BIR/44UC/LAC/2005/0003

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE MIDLAND LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER PARAGRAPH 5 OF PART 1 OF SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Property: Flats 18, 19 and 30 Gillett Close, Marlborough Court, Nuneaton, Warwickshire CV11 5XW

Applicants: Dr M D and Mrs Z Lockhat (tenants)

Respondent: Peverel O M Limited (management company)

Determination without an oral hearing under regulation 11 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003

Tribunal: Lady Wilson
Mr Stephen Berg FRICS

Date of the tribunal's decision: 24 February 2006

Background

1. This is an application by the joint leaseholders of Flats 18, 19 and 30 Gillett Close, in this decision called "the tenants", under paragraph 5 of Part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the Schedule") to determine their liability to pay administration charges. The respondent named in the application is Beazer Homes Bedford Limited, the lessor. The covenant to pay is enforceable both by the lessor and by the management company, but the leases require payment of the disputed administration charges to be made to the secretary of the management company. We consider that the management company, Peverel O M Limited, as successor to O M Limited, is the more appropriate respondent. However, the management company is named in the application as agent for the lessor, and we are satisfied that no-one has been misled, and that the application is validly made and can proceed.

2. This determination is made without an oral hearing under regulation 11 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 with the consent of the parties and on the basis of their written representations. The written representations which, together with attached documents, we have received are as follows:

a. from the tenants, in the statement of grounds attached to the application dated 3 December 2005, and also dated 3, 17 and 22 February 2006;

b. from the management company, dated 23 January and 16 and 22 February 2006.

3. Gillett Close, Marlborough Court is a development of 60 flats in five blocks. Flats 18, 19 and 30 are held by the tenants on leases for terms of 125 years from 1 May 1996 which are in standard form. The relevant tenants' covenants are contained in paragraphs 25.1 and 27 of the Eighth Schedule and are:

> *25 Not at any time during the Term to:*
>
> *25.1 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 Management Company) is permitted in the case of an Assured Shorthold Tenancy Agreement

...

27 Within one month after the date of any and every ... tenancy agreement of the whole or part of the Demised Premises ... to give ... to the Secretary to the Management Company notice in writing of such disposition ... with full particulars thereof ... AND ALSO at the same time to produce ... the document effecting ... the disposition ... And to pay ... at the same time to the Management Company's Secretary such reasonable fee appropriate at the time of registration in respect of any such notice [and] perusal of documents ... affecting the Demised Premises PROVIDED ALWAYS that in the case of contemporaneous transfer and mortgage the fee shall only be payable on one of such matters (other than the payment of rent and service charges in the case of an underletting or tenancy).

4. The application relates to charges made by the management company in respect of sub-lettings by the tenants on assured shorthold tenancies for periods of six months and for extensions of existing assured shorthold tenancies. It is not entirely clear what charges have been demanded since the relevant date of 30 September 2003 (see paragraph 5 below), but the position appears to be as follows (the dates provided by the parties vary):

Paid by the tenants:

2003:	Flat 18 4 December	£49.35 (paid)
	Flat 19 1 November	£49.35 (paid)
	Flat 30 1 November	£49.35 (paid) (tenants say £41.13)

2004:	Flat 18 10 September	£49.35 (paid) (not mentioned by tenants)
	Flat 30 15 October	£49.35 (paid)
2005:	Flat 19 24 January	£49.35 (paid) (not mentioned by tenants)

In addition, the following appear to have been demanded and not paid:

2005:	14 September	£64.63
	4 October	£64.63
	Date unknown	£35.28 (re-letting fee)
2006:	5 January	£64.63

5. By virtue of the Commonhold and Leasehold Reform Act 2002 (Commencement No 2 and Savings (England) Order 2003, the Schedule came into force on 30 September 2003, but only in respect of administration charges payable on or after that date. By sub-paragraph 1(1) of the Schedule, "administration charge" includes:

> *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 ...*

And, by sub-paragraph 1(3) of the 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.

By sub-paragraph 2, *a variable administration charge is payable only to the extent that the amount of the charge is reasonable.*

By sub- paragraph 4(1) of the Schedule:

> *A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.*

Sub-paragraph 4(2) provides for the making of regulations prescribing the form of such summaries, but no such regulations have yet been made.

Sub-paragraph 4(3) provides:

> *A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.*

By sub-paragraph 5(1):

> *An application may be made to a leasehold valuation 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.

Finally, by sub-paragraph 5(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

...

But, by sub-paragraph 5(5):

... the tenant is not to be taken to have agreed or admitted any matter by reason only of

having made any payment.

The tenants' case

6. The tenants said that they bought the flats nine years ago in order to sub-let them for charitable purposes and that they had been assured by freeholder's Sales Officer when they bought them that no fee would be payable for sub-letting. They were accordingly very anxious that Beazer Homes Bedford Limited should be a party to these proceedings so that it could be required to provide information relevant to this determination. They said that notwithstanding the assurance they had been given by the Sales Officer, the management company had made charges in respect of each sub-letting. They said that in a letter dated 14 July 1997 from O M Management Services Ltd, the respondent's predecessor, a Ms O'Carroll had informed them all that was needed in the case of extensions of existing tenancies was that the management company be informed of the extended time period, and that no charges had been made for extensions of existing sub-lettings until 2004, when a

charge of £24.68, increased in 2005 to £35.28, was made. They said that they had reluctantly paid the fees in the early years, but had refused to pay the increased fees. They could not understand why the names of sub-tenants were required, and considered that it was unreasonable to charge any fee, because all queries by their sub-tenants were dealt with by them, without the involvement of the management company.

7. In answer to the landlord's case they reiterated that in their view the process of demanding the names of sub-tenants was unnecessary, and that no service was provided in return for the payment. They said it was a breach of natural justice for the charge to be made when they had originally been assured by the freeholder's representative that it would not be made.

The management company's case

8. For the management company, Mr R J Sandler, the company solicitor, said that the company was entitled to require notice of sub-letting and it was not reasonable for tenants to expect the service to be carried out free of charge. It was not possible for the management company to charge either the freeholder or the other leaseholders for the service. He considered the charges to be reasonable in amount and at the lower end of the charges scale, and fully justified. Full charges for dealing with notices of extensions of existing sub-lettings would, he said, have been justified but the management company had chosen not to make them. He said that the management company had complied with the requirements of the 2002 Act and he enclosed a copy of the summary of the tenants' rights and obligations given under paragraph 4(1) of the Schedule.

Decision

9. It is clear, and is not disputed, that charges made for the administration associated with dealing with applications for permission to sub-let fall within sub-paragraph 1(1)(a) of the Schedule and we are satisfied that the payments which are the subject of this dispute are variable administration charges within the meaning of the Schedule. We are also satisfied that the tenants have been given proper summaries of their rights and obligations as required by the Schedule. Some of the charges levied since 30 September 2003 have been paid by the tenants, but the management company has not alleged that the tenants have admitted or agreed that the charges are reasonable and payable and we are satisfied that we have jurisdiction to consider them.

10. We do not accept that any assurance which may have been given by the freeholder's Sales Officer about the levying of such charges when the tenants purchased the flats can override the provisions of the leases, which clearly permit such charges to be made, and we are satisfied that we would not be assisted by evidence from Beazer Homes Bedford Limited, even if it were available, in this regard. Nor do we regard it as relevant to the reasonableness of the charges that the tenants use for charitable purposes the rents which they receive from sub-letting. Furthermore we are quite satisfied that it is not only a requirement of the leases but is also essential in the interests of good management that the management company is informed of all sub-lettings so that it can, if necessary, object to an unsuitable sub-tenant and so that it is aware of who is occupying the flats. We do not accept that there is any reason in principle why a tenant who seeks consent to sub-let should not pay the management company's reasonable charge for dealing with the request, and, although we accept that there may be landlords who do not make a charge for performing this function, we accept that it is reasonable in principle to do so. In any event the leases specifically provide for such a charge to be made. The question, therefore, is whether the amounts charged are reasonable in amount.

11. We are satisfied that the charges made are within the band of reasonable charges and are

payable by the tenants. The work to be done involves considering the applications, amending the records and, presumably in some instances, could require checks on the suitability of the proposed sub-tenant. We do not regard the charges made as in any way excessive.

Section 20C

12. The tenants have asked that an order be made under section 20C of the Landlord and Tenant Act 1985 that any costs incurred by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by them. In principle it appears that paragraph 7 and/or 8 of Part C of the Sixth Schedule to the leases would permit the placing of such costs on the service charge.

13. The Lands Tribunal, in *The tenants of Langford Court v Doren* (LRX/37/2000), set out the principles according to which orders under section 20C should be made, namely that the order should be just and equitable in all the circumstances, and should not depend only the result of the case. In our view the management company has acted reasonably in relation to the issues in dispute and to these proceedings, in which it has been successful. We therefore make no order under section 20C.

CHAIRMAN.....

DATE.....14 February 2007.....