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#### TENANT QUESTIONS LEASE CHANGE

Solicitor Peter Daniels, who is joint head of the property department at Chatham based Stephens & Son LLP, reports on a recent case involving a challenge to charges made by a landlord in return for varying a lease that may have implications for landlords and tenants in the future.



A tenant owned a lease that was not up to date and needed to be changed. The Landlord agreed to make the change but made a charge to the tenant for this. The tenant was unhappy with the charge made by the landlord so decided to challenge its validity. The case involved a tenant of residential premises who had a long lease - so all those who are tenants or landlords, or involved in the management of such premises would be wise to pay heed.

In the Commonhold and Leasehold Reform Act 2002 (CLRA 2002) Paragraph 1 of Schedule 11 defines "administration charge" as an additional sum payable by a residential tenant:

- For or in connection with approvals under the lease.
- For or in connection with the provision of information or documents (*paragraph 1(b), Schedule 11, CLRA 2002*).
- In respect of the tenant's failure to make a payment by the due date.
- In connection with the tenant's breach (or alleged breach) of covenant.

If the lease does not specify the amount of the administration charge or provide a formula by which to calculate that charge, then the landlord can only recover the amount that is reasonable (*paragraph 2, Schedule 11, CLRA 2002*).

In the case in question (*Mehson Property Co Limited v Pellegrino [2009] UKUT 119 [LC]*), the Lands Chamber of the Upper Tribunal (LCUT) overruled the Leasehold Valuation Tribunal's (LVT) decision to reduce the landlord's charge for varying a lease.

The lease was considered defective as its terms did not comply with the requirements of the Council of Mortgage Lenders (CML) Handbook. If a lease is not CML Handbook compliant then it may be impossible to mortgage the lease at all, or perhaps only by incurring the cost of an additional insurance policy against the risk arising from the defect. In this case the lease was considered defective because:

- Although the management company had covenanted to repair the property, it did not own an interest in the property.
- The landlord had not covenanted to repair, maintain or insure the property.
- Neither the landlord nor the management company were obliged to enforce covenants against the leaseholders of the other houses.

The landlord agreed to vary the lease to deal with the defective provisions.

The landlord's price for the deed of variation was £500, plus payment of legal fees of £350 plus VAT at 17.5% (£911.25 charge).

Following completion of the deed of variation, the tenant applied to the LVT to challenge the reasonableness of the £911.25 charge on the basis that it was an administration charge and subject to the CLRA 2002.

The LVT held that a reasonable cost would be £350 plus VAT. The LVT ordered the landlord to refund £500 to the tenant.

The Landlord appealed to the LCUT.

The landlord's appeal was allowed and the LVT's decision was quashed.

The LVUT held that a charge for entering into a deed of variation was not an "administration charge" within Schedule 11 to the CLRA 2002.

A landlord's charge for a deed of variation includes a charge for both:

- The provision of the document.

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- The substance of the variation, which may put the landlord in a worse position.

A charge for entering into a deed of variation that amends the parties' responsibilities under the lease covers more than the "provision of ... documents" under paragraph 1(b) of Schedule 11 to the CLRA 2002.

The LVT therefore had no power to consider the reasonableness of or to reduce the £911.25 charge.

This result will come as a relief to Landlords and their advisers but is a timely reminder that a tenant has the ability to challenge the reasonableness of a charge under Schedule 11 to the CLRA 2002 but that it only applies to "administration charges" (as defined by the CLRA 2002). However, it also shows that at LVT level, even relatively modest charges may be found to be unreasonable, and where the CLRA 2002 applies Landlords may find that the level of charges that are going to be found to be reasonable may be a lot less than they might have expected.

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