



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CH1/43UF/LAC/2019/0025

Property : 68 Nobel House, 4 Queensway, Redhill,
Surrey RH1 1TY

Applicant : Mr Clifford Pattenden

Respondent : Avon Estates(London) Ltd

Representative: N/A

Type of Application : Determination of liability to pay and
reasonableness of an administration charge

Tribunal Members : Judge S Lal

**Date and venue of
Hearing:** 26th February 2020, Judge's home

Date of Decision : 26th February 2020

DECISION

Application

1. This is an application under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (as amended by section 131 Housing and Planning Act 2016). The Applicant seeks a determination by the Tribunal as to his liability to pay an administration charge.
2. The Applicant also applies for an Order under section 20C of the 1985 Act preventing the landlord from recovering the costs incurred in these proceedings through the service charge.

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3. Directions were issued on 13th December 2019. The application is to be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013.
4. The Applicant is the leaseholder of the Property under a Lease between (1) Wigmore Investments (UK) Limited (the “Landlord”) (2) 4 Queensway Management Limited (the “Management Company”) and (3) the Applicant (“the Lease”). The Lease is for a term of 150 years from 25 March 2011.
5. The Applicant has let out the Property under an Assured Shorthold Tenancy Agreement (“AST”) through Andrews Estate Agents Redhill (“the Agent”) for a term of 12 months commencing in July 2019. The Applicant provided the Respondent with details of the AST confirming it was for a period of 12 months.
6. The Applicant claims that he is not liable to pay the sub-letting fee of £96 specified in the invoice from the Respondent dated 26th November 2019 as the Lease specifically excludes the payment of a sub-letting fee for ASTs of 12 months or less. The Applicant has referred to clauses 7(b) and (c) of Schedule 4 to the Lease.
7. The Applicant requests the Tribunal to rule that the sub-letting fee is not payable according to the provisions of clauses 7(b) and (c) of Schedule 4 to the Lease. The Applicant also claims that the Respondent should be liable for the Applicant’s costs of £100.

The Respondent’s Case

8. The Respondent claims that the Applicant is obliged to pay the sub-letting fee of £96 according to the terms of clause 7 (c) of Schedule 4 to the Lease. The Respondent asserts that clause 7(c) relates to two matters, the giving of notice and the registration of documents. The Respondent claims that whilst the Applicant is not obliged to give notice to the Respondent of an AST of 12 months or less or a periodic tenancy, the Applicant is obliged to produce the AST document for registration and incur the sub-letting fee. The Respondent also claims that on renewal or transition to a periodic arrangement a re-registration will be required and a further sub-letting fee will be payable.

The Decision

9. The Tribunal has reviewed the documentation provided together with the statements from the Applicant and the Respondent in relation to this issue. The Tribunal has considered the terms of the Lease and the obligations of the parties thereunder and the email correspondence between the parties.

10. The Tribunal notes that the parties agree that the Applicant is not obliged to give notice to the Respondent of an AST which does not exceed 12 months nor is the Applicant obliged to deliver a Deed of Covenant in the form set out in Schedule 8 to the Lease if the AST does not exceed 12 months. However, the parties disagree as to whether the AST document should be produced to the Respondent for registration and a sub-letting fee paid. Clause 7(c) of Schedule 4 to the Lease is not particularly clear on this point.
11. The Tribunal has considered clause 7 as a whole and determines that the intention was to exclude ASTs not exceeding 12 months and periodic tenancies from these provisions. It must follow that if the Applicant does not have to give notice to the Respondent of an AST not exceeding 12 months, there should be no obligation to produce the AST agreement for registration and therefore no obligation to pay a sub-letting fee in this case. Moreover, for periodic tenancies, there is no document to produce as these are generally ASTs which have continued after the original term.
12. For the above reasons, the Tribunal finds in favour of the Applicant. The Tribunal further determines under section 20C of the Landlord and Tenant Act 1985 that the Respondent shall not include costs incurred in connection with these proceedings as part of a service charge. Such an outcome reflects the Tribunal's decision.
13. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
14. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
15. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge S. Lal

Date: 26 February 2020