal costs are not reasonable as there is no registration fee payable, or that the legal costs as charged are not reasonable for the work done;
 - (vii) that the Respondent should not be allowed to recover their costs in respect of the Application as service charge because (i) it was the suggestion of monthly fees being payable (which the Respondent is stating will not be charged) that was fundamental to the Application being made; and (ii) that, until 31 August 2012, the Respondent had failed to accompany demands for payment of the administration charges with the

requisite Summary Statement of Rights and Obligations, thereby entitling the Applicants to withhold payment.

THE LAW

7. An "administration charge" is defined in paragraph 1(1) of Schedule 11 to the 2002 Act as:
"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 a 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."
8. Paragraph 2 states that " A variable administration charge is payable only to the extent that the amount of the charge is reasonable". A " variable administration charge" means " an administration charge payable by a tenant which is neither – (a) specified in his lease, nor (b) calculated by reference to a formula in his lease" (paragraph 1(3)).
9. Paragraph 5(1) provides that " 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,
 - (e) the person to whom it is payable,
 - (f) the amount which is payable,
 - (g) the date at or by which it is payable, and
 - (h) the manner in which it is payable."
10. Sub-paragraphs (2) and (4) make it clear that the Tribunal has jurisdiction in this regard whether or not any payment has been made unless, inter alia, the matter has been agreed or admitted by the tenant.
11. Section 20C(1) of the 1985 Act provides that " A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a...leasehold valuation tribunal...are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant...". Sub-section (3) provides that the Tribunal may make such order "...as it considers just and equitable in the circumstances".

DETERMINATION

12. The Tribunal determines that any reasonable person interpreting paragraph 10 of the Fourth Schedule of the Lease would conclude that it was not the parties' intention that the word "disposition" within the context of this paragraph was to include a sub-letting on an assured shorthold tenancy. In reaching this determination, the Tribunal took into account, inter alia, the following :
- (i) paragraph 10 of the Fourth Schedule of the Lease contains no reference to any of the legislative provisions cited in the Respondent's Statement which may have supported the interpretation of "disposition" as including such a sub-letting;
 - (ii) paragraphs 9.1, 9.2, and 9.3 of the Fourth Schedule of the Lease contain express provisions relating to sub-letting as follows:
 - (a) a restriction on the transfer, assignment, underletting or parting with possession of part only of the Property, (paragraph 9.1);
 - (b) a restriction on the transfer, assignment, underletting or parting with possession of the Property during the last 7 years of the Term without the Landlord's written consent, (paragraph 9.2);
 - (c) a restriction on underletting, charging, mortgaging or creating any other derivative interest in the Property which would have the effect of allowing the charge, mortgagee or other person to assign the Property without complying with paragraph 9.2;
 - (iii) it was noted by the Tribunal that (other than in accordance with paragraph 9.2), there was no requirement to obtain the Landlord's consent to subletting, and nor was there any reference in these paragraphs (which deal expressly with, inter alia, subletting) to any requirement to give notice of subletting and/or to payment of any registration fee;
 - (iv) the Applicants' evidence that the previous Landlord (upon whose instructions the Lease was originally drafted) did not seek payment of a registration fee on any sub-letting; and,
 - (v) where there is ambiguity, it is appropriate to apply the contra proferentum rule in interpreting the terms of the Lease.
13. In view of the Tribunal's determination in paragraph 12 above that there is no entitlement to charge and/or recover a registration fee, a fortiori, the Respondent cannot charge and/or recover any legal or other costs incurred in connection with such registration fees, or recover as service charge any costs or charges incurred by the Respondent in connection with the Application.

Catherine Wood.

Catherine Wood
Chair
Dated 7 December 2012