

REF LON/00AY/LVA/2005/0001

IN THE LEASEHOLD VALUATION TRIBUNAL

**IN THE-MATTER OF THE COMMONHOLD AND
LEASEHOLD REFORM ACT SCHEDULE 11**

Address **Ground floor flat 83 Hayter Road London SW2
5AD**

Applicant **Lucy Hackney**
Represented by **In person assisted by her father Mr Hackney**

Respondent **Townplot Limited**

Represented by **Mr Hammond of counsel instructed by
Messrs Knowles Solicitors**

The Tribunal
Mr P Leighton LLB (Hons)
Mr M Mathews FRICS
Mrs S Baum JP

Hearing Date **23rd November 2005**

Date of Decision **7th December 2005**

Introduction

- 1** The Applicant applied by application dated 14th October 2005 for a determination of reasonableness of an administration charge under Schedule 11 of the Commonhold and Leasehold Reform Act 2005 in respect of her lease of the ground floor flat 83 Hayter Road Brixton London SW2 (“the property”)
- 2** The application was listed for a pre trial review on 23rd November 2005 but the Respondent objected to the Tribunal’s jurisdiction and the Tribunal decided that a preliminary hearing should be held on that date to determinate that issue.

The Hearing

- 3** At the hearing Mr Hammond of counsel appeared for the Respondent and the Applicant appeared in person accompanied by her father and mother and was assisted by her father in the representation as he was a law teacher. At the end of the hearing the Tribunal announced its decision and gave oral reasons informing the parties that written reasons would follow.

The Facts

- 4** The Applicant is the assignee of a long lease of the property, which she acquired in 2001 from the previous leaseholder. The lease dated 6th February 1987 was for a term of 99 years from 29th September 1986. . Clause 3(7) of the lease provided that the tenant should not make any alterations to the property without the previous consent in writing of the landlord. By clause 3(9) the lessee covenanted to pay a registration fee of £10 on the registration of an assignment of the lease and by clause 3(12) the lessee covenanted to pay the landlords costs of preparing a notice under Section 146 and 147 of the Law of Property Act 1925 even if forfeiture is avoided otherwise than by relief at court.
- 5** Prior to the Applicant's acquisition of the property some alteration had been made to the property by a previous lessee whereby there was an ensuite bedroom and bathroom created. Although this appeared to be different from the original plan of the property the Applicant did not suspect that any alteration had been made in breach of covenant.
- 6** In July 2005 she returned a questionnaire to the landlord and noted the alteration which had occurred. As a result on 30th July 2005 the landlord served a notice under Section 146 of the Law of Property Act 1925. At that date no application had been made to the tribunal under Section 168(4) of the 2002 Act for a determination that a breach of covenant had occurred.
- 7** Thereafter some negotiations took place between the parties in which the landlord requested payment of a sum of money to consent to a variation of the lease to incorporate the changes made to the property. The discussions were without prejudice and have not resulted in an agreement. The Tribunal did not see the correspondence although a figure of £7,000 was mentioned, as a figure demanded by the landlord to secure a variation of the lease.

- 8** On 1st November the landlord issued proceedings for forfeiture in the county court which have been served on the Applicant but no other steps have as yet been taken in those proceedings and it appears that the county court may decide that it has no jurisdiction since the landlord has failed to obtain a decision of the Tribunal under Section 168(4) of the 2002 Act that there has been a breach of covenant before issuing his Section 146 notice.

The Law

- 9 Section 158 of the 2002 Act provides that Schedule 11 shall have effect in relation to the question of administration charges.
- 10 Schedule 11 of the Commonhold and Leasehold Reform Act 2002 provides

Para 1

- (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,*
- (b) *for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,*
- (c) *in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or*
- (d) *in connection with a breach (or alleged breach) of a covenant or condition in his lease.*

Para 2

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

Para 3

- (1) *Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that-*
- (a) *any administration charge specified in the lease is unreasonable, or*

- (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.*

Para 4

- (1) 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.*
- (2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.*
- (3) 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.*
- (4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.*

Para 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.*
- (2) Sub-paragraph (1) applies whether or not any payment has been made.*
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.*

(4) No application under sub-paragraph (1) may be made in respect of a matter which—

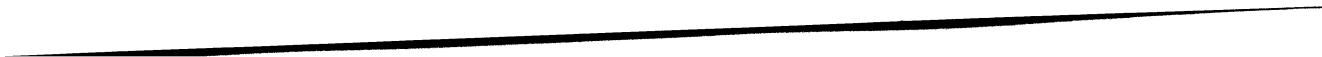
(a) has been agreed or admitted by the tenant,

The Issues

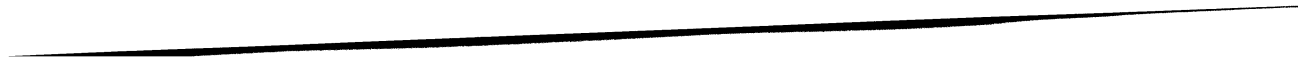
- 11 Mr Hammond contended on behalf of the landlord that the sum which the landlord sought from the tenant was not an administration charge within the meaning of Clause 1(a) or (d). It was agreed between the parties that clauses 1(b) and (c) could have no application. Alternatively if it was an administration charge within Clause 1(d) it would have been in the nature of damages and liability in respect of it would have arisen before 30th September 2003 which was the date when paragraphs 2 to 5 of the 11th Schedule of the Act came into force, so that the Tribunal had no jurisdiction to deal with it. Further he contended that if it was an administration charge it was not “payable “within the meaning of Clause 5 of Schedule 11 of the Act because there had been no agreement that it should be paid and the landlord could decide not to proceed with the proposed agreement but simply forfeit the lease as he had decided to do.
- 12 He further contended that the tenant was not prejudiced by the Tribunal declining jurisdiction as the county court had power to consider what conditions if any should be imposed for granting relief against forfeiture should the situation arise.

The Tribunal’s Decision

- 13 Unfortunately the Tribunal did not have the benefit of seeing the full correspondence file to ascertain the extent to which the parties had negotiated the matter and the formulation of the demand by the landlord.
- 14 The matter is further complicated by the fact that no figure has been provisionally or conditionally agreed and the landlord appears to have broken off negotiations and commenced proceedings in the county court.
- 15 The Tribunal decided that the sum demanded by the landlord in respect of the breach could not amount to an administration charge under Clause 1(a) as this clause must relate to approval granted in advance of the matter for which approval is sought



- 16 With regard to Clause 1(d), however, the Tribunal is of the opinion that this clause is wide enough to cover an amount demanded in the nature of a reparation for breach of a covenant or a payment accepted by the landlord to compensate him for a breach. It is not clear, however, how it would operate to give the Tribunal jurisdiction.
- 17 If the parties are in negotiation with regard to a figure and the negotiations break down and the landlord then proceeds to treat the breach as one for which he claims forfeiture, it is difficult to see how the administration charge is formulated. If on the other hand the lessee agrees a figure with the landlord he may be precluded from applying to the Tribunal by virtue of Paragraph 5(4) (a) though the Tribunal's jurisdiction is not ousted merely by virtue of the fact that he has paid it (see Paragraph 5(2)).
- 18** There is little authority on whether sums demanded to settle a dispute in "without prejudice" negotiations can be considered by the Tribunal. It has been held, however, in **80 Hanover Road London NW10 Lon 00AE/LAC/2005/001** (Miss S J Dowell) that the Tribunal does have jurisdiction in these circumstances. The decision, however, is apparently subject to appeal.
- 19** The Tribunal does not accept that it cannot consider the question of whether an administration charge is payable unless there has been a concluded agreement. Indeed one of the questions the Tribunal has to consider is whether it is payable and if it concludes that it is payable to fix the reasonable amount of such payment. However, there must be a quantified figure, which is capable of amounting to an administration charge and not simply general discussions regarding payment of a sum to remedy a breach of covenant.
- 20** In **80 Hanover Road London NW10 Lon 00AE/LAC/2005/001** the Tribunal considered that the application to the Tribunal amounted to a qualified or conditional acceptance of the offer. Whether that is correct or not it appears on the facts of this case that any offer was withdrawn by the issue of the county court proceedings. Again it is not known whether the offer was explicitly withdrawn in correspondence but since the landlord has chosen to go down the path of forfeiture he has by implication withdrawn a demand for payment by way of compensation.



- 21 The Tribunal also has no information as to whether the “demand” if there is one complies with Paragraph 4 of the Schedule setting out the tenant’s rights and obligations and may not be recoverable as such in any event. It appears, however, that there are no regulations under Paragraph 4(2) currently in force.
- 22 With regard to the issue of whether the provisions of the Act were in force only after the liability to pay the compensatory sum demanded by the landlord this must depend upon whether the administration charge came into existence before the Act or only when demanded, which was sometime after July 2005, at which point the Act was in force. The Tribunal’s initial view was that Mr Hammond was correct on that issue and that the provisions of the Act could not operate retrospectively but on reflection it is probably more likely that an administration charge can only be payable from the date from which it is demanded otherwise in cases such as this it would be quite impossible to know what the administration charge was. Such a view is also consistent with the Tribunal’s view that an administration charge can only become payable when it is sufficiently quantified.
- 23 In this case it is not clear whether the administration charge is quantified and in any event no longer exists as such. The Tribunal, therefore, decided to decline jurisdiction although if the county court proceedings were to disappear and the question of disposing of the matter by way of a charge arose again the Tribunal might reconsider the issue. If, however, the matter proceeds under Section 168(4) and thereafter by way of proceedings in the county court if a breach is established and a valid Section 146 notice is then served, the county court has full power to consider whatever conditions are reasonable for granting relief against forfeiture as well as exercising powers under Paragraph 5(3) of the Schedule if it finds that an administration charge is sought to be imposed.

Chairman

Peter Leighton



Date

7th December 2005

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Chairman Peter Leighton



Date 7th December 2005