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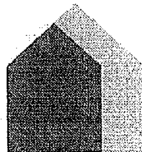


Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

REF: LON/00BD/LAC/2010/0008

PROPERTY: 4 GREEN HEDGES, 1 RIVERDALE GARDENS, TWICKENHAM TW1 2BU

Appellant	MS SHIRLEY MOORE
Respondent	RIVERDALE GARDENS RESIDENTS COMPANY LIMITED

Date of Directions	22nd April 2010
Date of Determination	23rd June 2010
Members of Tribunal	Mr S Shaw LLB (Hons) MCI Arb Mrs E Flint FRICS

DECISION

Introduction

1. This case involves an application made by Ms Shirley Moore ("the Applicant") against Riverdale Gardens Residents Company Limited ("the Respondent") in respect of the property at 4 Green Hedges, 1 Riverdale Gardens, Twickenham TW1 2BU ("the Property"). The application is made pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and was made on 16th April 2010. In the application the Applicant seeks a determination by the Tribunal of the liability to pay, and reasonableness of, an administration charge in the sum of £351.27, which has been levied against her by the Respondent. The circumstances in which that administration charge comes about will be set out below.

2. Directions were given in this matter on 22nd April 2010, on which occasion the matter was allocated to the paper track, to be determined on written representations by the parties and without the need for an oral hearing. However both parties were given the opportunity to request a hearing if so desired. Neither party has made any such request. Accordingly the Tribunal is dealing with this matter on the basis of written representations.

3. The Applicant has submitted to the Tribunal a bundle of documents prepared pursuant to the Directions, which bundle includes an expanded statement of her case, a summary of which is already contained within the application itself. The nature of that case will be summarised below. No representations of any kind have been received from the Respondent.

The Applicant's Case

4. The Applicant has set out in her application and her Statement of Case the background to this matter, which is that on Wednesday 3rd June 2009 her son parked his motor car in the visitor's parking bay of the block of flats called Green Hedges. As understood by the Tribunal, Green Hedges is a block of residential apartments constructed in approximately the 1970's and the Applicant is the leaseholder of one of the flats in that block.

5. On Saturday 6th June 2009 the Applicant's son's car was towed away by a company called Direct Parking Management, which was acting on the instructions of the Respondent. The Respondent is the company of managing agents, which company manages Green Hedges. At that time nobody had contacted the Applicant to make enquiry about the vehicle nor, so far as the Applicant is aware, had any enquiry been made of others within the block.

6. Summarising the position, the Applicant had to go to some considerable length (and expense) to recover the vehicle after it had been towed away, incurring costs of £506. So far as she was concerned the car had been towed away illegitimately, and when she was unable to recover the money from the Respondent or the company engaged by them to tow the vehicle away, she sued them in the County Court for recovery of these costs and her travelling expenses. There was no defence submitted by either of the Defendants in that case, and on 5th November 2009 a default judgment was entered in her favour in the total sum of £691.60p to cover her overall expenses and costs. Apparently it was necessary for her to engage bailiffs to enforce that judgment.

7. Notwithstanding this judgment in the County Court, the Respondent has continuously presented the Applicant with invoices, mounting in size on each occasion, for recovery of what is described in correspondence from the Respondent as "administrative charges" "with regard to arrears/breach of lease."

The Applicant has invited the Respondent to identify for her the provision of the lease which she has alleged to have breached by allowing her son to park in what she has described as the visitor's bay at the property. There has been silence from the Respondent by way of response to this request and, as noted above, no representations have been sent to the Tribunal by the Respondent in the context of this application by the Applicant.

8. It is in the above circumstances that the Applicant makes this application to the Tribunal for a determination to the effect that this administrative charge is not payable by her.

Analysis

9. The Tribunal would note that it has in the first instance considered whether it has jurisdiction to deal with this case. As mentioned, there is already a County Court judgment against both the Respondent and Direct Parking Management Limited arising out of this incident. However the Tribunal notes that the sum claimed in those proceedings did not incorporate the so-called administration charge in respect of which a determination is now sought. On this basis the Tribunal is satisfied that the matter now before the Tribunal was not expressly dealt with in the County Court judgment, and it is therefore appropriate for a further determination to be made by the Tribunal.

10. Notwithstanding failure on the part of the Respondent to present any case of any kind to the Tribunal, the Tribunal has considered the provisions of the lease to see whether there is some peg upon which this administration charge could legitimately be hung by the Respondent. In some of the correspondence passing between the Applicant and the Respondent, there is reference by the Respondent to *"house rules regarding use of the parking bays"*. That reference occurs in a letter from the Respondent dated 15th June 2009 and in the same letter it is asserted that *"your actions also caused us to make an attendance at the building on an emergency basis and to mobilise a contractor to remove the offending vehicle."* The nature of the emergency is not identified in that letter, and the

Applicant in a subsequent letter dated 9th July 2009 asked the Respondent to direct her to the *"house rules"* to which reference was being made. Those house rules have never been supplied, and instead a repeated letter has been sent to her demanding alleged arrears of administration charge, which simply makes reference to an entitlement *"to make additional charges in pursuit of matters of breach, the most common being arrears."* As mentioned, precisely which provision in the lease has been breached remains, to date, a mystery.

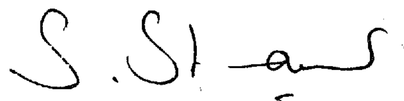
11. The 6th Schedule to the lease contains the covenants made by the Lessee with the Lessor. There is no express reference to parking bays in those covenants. At paragraph 10 of that Schedule there is the usual prohibition against performing acts of nuisance at the property and at paragraph 16 there is provision for the making of *"reasonable regulations"* to govern the use of the flats and the garages and the reserved property as described in the lease. No such regulations have been put before the Tribunal suggesting a breach on the part of the Applicant, and no clear evidence has been put before the Tribunal either from the Respondent to suggest that the parking of the Applicant's son's car on Wednesday 3rd June 2009 had created such an emergency situation of the kind described by the Respondent in its letters, as to justify a towing away of the vehicle on Saturday 6th June 2009, without any reference at all to the leaseholders in this relatively small block.

12. Further, it is not clear that there is an express provision for administration charges to be levied in the context of this lease. It is correct to say that at paragraph 18 of the 6th Schedule to the lease (covenants by the Lessee with the Lessor) there is provision for the Lessee to keep the Lessor indemnified from and against one sixteenth part of all costs, charges and expenses incurred by the Lessor in carrying out its obligations under the 7th Schedule to the lease. However the Respondent has failed to demonstrate (if this is the provision relied upon) which obligation under the 7th Schedule to the lease it purports to have been complying with in having this vehicle towed away.

Conclusion

13. Accordingly, on the evidence and material before the Tribunal, the Tribunal is not satisfied that the Respondent is entitled to make this claim for administration charges against the Applicant at all. The Tribunal comes to this conclusion because, as indicated above, it can find no obvious breach of the lease justifying such action (certainly none has been identified by the Respondent) and there have been no regulations put before the Tribunal to supplement the lease which suggests that the conduct complained of was in some way in breach of the lease. It is not even clear (although the Tribunal makes no finding in this regard) that administration charges are covered within the lease in any event. Furthermore, even if there were such a clear provision, under the Act the Tribunal would have to be satisfied that the sum claimed was reasonable and reasonably incurred, but given the circumstances of what has happened in this case, as already set out above, the Tribunal is not so satisfied.

14. For the reasons set out above, the Tribunal determines that the sum of £351.27p invoiced against the Applicant by way of administration charges in this case is not payable by her. Furthermore, the Applicant has made an application pursuant to Section 20C of the Landlord & Tenant Act 1985 to the effect that any costs arising out of her application to the Tribunal for this determination should not on some subsequent occasion be added to her service charge account. The Tribunal also accedes to this application and determines that no such costs should be recoverable against her by the Respondent by way of service charge.

Legal Chairman: S. Shaw 

Dated: 28 June 2010