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Residential
Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
Landlord and Tenant Act 1985 – Section 27A
Commonhold and Leasehold Reform Act 2002 - Schedule 11
LON/00AF/LIS/2009/0023

Property	:	**11 Wych Elm Lodge, 29 London Lane Bromley BR1 4HB**	
Applicant	:	**Longmint Limited**	**Landlord**
Represented by	:	**Ms E Thompson, Solicitor – Juliet Bellis & Co**	
		Ms R Perry, Property Manager – South East Property Services Limited	
Respondent	:	**David Kenneth Chappell**	**Tenant**
Represented by	:	**Mr David Chappell**	**In person**

Date of Reference	:	**30 October 2009**
Date of Oral Pre-Trial Review	:	**1 December 2009**
Date of Further Directions:		**18 March 2010**
Date of Hearing	:	**28 September 2010**
Date of Decision	:	**6 October 2010**

Tribunal	:	**Mr John Hewitt**	**Chairman**
		Ms Sue Coughlin	
		Mr Eric Goss	

Decision

1. The decision of the Tribunal is that:

   1.1 At the time of the issue of the court proceedings the sum of £3,198.04 claimed by the Applicant was payable by the Respondent to the Applicant being a sum on account of his liability in respect of proposed major works;

   1.2 The said sum of £3,198.04 has subsequently been paid by the Respondent to the Applicant;

   1.3 At the time of the issue of the court proceedings the sum of £94 claimed by the Applicant by way of a variable administration charge was not payable by the Respondent to the Applicant;

   1.4 The claims to statutory interest pursuant to s69 County Courts Act 1984 and to costs in the court proceedings be referred back to the court because these are matters within the exclusive jurisdiction of the judge;

   1.5 By consent an order shall be made and is hereby made pursuant to s20C of the Act that no costs incurred by the Applicant in connection with these proceedings before this Tribunal shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessees of Wych Elm Lodge to the Applicant; and

   1.6 The Applicant's application that the Tribunal require the Respondent to reimburse it with the sum of £150 paid by the Applicant to the Tribunal in respect of a hearing fee be refused.

NB 1 Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the supplementary hearing file provided to us for use at the hearing.

NB 2 Relevant law which we have taken into account in arriving at our decision is set out in the Schedule to this Decision.

Background

2. The background to this matter is set out in paragraphs 1-5.9 of the Further Directions dated 18 March 2010 [1] and should be read in conjunction with this Decision.

3. Pursuant to those Further Directions the parties have served further statements of case – the Applicant [8] and [26] and - the Respondent [22].

The major works

4. At the hearing we were told that the Applicant had complied with its undertaking to place a contract for the major works and that the works had now been concluded. The contract administrator has issued a certificate of practical completion. The contractor's invoice is at [20]. The sum claimed (excluding a retention of 2.5%) was £60,158.17. Ms Perry stated that the contract administrator's fixed fee was £1,800 so that the total cost of works payable at this time was £61,958.17. The Respondent's contribution at 4.5 % amounts to £2,788.12.

5. Ms Perry explained that the defects liability period expires on 29 January 2011 and that subject to the contractor carrying out snagging works to the satisfaction of the contract administrator a final certificate will then be issued and the contractor will be entitled to the payment of the retention of £1,312.78. The Respondent's share of that at 4.5% will amount to £59.07.

6. Ms Perry confirmed that surveyor's fees for drawing up the specification of works and other preparatory services had been included in a prior year's service charge accounts and paid by lessees so that no further professional fees were outstanding in respect of this project.

7. We were also told that the Respondent had complied with his undertaking to pay the sum of £3,198.04 by 31 March 2010 on the terms as set out in paragraph 5.8 of the Further Directions.

8. On the basis of these figures it seems that in due course there will be a balancing credit due to the Respondent in the sum of about £350.

9. The Respondent told us that subject to satisfactory completion of snagging works he was satisfied that the works had been carried out to an acceptable standard and at a reasonable cost. The Respondent explained that he had withheld his contribution to the major works as the only means available to him to focus on the major works which he said were long overdue and that the Applicant had neglected its obligations under the lease. He was satisfied that in consequence of his stance the Applicant had, at last, procured the works to be undertaken.

   The Respondent also told us that in the absence of specialist building surveying advice he no longer wished to pursue his 'years of neglect' argument in relation to the major works.

Other claims

10. At the hearing on 18 March 2010 and in his original statement of case the Respondent claimed that the Applicant was in breach of the covenants in the lease and that in consequence he had suffered loss and damage which he was entitled to set off against service charges otherwise due and payable. The Respondent told us that in the light of further information given to him, especially in respect of abuse of parking arrangements, he no longer wished to pursue any other money claims against the Applicant.

Matters in Dispute

11. In the light of the above the only matters in dispute for us to determine were the Respondent's application under s20C of the Act and the Applicant's application for reimbursement of the hearing fee of £150.

The section 20C Application – limitation of landlord's costs of the proceedings

12. An application was made under s20C of the Act with regard to the landlord's costs incurred or to be incurred in connection with these proceedings and an order was sought by the Respondent that those costs ought not to be regarded as relevant costs in determining the amount of any service charge payable by the Respondent.

13. Ms Thompson conceded that the regime in the lease did not enable the Applicant to recover as service charges sums incurred in connection with proceedings such as those presently before us. For the avoidance of any doubt Ms Thompson consented to an order being made by the Tribunal pursuant to s20C of the Act. We have therefore made such an order.

14. Ms Thompson also stated that the Applicant contended that it was entitled to recover direct from the Respondent its costs of these proceedings. She said that the Applicant would rely upon the provisions of clause 2(xviii) of the lease (page 7 of the lease and page 31 of the original trial bundle) and that the Applicant reserved the right to pursue a claim for costs. The Tribunal noted the contentions but is not required to make any determination or comment on them. We simply say that if any such claim is made it will amount to a variable administration charge within the meaning of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and will be subject to the requirement that such charges are to be reasonable in amount and susceptible to scrutiny by a tribunal at some future time upon an application being made for that purpose.

Reimbursement of Fees

15. Ms Thompson made an application that the Tribunal require the Respondent to reimburse the hearing fee of £150 paid by the Applicant.

16. The application was opposed.

17. The Tribunal considered carefully the rival submissions. Ms Thompson submitted that the Applicant had been successful and that the Respondent had eventually paid the sum claimed in the proceedings. The Respondent contended that the Applicant had failed to comply with its obligation s under the lease and that incompetent managing agents employed by the Applicant had failed to manage the development properly. It was not in dispute that the former managing agents had not performed well. It was not in dispute that on prior occasions the Respondent had been told that the contract for the major works had been placed with a contractor when in fact it had not.
The Respondent contrasted the woeful performance of the former managing agents with that of the present managing agents who took over on 31 July 2009 and he commented on the refreshing and marked improvement in service.

18. We have some sympathy with the Respondent. We are satisfied that over a number of years the Applicant did not manage the issue of the major works well. We accept the Respondent's submission that he felt the only step open to him was to decline to pay the sum on account and to force the Applicant to focus on the issue. We take into account that despite the issues raised in the defence in the court proceedings and in the original statements of case it was not until part way through the hearing on 18 March 2010 that the Applicant proffered an undertaking to place the contract for the major works promptly. We also take into account that in the court proceedings referred to the Tribunal the Applicant had claimed an administration fee of £94 and that at the hearing on 18 March 2010 the Applicant abandoned that claim. The hearing fee of £150 had already been paid by that time.

19. In all of these circumstances we find that it would not be just and equitable to require the Respondent to reimburse the Applicant the hearing fee of £150 and we have therefore rejected the Applicant's application.

The court proceedings

20. The court referred the claim to the Tribunal. The claim to service charges of £3,198. 04 and the claim to the administration charge of £94.00 have been dealt with and are now both resolved.

21. The other two claims made, namely the claim to statutory interest and the claim to costs in the court proceedings are both matters in the exclusive jurisdiction of the judge and we have therefore referred them back to the court for determination in the event that the Applicant considers it appropriate to pursue them.

22. In a final comment we wish to thank both parties for the courteous and helpful way in which they presented their respective cases. It seems clear to us that following the appointment of new managing agents the Respondent has seen a step change for the better in the management of Wych Elm Lodge and a positive relationship has been formed between the lessees and the managing agents. We hope that this new dawn will prosper and develop to mutual advantage. In this spirit we would encourage both parties to try very hard to resolve any outstanding matters between them without the need for further litigation and the costs and anxiety that will inevitably arise.

The Schedule

The Relevant Law

Landlord and Tenant Act 1985

Section 18(1) of the Act provides that, for the purposes of relevant parts of the Act 'service charges' means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

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

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

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

and the amount payable shall be limited accordingly.

Section 19(2) of the Act provides that where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction of subsequent charges or otherwise.

Section 20C(1) of the Act provides that a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a leasehold valuation tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

Section 20C(3) of the Act provides that the tribunal may make such order on the application as it considers just and equitable in the circumstances.

Section 27A of the Act provides that an application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable.

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

Section 27A(3) of the Act provides that an application may be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance, or management of any specified description, a service charge would be payable for the costs and, if it would, as to

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable.

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

Commonhold and Leasehold Reform Act 2002

Schedule 11

Paragraph 1 sets out a definition of a 'variable administration charge'.

Paragraph 2 provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Paragraph 5 provides that any party to a lease of a dwelling may apply to a Leasehold Valuation Tribunal for a determination whether an administration charge is payable and, if it is, as to :

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable.

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

No application may be made in respect of a matter which:

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court. Or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

A tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9(1) provides that subject to paragraph (2) a Tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or any part of any fees paid by him in respect of the proceedings.

Regulation 9(2) provides that a Tribunal shall not require a party to make such reimbursement if, at the time when the Tribunal is considering whether or not to do so, it is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Regulation 8(1) makes reference to a number of benefits/allowances including, but not limited to, income support, housing benefit, jobseekers allowance, tax credits, state pension credits and disability related allowances.

John Hewitt

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John Hewitt

Chairman

6 October 2010