



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

**Case Reference** : **CHI/00HB/LAC/2023/0001**

**Property** : **Flats 13, 28, and 45 Waverley House, Cathedral Walk, and Flats 4 and 19 Balmoral House, Cannons Way, Bristol BS1**

**Applicant** : **(1) Tony Walmsley  
(2) Rob Collin  
(3) Rob Nash  
(4) Julia Tu**

**Respondent** : **RMB 102 Limited**

**Representative** : **E&J Estates**

**Type of Application** : **Administration Charges**

**Tribunal Member** : **Judge D Dovar**

**Date of Decision** : **5<sup>th</sup> June 2023**

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**DECISION**

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## **Introduction**

1. This is an application under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 for the determination of the payability of various sub-letting charges levied by the Respondent on the Applicants, who are all long leaseholders of the Property and who all sublet their flats from time to time.

## **The Charges and relevant lease terms**

2. When each leaseholder wishes to sublet their flat, they are subject to a number of charges from the Respondent. The first is the Consent Fee. The second is the Notice to Sublet Fee. There is also a third fee, the Licence Renewal Fee.

### *The Consent Fee*

3. The Consent Fee is currently £58 plus VAT, but is due to increase to £60 plus VAT in June 2023. However the actual fee charged from time to time appears to vary.
4. The Respondent has set out its process for consents. That includes, receiving the application to sublet consent form; perusing the lease of the unit to consider the underletting provisions; obtaining office copy entries (as required); drafting a licence to underlet; raising an invoice; sending out the licence and invoice. The Respondent says that consent is not general, but that it is

*‘in most, if not all cases, an underletting to named persons for a term of 12 months on an assured shorthold tenancy.’*

It is then said that

*'following expiry of the contractual term of an assured shorthold tenancy some tenants will vacate and some will hold over on periodic tenancies'.*

*The Licence Renewal Fee*

5. However, it seems that each licence is for a period of 12 months. At the end of the period of the licence, the Respondent is pro-active in following up to see whether it can charge a further fee, a Licence Renewal Fee, which is on the same tariff as the Consent Fee. A review form is sent to the long leaseholder. Once completed, the Respondent updates any changes in the leaseholder's details and any change of tenant; if there is no change of tenant, then confirmation is given that consent has been renewed for a further 12 months and a new invoice is raised for a Licence Renewal Fee.
6. The Consent Fee is provided for by paragraph 25.2 of Part One of the Eighth Schedule of the Applicants' leases, under which each covenant not at any time to

*'underlet the Demised Premises without the prior written consent of the Lessor or its agents (such consent not to be unreasonably withheld or delayed) PROVIDED ALWAYS that such under letting shall be by means of either an assured shorthold tenancy ... AND ALSO to pay or cause to be paid to the Lessor or it's agents such reasonable fee at the same time as the granting of every such consent.'*

7. The Respondent also contends that this paragraph entitles them to the Licence Renewal Fee.
8. Whilst the Respondent accepts that paragraph 25.2 does not require consent to be renewed on an annual basis it says there is nothing to stop it only giving consent for the length of the contractual tenancy and for a renewal of consent after the contractual period has ended; particularly once a contractual assured shorthold tenancy becomes a statutory periodic tenancy by virtue of s.5 of the Housing Act 1988.

*The Notice of Sublet Fee*

9. The next fee charged is the Notice of Sublet Fee, being £75 plus VAT; again the actual charge from time to time appears to vary.
10. That is purported to fall under paragraph 27 of the same part of the Eighth Schedule which requires the Applicants as lessees

*‘To give written notice within 28 days to the Lessor ... of any assignment ... or other matter disposing or affecting the Demised Premises ... with a certified copy of the instrument affecting any such dealing AND ALSO to pay or cause to be paid at the same time to the Lessor or its agents such reasonable fee appropriate at the time of registration in respect of such dealing ...’*

**Specific Challenges**

11. The specific challenges are to the charges levied in the years 2019 to 2022 and to future charges. Each Applicant has their own set of invoices and challenges. Dealing with each in turn.

12. *Mr Collin (Flat 28, Waverley House)*. Mr Collin is in the fortunate position of having a historical agreement with the Respondent that he would not pay the Licence Renewal Fee, but on a tenant by tenant basis. However, for each consent he is charged £162, comprising a Consent Fee of £66 incl. of VAT and a Notice of Sublet Fee of £96 incl. VAT.
13. *Mr and Mrs Walmsley (Flat 13 Waverley House)*. The Walmsleys have paid:
  - a. £60 for consent in 2019;
  - b. £108 for consent and registration in 2020; and
  - c. £108 for consent and registration in 2021.
14. *Mr Nash (Flats 4 and 19 Balmoral House)*. Mr Nash has paid various sums for consent, ranging from £60 to £132, although I have not been provided with the precise dates and details of payment.

### **Administration Charges**

15. The challenge to these sums is that they are unreasonable administration charges. Schedule 11 of the 2002 Act, which caps administration charges to a reasonable sum, starts off with various definitions of what an administration charge is at paragraph 1 (1), they are:

*“..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.*

## **Jurisdiction**

16. The Respondent accepts that the Consent Fee (and therefore also the Licence Renewal Fee) is an administration charge under paragraph 1(1) of Schedule 11. However it contends the Notice of Sublet Fee charged by it under Paragraph 27 is not, with the result, it is said, that I have no jurisdiction to deal with it in this application, brought under Schedule 11. The Respondent has referred to a decision of a Midland FTT *Grayson v E&J Ground Rents Number 3 Limited* (BIR/37UC/LLD/2019/0004), which determined that a fee for registering a tenancy was not an administration charge. The involved a lease with similar provision to paragraph 27, save that, unlike the present terms, it expressly required notice of every 'underletting' to be given. Further, there was no requirement for landlord's consent to underlet and the only issue in that case was whether the Notice of Sublet Fee was reasonable.
17. The Applicants in this case have pointed out a few material differences to that case. Significantly, what the Respondent has neglected to point out in their description of the Consent Fee process is that at the same time as they send over their licence to sublet and their invoice for that process,

they also, in the same package send out their invoice for the Notice of Sublet Fee. One invoice is sent for both fees. Further consent is only given for the subletting if the entire cost is paid. The Applicants contend that this is therefore all part of the consent process and that it is artificial to separate the two out. With the result, they say, that the entire cost falls within the definition of an administration charge.

18. I was provided with invoices to Mr and Mrs Walmsley from the Respondent in respect of 13 Waverley House which support their view that the two charges are closely linked:

a. One dated 27<sup>th</sup> August 2020, that was for £162, comprising a Sublet – Consent Fee of £66, and a Notice of Sublet Fee of £96;

b. One dated 6<sup>th</sup> August 2021, that was for a total of £108, comprising Sublet-Consent Fee of £50 and Notice of Sublet Fee of £58.

19. I have also been provided with a copy of the covering letter for the invoice of 27<sup>th</sup> August 2020, in which the Respondent states

*“To complete the granting of the consent for this tenant please find enclosed a Licence to Sublet, which requires signing in the place(s) indicated and also an invoice for £135 plus VAT; this being the costs for both the consent and also registration of the new tenant.*

*Upon return of the licence, duly signed, along with the payment of £162.00 (£135 plus VAT) we will date both documents and*

*issue you with the Freeholders signed Licence to be held by you  
...'*

20. I take the view that as it is made a condition of consent, that the Applicants pay the Notice of Sublet Fee, it is an administration charge for the purposes of Schedule 11. It is clearly payable in connection with the granting of consents. If it were not paid, the Applicants would not get consent. Not only is the *Grayson* case not binding on me, but more significantly the decision is based on a different factual scenario. In that case there was no requirement to pay that fee before consent was given.

### **Reasonable Administration Fee**

21. The Applicants accept that the Respondent has a legitimate interest in keeping an up to date record of tenants, but are concerned that the cost and process is excessive for what is simply what they refer to as 'cut & paste' administration. Further, they object to the repeated charge for consent on an annual basis, the Licence Renewal Fee, rather than when there is a change in the actual tenant. They also challenge any charge under paragraph 27 on the basis that that relates to title, not to short term lettings. They do accept that a one off fee for consent in the sum of £58 plus VAT would be reasonable, but object to the additional Notice to Sublet fee and the Licence Renewal Fee.
22. The Respondent contends that this is all part of good estate management, in order to keep track on who is residing in the building and that it is a fair reward for the work undertaken.



23. It is accepted, and not challenged by the Applicants that the Consent Fee of £58 plus VAT is a reasonable administration charge. I do however query the necessity of some of the steps taken by the Respondent, but given that concession, that sum is payable for the Consent Fee.
24. I do not consider that any further fee is payable for as a Notice of Sublet Fee. Firstly, I do not consider that a short term underletting falls within paragraph 27. As a matter of construction, both on the wording of the paragraph itself and in the context of the Schedule, it does not include subletting. My reasons for this are:
- a. Paragraph 27 makes no express reference to underletting, but it does to assignments, transfers, mortgage and charge;
  - b. Underletting would therefore have to come within the wider provision of '*other matter ... affecting the Demised Premises*';
  - c. Given that paragraph 25.2 has already made an express reference to underletting, that 25.3 makes an express reference to assignment and transfer, and that paragraph 26 refers to assignments, transfer and underletting, it is odd that assignments and transfers are mentioned in paragraph 27, but the underletting is not. The inference being that if it was intended to apply to underletting, it would have said so;
  - d. As the Applicants have pointed out, the others have an impact on title, whereas a short term let does not and therefore the

words 'affecting the Demised Premises' should be read as including only matters affecting title or similar;

- e. When applying for consent under paragraph 25.2, it is likely that the tenancy agreement will be provided to the landlord for scrutiny, in which case, the requirement in paragraph 27 to provide a certified copy of the instrument affecting effecting the dealing seems otiose; they already have the instrument.

25. Secondly, and related that the last point, even if the paragraph is engaged on underletting, given that at the time the consent is being considered, the Respondent has been provided with all the details of the tenancy, I do not consider that an additional fee to take notice of the underletting is reasonable. I therefore consider that an additional fee charged as the Notice to Sub-Let is excessive. It is unreasonable to demand a further £75 plus VAT to note the new tenant, when that is a minor part of the consent process itself.

26. That leaves the Annual Licence Fee. I do not consider that a further Consent Fee is payable when a tenant holds over. That is not something that the lessee can control, it is a function of s.5 of the Housing Act 1988. On the coming to an end of the contractual tenancy, if the letting is an assured tenancy, it will automatically become a statutory periodic tenancy. That is a potential outcome from the day that the original consent is given. It must be implied in the consent given that if the occupation continues in that manner, that the consent will continue. I

therefore do not consider that an additional charge is payable in accordance with the paragraph.

27. Alternatively, if I am wrong on that, I do not consider that it is reasonable to charge any fee for confirmation that the same tenant is now residing under a statutory periodic tenancy. I also do not consider that it is reasonable to charge £58 plus VAT for a limited consent; i.e. limited to either 12 months or the contractual term of an assured tenancy. Again for the reason set out above, when consent is given at the outset, the Respondent is aware that for reasons outside of the lessee's control, the tenant may continue in occupation after the term. To limit the consent to the contractual term has the potential to put the lessee in an invidious position in that the consent could expire whilst they are unable to obtain possession. Further it appears that the sole purpose of limitation is in order to extract a further fee, very little is done for the renewal compared to the original consent.
28. If however the same tenant enters into a new contractual tenancy, then in my view that does warrant a new Consent Fee as that is a new tenancy that has been freely entered into by the lessee and the tenant.

## **Conclusion**

29. Accordingly, in respect of the charges that have been levied:
- a. *Mr Collin (Flat 28, Waverley House)*. Mr Collin should only have been charged £66 for the Consent Fee and not the additional £96 for Notice of Sub-Let;

b. *Mr and Mrs Walmsley (Flat 13 Waverley House)*. The £60 for consent in 2019 is payable, as was that sum in 2020 and 2021, but not the additional amount for notice in those years.

30. I have insufficient information to assess Mr Nash's charges and none for the Julia Tu. Given that the principles of what is chargeable have been set out above, hopefully the parties can agree what is payable for the years in question. If not then they should apply to me for further directions to determine the final amounts.

31. Given the result, in which the Applicants have been largely successful I will make a s.20C order prohibiting the Respondent from seeking to recover the cost of this application through the service charge from the Applicants. The Respondent accepts that there is no ability to charge the costs by way of administration charge and so no order under the 2002 Act is made.

JUDGE DOVAR

## **Appeals**

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) .

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.

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.

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.