

3397

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LON/00AW/LSC/2007/0294

Applications made under Sections 20C and 27A of the Landlord and Tenant Act 1985 ('the Act')

Applicant: Roger J Morgan

Respondent: Notting Hill Home Ownership Ltd

Premises: 98E Cambridge Gardens, LONDON W10 6HS

Date of Hearing: 25th September 2007

The Tribunal: Professor James Driscoll LL.M, LL.B, Solicitor (Chairman), and Mr PMJ Casey M.R.I.C.S

[As this a 'paper determination' there was no oral hearing.]

DECISIONS

On considering the applications for a determination of service charges for the periods April 2005 – March 2006, April 2006 – March 2007 and April 2007 – March 2008 the Tribunal determines that the Respondent can only recover 9.49% of their charges for these periods as provided for in the Applicant's lease.

The Tribunal also determines that the actual charges made for these three periods were incorrect and greater than the Respondent is entitled to and that the Applicant has therefore been overcharged.

The Tribunal also directs that the Respondent reimburses the Applicant for the fee of £50 paid in making the application and also pays the sum of £100 towards the Applicant's costs.

The Respondent must pay these sums (which total £150) to the Applicant within 28 days of the date of this order.

Exercising its power under Section 20C of the Act the Tribunal also directs that any costs incurred by the Respondents are not to be recovered as a service charge.

BACKGROUND

- 1 The Applicant is the leaseholder of the subject premises (a flat) under a long lease that was originally granted as a shared ownership lease by a predecessor in title of the Respondents.
- 2 The Respondent is owner of the freehold of the building containing the subject premises and the landlord under the Applicant's lease.
- 3 The building contains eight self-contained flats over four floors. All of the flats are subject to long leases; their leasehold owners currently sublet many of them.
- 4 The Respondent's lease contains the usual provisions as to the repair, maintenance and insurance of the building and the usual leaseholder's covenants which including a covenant requiring contributions towards the freeholder's costs through service charge payments (see the copy lease starting on page 60 of the bundle of documents prepared by the Applicant).
- 5 It appears that each leaseholder of the eight flats pays a contribution that is based on a proportion of these costs as specified in each lease. It is common ground that these different proportions are based on the floor space of each flat as compared to the total available floor space on the building. These proportions vary from 9.43% to 23.96 % depending on the floor space of each flat (see the chart on page 35 of the bundle of documents prepared by the Applicant). In other words, the larger the floor space of the flat, the higher the proportion of the charges payable under the lease of that flat.

6 It appears that the leases of the flats in the building are in a common form and that the specified proportion for each lease is set out in the 'Particulars' section at the beginning of each lease (see, for example, the copy of the Applicant's lease starting on page 60 of the bundle).

7 However, for the service charge years 2005 to 2008 inclusive, the Respondents have made (or propose to make) higher charges based on a different and larger proportion than is provided for in the Applicant's lease.

8 The Applicant seeks a determination of whether these higher charges are reasonable and recoverable under his lease.

THE APPLICATION

9 On the 2nd August 2007 the Applicant applied for a determination under Section 27A of the Act. Directions were given on the 6th August 2007. An oral pre-trial review was not considered necessary. It was directed that the application be dealt with on the 'paper track' without the need for an oral hearing during the week commencing the 10th September 2007. In the event the Tribunal considered the application on the 25th September 2007.

10 Under Section 27A(1) of the 1985 Act:

"An application may be made to a Leasehold Valuation Tribunal for a determination whether a service 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. "

11 In accordance with these directions the Applicant prepared, served and filed copies of a bundle of documents. The bundle includes statements made by the Applicant and a statement made on behalf of the Respondents.

12 It is common ground that the Respondent has been making service charge demands on a basis different to the one provided for in the Applicant's lease. The Respondent states in a letter to the Applicant (a copy appears on pages 17 – 18 of the bundle) that mistakes may have been made in the original drafting of the leases for the flats in the building containing the subject premises. In particular, flats A and B, which are on the lower ground of the building, do not have access to the common parts of the remainder of the building and this is not reflected in the drafting of the service charge proportions in the different leases. Accordingly, adjustments should be made to the service charge proportions for each of the leases. In a Table in this letter the proposed revised proportions are set out for each flat where a distinction is drawn between 'external' and 'internal' expenditure. In the case of the Applicant's lease, these proposed revised proportions are set at 9.49 and 14.45 respectively.

REASONS FOR THE TRIBUNAL'S DECISION

13 In reaching the decisions summarised above, the Tribunal concludes that the only way in which the Respondent (or any landlord in these circumstances) can alter the service charge provisions in the Applicant's lease is either with his agreement, or by a successful application to the Tribunal for a variation of the terms of the lease.

14 The Tribunal is surprised that the Respondent has taken the course it has and that it has tried to unilaterally impose a service charge lease variation on the Applicant (and presumably on the other leaseholders in the building).

15 This is why the Tribunal determines that the Respondent is not entitled in full to the service charges claimed for the periods in question. The Applicant has, therefore been overcharged for these

periods and he is entitled to a refund to a figure representing the difference between the proportion of the Respondent's charges provided for in the lease (that is 9.49% of the total costs) and that actually charged.

16 As it was left to the Applicant to make this application for a clarification of these simple points the Tribunal concludes that the Respondent should reimburse him for the fee paid and pay also a contribution towards his costs. Under Schedule 12, paragraph 10 of the Commonhold and Leasehold Reform Act 2002, the Tribunal may determine that a party shall pay the costs of the other party up to a figure of £500 in any of the circumstances specified in paragraph 10(2).

17 The Tribunal concludes that the Respondent have behaved unreasonably in seeking to unilaterally impose a variation of the Applicant's lease and by putting the Applicant to the trouble and the expense of making this application. Indeed the Respondent indicated in the letter referred to above in paragraph 12) that they would bear the costs of the application. This is why the Tribunal has determined that the Respondent should pay the Applicant the £100 in costs, the figure which the Applicant claims.

18 For the same reason the Tribunal has made an order under Section 20C of the Act in relation to any costs the Respondent may have incurred in this matter. Section 20C(1) of the 1985 Act states:

"A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the Landlord in connection with proceedings before a court or Leasehold Valuation Tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application".

19. Accordingly the Tribunal decides that any costs incurred by the Respondent in these proceedings are not to be taken into account in determining service charges.

Signed James Driscoll

James Driscoll (Chairman)

Dated: 25th September 2007