

5341



**Residential
Property
TRIBUNAL SERVICE**

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
LANDLORD AND TENANT ACT 1985**

LON/00AH/LSC/2010/0322

Premises: Flat 5 70 Bungalow Road London SE25 6JZ

Applicant: Navy Properties Co. Ltd

Represented by: Mr M Paine

Respondent: Mr S Liliano

Represented by: Did not attend

Tribunal: Mr C Leonard
Mr C Kane FRICS
Mrs J Dalal

Date of Hearing: 23/08/10

Date of Decision: 20/09/10

Introduction

1. This matter was transferred to this Tribunal by an order of the Croydon County Court dated 11 May 2010. The order was made in Claim No. 0QT28966 (issued on or about 9 March 2010) under paragraph 3 of schedule 12 to the Commonhold and Leasehold Reform Act 2002. Paragraph 3 of Schedule 12 provides that a court may transfer to the Leasehold Valuation Tribunal any question which falls within the jurisdiction of the Tribunal.
2. The claim before the court was a claim by the Applicant against the Respondent for the recovery of a service charge of £375.00, interest of £10.58, "S146 Notice" of £528.75 and "Agents Fee" of £705.00. The Respondent counterclaimed the sum of £375.00 described as "service charges for 2009 -10..."
3. Mr Paine of Circle Residential Management Limited, managing agents for the Applicant, confirmed to the Tribunal that the Applicant's claims for all items except the service charge of £375.00 are withdrawn and that they will not be reclaimed against the Respondent. That leaves only the service charge and the Respondent's counterclaim to be considered.

Statutory Regulation of Service Charges and the Tribunal's jurisdiction

3. Section 18 (1) of the Landlord and Tenant Act 1985 defines a service charge as "...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..."
4. Section 18 (2) provides that "The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord...in connection with the matters for which the service charge is payable".
5. Section 19 provides that

- (c) "(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

only to the extent that they are reasonably incurred...
and the amount payable shall be limited accordingly."

6. Section 27A (1) of the Act provides that

- (d) "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—
- (e) the person by whom it is payable,
- (f) the person to whom it is payable,
- (g) the amount which is payable,
- (h) the date at or by which it is payable, and
- (i) the manner in which it is payable... "

7. However subsection 27A (4) states "No application under subsection (1)...may be made in respect of a matter which - (a) has been agreed or admitted by the tenant..."

The Lease

7. The Applicant's right to recover service charges from the Respondent is governed by the terms of a 125-year lease between one Vishal Nagla and the Respondent dated 20 March 2007. The lease is of Flat 5, 70 Bungalow Road, South Norwood, London SE25 6JZ. Flat 5 is defined as "the Property". 70 Bungalow Road, which comprises 6 flats, is defined as "the Building".
8. Service charge provisions are set out at paragraphs 1.15, 1.16, 1.17, 3.2.4, 5.5 and 9 of the lease. There appear to be some drafting errors and incorrect or missing cross-references in the wording of the lease but the intention of the lease is perfectly clear; the Respondent must pay 1/6th of the cost incurred by the Applicant in carrying out maintenance and repair obligations defined at paragraph 5.5.

9. Of particular relevance for the purposes of this application are the Applicant's obligations to keep the Building in good repair and condition (paragraph 5.5.1), to keep the common parts of the Building clean and lighted (paragraph 5.5.3) and to keep the Building insured (paragraph 5.5.13). Paragraph 5.5.5 empowers the Applicant to employ maintenance staff, gardeners, cleaners and other staff. Paragraph 5.5.6.1 empowers the Applicant to employ managing agents and to pay their proper fees, salaries, charges and expenses.
10. The service charge "accounting period" runs from 1 January to 31 December (paragraph 1.17 of the lease). Paragraphs 9.1.3 and 9.3 of the lease provide for the Applicant or its managing agents to identify a fair and reasonable interim service charge to be paid on account having regard to anticipated expenditure for the next accounting period and for the Respondent to pay that estimated amount by two equal payments in advance on 24 June and 25 December each year. Paragraph 9.4 provides for any surplus of interim payments over final service charge for any given accounting period to be credited against the Respondent's service charge for subsequent accounting periods.

The Respondent's Counterclaim

11. It is not possible to identify exactly what is claimed in the Respondent's counterclaim without the assistance of the Respondent, who did not play any part in these Tribunal proceedings and did not attend the hearing to make his case. There is no "2009 -10" service charge.
12. If as it appears the Respondent means to reclaim all or part of the interim service charges paid by him for 2009 the Tribunal is not able to address such a claim. From the information provided by the Respondent in his Defence to the Applicant's county court claim, as supported by the evidence of Mr Paine, it appears that the Respondent agreed to pay those service charges as part of a compromise of previous court proceedings against him. It is not open to the Tribunal, given the provisions of subsection 27A (4) (a) of the 1985 act, to consider their reasonableness.

The service charge sought by the Applicant

13. The £375 sought by the Applicant in Claim No. 0QT28966 is the first half of a total interim service charge of £750.00. £750.00 is the Applicant's managing agents' calculation of a fair and reasonable interim service charge for the 2010 accounting period, payable (in accordance with paragraphs 9.1.3 and 9.3 of the lease) in two instalments on 25 December 2009 and 24 June 2010. The amount due (accompanied by the required statutory notices) was notified to the Respondent on 24 November 2009.
14. The Applicant produced a breakdown of the estimated expenditure behind that charge of £750.00. Whilst the breakdown is dated 12 March 2010, Mr Paine confirmed that the relevant information had been made available to the Respondent in 2009.
15. The Applicant's estimates of total maintenance, insurance and repair costs for 2010 comprise repair costs of £845.00, electricity charges of £200.00, buildings insurance of £2,200.00, accounting fees of £169.00 and management fees of £1086.00, total £4500.00. The Respondent's 1/6 contribution to that total is £750.00.

The Respondent's Defence

16. The Respondent states in his defence that he has not paid the service charge for 2010 because the Applicant (mistakenly identified in the Defence as a Mr Cerrone, who according to Mr Paine is a credit controller) has in two years since acquiring the building "...never done any maintenance work in the property". He states that tenants' demands to attend to repairs have been ignored, including a non-functioning "buzz" (presumably entry phone) for two years, holes in the walls, lack of lighting in the stairways, extremely dirty and worn out carpets, a lack of access to electric meters, a damaged main front door lock giving no building security and missing locks on letter boxes.

Evidence

17. In fact, as demonstrated by copy title documents included in the Applicant's bundle, the Applicant has owned 70 Bungalow Road since March 2009, one year before the Respondent's defence was filed. In evidence Mr Paine explained that despite the Applicant's obligation to keep the common parts of 70 Bungalow Road clean under paragraph 5.5.3 of the lease, in fact no cleaning has been undertaken by the Applicant at 70 Bungalow Road. That is because of a perception that leaseholders in relatively small properties like 70 Bungalow Road do not want to pay for such services, which lacking economy of scale are relatively expensive. That is particularly true of "buy to let" leaseholders facing financial difficulties. Mr Paine could not however say that the choice of cleaning or not cleaning had ever been put to the leaseholders of 70 Bungalow Road.
18. In relation to maintenance, Mr Paine gave this evidence. On taking over the management of 70 Bungalow Road Circle Residential Management Limited on behalf of the Applicant sent all tenants an information pack with details of the persons to contact in the event that maintenance and repair issues needed to be addressed. Since then, property management has been reactive. If a flat is sold the property will be inspected and any repair issues addressed. Otherwise, it will be for the leaseholders or tenants to report any problems. On receipt of a report of any problem a file will be opened and a suitable contractor sent to address the issue. If minor repairs are needed they will be carried out immediately. Major repairs will be priced and any statutory notice requirements observed before work is done.
19. In relation to insurance Mr Paine produced evidence to demonstrate that 70 Bungalow Road is insured with Aviva from 20 March 2010 to 19 March 2011 at a premium (including a "terrorism premium" of £382.50) of £2176.50 plus IPT at 5%; total £2275.88. He explained the relatively high premium by reference to the character and location of the property.
20. Mr Paine confirmed that the Applicant uses Lockton, brokers, to obtain insurance for 70 Bungalow Road and that Circle Residential Management Limited has cross-checked the premium against that paid for other properties, with which it compares satisfactorily. He also confirmed that Circle Residential Management Limited receives a commission of 25% on the net premium.

The Tribunal's Observations

21. The Tribunal inspected the exterior and common parts of 70 Bungalow Road on the day of the hearing. Mr Paine declined to be present at the inspection and the Respondent did not answer either the entry phone or a knock on his door.
22. The door entry phones appeared to be working properly, although the attachment of second doorbells for some flats suggested that this had not always been the case. In the apparent absence of the Respondent the Tribunal obtained access to the common parts from another resident. The front door Yale lock was satisfactory and appeared to have been recently replaced. Meter boxes were visible at the front of the property and apparently accessible using a standard key. Residents' numbered post boxes, outside the front door, appeared to be securely locked.
23. The appearance of 70 Bungalow Road was of a relatively new three-story building (the Respondent's lease indicates that it was newly built in 2007) built to a satisfactory standard, including double glazing to all windows. It would have been an attractive property had it not shown so many signs of neglect. Small gardens to the front of the property were overgrown and strewn with rubbish. The carpet in the hall and on the stairway was filthy. Part of it had been destroyed just inside the main front door by a fire, evidently not recent, that also caused damage and discolouration to the inside of the door.
24. Loose carpet at the bottom of the stairs creates a potentially dangerous trip hazard. Whilst apart from a dent apparently created by the front door lock, there was no evidence of "holes in the walls" the internal walls were, in parts, marked, dirty and spotted with what looked like electrical tape. The three floors of the hallway and staircase shared six lights, two per floor. Four had bare bulbs. Two had none.
25. An external down pipe to the north-east side of the property, on Park Road, had been broken away and had not been replaced. Again, judging by the discolouration to the wall beneath, this had not happened recently.
26. The day after the hearing Mr Paine sent to the Tribunal (and copied to the Respondent) correspondence indicating that in fact the common parts had been subjected to a "deep clean" in March 2010 and that the property had been inspected by Circle Residential management Ltd on 7 December 2009, 24 January

2010 and 18 February 2010. He advised that a section 20 consultation process is under way with regard to necessary repairs. Estimates had been obtained in February and May 2010 in relation to replacement of the damaged downpipe, clearing and redecorating the common parts, tidying the garden and replacing the hall and stair carpets.

27. In reaching a decision on this application the Tribunal cannot properly consider further evidence submitted unilaterally post-hearing – at least without making appropriate directions to ensure that both parties have an opportunity to address the issues it raises. In this case that is unnecessary. The new evidence did not affect, and could not affect, the Tribunal's decision on the only remaining substantive issue on this application - the reasonableness of the interim service charge - which was arrived at before it was received. It does have some limited bearing on observations made by the Tribunal, set out below, which may be of some assistance to both parties, and is mentioned for that reason only.

Conclusions

28. The Tribunal's view is that whilst some of the figures in the Applicant's estimates of costs seem to be on the high side, a total interim service charge of £750 for the year to 24 December 2010 does not appear inherently unreasonable. Accordingly the Respondent should pay the half-yearly charge of £375 sought by the Applicant in Claim No. 0QT28966.
29. That is not to say that the Respondent could not successfully challenge the final service charge for the year (or for other years) by making an application to the Leasehold Valuation Tribunal under section 27A of the 1985 Act. It is not suggested that such a challenge would necessarily be successful but the following observations may be of assistance to both parties.
30. First, whilst Circle Residential Management Limited's management charges are not unusually high they are at a level which reflects active management. Although repairs are, it would appear, in hand, if basic maintenance and cleaning is not undertaken regularly and consistently in future there might be scope for challenging management fees.

31. Second, it may be that the benefit of the commission received by Circle Residential Management Limited on arranging the insurance of the property should be passed on to the leaseholders following the principles set out in *Williams v Southwark London Borough Council* (2001) 33 HLR 224 Ch D. It is not for the Tribunal to reach a conclusion on that point in this case. The issue was not before the county court and other than the fact of receipt, which Mr Paine explained without hesitation, no evidence has been heard in relation to it, in particular how it is earned.

Fees and Costs

32. The Applicant made applications for reimbursement by the Respondent of tribunal and court fees under paragraph 9, Schedule 12 to the 2002 Act and for the Respondent to pay to the Applicant costs of £500 under paragraph 10 of Schedule 12.

33. Both applications were based upon the fact that the Respondent has played no part in these proceedings. He has not attended hearings or complied with directions (the Applicant has also had some difficulties in this respect, but only because correspondence sent to Circle Residential Management Limited was misaddressed). Beyond the brief statements made in his Defence his only response has been a continued refusal to pay. Further, the Tribunal noted from the copy Allocation Questionnaires received from the county court that the Applicant had indicated a desire to resolve the dispute by mediation. The Respondent refused.

34. With regard to Fees, the Tribunal has no hesitation on requiring the Respondent to pay to the Applicant the Tribunal's hearing fee of £150, paid by the Applicant. The Respondent has, by refusing to pay the interim service charge and refusing to mediate, forced the Applicant to a hearing.

35. The Applicant's submission that the Tribunal also has jurisdiction to award court fees is rejected, and in any case the awarding of court fees should be left to the court.

36. For the reasons set out above the Tribunal determines that the Respondent should pay to the Applicant costs of £500. On the evidence of Mr Paine the Tribunal is satisfied that the Applicant has incurred costs well in excess of that amount in being forced to a hearing.

Summary

37. The outstanding service charge of £375 claimed by the Applicant in Claim No. 0QT28966 is reasonable and payable in full by the Respondent.
38. The other charges claimed by the Applicant in Claim No. 0QT28966, having been withdrawn, are not payable by the Respondent.
39. The Tribunal cannot make any determination in relation to the Respondent's counterclaim.
40. The Respondent must pay to the Applicant a hearing fee of £150 and costs of £500, total £650.

Dated 20 September 2010



Colum Leonard

Chairman