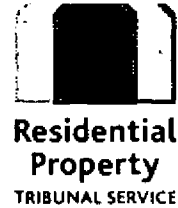


RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Sections 27A and 20C Landlord & Tenant Act 1985



DECISION

Case Number: CHI/21UD/LIS/2009/0100 .

Property: 2 Hughenden Court
Mount Pleasant Road
Hastings
East Sussex TN34 3ST

Applicants: Vectis Property Limited (landlord)

Respondent: Mr & Mrs Francis-Truett (tenants)

Application: 09 November 2009

Directions: 03 December 2009

Pre-Trial Review 02 February 2010

Hearing: 10 May 2010

Appearances: Mr & Mrs Francis-Truett in person
Mr Battersby & Mr Munns of Rayners for Vectis

Tribunal Members: Ms J A Talbot MA
Mr N I Robinson FRICS
Mr P A Gammon MBE BA

Case No. CHI/21UD/LIS/2009/0100

Property: 2 Hughenden Court, Mount Pleasant Road, Hastings, East Sussex TN34 3ST

Application

1. This was an Application issued in Hastings County Court by Vectis Property Co.Ltd on 28/08/2009 for service charges of £4310. The case was transferred to the Leasehold Valuation Tribunal on 09/11/2009.
2. Directions were issued on 03/12/2009. An oral Pre-Trial Review was held on 02/02/2010 at which it was identified that the service charge element of the amount claimed was about £3,082 and £1,227 was for arrears of ground rent.

Jurisdiction

3. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (S.18 Landlord and Tenant Act 1985). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable if it is reasonably incurred, or the works to which it relates are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

Inspection

4. The Tribunal members inspected the property before the hearing, accompanied by Mr & Mrs Francis-Truett and the current managing agents Mr. & Mrs Sharp of Fairways Management. This was a brief external inspection only. The property comprised a 1970's purpose built six storey block of 47 flats with basement car park. The elevations were of brick with substantial areas of worn and weathered brickwork. It appeared that the original windows were of timber with a number replaced in UPVC. The timber windows appeared to be in poor condition. Internally the tribunal saw a ground floor corridor with inadequate door closers, a problem noted elsewhere in the building. At sixth floor level, Mr. Sharp pointed out damage to the lift lobby ceiling was said to be caused by water penetration from the roof above. The interior of Flat 2 was not inspected as there were no likely relevant issues.
5. The valuer member accessed the roof/balcony area where the surface covering was asphalt finished. Recent patch repairs were noted. Windows to the eastern flat at this level looked in particularly poor condition and two further windows were boarded over. The member climbed a vertical ladder to the main roof and noted that the roof covering at this level was a roll on felt, possibly over the original asphalt, presumed to date from re-roofing work undertaken before the Right to Manage. One patch close to the ladder and another strip of felt were of a different colour and could have been more recent. The remainder of the covering, seen from the ladder, appeared satisfactory. In the area above the lift shaft was a rectangular structure apparently containing water tanks. Mr. Sharp advised that this structure had been recently clad with new flashings at the base, where the water penetration problems had stemmed from.
6. The tribunal members visited the basement communal garage and saw the parking space for Flat 2 where, due to water penetration through the concrete slab above, it had been necessary to install plastic sheeting over the space. It was mentioned that water was running down the wall of the garage to the west of the parking space above which the tribunal had already noted a defective asphalt upstand to the balcony/garage roof. The garage was generally badly lit with rubbish strewn around.
7. Overall the condition of the building generally appeared poor, with substantial work required. It was noted that the Right to Manage had been acquired on 13/06/2005, nearly

5 years previously. The condition was considered to reflect a current lack of ongoing maintenance rather than inherited problems, though some items such as the leaking garage ceilings and inadequate door closures may have been apparent at the time the RTM was transferred.

Hearing

8. The hearing took place in Hastings on 10 May 2010. It was attended by Mr & Mrs Francis-Truett in person, and by Mr. Battersby and Mr. Munns or Rayners, former managing agents for Vectis.
9. By way of background, Mr. Francis-Truett purchased Flat 2 on 05/02/2003. There was a historic dispute over roof repairs carried out in 2002 before he acquired the property which was not before the Tribunal. At the time of purchase the statement of account for the property showed a credit of £815.67 towards the roof repairs. Service charge and ground rent demands were issued to Mr. Francis-Truett but no payments were made. This was because he believed the amounts were not reasonably incurred and that he was not provided with sufficient information. This was denied by the managing agents.
10. The Tribunal confirmed, as had been recorded at the Pre-Trial Review, that it had no jurisdiction over ground rent, neither could it deal with county court interest or costs. At that hearing, Mr. Francis-Truett had withdrawn one limb of his previous defence based on Section 48 of the Landlord & Tenant Act 1985.
11. A further defence was raised that the sums fell due more than 6 years previously and were therefore subject to a limitation period. In order to assist the parties, the Tribunal expressed a preliminary view. The service charges were reserved by way of rent in the lease at a proportion of 1.9472%. Where the landlord has brought an application under a lease for recovery of service charges reserved as rent, the limitation period is 6 years from the date when payment first became due (s.19 Limitation Act 1980). Under the terms of this lease, the lessee was liable for the first payment on 25/03/2004, as payment was due in arrears. Therefore the limitation period would end on 25/03/2010, with the result that the action for recovery was brought within the period and was not statute barred.
12. The Tribunal noted that attempts had been made by the parties to settle the dispute, culminating in a letter dated 21/04/2010 from Mr. Munns to Mr. Francis-Truett. Given that the S.48 and limitation defences had fallen away, the Tribunal gave the parties a further opportunity to discuss the possibility of settlement. This led to agreement being reached. The Tribunal offered to record the agreement. It is emphasized that this is not a determination of the Tribunal and is not enforceable as an order in the County Court but is designed to assist the parties.

Record of Agreement

13. Mr Francis-Truett agreed to pay the sum of £2,017.19 in full and final settlement of service charges due for the period 05/02/2003 to 13/06/2005. Costs in connection with the Right to Manage and legal costs were not included.
14. As part of the agreement no order was necessary under S.20C of the Landlord & Tenant Act 1985 as Mr. Munn and Mr. Battersby agreed that no costs of the proceedings would be sought as service charges.

Dated 30 June 2010

Signed

**Ms J A Talbot
Chairman**