

**SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL**

Case Number: CH1/43UG/LAC/2004/002

Re: 9 The Fernery, Staines, Middlesex, TW18 3JJ (“the Premises”)

Between

Mr James Richards

(“the Applicant/Tenant”)

And

DJJ Estates Limited

(“the Respondent/Landlord”)

IN THE MATTER OF AN APPLICATION UNDER SCHEDULE 11 OF THE
COMMONHOLD AND LEASEHOLD REFORM ACT 2002

(Application to determine the liability to pay an Administration Charge)

DECISION OF THE TRIBUNAL

1. This is an Application by the Tenant of the above property, Mr Richards for the determination of the liability to pay an administration charge, and also to decide whether or not the proposed administration charge of £750 is reasonable. The Application was dated the 28th September 2004.
2. The Tribunal issued Provisional Directions on the 5th November 2004. In those Directions the Tribunal decided to deal with the case on the basis of written representations only, having also sought the agreement of the parties to proceed on this basis, i.e. without a Hearing.

3. The property is held on a lease dated the 4th December 1959 between the original Landlord, Alford Robinson (Builders and Contractors Ltd), and the original Tenant, Alice Verena Glue. The term of the lease is 99 years with effect from the 24th June 1959. As far as this Application is concerned, the salient covenant of the lease is as follows:-

Lessees covenant (10)

“.....NOT at any time during the said term without the licence in writing of the Lessor or Mortgage first obtained to erect or place any additional building or erection on any part of the demised premises other than a shed for domestic purposes only and not without such licence as aforesaid to make any structural alteration in the plan or elevation of the building hereby demised or in any of the party walls or the principal or bearing walls or timbers thereof nor bounding the demised premises and to maintain the existing boundaries of the said garden ground as the same now are.....”.

This Application is in connection with the applicant's proposed structural alterations to the subject property.

4. The factual information and evidence submitted by both parties was as follows.

Mr Richards, the applicant, stated in his application form that, in his opinion, the Landlord was demanding an unreasonable administration charge and he also stated that “Have been advised that typical admin cost for licence to alter should be closer to £250”. He further stated in his letter to the Respondent dated the 11th June 2004 that his understanding was that a licence of this nature would normally incur a cost of £200 - £250, and he indicated that he would be happy to pay the latter sum. He also referred to having taken advice from the Leasehold Advisory Service, and he indicated his willingness to the Landlords to pay their legal expenses necessarily incurred in respect to this Application. Mr Richards also stated in a letter to the Tribunal dated the 14th October 2004 in response to correspondence from the Respondent Landlords, that firstly to him the amount of staff that the Landlords employ is irrelevant and that his administration fee is not a subsidy. Secondly he questioned why the Respondent Landlords would necessarily need to employ outside Solicitors when they have inhouse Lawyers. Thirdly he referred to the fact that provincial Solicitors were, in his view, cheaper than Solicitors from the West End of London. The Tribunal noticed that Mr Richards did not reveal the source of the advice above, i.e. that an administration charge of £250 was reasonable.

The Respondent Landlords case was essentially contained in copies of correspondence between them and Mr Richards, the applicant Tenant, plus two letters to the Tribunal office. The salient points of this evidence were that in their letter to the applicant dated the 28th May 2004, the Landlords stated that the Tenant would be responsible for their legal and administrative costs in connection with the deed in the sum of £600. However, in a letter to the applicant dated the 14th June 2004 the Landlords then referred to the sum of £750 for their legal and administrative costs. They further stated that they felt this charge reasonable, again in a direct letter to the tenant (dated the 23rd September 2004). In their letter to the Tribunal office dated the 7th October 2004 the Respondent Landlords stated that their charges reflected the time spent by the various professional and administrative staff on the matter, and the level of expertise particularly in view of the calibre of staff involved. They further stated that a licence for alterations will involve their inhouse Solicitor in reviewing the lease, drafting the licence, agreeing the same with either of the lessee direct or the Solicitors acting for such lessee, preparing engrossment and effecting completion. They also stated that their own external Solicitors would reserve the right to review these charges upwardly in the event that the matter proved protracted. They also stated that in addition to the work required of their inhouse Solicitor their Property Managers would also be involved in considering the nature of the works proposed and the affect such works would have on the other flats in the building and the building itself with a view to determining whether the Landlords should authorise the proposed works. Finally at the request of the Tribunal, and in a letter to them dated the 25th January 2005, the Landlords stated "While it is difficult to be accurate in terms of the breakdown of the charges, in view of the time expended by the various individuals in our offices, in similar transactions undertaken, we would suggest the following represents a typical breakdown:-

1. Legal costs - £350.
2. Property managers fee - £250.
3. General Administration - £150".

Unfortunately, however, the respondent Landlords did not give an indication as to the professional hourly rate charged by their Solicitors, Managers etc.

5. The Law

Under Schedule 11 of the Commonhold and Leasehold Reform Act 2002, an administration charge includes:-

An amount payable by a Tenant to a Landlord for the costs associated with the granting of approvals under the lease, or considering Application for such approvals such as consent to alterations.
(Schedule 11 Part 1, 1 (1)).

Under paragraph 1 (3) of this Schedule, an administration charge which is neither specified in the lease nor calculated in accordance with the formulas specified in the lease is described as a variable administration charge.

Under paragraph 2 of the Schedule 11, such a variable administration charge is payable only to the extent that the amount of the charge is reasonable. Furthermore under paragraph 4 (1) of this Schedule, any demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of the Tenant in relation to administration charges.

Under paragraph 5 (1) of the Schedule, an Application may be made to a Leasehold Valuation Tribunal for the 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.

The Landlord and Tenant Act 1927 paragraph 19 (2) states that:-

“In all leases whether made before or after the commencement of this Act containing a covenant condition or agreement against the making of improvements without licence or consent, such covenant condition or agreement shall be deemed, notwithstanding any express provision to the contrary, to be subject to a proviso that such licence or consent is not to be unreasonably withheld; but this proviso does not preclude the right to require as a condition of such licence or consent the payment of a reasonable sum in respect of any damage to or diminution in the value of the premises or any neighbouring premises belonging to the Landlord, and of any legal or other expenses properly incurred in connection with such licence or consent nor, in the case of an improvement which does not add to the letting value of the holding , does it preclude that right to require as a condition of such a licence or consent, where such a requirement would be reasonable, an undertaking on the part of the tenant to reinstate the premises in the condition in which they were before the improvement was executed”

6. **Decision**

The only item in dispute between the parties is the issue of reasonableness, i.e. as to whether or not a proposed administration charge of £750 is reasonable. As indicated this proposed charge would be for the Landlords considering the Tenants Application to make structural alterations to the subject property and the preparation, etc. of the licence of consent for the Tenant to make agreed alterations to the subject property.

Furthermore the tribunal has noted that in principle the applicant is prepared to pay an administration charge, so there is no dispute as to whether or not such a charge is actually payable despite the fact that the lease is silent with regard to the payment for administration charges. The Tribunal noted that the applicant has received advice as to the provisions of the Landlord and Tenant Act 1927, as to the liability in principle to pay administration charges etc.

Turning now to the sole issue of reasonableness, the tribunal has carefully considered the written evidence submitted by both parties. As far as the proposed legal charge is concerned, the Tribunal takes the view that the sum proposed by the Respondent Landlords, i.e. £350 is reasonable. However, the Tribunal considers that the total fee of £400 to cover work by the Respondent Landlords property Managers and their general administration is unreasonable and the Tribunal considers that a reasonable sum here would be a total of £250.

Accordingly the Tribunal determines that, having regard to the evidence submitted to it that the reasonable administration charge in this matter should not exceed a total of £600 plus VAT. This decision to be effective for 6 months from the date hereof. The parties would also be able to reapply to the Tribunal should there be any material change in the circumstances of this particular matter. Furthermore the Tribunal once again draw to the attention of the Respondent Landlords the provisions of paragraph 4 (1) of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 above, i.e. that any demand for payment of administration charge must be accompanied by a summary of rights and obligations of the Tenant in relation to the administration charges.

..... Chairman

J. S. McAllister FRICS

Dated 31st January 2005

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..... Chairman

J. S. McAllister FRICS

Dated 31st January 2005