

5082



Residential
Property
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER S.27A OF THE LANDLORD AND TENANT ACT 1985**

LON/00AE/LIS/2009/0009

Property: 84a and 84b
Blenheim Gardens
London
NW2 4NT

Applicant: South Land Securities Limited

Respondents: Mr & Mrs Cuttler

Appearances: Mr Taylor of Hamilton King Management Ltd. for the
Applicant

Mr Cuttler in person

Tribunal Members: Ms F Dickie, Barrister
Mr I Holdsworth FRICS
Mr E Goss

Date of Hearing: 19 April 2010

Date of Decision: 28th May 2010

PRELIMINARY

1. On 28 November 2008 the Applicant landlord South Land Securities Limited by their management company, Hamilton King Management Ltd., issued County Court proceedings against the Respondents for arrears of ground rent, service and other charges plus interest and costs. Mr Cuttler is the sole leaseholder of the premises known as Flat A number 84 Blenheim Gardens, London NW2 4NT. He and his wife are joint leaseholders of Flat B. By an Order dated 26 February 2009 of District Judge Cohen sitting in the Willesden County Court the proceedings were transferred to the Leasehold Valuation Tribunal.

2. A Pre-trial Review was held on 17 February 2010 at which the Applicant was not represented and the Respondents, Mr & Mrs Cuttler, attended in person. The following issues in dispute were identified at the Pre Trial Review:
 - i. Professional supervision fees for works in 1996
 - ii. The reasonableness of management fees charged on works funded by an insurance settlement in 2003
 - iii. Various legal fees and charges applied in 2008
 - iv. Whether the Tribunal should make an order under s.20C of the Act preventing the Respondent from recovering the cost of these proceedings through the service charge.

3. The matter was listed for determination at an oral hearing on 19th April 2010 at which Mr Taylor from Hamilton King appeared on behalf of the Applicant and Mr Cuttler again attended in person.

SUMMARY OF DETERMINATION

4. In respect of the numbered issues identified above:
 - i. The Tribunal finds for the Applicant
 - ii. The Tribunal finds no management fees were charged on works funded by the insurance settlement.

iii. The Tribunal finds for the Respondent. The charges not conceded by the landlord are not recoverable under the lease as administration or service charges.

iv. The s.20C order is made by consent. The Tribunal refuses to order the Respondent to reimburse the hearing fee to the Applicant.

THE HEARING

5. The County Court Claim having been issued on 22 October 2008, the parties were in agreement that no point on limitation arose. They concurred at the Hearing that the Tribunal should make determinations only in respect of the items disputed in written submissions in the Statement of Case headed Respondents' Submission, and should not make determinations in respect of the total service charges payable for each of the years in question.
6. Hamilton King is a party (as "the Management Company") to the leases between South Land Securities and the tenants. The relevant terms in both leases relating to payment of service charges were identical and not in dispute.

Service Charge Year 1996

7. The parties agreed that the only sum in dispute for the service charge year 1996 was £172.11 in respect of surveyor's fees relating to the major works contract for that year. There was no dispute that professional fees of this nature would be recoverable as a service charge under the lease if incurred and reasonable. The Applicant produced an invoice from Supervising Surveyors & Associates Limited dated 23 October 1996 in the sum of £439.44 plus VAT, totalling £516.34. The invoice was in respect of "professional fees for preparing Specification of Works, obtaining tenders and negotiating with Leaseholders". The contribution sought from each of the three flats in the building, being one-third, was £172.11. In his written Statement of Case Mr Cuttler referred to this item as an excess service charge of

£484.19. However he accepted that the disputed figure was not an excess service charge once explained by Mr Taylor at the hearing.

8. It was observed on behalf of the Applicant that in the Statutory Consultation Notice dated 9 April 1996 the leaseholders had been advised that professional fees would be 10% of the cost of the work plus VAT, and that as the final cost of the major works was £5,163.42 plus VAT the professional fees were in fact less than that.
9. The case put by Mr Cuttler was that whereas 10% was not an unreasonable charge for professional services carried out, he disputed that any surveyor had ever presented him/herself to the leaseholders of the building or had contacted or negotiated with them in any way. He pointed out that he had owned and occupied the flat until three or four years ago and thus at the relevant time he would have been aware if any surveyor had inspected. The leaseholders were not provided with documentation or any evidence of work conducted by a professional surveyor, and no comparative tenders were given to them. Mr Cuttler considered that in fact the Schedule of Works would have been prepared by Liz Gilbert of Hamilton King and not by a surveyor. However, the Tribunal was informed that this person left Hamilton King's employment some three to four years ago.

Tribunal's Determination For Service Charge Year 1996

10. The only dispute was the £172.11 charged per flat in respect of the surveyor's invoice, which was less than 10% of the cost of the major works. The Tribunal considers this was in line with standard practice and typical of charges for works of this scale.
11. Mr Cuttler was unable to provide anything but his oral evidence that Supervising Surveyors & Associates Limited did not prepare detailed specifications for the works and carry out appropriate supervision, yet he had had ample opportunity to raise his complaint with the landlord at the time he was invoiced for this charge. Mr Cuttler was unable to direct the Tribunal's attention to any evidence within the bundle demonstrating that

he had specifically explained his objections to the invoice for the surveyor's fees. Although he suggested that he had disputed this item since 1996, he could not produce any correspondence dated earlier than 2004 showing he had done so.

12. Notwithstanding that the limitation period for recovery of this item had not expired on the date of issue of the County Court claim, this is a very stale matter. The Tribunal would have expected Mr Cuttler to raise his challenge to this invoice with the landlord contemporaneously. It was not reasonable to expect the landlord, in the absence of an appreciation of the particulars of his challenge, to retain records for the works carried out by the surveyors at that time. It appears that such records no longer exist and without the evidence of their former employee Ms Gilbert the landlord is now at a disadvantage in answering Mr & Mrs Cuttlers' challenge.
13. Nevertheless, the landlord has produced the invoice for professional fees. On the limited evidence available the Tribunal considers that it is more likely than not that surveyors were instructed to carry out professional services in respect of the major works in 1996 and that their fees charged are reasonable and payable.

Service Charge Year 2003

14. Mr Cuttler disputed an excess service charge of £863.95 charged to each flat. In the year in question major works were carried out to a value in excess of £8,000, in addition to works associated with an insurance claim with a value of £8,431.50. Mr Cuttler disputed that the landlord should be entitled to charge a 15% management fee on the latter (though there was no challenge to the principle of the landlord charging a fee for managing the premises). Mr Taylor however explained that Mr & Mrs Cuttler were in error and had not been charged a management fee on the value of the insurance work, only on the £100 excess on the claim. The Tribunal was referred to the statement of service charges for the period ending December 2003 which showed that the management fee for the year of £2,755.33 had been calculated as 15% of the net

service charge expenditure after a credit of £7,273.13 was made in respect of the insurance payout.

Tribunal's Determination in respect of service charge year 2003

15. Having considered the statement of service charges for the period ended December 2003 the Tribunal is satisfied that the management charges have been calculated on the basis of the year's expenditure after credit in respect of the insurance claim. Accordingly the Tribunal does not agree with Mr Cuttler that he has been charged a management fee in respect of the remedial works carried out to rectify flood damage to the cellar. No other challenge was brought to the reasonableness of service charges within that year. Accordingly the Tribunal finds in favour of the Applicant and in particular that management fees for the year 2003 are reasonable.

Charges for Years 2006 and 2008

16. The Respondents disputed legal fees charged in each of these years. Mr Taylor advised however that as a gesture of goodwill certain credits had been made within the last couple of months.

2006 Flat B Only

- i. Charges of £111.63 and £89 for administration by Hamilton King had now been credited back to tenant's account. The only item therefore in dispute in this year was a charge of £178.60 in respect of an invoice from Marston's Solicitors. The landlord produced a copy of the invoice for these services and argued that this was an administration charge recoverable under clause 3(d) of the lease, by which the Lessee covenanted:

3(d) to pay all reasonable costs charges and expenses (including solicitors' costs counsel's fees and surveyors' fees together with any value added or other tax payable in respect of such costs and fees) incurred by the Lessors for the purpose of or incidental to the preparation and service of a notice under section 146 of the

Law of property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court.

2008 Flat A

ii. Charges of £111.63 and £89 for administration by Hamilton King had now been credited back to tenant's account

2008 Flat B

iii. The Applicant disputed that the charges of £111.63 and £89.00 (alleged by the tenant to have been made on 27 June 2008) had in fact been made in 2008 in respect of Flat B. Mr Taylor advised however that if such charges had been made they would be credited back. Charges of £88.13 and £65.00 for administration by Hamilton King had now been credited back to tenant's account.

iv. All of the Management Company's administration fees had been taken off the account leaving only solicitors and Court fees. The only items in dispute therefore for this year were £85.00 for the Court fee for issuing these proceedings in the County Court and £190.00 in Court fees (charged in respect of Flat A). Putting his arguments in respect of disputed legal fees, Mr Cuttler was unhappy that the landlord had not attended the County Court and Leasehold Valuation Tribunal Pre-trial Review Hearings.

Tribunal's Determination in Respect of Charges for 2006 and 2008

17. The landlord has made goodwill concessions leading to credits understood to have been made to the account within the last few months, the dates and amounts of which were not disputed by the Respondents. In the circumstances the only charges for the years 2006 and 2008 now challenged by Mr Cuttler were solicitor's costs and County Court fees. The Tribunal finds however that these amounts are not payable by the tenants under the terms of the lease as a service charge or as an administration charge. An administration charge under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 is an amount payable (amongst other things) in respect of the tenant's failure

to pay sums on their due date to the landlord or other party to the lease (eg. Interest on late payment). Clause 3(d) does not provide for payment of an administration charge in this sense. The Clause relates to the payment of costs etc. incurred on preparation of a section 146 Notice. The Landlord's costs in the County Court proceedings are a matter for that court and not for this Tribunal, which has no jurisdiction in relation to:

2006

£178.60 Solicitor's costs in respect of recovery of Flat B service charges

2008

£ 85.00 Court fee Flat B.

£190.00 Court fee Flat A.

The landlord has confirmed that all other charges will be waived.

Section 20C Application

18. The Respondents made an application to the Tribunal under Section 20C of the Act to seek an order preventing the landlord from recovering the cost of these proceedings through the service charge account. The Applicant did not contest this application and therefore by consent the Tribunal Orders that the costs of these proceedings are not relevant costs recoverable as service charges under the lease.

Application for refund of hearing fee

19. The landlord sought an Order from the Tribunal that the Respondents should reimburse to it the cost of the Hearing fee in the sum of £150. It was submitted that all of the matters explained at the hearing had been put in writing and discussed with Mr Cuttler by telephone, and that there had therefore been no reason for the hearing to have taken place. Mr Taylor explained that the accounts section of Hamilton King is in Manchester, where he is based, although there is a London office that deals with maintenance issues. He confirmed that he did not come to the Pre-trial Review because in his experience such hearings were a waste of time and he did not wish to make the journey to attend. He

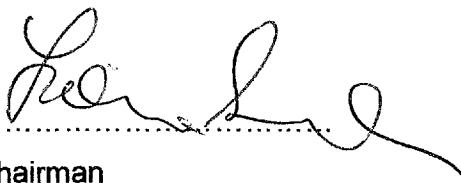
argued that having conceded the Section 20C application the landlord should be entitled to recover the Hearing fee.

20. Mr Cuttler argued that he had written many times over the years to Hamilton King or their solicitors but had never been given an explanation for the charges he disputed, and that the landlord had not been represented at the Willesden County Court Hearing or the Pre-trial Review.

Determination regarding Hearing Fee.

21. Pursuant to Regulation 9(1) of the Leasehold Valuation Tribunal (Fees)(England) Regulations 2003, "in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings". Having considered this power the Tribunal makes no order for reimbursement of the Applicant's Hearing fee. It is of the view that this dispute might well have been wholly or substantially resolved at the Pre-trial Review had the Applicant sent a representative and that such representation could have been arranged through the London office. The decision to hold a Pre-trial Review was made by the Tribunal and Mr Taylor was wrong not to have had regard to the Tribunal's view that a Pre-trial Review should take place in the presence of the parties.

Chairman:



Chairman
Ms F Dickie

Dated 28th May 2010