

3599

LONDON RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00BA/LIS/2007/0051

Application made under Section 27A Landlord and Tenant Act 1985 (the Act)

Applicant: Mrs Isabelle Griffith

Respondent: Mrs Clarissa Daulby

Premises: 2 Park Court, Woodside, Wimbledon, London SW19

Date of Application: 10th July 2007

Date of Oral Pre-trial Revenue: 22nd August 2007

Date of Hearing: 23rd October 2007

Date of Decision: 15th February 2008

Appearances for the Applicant:

In Person

Appearances for the Respondent:

Ms H Knight of Counsel instructed by Osmond & Osmond (Solicitors)

Leasehold Valuation Tribunal:

Professor James Driscoll LLM, LLB, Solicitor (Chairman),

Mr Robin Potter FRICS, and

Ms Sue Wilby

DECISIONS

On hearing the Application for a Determination of the reasonableness of management charges and charges for services for the year 2006 the Tribunal has decided that both sets of charges were reasonably incurred.

The Applicant's application for an Order that the Respondent pays costs or reimbursement of the fee incurred by the Applicant in making this Application is dismissed.

The Applicant is to pay to the Respondent the sum of £350.00 in relation to her costs within 28 days of the date of this decision (under Schedule 12 Commonhold and Leasehold Reform Act 2002).

BACKGROUND

- 1 The Applicant is a leaseholder of Flat 2 in the subject premises. This flat is one of four in a small block of flats known as Park Court, Woodside, Wimbledon, London, SW19.
- 2 The Respondent, Ms Clarissa Daulby, was formerly, and for a relatively short period of time, the manager of the subject premises following her appointment by the Tribunal under Part 2 of the Landlord and Tenant Act 1987. There have, in relation to the subject premises, been several previous applications to the Tribunal.
- 3 The subject premises is a purpose built two-storey block of flats that appears to have been built in the 1950s. Each of the flats is held on a 99 year lease with the usual covenants as to maintenance and service charge contributions. The landlord covenants (in summary) to insure the premises, maintain the garden, decorate, repair, rebuild and maintain the roof, chimneys, gutters, foundations, party walls and so on, which are used in common by the occupiers of the flats. The landlord also covenants to repair and maintain specified fences and to light, decorate, maintain and clean the common entrance and stairway.
- 4 Each of the four leases also provides that the leaseholder is to pay one quarter of the costs of providing these services in addition to which they are to pay one quarter of 10% of that cost as a management fee.

5. The Applicant has expressed dissatisfaction with the management of the subject premises on several occasions and over many years. In 1999 she applied under Part 2 of the Landlord and Tenant Act 1987 for the appointment of a manager. On 7 December 1999 the Tribunal directed that Countryside Residential Lettings Limited, trading as Countryside Property Management, be appointed to manage the subject premises from the date of the Order until further order. The Tribunal Order set out in detail the terms of that appointment.
6. During 2005 the Applicant expressed dissatisfaction with the performance of the appointed manager and she made further Applications to the Tribunal for a variation of the original Order contending that a different manager should be appointed. In response Countryside informed the Tribunal (in a letter dated the 11th October 2005) that they agreed that their rôle as manager should be terminated.
7. At the hearing of the Applicant's Application for a variation on the 8th November 2005, the Tribunal varied the original Order so as to appoint the Respondent (of the Property Lodge Management Company) as the new appointed manager. The Respondent attended this hearing with the Applicant who proposed her as the new manager.
8. Although the Tribunal was satisfied that the Respondent was a suitable (though inexperienced) potential manager for the subject premises, given the history of the management of Park Court, as the Tribunal saw it, the Tribunal decided that it would be appropriate to limit the period of the Respondent's appointment to one year.
9. On the 15th December 2005 the Tribunal appointed the Respondent as receiver and manager under Part 2 of the Landlord and Tenant Act 1987 with effect from the date of the Order for a period of one year until the 14th December 2006.
10. Accordingly the second appointment came to an end on 14 December 2006. The Applicant had on 8 December 2006 applied to the Tribunal for the appointment of a different manager. However, with the consent of the leaseholders, the Respondent continued to act as manager for an interim period. But by a letter dated 26 February 2007 she gave notice of her resignation indicating that she had no objection to the Applicant's application for a different manager to be appointed under the 1987 Act.
11. The Tribunal heard the third Application for such an appointment on the 8th March 2007 (see LON.00BA/LAN/2006/0025). On this occasion both the Applicant and the Respondent (and her counsel) attended the hearing and addressed and made various submissions to the Tribunal.

12. In paragraph 5 of that decision the Tribunal stated "having heard Ms Griffiths and Mrs Daulby, we are satisfied that Mrs Daulby had done her best in difficult circumstances, although, with the best of intentions, she had not been as assertive, perhaps, the circumstances required." The Tribunal also dismissed the Applicant's application that the Respondent should pay any part of the costs of the hearing or the application fees.
13. The Tribunal also made an Order on this occasion further varying the original Order appointing a manager under Part 2 of the 1987 Act by appointing Mr Paul Cleaver of Urang Limited as manager for a period of two years from the date of the Order or until further Order in the interim.

THE APPLICATION MADE UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

15. The Applicant made this fresh application, this time under Section 27A of the 1985 Act on 10 July 2007. In the application she seeks a determination as to the reasonableness of charges made for the year 2006 and for any charges that the Respondent might make for the year 2007. In particular she challenges the reasonableness of the Respondent's remuneration of £720 in 2006. She also challenges the reasonableness of the gardening and cleaning charges which she stated came to a total of £1,092 according to the published accounts although she stated that the Respondent had claimed a lower figure of £1,006.
16. In her Application to the Tribunal she challenged these charges on the basis that the standard of service and the responsibilities under the leases and the Order of the Tribunal were unreasonable. She also challenged whether the gardening and cleaning charges were reasonable. In addition the Applicant sought in her Application reimbursement of any fees in relation to this Application if the Tribunal found that the Respondent had failed to carry out her duties according to the Order.
17. The Tribunal held an oral pre-trial review on the 22nd August 2007 when Directions were given. In accordance with these Directions a bundle of documents was prepared and was available to the Tribunal at the hearing.
18. Both parties gave evidence at the hearing of the Application on the 23rd October 2007. In her evidence the Applicant set out at some length the reasons why she was dissatisfied with the general standard of maintenance of the subject premises. She had particular concerns about the lack of maintenance as she saw it, of the garden, the garden walls, the trees and the fences and the garage which she said has not been looked after properly and, in the case of the garage, had become dilapidated. Concerns were also expressed at the slow progress with putting in hand repairs required to an external wall.

19. She complained that although the Respondent managed to get three quotes for the necessary repair works in June 2006 all of these quotes were in her view too high.
20. She also told the Tribunal that having expressed her dissatisfaction to the Respondent about the general level of management of the premises and the gardens that in her view the Respondent should have carried out more regular inspections and supervisions. The Applicant had herself kept a careful note of how often the gardening services were provided. In addition to her general complaints she said that the visits by the gardeners were infrequent and in relation to the cleaning of the common parts there was no cleaning in January and February of 2006. She contends that the Respondent is only entitled to 50% of her fee which would, in the Applicant's submission, be a reasonable fee in the circumstances. The Applicant also contended that the gardening and cleaning services had not been fully earned.
21. In response to cross-examination she agreed that the other leaseholders in the subject premises did not share her concerns. She also agreed that the other leaseholders had been supportive of the Respondent's efforts during her period of management.
22. The Respondent gave evidence and reminded the Tribunal that she had only been appointed for a brief period and the Applicant recommended her appointment to the Tribunal. She said that she had had regular meetings with the Applicant to which other leaseholders had been invited. However, she had not kept any notes of these meetings.
23. She said that she had spoken on several occasions to the firm that provided the gardening services, a firm by the name of Avalon. She said that whenever she thought she had reached agreement with Avalon and the Applicant that the Applicant would change her mind. She also discovered that even though she had agreed to contact this firm that the Applicant was also contacting them as well. She said that she had no complaints from any of the other leaseholders and that she considered that she had discharged her responsibilities as an appointed manager quite properly. She felt that according to the Applicant's view of the scope of her responsibilities that she would have to make this position a full time job.
24. In response to a question to the Tribunal she told the Tribunal that there was the sum of £7,000 in the sinking fund at present although this would not be sufficient to deal with the proposed repairs to the wall.
25. In summary, the Respondent told the Tribunal that she did everything possible to manage the premises properly and in particular to put in hand the necessary works to the wall. She had tried to commission works and had obtained

estimates but the complaints from the Applicant prevented progress from being made.

26. She reminded the Tribunal that she resigned from her position as manager and had no further wish to be involved with the management. She is not claiming any fees for work undertaken for the brief period from the end of the Tribunal appointment until her resignation as an interim manager as agreed with the leaseholders.

REASONS FOR THE TRIBUNAL'S DECISION

26. The Tribunal refers again to the Decision of this Tribunal on 8 March 2007 when the Tribunal having heard also heard complaints from the Applicant about the circumstances of the management of the subject premises in 2006. On that occasion the Tribunal found that the Respondent had carried out her responsibilities reasonably in these circumstances. The management of the subject premises has had a troubled history.
27. Nothing that the Tribunal heard on this current application persuades it that the Respondent did anything other than a reasonable effort at discharging the responsibilities under the terms of her appointment. The fact that works have yet to be commissioned is not the fault of the Respondent. The Tribunal also determines that the costs incurred in garden and cleaning were reasonably incurred.
28. The Tribunal sees no reason to reach any other finding other than that the charges made in accordance with the Order appointing of the Respondent were reasonable.

COSTS

29. Nor is the Tribunal persuaded that there were any grounds at all for the Respondent to be directed to reimburse the Applicant for the fee on making the Application (in accordance with Regulation 9 of the Regulations). The Respondent was perfectly entitled to defend her record as manager and the costs she charged. The Tribunal repeats that it has determined that her costs for her work as an appointed Manager of the premises in 2006 were reasonably incurred.
30. Through her Counsel, the Respondent sought an Order directing the Applicant to pay her costs. In making this application the Respondent relies on paragraph 10, Schedule 12 of the Commonhold and Leasehold Reform Act 2002. (Section 174 and Schedule 12 make provision for the procedure of the Tribunal).

31. In summary, these provisions allow the Tribunal to determine that a party to proceedings should pay the costs incurred by another party in connection with proceedings. Regulation 10(2)(b) provides that such an order can be made where the Tribunal concludes that a party has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. Costs up to a maximum of £500 can be ordered.
32. The Tribunal in exercise of this power concludes that a costs order should be made as the Applicant has, in the opinion of the Tribunal acted unreasonably in bringing this Application. She could have made such an Application in the proceedings that were held on March 2007. Instead she waited until the following July to make this Application. And she did so in face of the Tribunal's earlier findings that the Respondent did a reasonable job whilst acting as the appointed Manager. Nothing the Applicant has contended in these proceedings supports her complaints about the Respondent.
33. Facing further complaints about her conduct as an appointed Manager the Respondent was entitled to defend herself and to be legally represented.
34. Accordingly the Tribunal determines that the Applicant is to pay the Respondent £350.00 towards her costs. This is to be paid within 28 days of the date of this decision.

Signed

James Driscoll

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James Driscoll LL M, LLB, Solicitor, (Lawyer Chairman)

Dated: 15 February 2008