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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00AG/LAC/2014/0001**

Property : **Flat 22, Centre Heights, 135-137
Finchley Road, London NW3 3JG**

Applicant : **Mark Simon Stone**

Representative : **Ms Pathirana (solicitor)**

Respondent : **Anaspel Limited**

Representative : **Lawrence Stephens Solicitors**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay an administration charge**

Tribunal Members : **Ms L Smith
Mr K Cartwright, FRICS
Mr A Ring**

**Date and venue of
Hearing
(paper determination)** : **10 Alfred Place, London WC1E 7LR
31 March 2014**

Date of Decision : **31 March 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £200 + VAT is payable by the Applicant in respect of the administration charge for response to management enquiries
- (2) The tribunal determines that the sum of £850 + VAT is not payable by the Applicant in respect of the administration charge for the managing agent's fees in relation to the licence to assign
- (3) The tribunal determines that the application by the Applicant in respect of the administration charge for the solicitor's fees in relation to the licence to assign is premature as there is, as yet, no proper estimate or demand in that regard
- (4) The tribunal makes the determinations as set out under the various headings in this Decision
- (5) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985

The application

1. The Applicant seeks a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of administration charges payable by the Applicant in respect of the Respondent's response to management enquiries and charges for dealing with a proposed licence to assign.
2. The charges in dispute are as follows:-
 - (i) £200 + VAT payable to the Respondent's managing agents in providing replies to management enquiries
 - (ii) £850 + VAT (estimated) payable to the Respondent's managing agents in dealing with the Applicant's proposed application for licence to assign (which application has not yet formally been made as there is, as yet, no proposed assignee)
 - (iii) £1250 + VAT "plus additional costs" (estimated) payable to the Respondent's solicitors in dealing with the proposed application for licence to assign.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The application was made on the basis that it could be dealt with without a hearing and it was agreed at the hearing for directions (on 23rd January 2014) that the matter would be dealt with on the basis of written representations. The Tribunal had before it the Applicant's statement of case and response to the Respondent's statement of case, the Respondent's statement of case and documents and legal decisions relied upon by both parties.

The background

5. The property which is the subject of this application ("the Property") is a 2 bedroom, duplex flat in a purpose built (mixed use) block.
6. The Applicant is the underlessee of the Property under an underlease dated 29th January 1986 ("the Lease"). The Applicant wishes to dispose of his interest in the Property by an assignment. To this end, his solicitors raised management enquiries with the Respondent and sought details of its charges in relation to the proposed licence to assign.
7. Clause 2(xxiv) (c) of the Lease provides that the lessee shall not assign the Property without the previous consent in writing of the lessor (which shall not be unreasonably withheld). Clause 2(xx) of the Lease provides that where such consent is sought the lessee "shall disclose to the Lessor such information as the Lessor may reasonably require and shall pay the Lessor's legal expenses and Surveyors' fees (including disbursements and stamp duty and any fees and expenses paid to any Superior Landlord) ".

The issues

8. At the directions hearing, an issue was raised as to the jurisdiction of the Tribunal to determine the reasonableness and payability of the Respondent's managing agents' and solicitors' fees for the proposed licence to assign, as the figures quoted were simply estimates. In addition, the Applicant challenged the reasonableness of the sums claimed.
9. Although the fee of £200 + VAT for the Respondent's managing agents' charges for response to management queries has been paid, the Applicant also challenged the reasonableness of this sum.
10. Having considered the submissions from the parties, the legal authorities relied upon on both sides and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Managing Agents' and Solicitors' fees in relation to the proposed licence to assign

The tribunal's decision

11. The Tribunal considers that it has jurisdiction to deal with this issue. It determines that the fees of the managing agents in relation to the proposed licence to assign are not payable under the Lease and/or because they are not reasonable. The Tribunal considers that the application in relation to the Solicitors' fees is premature as the amount disputed is only an estimate and it is impossible to determine what rate or amount of work is reasonably payable until the application for a licence to assign is made and a firm estimate is provided.

Reasons for the tribunal's decision

12. The Applicant submits that the fees quoted in e mails passing between the respective solicitors are fixed costs with the possibility of additional charges in certain eventualities. This is disputed by the Respondent who says that the fees quoted are an estimate based on a proposed hourly charge and an estimate of the time which will be required to deal with a standard licence to assign. The Respondent argues that, as a result, the administration charges are not yet payable (as they are not yet due) and accordingly that the Tribunal does not have jurisdiction to determine these items.
13. Dealing first with the factual basis underlying the dispute, the Tribunal cannot gainsay the Respondent's statement that these are not fixed costs but are an estimate based on hourly rates and are intended to cover certain work which is set out in the Respondent's statement of case.
14. In relation to jurisdiction, the Respondent relies on the case of *Drewett v Bold* [LRX/90/2005] on the basis that the administration charges are future charges and therefore fall outwith the Tribunal's jurisdiction. By its supplementary statement in response, the Applicant submits that this matter does not relate to a future charge. They rely on the case of *Palmer v Holding and Management (Solitaire) Ltd* (CAM/12UE/LAC/2012/001). The Tribunal did not find either authority of particular assistance. In *Drewett*, the Tribunal held that the administration charge did not have to be payable or due in order for an application to be made in relation to reasonableness. The Tribunal also rejected an argument that nothing was due because nothing had been formally demanded.
15. The Tribunal therefore goes on to decide whether the estimated charges are reasonable. In relation to the managing agents' fees of £850 + VAT, the Applicant submits that the Respondent is not entitled to charge fees

for the managing agent in relation to a licence to assign since a managing agent is not acting there in the capacity of a surveyor; alternatively that to charge for the services of a surveyor in that regard is not necessary and therefore not reasonable.

16. In that regard, although the Lease provides for the Respondent to charge for the services of a surveyor in relation to consents required under the Lease, this clause relates generally to consents under the Lease which would include such things as structural alterations. In spite of the submissions made by the Respondent at paragraphs 29-32 of its statement of case, the Tribunal can see nothing there which requires the services of a surveyor or managing agent. Since the Respondent is seeking a reference for any proposed assignee, it should be an easy matter for a solicitor to assess whether the proposed assignee is suitable. The Tribunal does not understand the relevance of major works to the role of a surveyor in this regard (the management enquiries are a separate issue). Accordingly, the Tribunal considers that nothing is payable for the managing agents' fees in relation to the proposed assignment.
17. In relation to the solicitors' fees, the position is more difficult. The Respondent seeks to charge £275 + VAT per hour (reduced from the solicitor's usual rate of £350 per hour) and estimates that the costs would be £1250 (suggesting 4-5 hours work). The Applicant submits that this is excessive and makes various arguments about the level of fee earner being used and the possible complexity of the work involved. It appears to be the Applicant's case that £350 + VAT is reasonable. This contention is not evidenced. Although it is said in the Applicant's supplementary statement of case that the proposed assignment is straightforward as the proposed assignee is a private individual resident in the UK, the Tribunal does not have any details of the proposed assignment and has no way of knowing what work might be necessary. Although the Tribunal would observe that fees of £275 + VAT per hour are high if the matter is straightforward and, of course, that the Applicant should not be required to pay for the work to be carried out by a partner in a City firm just because that is who the Respondent decides to instruct, the Tribunal has come to the conclusion that the application in relation to the solicitors' fees is premature as there is insufficient evidence on which to determine reasonableness. It is of course open to the Applicant to make a further application in relation to the administration charge if and when further information about the extent and nature of the work involved is clear.

Managing Agents' fees in relation to response to management enquiries

The tribunal's decision

18. The tribunal determines that the amount payable in respect of this item is £200 + VAT.

Reasons for the tribunal's decision

19. On 5th November 2013, the Applicant's solicitors raised management enquiries in relation to the proposed assignment. On 13th November, the Respondent's solicitor indicated that the replies would be provided on payment of £200 + VAT. On 28th January 2014, the Applicant's solicitors paid £200 + VAT for dealing with the management enquiries. This does not of course prevent the Applicant from disputing the reasonableness of that charge. The management enquiries were provided on 3 February 2014.
20. The Applicant raises at paragraph 5.1.3 of his statement of case that the Lease does not provide for payment of fees in relation to management enquiries. The Respondent accepts that the Lease does not provide for payment of such fees but points out that neither does the Lease require the Respondent to respond to such enquiries. The Respondent submits that the response to the enquiries is by way of a collateral contract outside the Lease but falls within the definition of an administration charge under CLRA 2002 and, relying on the case of *Bradmooss Ltd [2012] UKUT 3*, submits that the Respondent is entitled to raise a charge for this. The Tribunal agrees with the Respondent.
21. Turning then to reasonableness, the Respondent's managing agent apparently charges £150 + VAT per hour. The enquiries raised 23 questions, ranging from simple party details through provision of information about the service charges and insurance to proposed major works and consultation exercises. The overall fee of £200 + VAT for response to those enquiries is, in the view of the Tribunal, reasonable.

Application under s.20C and refund of fees

22. The Applicant made an application for a refund of the fees that he had paid in respect of the application¹. Taking into account the determinations above, the Tribunal does not order the Respondent to refund any fees paid by the Applicant.
23. In the application form and in the statement of case, the Applicant applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the Tribunal does not make an order.

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Name: Ms L Smith

Date: 31st March 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service 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.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) 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 court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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 or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 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,
 - (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 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.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this 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.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate 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.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or

(b) on particular evidence,
of any question which may be the subject matter of an application
under sub-paragraph (1).