**UPPER TRIBUNAL (LANDS CHAMBER)**

**UT Neutral citation number: [2012] UKUT 3 (LC)**
**LT Case Number: LRX/128/2011**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***LANDLORD AND TENANT – administration charges – charge for consent to underletting — reasonableness – Landlord and Tenant Act 1927 s 19(1)(a) – appeal allowed***

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF A LEASEHOLD VALUATION TRIBUNAL FOR THE NORTHERN RENT ASSESSMENT PANEL**

**APPEAL BY**

**BRADMOSS LIMITED** **Appellant**

**Re: 10 Meadow Court**
**Wellfield Road**
**Hale WA15 8LG**

**Determination on the basis of written representations**

The following case is referred to in this decision

*Holding and Management (Solitaire) Ltd v Norton* [2012] UKUT [1] (LC), LRX/33/2011

## DECISION

1. This is an appeal against a decision on an application made by tenants under paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. The application related to fees that the landlord sought to charge for consent to underletting (£135) and for registration of underletting (£75). In relation to the registration fee the LVT held that the fee was not an "administration charge" as defined in the Schedule and therefore it did not have jurisdiction under paragraph 5 to make a determination in respect of it. The LVT held that no fee was payable for consent to the underletting; and on this it granted the landlord permission to appeal. The tenants do not respond to the appeal.

2. The lease contains a covenant on the part of the lessee (paragraph 25.2 of Part 1 of the Eighth Schedule) "Not to underlet the Demised Premises without the prior written consent of the Lessor and the Management Company or its agents (such consent not to be unreasonably withheld or delayed)." The LVT expressed as follows its conclusions in relation to the charge that the landlord sought to make under this provision:

> "14. Although this application has been made there is insufficient information to conclude that the Property has been sublet and consequently paragraph 25.2 of Part 1 one the Eighth Schedule to the Lease is in operation. Notwithstanding the position is unclear we have proceeded on the basis that the Property is sublet.
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> 15. We have considered whether an administration charge is payable. We have carefully examined the terms and conditions within the Lease. We do not find a covenant by the Lessee to pay a charge or costs and expenses which the Lessor incurs in dealing with an application by the Lessee for permission to sublet. This contrasts with the clear requirement for payment under paragraph 27.1 of Part 1 one the Eighth Schedule to the Lease.
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> 16. In the absence of such a covenant or condition we have considered whether the Respondent is entitled to request a variable administration charge falling within paragraph 1 of the Commonhold & Leasehold Reform Act 2002.
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> 17. We have been guided by the decision of George Bartlett QC, President of the Upper Tribunal (Lands Chamber) when refusing permission to appeal relating to 69 Granary Court, Haslers Lane, Great Dunmow, Essex CM6 1BW, Number LRX/40/2010 in which he stated 'The contention advanced by the applicant – that "under the provisions of the relevant Act the respondent is entitled to make a 'variable administration charge' whether it is specified or not in the lease" – is incorrect. The provisions of section 158 and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 do not create an entitlement to make an administration charge where the lease does not itself provide for this. An appeal would accordingly fail.'
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> 18. We conclude that an administration charge is not payable irrespective of whether the Lessor intends to incur the individual elements of cost specified in the Respondent's submissions. Whilst permission may be necessary we see no reason why the Lessee should be responsible for the costs of preparation."

3. The appellant says that in their submissions to the LVT the respondents did not take any point as to whether the appellant had the right to charge an administration fee and that consequently the appellant did not seek to justify its right to do so. Such right, it says, is governed by the provisions of section 19(1)(a) of the Landlord and Tenant Act 1927, and the LVT chose either to disregard or to ignore this provision.

4. Section 19(1)(a) provides as follows:

> (1) In all leases whether made before or after the commencement of this Act containing a covenant condition or agreement against assigning, under-letting, charging or parting with possession of demised premises or any part thereof without licence or consent, such covenant condition or agreement shall, notwithstanding any express provision to the contrary, be deemed to be subject–
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> (a) to a proviso to the effect that such licence or consent is not to be unreasonably withheld, but this proviso does not preclude the right of the landlord to require payment of a reasonable sum in respect of any legal or other expenses incurred in connection with such licence or consent; and

5. I have very recently given a decision on appeals which concerned the operation of section 19(1)(a) (*Holding and Management (Solitaire) Ltd v Norton* and other appeals [2011] UKUT [1] (LC), LRX/33/2011 and others). In that decision I said that the provision does not confer on the landlord the right to make a charge. It provides that the statutory proviso that consent is not to be unreasonably withheld does not preclude the landlord from charging a reasonable sum in respect of any legal or other expenses incurred in connection with such consent. In the present case the lease contains a covenant against underletting without the consent of the landlord or management company, but there is a proviso that such consent is not to be unreasonably withheld or delayed. If the landlord or management company seeks to impose a charge for consent, the question is whether it would be unreasonable for it to refuse consent if the charge is not paid. If the charge is reasonable it would not be unreasonable for it to refuse consent. Section 19(1)(a) provides statutory recognition of this, and the fact that the lease makes no provision for a charge would not make such a charge unreasonable.

6. I went on in the recent decision to consider the operation of Schedule 11 of the 2002 Act in such cases. Under paragraph 1(1) "administration charge" for the purposes of the Schedule is defined as an amount payable by a tenant as part of or in addition to the rent which is payable, directly or indirectly, (inter alia) for or in connection with the grant of approvals under his lease. The charge for consent to the underletting is thus an administration charge, provided that is it reasonable. If it is not reasonable, it would be unreasonable to withhold consent if the charge is not paid; and the charge would not be payable. Under paragraph 1(3) a "variable administration charge" is an administration charge payable by a tenant which is neither specified in his lease nor calculated in accordance with a formula in the lease. If the charge for consent to the underletting is an administration charge it is thus a variable administration charge for the purposes of the Schedule. Paragraph 2 provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable. That was the issue that the LVT ought to have decided, and it now remains to be determined, therefore.

7. The LVT in the present case said that it was guided by my refusal of permission to appeal to this Tribunal in another case, LRX/40/2010. I should make clear that decisions on applications for permission to appeal should not be treated as laying down guidance. They are made on paper, usually on the basis of limited material and submissions, they are expressed shortly rather than being fully reasoned in the way that substantive decisions are, and they do not set out the facts on which they are based. They are not published on the Tribunal's website. In the case referred to the only contention raised in the application to appeal was that an entitlement to make a variable administration charge arose out of the provisions of the 2002 Act, and it was this that the refusal of permission dealt with. No such contention has been advanced in the present case.

8. The appellant is invited to make further submissions on whether the payment sought for consent to underletting (£135) is reasonable; and, if it is not, what lesser amount if any would be reasonable. Such submissions must be received within 21 days of this decision, which will not take effect until these issues have been determined.

Dated 10 January 2012

George Bartlett QC, President

**Further Decision**

9. I have now received from the appellant submissions on the reasonableness of the administration charge sought for consent to the underlettings. It is said that in each case an application for consent is processed by the appellant's agents. The procedure adopted is claimed to be extensive: the agents will undertake a perusal of a copy of the under-lease to ensure that the appropriate covenants are contained within it. Once completed, the full details of the under-lease will be entered by the agents in their records and will pas the appropriate information to the property managers, who need a complete current record of the occupants of all the flats.

10. In each case, it is said, the work comprises: (i) seeking legal advice from in-house lawyers in connection with the drafting of all documents; (ii) perusing each lease and determining the requirements for consent under it; (iii) requesting the proposed tenancy documents, examining them, and ascertaining appropriate requirements; (iv) engaging in correspondence, email communications and dealing with telephone queries; (v) the execution of documents, such as

the recording of all information, utilisation of IT infrastructure and lease storage and retrieval.. After the grant of consent all documents are scanned onto the appellants' database. In each case the work involved is undertaken by trained administrators under the supervision of qualified legal staff. It is not possible, when so many applications have to be processed, to set either an hourly rate or a charge out rate. It is estimated, however, that an administrator will spend approximately two hours dealing with the application and the legal department about one hour.

11. The justification advanced by the appellant for the consent fee is made in terms that apply to all consents, and a list of work which, it is claimed, the appellant's agent does, is set out. This looks to me to be a list of all the things that could conceivably be done in connection with the grant of consent rather than the things that would need to be done in a typical case or that were in fact was done in the case under consideration. I am wholly unpersuaded by the appellant's assertion that it would have been necessary for an administrator to spend approximately two hours dealing with the application and the legal department about one hour. In the absence of any information on the part of the appellant as to what was actually done, by whom and how long it took, I am not satisfied that a fee of £135 for the grant of consent in addition to the £75 fee for registration of the underletting was justified or that consent could reasonably have been refused in the event that the tenants had refused to pay it. It does not seem to me that a fee greater than £40 plus VAT could be justified, and I determine that this amount is payable.

Dated 15 February 2012

George Bartlett QC, President