RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL for the
London Rent Assessment Panel

Ref:	**LON/00AY/LAC/2004/009**
Commonhold and Leasehold Reform Act 2002 ('the Act')	
HEARING:	**18 February 2005**
TRIBUNAL MEMBERS:	**Mr John Hewitt Chairman** **Mr W. John Reed FRICS** **Mr Alan Ring**
PREMISES:	**Flat 3, 105 Babington Road** **London SW16**
APPLICANT:	**Sarah Jane Cooke** **Daniel Robert Cooke**
Appearances:	Mr Stan Gallagher Counsel Mr & Mrs Cooke
RESPONDENT:	**Shah Muhammad**
Appearances:	None

DECISION OF THE TRIBUNAL

1. Decision

1.1 The decision of the Tribunal is that:

1. The administration fee payable by the Applicant in respect of the retrospective licence for alterations referred to below is the sum of £50. It is payable:
   by the Applicant
   to the Respondent
   with the draft retrospective licence for alterations to be submitted to the Respondent
   by cheque drawn on a solicitor's client bank account
2. The Respondent shall by 4pm Friday 11 March 2005 pay to the Applicant:-

1. the sum of £250 by way of reimbursement of fees paid in respect of this application and the hearing, and
2. the sum of £500 by way of costs incurred by the Applicant in respect of these proceedings

1.2 The reasons for the decisions made by the Tribunal are set out below.

2. Background

2.1 The Applicant is the lessee of the Premises and the Respondent is the landlord. The dispute between the parties is the amount of an administration charge of £5000 sought by the landlord for the giving of a retrospective licence for alterations in respect of an improvement possibly carried out to the Premises by a predecessor in title of the Applicant.

2.2 The lease is dated 27 March 1986 and granted by the Respondent to Anthony Robert Wickes for a term of 125 years from 24 June 1985 at a ground rent of £100 per annum for the first 33 years of the term and thereafter as provided for in the Fourth Schedule to the lease.

2.3 Clause 3(8) of the lease is a covenant on the part of the lessee:
Not to cut maim or injure any of the ceilings floors walls or partitions of the Demised Premises nor make any alterations in the Demised Premises without the prior consent of in writing of the Lessor'

2.4 There is a lease plan attached to the lease. It refers to the *'proposed first floor'* and shows a studio flat with a *'double arched opening'* by what is evidently a sleeping area separating a living area. The Tribunal was told that currently there is no 'double arched opening' but a stud non-load bearing partition containing an internal door separating the 2 areas. Thus the position on the ground does not accord with the title deeds.

2.5 It seems there may be 1 of three explanations for this:-
1. that the lease plan is wrong and the partition and door were installed as part of the conversion works carried out in about 1985
2. a predecessor in title carried out the alteration and either did not obtain the landlord's written consent, or
3. the predecessor in title did obtain written consent but it has not been kept with the title deeds

2.6 This issue came to light when the Applicant was about to sell the leasehold interest in the flat and a prospective purchaser made enquiry.

2.7 The Applicant sought to resolve the issue by seeking the Respondent's retrospective licence consenting to the alteration. The Respondent, in correspondence said that licence would be given, but only on the payment of £5000.

2.8 By an application dated 6 December 2004 made to the Tribunal pursuant to s158 of and Schedule 11 to the Act, the Applicant sought a determination whether an administration charge is payable, and if it is, as to:
1. the person by whom it is payable
2. the person to whom it is payable
3. the amount which is payable
4. the date at or by which it is payable, and
5. the manner in which it is payable.

2.9 The Applicant sought to have the application determined on the fast track, as a sale of the flat was pending, and was prepared to have it determined by a paper hearing. The Respondent refused to agree and said that he wanted an oral

hearing. Accordingly, on 12 January 2004 directions were given for an oral hearing and the hearing date of 18 February 2005 was set.

2.10 The Applicant served its bundle. The Respondent has not served his bundle. At the hearing the Applicant was represented by Mr Gallagher of counsel. The Respondent was neither present nor represented, although correspondence on the Tribunal file shows that he has appointed an agent to deal with this matter for him whilst he is temporarily abroad. The hearing thus proceeded in the absence of the Respondent.

3. The Case for the Applicant

3.1 Mr Gallagher presented the case for the Applicant and went through the salient facts born out by the correspondence as follows:-

16.09.04 Applicant's solicitors ('First LLP') write to the Respondent seeking retrospective licence and enclose a licence for signature; Mr Cooke checked with his solicitor and confirmed that the unsigned licence in the Tribunal's papers was the 'letter' referred to in the solicitors' letter.

18.09.04 Respondent replies and states that he is unable to make any amendments to the lease plan without a fee of £5000. He goes on to say *'...if your client is agree to pay me £5000 with your undertaking, then I will send my consent as you mentioned it. Thank you.'* The Tribunal takes it and finds that this letter means that the Respondent was willing to sign the retrospective licence in the form enclosed with the letter dated 16.09.05.

22.09.04 First LLP write to the Respondent seeking to clarify the history and assert that under the terms of the lease the Respondent is not allowed to unreasonably withhold consent.

27.09.04 The Respondent replies stating that he does not know anything about the wall, he asks for it to be removed and states *'...on the other hand I will give you consent with my alterations fee of £5000 i.e to amendment of the lease.'*

28.09.04 First Law respond, state that £5000 will not be paid and draw attention to the Act and the jurisdiction of the LVT on administration charges. They send a copy of Schedule 11 to the Act so that the Respondent can satisfy himself as to what they said. They reiterate their view the matter is best resolved by a licence and urge the Respondent to seek legal advice.

12.10.04 The Respondent replies. He complains of unauthorised alterations and cites clause 3(8) of the lease. He says he is not asking for an administration charge but *'...penalty charges doing unauthorised alterations without the consent of the lessor otherwise make it as open plan as per plan. Therefore I am unable to give my consent without penalty charges for breaching the terms of Lease.'*

03.11.04 First Law reply to seek clarification of the Respondent's position and ask *'Please could you confirm that upon receipt of our clients payment of the sum of £5000.00 you will grant your consent in relation to the wall.'*

05.11.04 The Respondent replies *'I hereby inform you & confirm you that upon receipt of your clients payment of the sum of £5000 (five thousands only) I will grant my consent in relation to the wall.'*

Mr Cooke was able to confirm that at no time had the Respondent or any surveyor or adviser instructed by him attended the Premises to inspect them.

It was explained to the Tribunal that following the decision of the Tribunal as to the amount of the administrative charge payable in respect of the consent, the Applicant's solicitors will again write to the Respondent tendering the sum determined and sending a further copy of the licence for signature by the Respondent. If he fails to give consent within a reasonable time, an application may be made to the court seeking a declaration that consent has been unreasonably withheld.

3.2 Mr Gallagher made submissions as follows:

1. The Applicants have sought retrospective licence for alterations in respect of the wall which constitutes an improvement.
2. The lease contains a qualified covenant prohibiting alterations (clause 3(8)), consequently s19 (2) Landlord and Tenant Act 1927 is engaged to imply a proviso that the landlord's consent is not to be unreasonably withheld. The proviso does not preclude the right to require as a condition of the giving of such consent the payment of reasonable sum in respect of any damage to or diminution in the value of the premises and of any legal or other expenses properly incurred in connection with such consent.
3. The Respondent has confirmed on several occasions that he has no objection to giving consent; all that is in issue is the sum sought by the landlord for giving it.
4. The reasonable legal or other expenses properly incurred payment of which may be made a condition of consent constitute an administrative charge within the meaning of paragraphs 1(1) and (3) of Schedule 11 to the Act.
5. No evidence has been put in by the Respondent to set out costs incurred by him or as to any damage or diminution in value of his interest in the Premises.
6. As a matter of general law a landlord is not entitled to extract a ransom price for the giving of a consent in respect of a qualified prohibition on improvements. The proviso at s 19(2) of the 1927 Act is limited to the payment of compensation for damages or diminution and the reimbursement of legal and other expenses properly incurred.
7. By virtue of Schedule 11 to the Act the legal or expenses properly incurred must be reasonable. In the circumstances of this case, reasonable is limited to nil or a nominal sum.
8. The demand made by the Respondent for the sum of £5000 was not accompanied by a notice compliant with paragraph of the Schedule 11 giving a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
9. The Respondent has acted unreasonably in connection with the application for the licence and as a result the Applicant incurred fees in connection with these proceedings which the Respondent ought to reimburse. Further, the Respondent has acted unreasonably in declining to agree to a paper determination and on insisting on an oral hearing and then failed to file his statement of case and failed to attend the hearing or arrange for his representative to attend on his behalf. In consequence the Applicant was obliged to pay a hearing fee of £150 and to incur solicitors' charges and counsel's brief fee in connection with the hearing. Mr Gallagher told the Tribunal that his brief fee exceeded £500.

4. Findings and Decisions

4.1 We find that the construction of the wall, which is not shown on the lease plan, constitutes an alteration which is also an improvement. The lease contains a qualified covenant prohibiting alterations without the written consent of the landlord. S19 (2) of the Landlord and Tenant Act 1927 is engaged to the effect that such consent is not to be unreasonably withheld. A landlord is entitled to impose as a condition of consent the payment of any damages or diminution in the value of his interest he may suffer and his legal or other expenses reasonably incurred.

4.2 Upon the application for retrospective licence for alterations the Respondent did not raise any material or objection in principle. We accept the evidence of the Applicant that no visit to the Premises was made by or on behalf of the Respondent.

4.3 Our reading of the correspondence put before us, is that initially the Respondent imposed as a condition for the giving of consent a fee of £5000. Later he changed track and imposed this sum as a 'penalty' for the past breaches of the covenant. At no time has the Respondent explained how his figure of £5000 has been arrived and neither has he sought to justify it, despite being invited to do so.

4.4 We find that the Respondent sought the sum of £5000 as an administration fee for the giving of his consent. The Respondent has evidently not sought legal or other advice in connection with the request for consent and has not submitted any evidence as to the cost of any such advice. We find that no such advice was sought or paid for. The first letter written by the Respondent makes it clear to us that the Respondent had concluded that he did not need to take any advice, that he was perfectly happy to give consent, conditional only upon payment of his 'fee' of £5000.

4.5 We find that such a fee amounts to an administration charge within the meaning of Schedule 11 to the Act. In the absence of any evidence from the Respondent as to how the sum of £5000 is made up, and bearing in mind that only a few letters have been written, we have no hesitation in concluding that £5000 is not a reasonable administration fee. Having regard to our experience in these matters we conclude that a reasonable administration fee payable by the Applicant for the written consent of the Respondent, bearing in mind that the Applicant's solicitors have prepared a licence which is in perfectly acceptable form, is the sum of £50.

4.6 Although it is not for us to make determinations on the question of unreasonably withholding of consent, it may be helpful to both parties if we make the comment that upon the tender of the sum of £50, a copy of this decision and a further copy of the licence we are of the view that it would be unreasonable of the Respondent not to give his consent. If the Respondent is of the view that he has a claim in damages in respect of any loss or damage suffered in the past arising out of the apparent breach of covenant, he is still entitled to bring such claim before a court, and he is not precluded from doing so by the giving of the consent as sought.

4.7 The Applicant has paid a fee of £150 on making this application (although it seems to us that the fee actually payable was only £100) and has paid a further fee of £150 for the hearing. We have decided that the Respondent shall reimburse the Applicant in the sum of £250 in respect of those fees. We came to this decision for three reasons. First, we decide that the Respondent was unreasonable in imposing a condition of £5000 right at the

outset. This was compounded by his failure to seek professional advice – advice the reasonable cost of which he could have recovered from the Applicant – despite being told that he was being unreasonable by the Applicant's solicitors and ignoring their invitation to him to seek independent legal advice. Further the hearing fee was incurred due to the Respondent's insistence on an oral hearing. Given that he failed to attend the hearing or arrange for his representative to attend on his behalf, such insistence was unreasonable. The whole issue arose from a possible error in the lease plan. The lease was granted by the Respondent. He was well placed to try and resolve the issue at the outset. We believe it would have been reasonable for him to have done so. He made no attempt to do so. On the contrary it seems to us that his very first reaction was to exploit the situation to his considerable advantage. For these reasons we find that his conduct left the Applicant no alternative but to bring these proceedings and thus he should bear the fees associated with them.

4.8 For similar reasons we have also decided that the Respondent shall pay to the Applicant the sum of £500 in respect of costs. The Respondent insisted upon an oral hearing. In our view this reasonably led the Applicant to incur additional solicitor's costs and counsel's fees in preparing for and attending the hearing. We are satisfied on what we have been told and from our experience in these matters that such additional costs and fees exceed £500. We consider that the Respondent's insistence on an oral hearing and his failure to attend it or be represented at it, amounts to him having acted *'otherwise unreasonably in connection with the proceeding'* within the meaning of paragraph 10(3) (b) of Schedule 12 to the Act. Accordingly, we find that it is fair and just that the Respondent should make a payment towards the additional costs his conduct has caused to be incurred.

John Hewitt
Chairman
28 February 2005