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

Case Reference : **BIR/37/LAC/2013/0006**

Property : **30 Murden Way, Beeston,
Nottinghamshire, NG9 2WF**

Applicant : **Mrs CM Belton & Mr DW Belton**

Respondent : **Proxima GR Properties Limited**

Type of Application : **Application under Paragraph 5 of
Schedule 11 to the Commonhold
and Leasehold Reform Act 2002 for
the determination of liability to pay
and reasonableness of
administration charges**

Tribunal Members : **Judge S McClure
Mr V Ward BSc Hons FRICS**

Date of Hearing : **None - paper determination**

Date of Decision : **17 FEB 2014**

DECISION

Decisions of the Tribunal

- (1) The consent to sublet fee is payable, and the sum payable is £55.
- (2) The registration fee is a variable administration charge
- (3) The Applicants are not liable to pay the registration fee.
- (4) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the Respondent's costs of the Tribunal proceedings may be passed to the lessees through any service charge.
- (5) The Tribunal determines that the Respondent shall pay the Applicants £65 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicants.

The Application

1. The Applicants seek a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) as to their liability to pay the £100 consent to sublet fee and the £75 registration of sublet fee levied by the Respondent.
2. The Applicants also seek an order for the limitation of the Respondent's costs in the proceedings under S20C of the Landlord and Tenant Act 1985 (the 1985 Act), and an order for the return of their tribunal application fee.

The Background

3. The Applicants are the owners of the leasehold house known as 30 Murden Way, Beeston, Nottingham, Nottinghamshire, NG9 2WF (the Property) and hold the residue of a 125 year term from 1 January 1989 granted by a lease dated 31 March 1992 (the Lease). The Respondent is the freeholder and landlord of the Property.
4. The Applicants purchased the Property in June 2003 and have been letting it out to tenants since the purchase. The Respondent is not the original freeholder and took over the freehold in, or around, November 2007.
5. In March 2013 the Respondent wrote to the Applicants stating that the Applicants appeared to be subletting without out the prior consent of the Respondent and, if so, the Applicants were in breach of their lease. The Respondent stated, inter alia, that the Applicants were required to

pay a fee of £100 for consent for the subletting of the Property and a fee of £75 for registration of the consent.

6. The Applicants denied that they were liable to pay either fee. The parties were not able to come to an agreement on the matter. In September 2013 the Applicants paid the £175 fee to the Respondent, and told the Respondent that they were considering taking the matter to the Tribunal.
7. An application dated 30 October 2013 was made to the Tribunal by the Applicants for a determination under Section 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the Act).
8. By Directions of 19 November 2013, the Tribunal identified the issue to be determined as the Applicants' liability to pay the charge of £175 made by the Respondent pursuant to paragraphs 25(a) and 27 of the lease.

The Law

Commonhold and Leasehold Reform Act 2002 Schedule 11

Paragraph 1 Meaning of "Administration charge"

- (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,
- (2) -
- (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.

Paragraph 2

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

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.

Landlord and Tenant Act 1985 (as amended)

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 [-] the First-tier 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) —

- (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.

The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Regulations 2013

Paragraph 13 Reimbursement of fees, etc

- (2) The tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

The Lease

- 9. Clause 25 (a) of the Lease states 'Not at any time during the said term to sub-let the whole or any part of the Demised Premises save that an underletting of the whole of the Demised Premises (with the prior written consent of the Lessor the Management Company and any mortgagee of the Demised Premises) is permitted in the case of a term certain not exceeding three years let at a rack rent.'
- 10. Clause 27 of the Lease states 'Within one month after the date of any and every assignment transfer mortgage charge underlease or tenancy agreement (including any immediate or derivative underlease or

tenancy agreement) of the whole or part of the Demised Premises for any term assignment of such underlease or grant of probate or letters of administration order of court or other matter disposing of or affect the Demised Premises or devolution of or transfer of title to the same to give or procure to be given to the solicitors for the Lessor and separately to the Secretary for the Management Company notice in writing of such disposition or devolution or transfer of title with full particulars thereof and in the case of an underlease (and if required by the Lessor or the Management Company) a copy thereof for registration and retention by it And at the same time to produce or cause to be produced to them the document affecting or (as the case may be) evidencing such disposition or other matter And to pay or cause to be paid at the same time to the Management Company's Secretary such reasonable fee appropriate at the time of registration (but not being less than 0.1% of the consideration plus tax of whatsoever description which may become payable from time to time during the term as aforesaid in each case) in respect of any such notice perusal of documents and registration affecting the Demised Premises PROVIDED ALWAYS that the Management Company shall upon receipt of any such notice acknowledge receipt thereof in sufficient terms so as to comply with the provision of Clause 7 hereof PROVIDED FUTHER that in the case of transfer and a mortgage the said fee shall only be payable on only one of such matters.'

11. The Sublet Guidelines provided to the Applicant by the Respondent in March 2013 are not part of the Lease and set out the charges the Respondent seeks to impose for, inter alia, consent for subletting and for registration fees.

Upper Tribunal cases referred to by the parties

12. The Applicants referred the Tribunal to Holding and Management (Solitaire) Ltd and other appeals [2012] UKUT [1] (LC), (the Solitaire decisions) in which it was held by the President of the Upper Tribunal that in each case the lease provided for the landlord to charge a fee in respect of its consent to underlettings and that the fee must be reasonable. The President found that a consent fee of £40 plus VAT was reasonable in each case. Registration fees were not in issue at the Upper Tribunal, having been dealt with below at the Leasehold Valuation Tribunal (LVT). In two of the four cases a registration fee had been found by the LVT to be payable. In the third case the LVT had found that no registration fee was payable and in the fourth case the LVT had determined that it had no jurisdiction to deal with the registration fee. The President applied the same fee irrespective of whether or not a registration fee had been paid, and irrespective of whether the sublet was in respect of an existing tenant or a new tenant.
13. The Respondent referred the Tribunal to Freehold Managers (Nominees) Ltd v Piatti [2012] UKUT 241 (LC). This case was

determined after the Solitaire decisions referred to in the paragraph above. In Piatti, HHJ Huskinson held that a consent fee was payable and determined that a fee of £165 was reasonable.

Leasehold Valuation Tribunal cases referred to by the Applicants

14. LON/00AM/LAC/2011/0019, in which the LVT allowed a consent fee of £40 plus VAT, and determined that the registration fee was a variable administration charge and that it was not payable under the terms of the lease.
15. MAN/00CX/LAC/2012/0022, in which the LVT allowed a consent fee of £40, determined that the registration fee was not payable under the terms of the lease, and determined that the statutory tenancy that arose after the expiration of a fixed term tenancy did not require any further notification under the terms of the lease.

First Tier Tribunal/Leasehold Valuation Tribunal cases referred to by the Respondents

16. MAN/00CJ/LAC/2013/0010 in which the First-tier Tribunal (FTT) determined that the registration fee was not an administration charge.
17. MAN/00CG/LAC/2012/0013 in which the LVT allowed a £95 consent fee and determined that the registration fee was not an administration charge.
18. MAN/00CZ/LAC/2012/0001 in which the LVT determined that the registration fee was not an administration charge.
19. CHI/24UL/LAC/2011/0009, CHI/00HC/LAC/2011/0015 and CHI/43UJ/LAC/2011/0010 in each of which the LVT allowed a consent fee of £135 including VAT, and determined that the registration fee was not an administration charge.
20. BIR/00CN/LAC/2010/0003, in which the LVT held that consent fees of between £150-£180 are reasonable.

The information before the Tribunal

21. A hearing was not requested by either party, and was not required by the Tribunal as credibility was not an issue in the matter. The Tribunal considered the matter on the papers presented on 27 January 2014.

The Issues

22. The Tribunal identified the relevant issues for determination as follows:

- (i) The liability of the Applicants to pay a sublet consent fee and, if so liable, the amount of the fee.
- (ii) The liability of the Applicants to pay a fee for registration of the subletting and, if so liable, the amount of the fee, such determination to include whether the registration fee is an administration charge.
- (iii) Whether the Tribunal should make an order under S20C of the 1985 Act preventing the Respondent from recovering the cost of these Tribunal proceedings by way of the service charge provisions in the lease.
- (iv) Whether the Tribunal should make an order under Regulation 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for reimbursement of the Applicants' £65 application fee by the Respondent.

The Sublet consent fee

- 23. The Applicants say that no sublet consent fee is payable and that, if the Tribunal find the fee is payable, £40 is a reasonable sum.
- 24. The Applicants say that any further consent to sublet fees that the Respondent may demand in the future are not payable.
- 25. The Respondent says the fee levied is both payable and reasonable and makes no comment in respect of liability for any future fees.

The Applicants' case

- 26. With regard to whether the Applicants are liable to pay a fee for consent to a sublet, the Applicants have not put forward any argument as to why, in principle, they are not so liable.
- 27. With regard to the amount of any consent fee, the Applicants state that the work involved in providing consent does not justify a fee of £100. They say they have been letting out the property since their purchase of it in 2003 without any problems, and without having provided the Respondent with the information about the tenants of the Property which the Respondent now requires. The Applicants say that much of the costs the Respondent says is included in the £100 fee are normal business costs that should not be passed on to them. The Applicants say that the time the Respondent says it takes them to carry out individual tasks involved with the granting of consent are inflated, that the total times claimed are also inflated, and that if a charge is to be payable the Applicants say £40 is reasonable. The Applicants rely on the cases of

LON/00AM/LAC/2011/0019 and MAN/00CX/LAC/2012/0022 with regard to reasonableness of the fee.

28. They say that the Sublet Guidelines are unclear and imply that consent fees might not be payable. They say that the fees set out in the Sublet Guidelines for renewal of consent for an existing tenant are not payable because (i) they can see no necessity for renewal of consent, (ii) little work would be involved upon renewal and (iii) the Guidelines give no indication of how long a further fixed term would be.

The Respondent's case

29. The Respondent states that Clause 25 of the lease clearly states that the Applicants were required to get prior written consent for subletting.
30. The Upper Tribunal decision of Piatti confirms that Section 19(1) (a) of the Landlord and Tenant Act 1927 permits the requirement of payment of a reasonable sum incurred in connection with a licence or consent. That decision also determined £165 to be a reasonable fee for consent to sublet. The Respondent also relies on the decision of BIR/00CN/LAC/2010/0003 in which the LVT held that consent fees of £150-£180 are reasonable.
31. The fee is a reasonable charge for the work required to grant written consent. The Respondent sets out in some detail the work that may be involved in granting consent, and also lists common complications that are encountered by the Respondent's agent when dealing with consents. The list of common problems includes the leaseholder failing to provide a copy of the tenancy agreement.
32. The Respondent sets out a schedule of work involved in granting consent to the Applicants which totals two hours not including the Tribunal application, and which includes chasing the Applicants who had, the Respondent says, failed to initially provide a copy of the tenancy agreement.
33. The Respondent refers to its alternative of a Global Licence, which may work out cheaper for multiple lettings.

The Tribunal's decision

34. Having considered all of the information provided, the Tribunal determines that a fee of £55 inclusive of VAT for the consent fee is payable.

35. With regard to the Applicants' contention that any further consent fees are not payable, the Tribunal makes no determination on the basis that the issue of further consent fees was not part of the application.

Reasons for the Tribunal's decision

36. The Tribunal is not bound by First Tier Tribunal or Leasehold Valuation Tribunal decisions. The Tribunal is bound by the Upper Tribunal.
37. The Tribunal finds that the Applicants are required under Clause 25 of the Lease to obtain consent for the sublet.
38. The Tribunal finds that the Applicants are required to pay a reasonable fee for obtaining that consent, following the Upper Tribunal decisions in the Solitaire cases and Piatti.
39. The Tribunal has guidance from the Upper Tribunal with regard to the amount payable for the consent fee. In the Solitaire cases the President of the Tribunal determined that £40 plus VAT was a reasonable fee for consent. That fee applied whether the consent was with regard to a new tenant, or a renewal consent in respect of an existing tenant. The fee also applied whether a registration fee was also payable or not. Accordingly, the Tribunal finds that £40 plus VAT is the normal fee payable for a standard consent to sublet.
40. The Tribunal then considered Piatti, where a fee of £165 was determined to be reasonable. In Piatti, HHJ Huskinson stated that the £165 fee was determined on the particular facts of the case and he considered that the landlord in that case had been put to a substantial amount of work for the purpose of considering the application to sublet. He stated that a fee in a normal case would be much less than £165 and it may be that a fee of £35 might be reasonable for a renewal consent. HHJ Huskinson cited the Solitaire decisions with regard to whether a consent fee was payable, but not with regard to the amount of the fee.
41. The Tribunal finds that the renewal consent in the present case was not referred to in Piatti as a 'normal case', as although the Applicants' tenant was already in occupation, the Applicants had not previously obtained consent.
42. The Tribunal notes that in the Solitaire cases the President of the UT stated that he came to the sum of £40 in the absence of evidence from the landlords as to what they had actually done in each case to justify the higher consent fees claimed. In this case, the Respondent has provided details of the work done and time taken in respect of the consent approval. They have set out various tasks and say the time taken is two hours. They say they calculate the hourly rate for dealing

with consent approval is £55. The Respondent does not say whether this figure is inclusive of VAT.

43. The Tribunal accepts that the Respondent has taken the steps they say they have taken. The Tribunal finds that £55 an hour inclusive of VAT is reasonable. The Tribunal does not find that the time taken is reasonable for dealing with the consent approval. The Tribunal finds that an hour is a reasonable time for dealing with this consent approval. The Tribunal finds that the fee for the consent to sublet is £55 inclusive of VAT. The Respondent must refund the Applicants £45 of the £100 consent fee paid.
44. With regard to further consent fees, the Applicants did not raise the issue of any further fees in their original application, and did not dispute the Directions Order of 19 November 2013 which identified that the matter in dispute was the charge of £175 made by the Respondent pursuant to paragraphs 25(a) and 27 of the Lease. The Tribunal makes no determination on the matter of further consent fees, as this issue is not part of the application to the Tribunal.

The Registration fee

45. The Applicants say that the registration fee is an administration charge and that it is not payable as Clause 27 of the Lease does not provide for payment of a registration fee for a tenancy agreement.
46. The Respondent says that the registration fee is payable and the sum is reasonable. The Respondent says that the Tribunal does not have jurisdiction to deal with the matter as the registration fee is not an administration charge.

The Applicants' case

47. The Applicants say that the registration fee is an administration charge as defined by paragraph 1(1) of Schedule 11 of the Act.
48. The Applicants say that the Clause 27 of the Lease is almost indecipherable. They suggest that Clause 27 differentiates between a tenancy agreement and an underlease, and that only an underlease needs to be registered. They say that as the agreement in question is an assured shorthold tenancy, it does not need to be registered and therefore no fee is payable. The Applicants rely on MAN/ooCX/LAC/2012/0022 on this point.
49. The Applicants say that registration does not appear to be mandatory but only 'if required by the Lessor or Management Company'. They say there is no justification for the registration fee demanded and ask what work needs to be done in addition to that involved in granting the

consent to justify a fee. The Applicants say they are aware that similar cases before the Tribunal have resulted in different conclusions and they say that this demonstrates the terms of some leases are ambiguous. They say if there is any doubt as to the interpretation of the lease, the benefit of it should be given to them, as the terms are being imposed on them.

The Respondent's case

50. The Respondent says that the Tribunal does not have jurisdiction in relation to the registration fee because the registration fee is not a variable administration charge for the purposes of paragraph 1(1) of Schedule 11 of the Act. The Respondent relies on the 6 LVT and FTT decisions, set out at paragraphs 16-19, in support of their contention.
51. The Respondent says that the registration fee is payable under Clause 27. The Respondent accepts that Clause 27 is not easy to understand. The Respondent says that the principle of a registration fee payable on subletting is clear and well established in many of its leases. The registration fee is contractually payable pursuant to the terms of the lease.
52. The Respondent says that the consent and registration fee of £175 is a one off payment. If a new tenant is registered a registration fee of £75 only will be applicable and if the same tenant renews his tenancy once it has expired this will be charged at 50% of the registration fee, ie £37.50.

The Tribunal's decision

53. The Tribunal finds that the registration fee is a variable administration charge, as provided for by paragraphs 1(1) and 3 of Schedule 11 of the Act.
54. The Tribunal finds that the Lease does not provide for the payment of a registration fee.

Reasons for the Tribunal's decision

55. The Tribunal is aware of no decision binding upon it on the issue of whether a registration fee is an administration charge or, if it is, the amount of any such fee. The Tribunal must consider all of the information and evidence before it, and come to its own view.
56. The Tribunal finds that the imposition of a registration fee that is asserted by the Respondent to be an essential step following the granting of consent to sublet, is so closely connected with the granting

of the consent that the registration fee is an amount payable in connection with the grant of approvals under the lease. As such the registration fee is an administration charge. The Tribunal, therefore, has jurisdiction to consider the Applicants' liability to pay the charge and, if so liable, the amount they are liable to pay

57. It is not disputed by the parties that Clause 27 of the Lease is the clause that deals with registration fees. The Tribunal agrees with the parties that Clause 27 is hard to understand.
58. The Respondent's reading of Clause 27 provides that the section of Clause 27 referring to payment of a fee refers to all of the matters set out at the commencement of Clause 27. These matters include the terms underlease and tenancy agreement.
59. The Applicants' reading of Clause 27 is that the reference to registration refers only to an underlease. They say that it follows that a registration fee is therefore only payable for an underlease. The clause differentiates between an underlease and a tenancy agreement. The Applicants' agreement is a tenancy agreement and not an underlease. Therefore, registration of their tenancy agreement is not required and, it follows, payment of a registration fee is also not required
60. The Tribunal finds that the reference to a registration fee in Clause 27 applies only to an underlease, and finds further that the Respondent has chosen to differentiate between an underlease and a tenancy agreement. Neither party has directed the Tribunal to any definition of the terms underlease or tenancy within the lease. The Tribunal finds that the Applicants' assured shorthold tenancy is a tenancy agreement and not an underlease for the purpose of applying Clause 27.
61. The Tribunal finds, therefore, that the Lease does not provide for the payment of a registration fee for consent to sublet under a tenancy agreement and the Respondent must refund the £75 fee paid to it by the Applicants.

Application under Section 20C and refund of fees

62. Having taken into account the determinations above and all of the evidence before the Tribunal, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.
63. The Tribunal may make an order that the Respondent reimburse the Applicants the whole or part of any fee paid by them in their application to the Tribunal. Having taken into account the determinations above

and all of the evidence before the Tribunal, the Tribunal orders the Respondent to refund the Applicants the £65 application fee within 28 days of the date of this decision.

In reaching their determination the Tribunal has had regard to the evidence and submissions of the parties, the relevant law and their own knowledge and experience as an expert Tribunal but not any special or secret knowledge.

If either party is dissatisfied with this decision they may apply in writing to this Tribunal for permission to appeal to the Upper Tribunal. Any such application must be made within 28 days of date of issue of this decision which is given below (regulation 52 (2) of The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rule 2013) stating the grounds upon which it is intended to rely on in the appeal.

Name: Judge S McClure

Date: 17 FEB 2014