10556

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/23UE/LAC/2014/0006
Property	:	32 Stewarts Mill Lane, Abbeymead, Gloucester GL4 5UL
Applicants	:	JD Morris and LM Morris
Representative	:	
Respondent	:	Proxima GR Properties Limited
Representative	:	Estates & Management Limited
Type of Application	:	For the determination of the reasonableness of and the liability to pay administration charges (schedule 11 to the Commonhold and Leasehold Reform Act 2002)
Tribunal Member(s)	:	Judge Tildesley OBE Mr Jan Reichel MRICS
Date and Venue of Hearing	:	Determination on the papers on 17 November 2014 at Swindon Magistrates' Court
Date of Decision	:	6 January 2015

DECISION

Decisions of the Tribunal

1. The Applicants were not required under paragraph (xii) of the Third schedule to the lease to notify the Respondent of the grant of an assured shorthold tenancy. Thus the Respondent was not entitled under the terms of lease to charge a fee of £85 for notification of an assured shorthold tenancy

2. The Tribunal, however, has no jurisdiction to determine whether the Applicants are liable to pay the £85 fee for registering the assured shorthold tenancy with the Respondent because the fee does not fall within the category of a variable administration charge. Even if it had jurisdiction, the Tribunal would not have had the authority to order the Respondent to reimburse the Applicants with the £85 fee, which was the order requested by the Applicants. Thus, if the Applicants wish to pursue the matter, it would be necessary for them to bring proceedings before the County Court. Given the finding in 1 above the Respondent, however, might wish to consider reimbursing the fee so as to avoid the expense of court proceedings.

3. The disputed fees of £60 imposed 6 November 2013 and £115 dated 28 February 2014, and the legal costs of £180 17 March 2014 were not recoverable by the Respondent because they did not come within the language of paragraph (x) to the Third Schedule to the lease. Thus the charges were wholly unreasonable and not payable by the Applicants.

4. The Tribunal is minded to order the Respondent to pay the Applicants £65 in respect of the reimbursement of the Tribunal fees paid by the Applicants. The Tribunal invites the parties' representations in writing within 14 days of the date of this decision. If no representations are made by the Respondent, the order will take effect automatically and will require the Respondent to pay the fee of £65 within 28 days from release of the decision.

The Application

5. 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.

6. The Applicants request the Tribunal to determine whether the following charges were payable:

    - £85 fee for the registration of a sub-letting of the property by the Applicants

    - £60 charge for pursuing arrears in connection with the insurance charge for the property.

- £115 charge for pursuing arrears in connection with the insurance charge for the property

- £180 charge for legal service in connection with the insurance charge for the property.

7. The Tribunal received the application on 2 July 2014. Directions were issued on 3 July 2014 to progress the application. The Tribunal decided that the application would be determined on the papers unless a party objected within 28 days of receipt of the directions. No party objected to a paper determination. On 19 September 2014 the Respondent supplied the Tribunal with two copies of the agreed bundle of documents. On 14 October 2014 the Tribunal informed the parties that a paper determination had been arranged for 21 November 2014[1] and that the parties would receive a copy of the decision shortly afterwards. The Tribunal apologises for the delay in sending the decision which was due to the Judge having an operation.

8. The Applicant described the property as a two bedroom individual coach house with accommodation over two floors with a single garage and drive through underneath the property. The single garage was not part of the demised property. According to the Applicant, the property was in the middle of a terrace of privately owned houses with its own individual front door to the outside

9. The property was subject to a lease dated 31 July 1992 for a term of 999 years starting from 27 March 1992, and made between Heron Homes Limited of the one part and Mr R McGuiness and Miss H Maskill of the other part. The lease described the property as *Flat over Garages.*

10. The relevant legal provisions are set out in the Appendix to this decision.

The Fee for the Registration of the Sub-Letting (Assured Shorthold Tenancy)

11. The facts not in dispute:

    a. The Applicants purchased the property in 2006 for the purposes of letting with a buy-to-let Mortgage.

    b. Since the purchase of the property, the Applicants have let it on an assured shorthold tenancy through a Member of the Association of Residential Letting Agents. The member makes the necessary tenancy reference checks, operates the tenant deposit scheme, carries out quarterly property inspections and reporting, and ensures a written agreement for the tenancy.

[1] The date of the determination was brought forward to 17 November 2014.

c. On purchase of the property in 2006 the Applicants notified the previous managing agents (Peverel O M Limited) of their intention to sub-let the property.

d. On or around September 2011 Estates & Management Limited (Respondent's representative) demanded from the Applicants the payment of £185 fee for consent to the sub-letting and an £85 fee for registration of the sub-letting.

e. On 11 October 2011 the Applicants questioned whether the Respondent had authority under the lease to demand the above fees.

f. On 24 October 2011 the Respondent accepted the Applicant only required consent to sublet the property in the last seven years of the term, in which case there was no justification to charge a fee of £185 for consent. The Respondent, however maintained that the wording of paragraph (xii) of the Third Schedule to the lease authorised the £85 fee for registration of the Applicants' sub-let

g. Between the 27 November 2011 and 12 March 2012 the parties exchanged correspondence re-stating their respective positions. On 17 February 2012 the Applicants supplied the Respondent with a copy of a letter from Cotswold Conveyancing Centre, Specialist Property Lawyers, advising that the Respondent had no authority under the lease to charge a fee for registration of the Applicants 'sub-let.

h. On 12 March 2012 the Respondent wrote to the Applicants stating that their account had now been placed in breach and a fee of £85 had been added to the account. Further the Respondent warned the Applicants that if the fee and a copy of the tenancy were not received within 14 days legal proceedings may be commenced to rectify the breach.

i. On 9 July 2012 the Applicants sent the Respondent's representative a cheque for £85 without prejudice to bring the dispute to a close.

12. The Applicants argued the fee of £85 was not authorised by the lease and requested re-imbursement of the £85 paid to the Respondent. The Applicants pointed out they made this payment without prejudice which in their view did not amount to an admission on the validity of the charge levied by the Respondent.

13. The Respondent disagreed with the Applicants' construction of the lease, arguing that an assured shorthold tenancy was a disposition which required notification to the Respondent under paragraph (xii).

14. The Respondent also argued that the Tribunal had no jurisdiction to determine whether the fee was payable because it did not fall within the statutory definition of an administration charge. In respect of the latter the Respondent relied on the Upper Tribunal decision in *Proxima GR Properties Ltd v Dr Thomas D McGhee* [2014] UKUT 0059.

15. Finally the Respondent said that the Applicants were prevented from disputing the charge because their payment of £85 on 9 July 2012 was made in full and final settlement of the dispute.

The Issues
Is the Fee authorised by the lease?

16. Under paragraph (xii) of the Third schedule to the lease entitled *Devolution,* the tenant covenants with the landlord :

> "At all times during the said term to deliver or cause to be delivered to the Vendor a notice in writing of every assignment mortgage charge disposition or devolution of or transfer of title to the Property within one month after the 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 evidence such Notice to specify the name and 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 the Vendor a reasonable registration fee and VAT or similar tax thereon for such registration". `

17. Paragraph (xi) of the Third schedule entitled *Disposals of Part* was also relevant to the interpretation of paragraph (xii) which stated:

> "Not to assign transfer charge ***underlet (Tribunal's italics)*** or part with possession of part only of the Property and during the last seven years of the said term not to assign ***underlet*** charge or part with the possession of the property without the previous consent in writing of the Vendor (such consent not to be unreasonably withheld)".

18. The Applicants' lawyers argued that paragraph (xii) of the Third schedule did not restrict the letting of the property under an assured shorthold because there was no disposition or devolution of the title of the property in that the leasehold interest had not been transferred to a third party. The Respondent, on the other hand, submitted that the definition of word *"disposition"* in paragraph (xii) was the *"act of transferring care, possession or ownership to another such as by deed or will".* According to the Respondent, the sub-letting of the property by means of an assured shorthold tenancy was included within the definition of disposition because it had the effect of transferring the care and possession of the property to the sub-tenant.

19. When construing a lease it is important to consider the ordinary and natural meaning of the words used in the context of the lease as a whole. The Tribunal considers that the Respondent has simply plucked out the word *disposition* from paragraph (xii), and selected one of its dictionary meanings to suit its argument that a granting of an assured shorthold tenancy was caught by the provisions of paragraph (xii).

20. The Tribunal considers that when the wording of paragraph (xii) is examined as a whole the requirement to notify the landlord (the Respondent) was restricted to dealings which affected the legal title of the long leasehold interest owned by the Applicants, either a change in the title or a legal charge against the title. The grant of an assured shorthold tenancy did not compromise the Applicants' leasehold interest in the property.

21. The Tribunal's view that the grant of an assured shorthold tenancy was not caught by the wording of paragraph (xii) was reinforced by the absence of the words *sub-let or under-let* in the said paragraph. The Tribunal is satisfied that the omission of these words from paragraph (xii) was deliberate and reflected the original parties' intentions when they agreed the lease. In this respect it was significant that the word *underlet* was used in paragraph (xi) which immediately preceded paragraph (xii). Paragraph (xi) prohibited under-letting of part of the property and under-letting of the property in the last seven years of the lease without the landlord's consent.

22. The form and wording of the lease as a whole also supported the Tribunal's interpretation that paragraph (xii) did not impose an obligation on the Applicants to notify the Respondent of a grant of an assured shorthold in respect of the property. The lease was for a term of 999 years with a nominal ground rent of £50 per annum. Under the terms of the lease the Applicants in their capacity of tenants were required to insure the property, paint the exterior of the property, and maintain and repair the property with the owners of the garage. The Respondent in its capacity of landlord provided no services to the Applicants, and was not entitled to recover a service charge.

23. In short the form and wording of the lease as a whole demonstrated that the landlord had no real involvement with the property, and no specific reason for why the landlord should be informed about sub-lets of the property. The purpose of paragraph (xii) was to enable the landlord to fulfil its statutory responsibilities and obligations under the lease to the owners of the long leasehold in the property, such as, demands for ground rent.

24. The Tribunal concludes for the reasons given above the Applicants were not required under paragraph (xii) of the Third schedule to the lease to

notify the Respondent of the grant of an assured shorthold tenancy. Thus the Respondent was not entitled under the terms of lease to charge a fee of £85 for notification of an assured shorthold tenancy

Does the Tribunal have jurisdiction to determine the Applicants' liability to pay the fee of £85

25. The Tribunal is a creature of statute. The Tribunal derives its jurisdiction to determine whether charges are payable under the lease from section 158 and schedule 11 of the Commonhold and Leasehold Reform Act 2002. In order for the Tribunal to exercise its jurisdiction the £85 fee must fall within the definition of a variable administration charge. The Respondent said that it was not an administration charge and referred to the Upper Tribunal decision in *Proxima GR Properties Ltd v Dr Thomas D McGhee* [2014] UKUT 0059. The Applicants stated that they were not qualified to comment on the detail of the Upper Tribunal decision but observed that the particular lease referred to by the Upper Tribunal did include a clause prohibiting under-letting without consent throughout the term of the lease.

26. The Upper Tribunal as paragraphs 21 and 22 said as follows:

> "The appellant did not challenge the LVT's decision that the registration fee was not a variable administration charge, a conclusion which it clearly regarded as being in its favour. The respondent has not sought permission to cross-appeal on this issue and therefore, strictly, it is not before the Tribunal. Nonetheless, as the issue recurs with some regularity I take the opportunity to record that I agree with the conclusion of the LVT, for the reasons which it gave. I will briefly explain those reasons in my own words.
>
> A sum payable as a fee for registering a document is not, in my judgment, payable "directly or indirectly for or in connection with the grant of approvals under [a] lease or applications for such approvals" so as to come within paragraph 1(1)(a) of Schedule 11 to the 2002 Act. If a request was made for the landlord's approval of a proposed underletting, and that approval was granted but the underletting did not then proceed, there would be no question of a registration fee being payable under paragraph 28 because no transactions would have taken place. The written notice which the respondent was required to give under paragraph 27 of the eighth schedule to the lease was not a request for an approval of any sort, nor was the charge which the appellant is entitled to make for registering the transaction of which notice is given a charge for the grant of an approval or in connection with an application for approval. This conclusion is consistent with views expressed in the leading text books: *Commercial and Residential Service Charges,* Rosenthal and others (2013) at paragraph 29-54, and *Service Charges and Management*, Tanfield Chambers, (third edition) (2014) at paragraph 17-007)".

27. The Upper Tribunal did not hear full argument on whether a fee for registering a document fell within the definition of an administration charge. Given those circumstances the comments of the Upper Tribunal were obiter and not binding on this Tribunal. Having said that, this Tribunal finds the rationale of the Upper Tribunal convincing and in the absence of arguments to the contrary decides that the fee of £85 for registering the assured shorthold was not a variable administration charge. Thus the Tribunal has no jurisdiction to determine whether the £85 fee is payable by the Applicants.

Decision on the £85 fee

28. The Tribunal accepts that it has no jurisdiction to determine whether the Applicants are liable to pay the £85 fee for registering the assured shorthold tenancy with the Respondent. Even if it had jurisdiction, the Tribunal would not have had the authority to order the Respondent to reimburse the Applicant with the £85 fee, which was the order requested by the Applicant. Thus, if the Applicants wish to pursue the matter, it would be necessary for them to bring proceedings before the County Court.

29. The Tribunal, however, has found that the Respondent was not entitled under the terms of lease to charge a fee of £85 for notification of an assured shorthold tenancy. The Tribunal decided it was necessary to make the finding on the construction of the lease because it had a bearing upon the subsequent administration charges which the Respondent said were raised to collect arrears in relation to insurance and the registration fee. Also the Tribunal considers the payment of the £85 fee by the Applicants did not constitute admission of their liability for the charge. The contents of the Applicants' correspondence as set out in paragraph 11 above, and the caveat of *without prejudice* to the payment clearly indicated that the Applicants had not conceded the Respondent's right to demand the charge. Given those circumstances the Respondent might wish to consider reimbursing the fee so as to avoid the expense of court proceedings.

The Charges imposed for collecting the arrears in relation to the insurance charge

30. The disputed charges were a fee of £60 imposed 6 November 2013; a fee of £115 dated 28 February 2014, and legal costs of £180 dated 17 March 2014. These costs were incurred by the Respondent in connection with the collection of the charge for insurance in the sum of £205.20 demanded on 1 July 2012.

31. The Respondent relied on paragraph (x) of the Third schedule to the lease for its authority to impose the charges. Paragraph (x) states as follows:

"To pay all costs charges and expenses (including legal costs and surveyor's fees) which may be incurred by the Vendor in connection with the recovery of arrears of rent or any sums or sums payable hereunder or incidental to the preparation and service of any notices or proceedings under sections 146 and 147 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court".

32. These charges fell within the definition of variable administration charges. Paragraph 1(1)(c) to Part 1 of Schedule 11 of the 2002 Act states that an amount payable by a tenant of a dwelling directly or indirectly in respect of a failure by the tenant to make a payment by the due date to the landlord is an administration charge. Paragraph 1(1)(c) is drawn widely and would catch the charges imposed by the Respondent in connection with the collection of the purported arrears of insurance.

The Chronology

33. The chronology in relation to the dispute on the charges was as follows:

a. On 12 June 2012 Mr Fildes, Head of Marlborough House Management, sent a letter entitled *General Letter to All Owners* to the Applicants. In that letter Mr Fildes informed the Applicants that the landlord would be collecting the insurance premiums from them directly via their appointed agent, Tysers.

b. On 25 June 2012 Estates and Management Limited advised the Applicants that it was a requirement of their lease that their property was to be insured via the landlord's agency. Further, Tysers would be sending them the insurance documents and that the Applicants should pay the insurance premium promptly within 30 days of receipt of the invoice.

c. On 27 June 2012 Tysers wrote to the Applicants stating that with effect from 1 July 2012 insurance cover for the property would be maintained with Zurich Insurance Limited.

d. On 7 November 2012 Tysers invoiced the Applicants for the sum of £205.20 in respect of insurance for the property, which was payable within 30 days from the date of the invoice.

e. On 11 December 2012, 11 January 2013, 8 February 2013 and 21 May 2013 Tysers reminded the Applicants that payment of the premium was still outstanding.

f. On 6 November 2013 Estates and Management Limited wrote to the Applicants advising the balance of their account was £265.20 which included a fee of £60 for their

administration costs relating to unpaid insurance arrears. Estates and Management Limited pointed out that the Applicants were in breach of their lease and requested payment of the outstanding amount within 14 days otherwise further administration charges would be incurred. Estates and Management Limited also enclosed a copy of the statutory notice entitled *Administration Charges: Summary of Tenants Rights and Obligations* with the letter.

g. On 11 November 2013 Estates and Management Limited responded to the Applicants' correspondence[2] with Tysers regarding the insurance which stated that it was the responsibility of the leaseholder to insure the property in an insurance office or with underwriters as the landlord shall reasonably require. According to Estate and Management Limited the above clause allowed the freeholder to determine the agency through which the leaseholder shall place the insurance. Estates and Management Limited reminded the Applicants that their client had paid the premium to the insurers on their behalf and that non-payment of insurance was considered a direct breach of the terms of their lease.

h. On 18 November 2013 the Applicants wrote to Estates and Management Limited re-iterating the contents of their previous correspondence on the matter that the lease placed the responsibility on the tenant to insure the property not on the landlord. The Applicants treated the letter from Estates and Management Limited as a request for a copy of the insurance taken out by them. The Applicants supplied Estates and Management with a copy of their insurance cover with *Direct Line*.

i. On 2 January 2014 Estates and Management Limited informed the Applicants that it had passed the file to the legal department for further action. Estates and Management Limited also stated that the Applicants were in breach of the lease and that unless payment was made within 14 days it would notify the Applicants' mortgage company as a prelude to forfeiture proceedings.

j. On 17 March 2014 JB Leitch solicitors advised the Applicants that they had been instructed by Estates and Management Limited to recover outstanding insurance charges and fees totalling £380.20, which included the commencement of court proceedings without further notice. Further Estates and Management as a result of instructing JB Leitch had incurred legal fees which were assessed at £180.

[2] The Applicant's correspondence was not included in the bundle

k. On 18 March 2014 the Applicants responded to the letter from JB Leitch re-iterating their view that they were responsible for insuring the property.

l. On 10 April 2014 JB Leitch solicitors replied stating section 164 of the 2002 Act did not apply because the property was a flat not a house. JB Leitch offered as a gesture of goodwill to settle the dispute in the sum of £422.70.

m. On 12 April 2014 the Applicants wrote to JB Leitch stating they had insured the property since 2006 which was not challenged by the previous managing agents. The Applicants repeated their view they were responsible under the terms of the lease for insuring the property.

34. The Applicants' position was that they were not liable for the charges because they were based on a false premise According to the Applicants, they were responsible under the terms of lease for insuring the property which they had done. In those circumstances, they were not required to pay for the premium for the insurance policy taken out by the Respondent, which meant that the costs incurred by the Respondent in the recovery of the purported arrears were not authorised by the lease.

35. The Respondent, on the other hand, maintained that the lease required the Applicants to take out adequate insurance with their nominated insurance brokers and insurers, which were Tysers and Zurich Insurance PLC respectively. Further the Respondent submitted that the invoice for the insurance charge dated 7 November 2012 was sent to the Applicants to enable them to comply with the terms of their lease. Finally the Respondent contended that they were entitled to incur the charges because of the Applicants' failure to pay the insurance premium.

Decision

36. The Tribunal has jurisdiction to determine whether administration charges are payable. The Tribunal is satisfied that the disputed charges of £60 imposed 6 November 2013 and £115 dated 28 February 2014, and the legal costs of £180 dated 17 March 2014 fell within the definition of administration charges.

37. The Tribunal's starting point is whether these charges were authorised by the lease. The Tribunal agrees with the Respondent that it was entitled under paragraph (x) to The Third Schedule to charge the Applicants its costs (including legal costs) incurred in connection with the recovery of arrears of rent or any sums or sums payable under the lease.

38. The question for determination is not whether the Respondent can charge for the costs incurred in the collection of arrears but whether

the Applicants had fallen into arrears in relation to a sum payable under the terms of the lease. The Applicants maintained they were not in arrears because they were not liable under the lease to pay for the premium for the insurance arranged by the Respondent.

39. Thus the Applicants liability to pay for the disputed administration charges depended upon the wording of the insurance clause in the lease. Paragraph (iii) to the Third Schedule which deals with covenants by the purchaser (tenant) to the vendor (landlord) states as follows:

> "At all times during the said term to insure and keep insured the property against loss or damage by fire and other perils normally insured under a Householders Comprehensive Policy and such other risks (if any) as the Vendor may reasonably think fit in an insurance office or with underwriters of repute as the Vendor shall reasonably require in the full amount of the cost of rebuilding the property (including Architect's Surveyors and Civil Engineers fees on such value) or such other greater sum as the Vendor shall reasonably from time to time think fit in the joint names of the Vendor and the Purchaser and whenever required produce to the Vendor the policy or policies of such insurance and the receipt for the last premium thereof and in the event of the Property being damaged or destroyed by fire or other insured risk as soon as practicable lay out the insurance monies in the repair rebuilding and reinstatement of the Property and to make up any deficiency in the insurance monies out of the Purchaser's own monies".

40. The Tribunal interpretation of paragraph (iii) in the context of the lease as a whole is as follows:

a. The Applicants (tenant) are responsible under the lease for insuring the property.

b. The lease does not require the Respondent (the landlord) to insure the property.

c. There is no provision in the lease which enables the Respondent to recover the costs of insurance if it chooses to insure the property.

d. Paragraph (iii) envisages the Applicants arranging the insurance which must insure the property against loss or damage by fire and other risks normally covered by a Householders Comprehensive Policy. The insurance must be placed with an insurance office or with underwriters of repute.

e. The Respondent is entitled on request to be given a copy of the insurance policy taken out by the Applicants and a receipt for the last premium.

f. The Respondent can require the Applicants to cover additional risks; and or use another insurance office or underwriter of repute; and or insure in a greater sum. The Applicants are only required to meet the Respondents' requests if they are reasonable.

g. The arrangements for insurance as set out in paragraph (iii) are that the Applicants take out and pay for the policy of insurance for the property. The Respondent is entitled on request to see a copy of the policy and a receipt for the premium. If the Respondent is dissatisfied with the Applicants' choice they can require the Applicants to cover other risks, insure a greater sum or use a different insurer or broker provided the requirements are reasonable. The Applicants can decide not to adopt the requirements if they are unreasonable. If the Respondent disagrees with the Applicants' decision, the Respondent has the option to take proceedings for breach of covenant.

41. Turning to the facts of this case, the Respondent adduced no evidence that it had requested sight of the policy of insurance taken out by the Applicants before it insured the property with Zurich insurers commencing 1 July 2012. Equally the Respondent did not enter into dialogue with the Applicants about alleged deficiencies with their existing insurance arrangements for the property or make requests for alterations of the policy in respect of the risks covered, the sums insured and the name of the insurers.

42. The reality was that the Respondent insisted that the Applicants pay for the insurance taken out by it. This was clear from the language used in the earlier correspondence from the Respondent about the insurance. The letter dated 12 June 2012 from Marlborough: *"From this year the landlord will be collecting the insurance premiums from you directly.* The letter dated 25 June 2012 from Estates and Management Limited : *"It is a requirement that your property is to be insured via the landlord's agency".* The letter dated 27 June 2012 from Tysers: *Tysers have been instructed to arrange the comprehensive block building and terrorism insurance for your building in accordance with your lease agreement".*

43. The Respondent's contention that its actions were in accordance with the terms of the lease had no substance. The Respondent was again selecting particular words from paragraph (iii) to fit its argument rather than considering the meaning of the words in the context of paragraph (iii) and the lease as a whole. Their argument that the Applicants had to use the Respondent's nominated agent was a corruption of the arrangements established by the lease for insuring the property. If the Respondent was correct in its argument it would defeat the purpose of those arrangements which were for the Applicants (the tenants) to take out insurance for the property.

44. The Respondent in its determination to recover payment of the insurance premium has overlooked the fact that there were no provisions in the lease which enabled the Respondent to pay for the insurance premium and to recover the premium from the Applicant. The disputed insurance premium was, therefore, not a sum or sums payable within the meaning of paragraph (x) which meant there were no arrears of a sum for which the Respondent could incur costs and recover them from the Applicants.

45. The parties have referred to section 164 of the 2002 Act which enables a tenant of a long lease of a house to insure the property provided certain conditions are met even though the lease requires the tenant to insure with an insurer nominated by the landlord. The Tribunal is satisfied that the Applicants introduced section 164 because the Respondent was not listening to their primary submission on the proper construction of the lease. The Tribunal considers that the provisions of section 164 have no application to the facts of this case. The Tribunal's determination is based solely on the proper construction of the lease.

46. The Tribunal decides that the disputed fees of £60 imposed 6 November 2013 and £115 dated 28 February 2014, and the legal costs of £180 17 March 2014 were not recoverable by the Respondent because they did not come within the language of paragraph (x) to the Third Schedule to the lease. Thus the charges were wholly unreasonable and not payable by the Applicants.

47. Given the finding in paragraph 46 above, the Tribunal did not consider whether the actual amount of the administration charges in relation to the work done was reasonable. If the Tribunal had been required to make this decision it would have found the quantum unreasonable. Charges of £60 and £115 were excessive for in effect sending out two pro-forma letters. A charge of £30 per letter would have been more appropriate. Equally the solicitors' costs of £180 did not on the evidence appear justified. The solicitors had to refer to their clients on the proper construction of the lease rather than forming their own view on the validity of the Applicants' submissions. Essentially the work done by the solicitors involved writing a series of letters demanding payment with the threat of court proceedings. In the Tribunal's view, a charge of £100 would have been a more accurate reflection of the work done.

Application under S20C and refund of fees

48. In the application form the Applicants did not apply for an order under Section 20C of the 1985 Act which was correct because there was no provision in the lease for the Respondent to recover its costs in connection with these proceedings through the service charge.

49. The Tribunal is minded to order the Respondent to pay the Applicants £65 in respect of the reimbursement of the Tribunal fees paid by the Applicants. In the Tribunal's view, the Respondent did not give the Applicants' representations the consideration they deserved. If the Respondent had applied its mind to the issues raised by the Applicants, these proceedings would have been avoided. The Tribunal invites the parties' representations in writing within 14 days of the date of this decision. If no representations are made by the Respondent, the order will take effect automatically and will require the Respondent to pay the fee of £65 within 28 days from release of the decision.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

Appendix of relevant legislation

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).