FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BJ/LAC/2019/0027**
Property	**:**	**78B Prince of Wales Mansions, Prince of Wales Drive, Battersea, London SW11 4BJ**
Applicant	**:**	**Monica Meireles Younghusband**
Respondent	**:**	**Magnacircle Ltd**
Type of application	**:**	**Reasonableness of administration charge**
Tribunal members	**:**	**Judge Nicol** **Mr T Sennett FCIEH**
Date of decision	**:**	**10th February 2020**

DECISION

The Applicant shall pay to the Respondent the sum of **£1,250**, being the reasonable and payable administration charge for the retrospective grant of consent for an alteration to the subject property.

The relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The Applicant seeks a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of administration charge payable by the Applicant in respect of the retrospective grant of consent for an alteration to the subject property.

2. When the Applicant was in the process of selling the flat, the buyer queried an apparent change in the layout and asked for confirmation that licence had been granted. It turned out that the last owner but one, the person who had sold to the person the Applicant bought from, had removed a cupboard which was an alteration requiring the lessor's consent under clause 3(6) of the lease.

3. The Respondent offered the option of reinstatement but that was not feasible for the Applicant with her pending sale. Instead, the Respondent charged £2,000 for the retrospective grant of consent. The Applicant paid this in order to allow the sale to go through but asserts that it is not reasonable.

4. The Applicant does not deny that the alteration was carried out without consent but points out that it was not her but a predecessor-in-title who carried it out. However, that is precisely why her buyer was insistent on confirming that there was consent – the liability of the vendor usually falls also on the buyer and it is for the buyer to protect themselves. The buyer's remedy in such circumstances is against the vendor and there is no basis for any loss to fall instead on the lessor.

5. The Applicant also points out that the Respondent's agents were likely on notice of the alteration from their own previous inspections. However, that is not sufficient to imply some kind of warranty that there was no issue. The same points as those made in the preceding paragraph apply here.

6. For these reasons, the Respondent is entitled to levy a charge for their time in dealing with the grant of consent.

7. However, the charge must still be reasonable in amount in the circumstances of this case. It is worth noting that the charge of £2,000 is in addition to an initial inspection charge of £350 which the Applicant paid separately.

8. The Respondent has provided a breakdown for an amount of £2,230 which includes 2 hours each for a junior and a senior surveyor. The latter's time is specifically said to be for "ascertaining the structural effect of the alterations". This case was relatively simple, involving the removal of a non-structural element, namely a cupboard. In those circumstances, that amount of surveyor time is excessive.

9. The total of £2,230 also includes two elements which do not appear to be correctly included:

   (a) £400 for dealing with the normal notice of assignment. This is a standard type of fee which would be payable in any event, irrespective of any consent for alterations.

(b) "½ hour accountant's time". The Tribunal has no idea how an accountant's input would be relevant to the issues in this case.

10. In the circumstances, doing its best with the information available, the Tribunal determines that the charge of £2,000 is not reasonable and that a reasonable charge would have been no more than £1,250.

Name: Judge Nicol **Date:** 10th February 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 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.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this 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.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(1) An application may be made to the appropriate 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 the appropriate 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,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).