5143

LON/00AR/LSC/2009/0824

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT ACT 1985

Address:	Flat 12, Natasha Court, Mimosa Close, Essex, RM3 8GU
Applicant:	Warwick Court (Harold Hill) Management Company Limited
Respondent:	Mr S. Hayes
Date of Transfer:	4 December 2009
Inspection:	Not applicable
Hearing:	4 March 2010 and 4 May 2010

Appearances:

Landlord

Miss T. Lyons	Counsel
Miss W. Taylor	Property Manager

For the Applicant

Tenant

Mr S. Hayes	Leaseholder (in person)

For the Respondent

Members of the Tribunal
Mr I Mohabir LLB (Hons)
Mr T W Sennett MA FCIEH
Mrs L Walter MA (Hons)

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00AR/LSC/2009/0824

IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT 1985

AND IN THE MATTER OF FLAT 12, NATASHA COURT, MIMOSA CLOSE, HAROLD HILL, ESSEX, RM3 8GU

BETWEEN:

WARWICK COURT (HAROLD HILL) MANAGEMENT COMPANY LIMITED

Applicant

-and-

STEVEN HAYES

Respondent

THE TRIBUNAL'S DECISION

Introduction

1. On or about 12 January 2009, the Applicant had commenced proceedings against the Respondent in the Hitchin County Court to recover service charge arrears in the sum of £978.78 and administration costs in the sum of £146.80, totalling £1,125.66. The Particulars of Claim did not particularise how the sums were claimed under the terms of the Respondent's lease or in respect of any particular period.

2. On 25 February 2009 the Applicant made an application for judgement in default. This application appears to have been supported by the supplementary witness statement of Wendy Taylor dated 10 February 2010 who is a Property Manager employed by the Applicant's managing agent.

Paragraph 3 of her witness statement referred to various demands for various charges for the period 2006 to 2008. However, on 11 March 2009 the Respondent filed a Defence in which he appears to assert that a demand made by the Applicant for an unspecified supplementary charge was not recoverable on the basis that the Applicant had not made adequate provision for the external decoration of the property by way of a reserve fund and because of historic neglect.

3. Pursuant to an order made by Deputy District Judge Muskath on 4 December 2009, the proceedings were transferred to this Tribunal.

4. At the hearing, the Tribunal sought clarification from the Applicant as to what amounts were being claimed against the Respondent and in respect of which service charge period. It seems that on 1 December 2007, the Applicant served a demand on the Respondent in the sum of £953.01 in respect of the service charge year ended 31 December 2008. This was comprised of the sum of £250 as a reserve fund contribution and a further sum of £703.01, being an advance service charge payment on account. This demand was paid by the Respondent and is not in issue.

5. On 24 January 2008, the Applicant served a further demand on the Respondent for the sum of £965.74 which is the supplementary charge disputed by the Respondent in his Defence for the reasons set out above. The Applicant also clarified that it was seeking to recover administration charges of £146.88 and Land Registry fees of £13, totalling £159.88. The administration charges were also being claimed for the period ended 31 December 2008. Thus it became finally clear as to how the aggregated claim of £1,125.62 was being made by the Applicant and in respect of which service charge period.

6. The Respondent is the present lessee of the subject property by virtue of a lease dated 24 March 1995 made between (1) Wimpey Homes Holdings Ltd and (2) Warwick Court (Harold Hill) Management Company Limited and (3) Michael David Harrison and Jennifer Susan Harrison (" the lease"). As the

Tribunal understood it, the Respondent did not contend that he was not contractually liable under the terms of his lease to pay the sums claimed by the Applicant. It is, therefore, not necessary to set out the relevant lease terms that give rise to the Respondent's contractual liability for the sums in issue. Where necessary, any relevant lease terms are referred to in the body of this Decision.

The Relevant Law

7. The substantive law in relation to the determination of this application can be set out as follows:

Section 27A of the Act provides, *inter alia*, that:

> *"(1) 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.*
>
> *(2) Subsection (1) applies whether or not any payment has been made."*

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges.

8. Any determination made under section 27A is subject to the statutory test of reasonableness implied by section 19 of the Act. This provides that:

> *"(1) 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 works, only if the services or works are of a reasonable standard;*
> *and the amount payable shall be limited accordingly."*

9. In relation to administration charges, paragraph 2 of Schedule 11, Part 1 of the Commonhold and Leasehold Reform Act 2002 also imposes a test of reasonableness but this is not defined at all as is the case in section 19 of the Act. Nevertheless, it is now a commonly held view that the same test should be applied in each instance.

Decision

10. The first hearing in this matter took place on 4 March 2010. On that occasion, the Applicant was represented by Miss Troop of Counsel and the Respondent appeared in person. The Tribunal, of its own motion, raised the issue of whether the Applicant had *locus standi* under the terms of the lease to bring these proceedings. The hearing was adjourned with directions to deal with this point.

11. The adjourned hearing took place on 4 May 2010. On this occasion the Applicant was represented by Miss Lyons of Counsel. Also in attendance was Miss Taylor, the Property Manager. The Respondent appeared in person.

Locus Standi

12. Miss Lyons submitted that under paragraph 2 of Part 1 of the Sixth Schedule of the lease, the lessee (and thereby the Respondent) covenanted to pay to the Applicant such estimated amount demanded on account of the anticipated expenditure under Part II of the Sixth Schedule in any given service charge year. Therefore, in breach thereof, the Applicant was entitled to commence proceedings if appropriate. It followed, that the Applicant had locus standi to bring these proceedings. The Respondent was unable to make any legal submissions on this point.

13. The Tribunal accepted the submission made by Miss Lyons as being correct. Paragraph 2 of Part 1 of the Sixth Schedule created a contractual obligation on the part of the lessee to pay the estimated service charge demand to the Applicant. As such, any breach was actionable by the Applicant at common law and did not require an express power to enforce under the terms of the lease.

Supplementary Charge

14. Miss Lyons told of the Tribunal that the charge of £965.74 relating to external work and redecoration of the building carried out in 2009. This figure was based on the actual expenditure incurred. She submitted that it was recoverable under paragraph 1 of Part 1 of the Sixth Schedule of the lease and,

even though it had not been demanded until 24 January 2008, there was no prohibition in paragraph 1 that prevented the Applicant from doing so. The delay had simply been caused by the tendering process and the Applicant was obliged to carry out this work under paragraph 2 of the Fifth Schedule.

15. The Respondent contended that paragraph 11 of Part II of the Six Schedule of the lease gave the Applicant a discretion to set aside in any year such sum it considered necessary in a Reserve Fund. He said that each year he had received a service charge demand which included a reserve fund contribution. Apparently, from 1995 to 2004 with a reserve fund contribution had been collected by the Applicant. Thereafter, it had been charged annually. The Respondent submitted that an accrued sum of approximately £20,000 should have been in the Reserve Fund and this would have been sufficient to meet the cost of the external work and redecoration of the building. Therefore, the demand for the supplementary charge of £965.74 had not been reasonably incurred. He accepted that the Applicant could, in principle, serve a supplementary demand in any given year under the terms of his lease.

16. The Tribunal found that the supplementary charge of £965.74 demanded by the Applicant on 24 January 2008 had been reasonably incurred. From the audited service charge account for the year ended 31 December 2008, it was beyond doubt that the Reserve Fund was in fact £10,093 and not the £20,000 as asserted by the Respondent. Indeed, having been taken through the relevant accounts at the hearing, the Respondent accepted that the figure of £10,093 was correct. This was insufficient to meet the liability of having to carry out the external repairs and redecorations of the building. It was common ground that the Applicant was contractually entitled to service supplemental demand. Accordingly, the Tribunal found that the supplementary charge was recoverable and payable by the Respondent.

Administration Charges (*Debt *Recovery Charges)

17. Debt recovery costs of £146.88 and Land Registry search fees £13 were additionally claimed by the Applicant as being part of the costs of enforcement against the Respondent.

18. Miss Lyons submitted that these costs were recoverable on the party and party basis under paragraph 10 of the Third Schedule of the lease. This is a covenant by the lessee *"to pay all sums of any nature assessed or charged at any time upon the Property or to the Company the Management Company or the Purchaser in respect thereof"*. Alternatively, Miss Lyons submitted that the administration charges were recoverable under paragraph 9 of Part II of the Sixth Schedule as being *"the costs incurred by the Management Company in bringing or defending any actions or other proceedings against or by any person whomsoever"*.

19. In evidence, Miss Taylor explained that the debt recovery costs of £146.88 represented the cost of the managing agent having to instruct a debt collection agency to attempt to recover service charge arrears owed by a lessee. The Land Registry search fee of £13 had been incurred by her firm to ensure that the correct other was being pursued. In the absence of payment, enforcement action could be taken against a lessee. Miss Taylor confirmed that debt collection was not part of it the Applicants functions under the terms of the lease and this was the reason why it had been outsourced to a debt collection agency.

20. The Respondent submitted that the administration charges claimed by the Applicants were not recoverable under paragraph 10 of Part II of the Sixth Schedule because the paragraph was only concerned with litigation costs, which these were not. Therefore, the charges were not contractually recoverable under this provision. In the alternative, the Respondent submitted that the debt recovery costs of £146.88 were not reasonable because he had only received one letter from the debt recovery agency and nothing else. He contended that £30-50 was reasonable.

21. The Tribunal found that the administration charges claimed by the Applicant in this matter could only be recovered as part of its overall service charge expenditure under paragraph 9 of Part II of the Sixth Schedule of the lease. From the evidence given by Miss Taylor, they had clearly been incurred in contemplation of proceedings against the Respondent and, as such, could only

be regarded as litigation costs. The Tribunal also found the debt recovery costs of £146.88 and the Land Registry fees of £13 had been reasonably incurred and were reasonable in quantum. They had been incurred because of the Respondent's failure to pay the supplementary charge that had been demanded. His failure to do so had been based on a misconception as to the amount held in the Reserve Fund. The Respondent's stance had not changed in the interim until the hearing. Therefore, it seems, the Applicant was obliged to commence these proceedings against the Respondent and of these costs were a precursor to doing so.

Section 20C & Fees

22. The Respondent had made an oral application under section 20C of the Act for an order that the Applicant be *disentitled* from being able to recover or any part of the costs it had incurred in the proceedings before the Tribunal. However, for the reasons set out in paragraph 21 above, the Applicant was obliged to bring these proceedings and it had succeeded entirely. Therefore, "costs should follow the event" and the Tribunal makes no order.

23. The Tribunal was not told if the Applicant had paid a hearing fee of £150. In that event, the Tribunal makes an order that the Respondent reimburse this amount to the Applicant, such sum to be added to his overall liability. This order is made pursuant to paragraph 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003. Given that these proceedings have been transferred down from the County Court, the Tribunal has no jurisdiction in relation to the court fees and costs incurred there. Accordingly, this matter is now transferred back to Hitchin County Court to determine those matters in the event that the Applicant elects to pursue these costs.

Dated the day of June 2010

CHAIRMAN.....
Mr I Mohabir LLB (Hons)