

RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL

Property : Flats 7 & 8 Marine Court,
377 Kingsway,
Brighton BN3 4QD

Applicant : Marine Court Hove Ltd.

Respondent : Alan Devlin

Case number : CAM/OOML/LSC/2008/0018

**Date of Transfer from
County Court** : 17th March 2008

Type of Application : To determine reasonableness and
payability of service charges (Ss. 19 and
27A Landlord and Tenant Act 1985 ("the
Act"))

The Tribunal : Bruce Edgington (lawyer chair)
Marina Krisko FRICS
Mohammed Bhatti JP

Date of hearing : 23rd June 2008

Venue : Committee Room 3, Portslade Town Hall,
Victoria Road, Portslade, Sussex BN14 1YF

DECISION

UPON it being recorded that (a) the Respondent agrees to pay the ground rent claimed of £200 and services charges claimed of £2,000.00 and (b) the Applicant has abandoned its claim for the locksmith's fee of £153.43.

1. The Tribunal finds that in respect of the legal fees claimed of £260.00, a reasonable amount due to the Applicant is £117.50, and

2. The Tribunal makes an Order pursuant to Section 20C of the Act that no part of the cost of representation before this Tribunal shall be recoverable from any tenant.
3. These proceedings are transferred back to the Brighton County Court so that any outstanding issues such as the claim for interest and the fees and costs incurred in the proceedings before that Court to be resolved.

Reasons

Introduction

4. On the 22nd October 2007, the Applicant issued proceedings against the Respondent for the recovery of ground rent (£200.00), service charges (£2,000.00) legal fees (£260.00) and locksmith's charges (£153.34). The Applicant is the freeholder of the property and the Respondent is the long leaseholder. By an Order made by District Judge Pollard in the Brighton County Court on the 28th February 2008, the court proceedings were "stayed and transferred to the Leasehold Valuation Tribunal for determination". That Order was not typed until the 17th March 2008.
5. It is clear from the defence filed in the County Court and from subsequent representations made that the Defendant's complaints are (1) that he knew nothing of any claim until he received a letter from the Applicant's solicitors to which he replied on the 1st October asking for clarification, (2) that he should not have to pay the legal fees claimed because no-one had contacted him and (3) that he did not see why he should have to pay the locksmith's fees until he had seen the evidence which supported the Claimant's allegation that the changing of locks had been caused by his sub-tenant in Flat 8.

6. Upon receipt of the papers from the Court, this Tribunal made a directions Order requiring the Respondent to file and serve a short statement of response to the claim identifying those matters which were actually in dispute by 10th May 2008. That was not done until 2nd June 2008.
7. The Applicant was then ordered to file and serve a reply to this including an explanation as to why, if this was the case, that requests for information from the Respondent were ignored. No such reply was filed although a statement was filed on Friday 20th June which does deal with the other issue of whether any demands were sent prior to the solicitor's letter.
8. During the week prior to the hearing, the Applicant's solicitors, Griffith Smith Farrington Webb, notified the Tribunal office that they could not obtain instructions and a request was made to adjourn the hearing. As no indication was given as to when the solicitors expected to receive instructions, the application was refused.
9. The Applicant's statement is that of Lloyd Evans, a director. He confirms that the Applicant abandons its claim for locksmith's fees. Of the allegation by the Respondent that he did not receive any demand for service charges before the one letter before action from the Applicant's solicitors, Mr. Evans can only say that "*the company cannot prove that it posted the relevant demands to the Respondent which are the subject of these proceedings*".
10. As far as legal costs are concerned, the statement is confusing and ambiguous. At paragraph 16, Mr. Evans says that the current arrears have cost the company over £1,000 in legal fees including VAT and disbursements to include bring the County Court proceedings. He then says that he is expecting a further £1,250 invoice including VAT for legal

fees in connect with these proceedings making a total of £2,295.

11. In paragraph 20, he then says that the total legal costs have been £3,300.

The Inspection

12. In view of the concessions made by the Respondent, an inspection was not actually required but as the parties had been notified of an inspection, that took place. Nothing turns on such inspection and the Tribunal only looked at the outside of the building.

The Lease

13. Amongst the papers supplied by the Court was a copy of the Lease of Flat 4 in this block. No explanation is given for not supplying a copy of the Leases to the property. Fortunately, Mr. Devlin did produce copies of the Leases of both flats at the hearing which are dated 23rd May 2003 and run for 125 years from 25th December 2002. The ground rent is £100 per annum for each flat.
14. As far as legal fees are concerned, the tenant's covenant is:-

"To pay all expenses (including Solicitor's fees) incurred by the Lessor in connection with the recovery or attempted recovery by the Lessor from the Lessee of any monies due from the Lessee to the Lessor under the provisions of this Lease which have not been paid on the date due".

The Law

15. Section 18 of the Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent which varies 'according to the relevant costs'. Clearly, this claim comes within that definition.

16. Section 19 states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. A Leasehold Valuation Tribunal has jurisdiction to make a determination as to whether a service charge is reasonable and, if it is, as to the amount which is payable. A County Court can transfer such a case to the Tribunal to resolve a dispute over the reasonableness and payability of service charges.

17. As far as interest is concerned, this is pleaded in the County Court proceedings. The Applicant has asked that this Tribunal adjudicates on that claim. This Tribunal can only rule on the reasonableness of service charges. Whilst it notes that clause 4(B)(iv) in the Lease does require the Lessee to pay interest on monies outstanding for 21 days, this is a contractual remedy and can only be resolved by the Court. Having said that, if this is the only remaining dispute between the parties, the Tribunal would strongly recommend that the Respondent considers the terms of the Lease, as interest would clearly seem to be payable, at least up to the date of the letter before action.

The Hearing

18. The hearing was attended by Lloyd Evans, a director of the Applicant and the Respondent, Alan Devlin. Neither party was represented and both parties agreed to proceed with the hearing despite the late service of documents. Mr. Evans was asked whether anyone responded to Mr. Devlin's letter of the 1st October 2007 requesting information. No response could be produced.

19. Mr. Evans resolved the problem over the amount of legal fees incurred by confirming that the £3,300 was an error and his statement should read £2,300. However, when asked whether he had details of how these fees

were made up, he said that he did not have any further details. Thus the only breakdown of these costs is in the copy fee note submitted which contains a brief summary of what was done and then a claim for 6 hours time at £160 per hour.

20. The Tribunal was concerned to note that no attempt has been made within these proceedings to explain to Mr. Devlin exactly why such a large bill of costs has arisen or what the breakdown is in the claims of £50 and £80 respectively in the letters or statements claiming legal costs.
21. Mr. Devlin made a number of submissions to the Tribunal which were about matters unrelated to the issues. However, he did point out that Mr. Evans had admitted in an e-mail that he may have put insufficient postage of demands for rent and service charges.
22. Of relevance to the situation concerning the costs order sought by Mr. Devlin, he said that if evidence had been supplied to him as to the locksmith's account and that this work was caused by one of his tenants, he would have paid that and the ground rent and service charges.

Conclusions

23. It is clear that under the terms of the Lease, legal fees are recoverable and it therefore remains for this Tribunal to decide whether the £260 claimed is reasonable. If the fees were just incurred in the recovery of service charges, the only evidence before this Tribunal is that the Respondent did not know about a claim for service charges until he received the pre-proceedings letter and he then responded asking for details of the locksmith's fee note. The Applicant, on the other hand, frankly admits that it cannot say whether any demands were posted to the Respondent. Mr. Evans also appears to accept that he may have put insufficient postage on letters to Mr. Delvin.

24. The decision of the Tribunal would therefore have been that no pre-proceedings legal fees were reasonably incurred as service charges. However, the same cannot be said for the recovery of ground rent. As the Respondent accepts that he received a solicitor's letter demanding the ground rent and agrees that it was payable, it follows that the Applicant should be able to recover that cost. The Tribunal also notes that the letter of 1st October is rather aggressive in tone, states that Mr. Devlin refuses to pay costs or interest and all he asks for are details of the locksmith's account. He does not ask for details of the service charge demand itself.
25. The reasonable cost of taking instructions from a client, considering the relevant terms of the Leases and writing a letter demanding ground rent (a very simple issue) would, in this Tribunal's view, be £100 plus VAT and this sum is recoverable. In other words, it would take about 6 units of time at £160 per hour.
26. As to the amount of costs actually incurred by the Applicant, the Tribunal has some difficulty in understanding how costs of £2,300 or thereabouts could have been incurred in a claim involving a letter before action, a summons and statement of claim, consideration of a defence and then a transfer to this Tribunal. Although it is appreciated that the solicitors were without instructions at various times, the (unsigned) statement from Mr. Evans was filed and served on the working day before the hearing, the Lease sent to the court was wrong and there was no trial bundle as ordered.
27. This is a straightforward claim to make and as the main thrust of the defence was that details of the claim had been requested but not supplied, it is difficult to see how thousands of pounds in legal fees have been incurred.

28. As far as the Applicant's costs of representation before this Tribunal are concerned, these are not recoverable by way of an order for costs. However, this Tribunal does have the power in Section 20C of the Act to make an order preventing a Lessor from recovering such costs in future service charge demands.
29. The Respondent made his application in writing and on behalf of "the leaseholders" in advance of the hearing which he is permitted to do. The only response to that application is a confusing explanation of thousands of pounds of costs being incurred in such representation without any convincing explanation as to the amount or the reason for such costs being incurred.
30. The decision of the Tribunal is that these proceedings may well not have been necessary. Furthermore, by the time these proceedings were transferred to this Tribunal, the Respondent's request for information was absolutely clear. Despite the Respondent being late with his statement, the Applicant had three weeks before the hearing to provide the information requested, resolve this dispute and prevent a hearing, but it did not do so. An order is therefore made pursuant to Section 20C preventing the Applicant from recovering such costs from any of the leaseholders.
31. This decision cannot affect any costs incurred in the County Court which will be a matter for that Court in due course. However, in order to assist the Respondent, it is probable that in view of the amount of the admitted part of this claim which was not paid before the summons was issued, the court is likely to order him to pay the fixed costs on the summons, any allocation fee paid and interest on the total amount payable. It may therefore be sensible for him to reach a compromise in order to avoid

further time and expense.



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Bruce Edgington
Chair
23rd June 2008