



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case Reference : CAM/38UF/LVA/2018/0001

Property : Flat 15 White Hart Mews,
High Street,
Chipping Norton,
OX7 5FB

Applicant : David Graaff

Respondent : Metropolitan Ground Rents Ltd.

Date of Application : 2nd January 2018

Type of Application : To determine reasonableness and
payability of variable administration charges

The Tribunal : Bruce Edgington (lawyer chair)
David Brown FRICS

DECISION

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1. The charge claimed from the Applicant for a notice of subletting is not a variable administration charge, which means that the Tribunal has no jurisdiction. The application in respect of that charge is therefore dismissed.
2. The Tribunal does not make an order pursuant to section 20C of the **Landlord and Tenant 1985** ("the 1985 Act") or paragraph 5A of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") preventing the Respondent from including costs of representation in these proceedings in any future service charge demand or administration charge.

Reasons

Introduction

3. This Application is for the Tribunal to determine the reasonableness and payability of a variable administration charge. The Applicant does not say so specifically, but it is assumed that he is the long leaseholder of the property and has sublet it because he has been asked to pay a fee of £126, submit a copy of the sub tenancy agreement and complete a form. It is clear that this is not a fixed charge as the only mention of the amount of the charge in the lease is in

paragraph 31.4 of Schedule 7, Part Two which mentions a 'minimum' fee.

4. There is much in the bundle submitted for the use of the Tribunal about the amount of the fee and why it has been charged. However, one of the points made by the Respondent throughout has been that the charge is not a variable administration charge as defined in the legislation and the Tribunal therefore has no jurisdiction.
5. A directions order was made by the Tribunal on the 17th January 2018 which ordered the parties to file and serve evidence. The order said that the Tribunal would not inspect the property and would be prepared to deal with the determination on the basis of the papers and written representations made. It pointed out that a determination would not be made before 16th March 2018 and either party had the opportunity to both ask for an inspection of the property and have an oral hearing if they so requested. No request was made for either an inspection or an oral hearing.

The Law

6. Paragraph 1 of Schedule 11 of the 2002 Act defines an administration charge as being:-

“an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable... in connection with the grant of approvals...or the provision of information or documents by the landlord or a person who is a party to his lease otherwise than as landlord or tenant...or a breach (or alleged breach) of a covenant or condition in his lease.”

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

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

8. Paragraph 5 of the Schedule provides that an application may be made to this Tribunal, as successor to the LVT, for a determination as to whether an administration charge is payable which includes, by definition, a determination as to whether it is reasonable.
9. The Applicant has asked for orders under section 20C of the 1985 Act and paragraph 5A of Schedule 11 of the 2002 Act preventing the Respondent from recovering its costs of representation in these proceedings from the Applicant as either a service charge or an administration charge.

The Lease

10. The Tribunal has been supplied with a copy of the lease in this case. It is dated 25th April 2006 and is for a term of 125 years from 1st January 2004 with an increasing ground rent.

11. Schedule 7 deals with lessee's covenants and paragraph 31 of Part Two deals with what happens on a subletting. A copy of the subletting agreement duly certified by a solicitor or licensed conveyancer has to give the lessor's solicitor and to the management company within one month of execution with a fee of a minimum of £30 plus VAT.

Discussion

12. The Applicant is clearly aggrieved because the charge is much more than £30 and he believes that there is case law to support his position. An increase seems to have arisen following the passing of the **Insurance Act 2015**.
13. However, this Tribunal is limited by the Statute which gives it the jurisdiction to deal with administration charges. If the charges are not administration charges according to the 2002 Act, then the Tribunal has no power to consider them.
14. The simple questions to answer are whether the charge imposed is in connection with the grant of an approval, and the answer to that question is 'no'; is it in connection with the failure to make payment or any other breach of covenant? Again the answer is 'no'. Is it for or in connection with the provision of information or documents by or on behalf of the **landlord** (our emphasis) or a person who is party to his lease otherwise than as landlord or tenant? The answer to that is also 'no'. It is the leaseholder who is providing the information or documents, not the landlord or management company.
15. Further, it was decided in the Upper Tribunal case of **Proxima Properties Ltd. v Dr Thomas D McGhee** [2014] UKUT 59 (LC) that a registration fee is not an administration charge.

Conclusions

16. As the Tribunal has no jurisdiction, it has to dismiss the application. Any remedy may be in the county court where any allegation that the fee is not 'reasonable' can be considered as a possible breach of contract.
17. In the circumstances and taking into account the conclusion reached, the Tribunal does not make orders pursuant to section 20C of the 1985 Act or paragraph 5A of Schedule 11 of the 2002 Act.

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Bruce Edgington
Regional Judge
16th March 2018

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.