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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**1 & 2 Westgate Shipton Court Chipping Norton Oxfordshire OX7 6DG**
Applicant	:	**Miss O.M.K. Arathoon**
Respondent	:	**Mr. A. Walford**
Case number	:	**CAM/38UF/LSC/2010/0064**
Date of Application	:	**26th May 2010**
Type of Application	:	**Application for a determination of liability to pay a service charge, pursuant to section 27A of the Landlord and Tenant Act 1985**
Date of Hearing	:	**23rd September 2010**

Tribunal:

Mrs Joanne Oxlade	**Lawyer Chairman**
Mrs. Helen Bowers BSc. (ECON) MRICS MSc	**Valuer Member**
Mr. Robert Brown FRICS	**Valuer Member**

Attendees:

Applicant	**Respondent**
Miss O.M.K. Arathoon	**Mr. A. Walford**
Mrs. Helen Harrison	
Mrs. Claire Jones	

DECISION

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1. The service charges demanded by the Applicant in respect of insurance of the premises for the years 2006/07, 2007/08, 2009/10 namely £207.80, £254.76, and £399.28 are reasonable, and have been demanded in accordance with the relevant legislation.

2. The Respondent shall pay to the Applicant the sum of £220 as reimbursement of the application and hearing fees.

REASONS

Background

1. Miss O.M.K. Arathoon owns the freehold of the premises ("the Lessor"). The Respondent ("the Lessee") bought the lease of the premises on 24th March 2004.

2. The lease provides that the Lessor shall insure the premises, shall rebuild or reinstate the building if damaged or destroyed, shall apply insurance monies received to rebuild or reinstate the premises, and that the Lessee shall pay the costs incurred by the Lessor in insuring the premises.

3. In 2005 the Lessee indicated that he wished to be solely responsible for insuring the premises because he was concerned that (a) the insurance cover was inadequate to rebuild or reinstate the premises, and (b) the insurance policy should have been but was not held in the joint names of the Lessor, Lessee, and the Lessee's wife. He proposed terms to address these two points. However, upon taking legal advice the Lessor indicated that she would continue to insure the premises along with some of the other buildings on the Estate, but did take steps to (a) have the buildings valued by a surveyor for insurance purposes and (b) have the Lessee and his wife named on the policy by way of special endorsement. The Lessee said that he still considered that the insured sum was inadequate, that a special endorsement on the policy was not adequate as it did not amount to being jointly named on the policy. It was pointed out by the Lessor that the Lessee could elect to secure separate cover for that portion which he considered fell short, but he said that he would make his own arrangements for the entire sum.

4. In due course service charges were demanded by the Lessor, which included the cost of insurance: £207.80 in 2006/07, £254.76 in 2007/08, and £399.28 in 2009/10. The Lessee declined to pay these sums on the basis that he had made other arrangements to insure in light of the Lessor's inadequate arrangements. The sums demanded in 2008/2009 were in fact paid, and so we have not been asked to determine the reasonableness of those.

The Application

5. Accordingly, on 26th May 2010 the Applicant made an application pursuant to 27A of the Landlord and Tenant Act 1985 for a determination of the payability and reasonableness of the service charges in respect of insurance. This provides that:

"an application may be made to a leasehold valuation tribunal ("LVT") for a determination whether a service charge is payable and, if it is, as to –

(a) the person by whom it is payable...

(c) the amount which is payable ...".

Section 19(1) of the 1985 Act provides that "relevant cost shall be taken into account in determining the amount of the service charge payable for a period –

(a) only to the extent they are reasonably incurred, and

(b) where they occurred on the provision of services or the carrying out of works, only the services or works are reasonable standard; and

the amount payable shall be limited accordingly".

6. Directions were made in preparation for an oral hearing and the matter came before us for hearing on 23rd September 2010. Prior to the hearing we inspected the premises in the presence of both parties. We inspected 1 Westgate both internally and externally, but in respect of 2 Westgate we were advised that a full internal inspection was not convenient as a copy deadline was being met by his wife who ran her business from there. No 1 consisted of an open plan living room/kitchenette on the ground floor, and a first floor bedroom and bathroom on the first floor. We observed that the living room/kitchenette of No 2 were similar to that seen at No.1, and were told by the Respondent that there were 2 double bedrooms upstairs, along with a bathroom.

Hearing

7. The Applicant and her sister attended the hearing, accompanied by Mrs Jones, a friend, and the Respondent attended alone. All parties represented themselves.

8. At the outset we identified the issues as follows:

(a) Whether the insurance policy had been effected in accordance with the terms of the lease i.e. in the joint names of the Lessor and Lessee
(b) Whether the buildings were insured for a sufficient sum to meet the re-building/reinstatement value
(c) Whether the demand for payment of the insurance premium as part of the service charge was lawfully made (i.e. whether it contain a statement of rights)
(d) Whether the costs of the hearing could be added to the service charge account, and if so, what sum (if any) could reasonably be added
(e) Whether either party had behaved unreasonably, so invoking the Tribunal's power to make an order for payment of a sum up to £500
(f) Whether the fees incurred by the Applicant in bringing the proceedings (application fee of £70 and hearing fee of £150) should be met by the Respondent.

9. We had the benefit of documents filed by both parties, heard oral evidence from both parties including cross-examination, and questions were asked by the Tribunal.

10. At the end of the hearing we reserved our decision, indicating that we would in due course provide a written decision and written reasons.

Discussion

Mrs. Walford

11. It is apparent from the Land Registry office copy entry in respect of the premises that Mr. Walford is the Lessee, but that no interest is recorded for his wife. At the hearing this information appeared to take Mr. Walford by surprise - who said that he thought that his wife was a joint Lessee. He said that being his wife, she had an interest in the premises, and so wanted insurance cover to include her. However, we observed that the Respondent had not named his wife as a joint party to the insurance which he had arranged (in substitution of the insurance which the Applicant had taken out, and which he believed to be inadequate), and did not consider that his answer for this adequately explained the position.

12. On the basis of the evidence that we have heard we are not satisfied that Mrs. Walford has an interest in the premises. Accordingly, although Mr. Walford is a proper party to the proceedings, she is not. The heading of this decision has been amended accordingly. Further, although to date she has been named on the policy, we are not satisfied that this is necessary in future because we are not satisfied that she has an insurable interest.

Joint names v special endorsement

13. One of Mr. Walford's concerns was that the policy should be in joint names of all Lessees and the Lessor, not simply because the lease says so, but that he may wish to make a claim on the policy without having to revert to the Applicants. The Applicant state that when this point was first raised with her in 2005 she immediately took steps to put the insurance into joint names, that this was done by special endorsement, a copy of which is enclosed at page 30 of the Applicant's bundle. The Respondent says that this is not the same as putting the policy in joint names, which is what the lease requires.

14. We have had regard to the wording of the endorsement, which says as follows:

"Special Endorsements

23. Special endorsement - Extension to Policyholder

In respect of the buildings 1&2 Westgate, the definition of you/your/policy holder is extended to include Mr. A. Walford".

15. Firstly, we are entirely satisfied that the wording of the extension declares the Respondent to be a joint policy holder, and so are satisfied that the requirement under the lease to insure the premises in the joint names of all persons "having an interest therein against loss or damage", has been complied with. Secondly, the lease records the agreement of the parties (Sch. 8 (4) that insurance monies are to be paid to and used by the Lessor in rebuilding or reinstating the building.

Reinstatement Value

16. In response to the Lessee's concern that the rebuilding/reinstatement value may be incorrect the Lessor sought guidance from her insurance broker. In 2005 either the Broker or the insurance company arranged for a specialist Surveyor, Michael Grey, to undertake a detailed survey of these premises, and others on the Estate, to assess rebuild values. As a result of this report, the Lessor took insurance for the rebuild sums recommended, with a combined value of £218,000 for No.s 1&2. Her position is that she has secured expert advice and acted upon it. Since then the sums involved have increased through indexation.

17. The Lessee says that the values ascribed in 2005 were woefully inadequate and continue to be, but produced no expert report to rely on. He made reference to a meeting with the Head of Pymans in mid-2005, in which the costs quoted were £180-£200 per square foot for construction of a traditional stone building under a stone/slate roof. He thought that there should be a written report, but had not produced it.

18. We prefer the detailed written report relied on by the Lessor, to the assertions relied on by the Lessee and contained within his letter of 18th August 2005. The latter information contains at best a ball park figure given by a construction company, as opposed to a formal rebuilding cost valuation. It is also not clear from the Lessee's calculations how he arrives at a reinstatement value of £500,000 for 2 cottages (1 & 2), when the rebuild value of £940,000 given in his letter of 18th August 2005 appears to relate to 6 cottages (5 of 800 square feet and 1 of 700 square feet). This would suggest at best dividing £940,000 by 1/3rd, so giving a rebuild value of £313,000. We consider that the Lessees evidence is insufficiently precise to attach any weight.

19. We consider that the Lessor has complied with the obligation to insure against loss and damage for the full replacement value. Had the Lessor ignored the expert advice given as a result of the report commissioned by the insurance company, and over-insured as encouraged by the Lessee, then the Lessor could not have recovered those premiums as reasonable service charges against either this Lessee or others.

S21B compliance

20. The obligations provided by s21B of the 1985 Act, as amended by the 2002 Act, provide that the Lessor shall when making a demand for service charges ensure that the Tenant's Rights are notified to him, in the form provided by The Service Charge (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 This came into force on 1st October 2007. The consequence of not doing so is that any demand made is not payable until correctly accompanied.

21. We heard conflicting evidence from the parties on this point, Miss Arathoon saying that she had become aware of the provisions, and sent the demand with accompanying notification of rights by recorded delivery in June 2010, and a copy of the slip was provided. Mr. Walford strongly disputed receipt of the notification. In this respect we preferred the oral evidence of Miss Arathoon to that of Mr. Walford, the former displaying considerable familiarity with the documents and sincere attention to detail. We consider it more likely than not that the document was overlooked by Mr. Walford.

S20C Costs

22. Mr. Walford was concerned that the Lessor's costs should not be added to the service charge account. However, in circumstances falling short of service of a section 146 notice, the lease makes no provision for the recovery of costs. Accordingly, the service charge account should not include any costs caused by these proceedings, which Ms. Arathoon accepted.

Fees

23. We were asked to consider making a direction that Mr. Walford pay to the Lessor the costs borne by her of bringing the application (£70) and the hearing fee (£150), which were are permitted to do by virtue of Regulation 6 of the Residential Property Tribunal (Fees) (England) Regulations 2006. We consider that such an order is appropriate because the Lessor had no alternative but to make the application and has succeeded in her application; further, the Lessor listened to the Lessee's concerns and amended the policy to add him (and his wife) as policy holders, and had the buildings re-valued so that a proper premium could be set. Whilst the Lessee has implied that the Lessor acted inflexibly and adopted arcane practises, we consider that Mrs Arathoon has sought to listen to and accommodate his concerns, taken advice, but was ultimately entitled to rely on the terms of the lease - which is the document that binds them both. Although the Lessee says that the matter had to be resolved by another body because they could not reach an agreement, it was not reasonable for him to not pay the sums demanded but then not to make the application himself to have the matter resolved.

24. Accordingly, we find that the Lessee should pay to the Lessor the sum of £220 to reimburse them for the cost of bringing the application.

Costs

25. We were asked to consider making an order against the Lessee by invoking our powers under paragraph 10, Schedule 11 of the Commonhold and Leasehold Reform Act 2002. We are permitted to do so where one party "has in the opinion of the LVT acted frivolously, vexatiously, abusively, disruptively, or otherwise unreasonably in connection with the proceedings".

26. We find that the Lessee has acted unreasonably: he was obdurate in resisting the plain wording of the special endorsement of the policy; for 5 years he argued that the rebuilding costs were too low, yet failed to adduce at the hearing any reliable evidence of the actual rebuilding costs, and the figures produced by him do not stack up. However, the brake on the power to make the order acts because of the words "in connection with the proceedings". We do not consider that the Lessee has acted unreasonably *in the proceedings*. In any event the threshold is high .We therefore decline to make the order.

27. For completeness, we should say that whilst in correspondence the Lessee, said that he may wish to make an application against the Lessor, at the hearing he accepted that the Lessor had acted reasonably.

28. It is apparent from the evidence that there are other proceedings underway, and that others may come before us in the form of service

charge disputes. Both parties would be wise to acquaint themselves with the terms of their lease, and to take legal advice.

Conclusion

29. For the reasons given above we find that

(a) the sums claimed by way of service charges for the years 2006/07, 2007/08, 2009/10 (namely £207.80, £254.76, and £399.28) are reasonable
(b) the Lessee must reimburse the Lessor the fees incurred in issuing the application and the hearing fee of £220
(c) the lease makes no provision for the costs to be added to the service charge account, so that an order under s20C of the 1985 Act would be otiose
(d) the Lessee has not acted wholly unreasonably in connection with the proceedings.

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Joanne Oxlade

27th September 2010