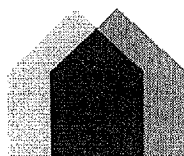


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**Residential
Property**
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Landlord and Tenant Act 1985 section 27A

LON/00BK/LSC/2010/0115

Premises: 31 Portsea Hall Portsea Place, London W2 2BY

Applicant: Coralmint Limited

Represented by: Michael Richards & Co Managing agents

Appearances Ms Carol Cherriman Property Manager with
Michael Richards & Co

Respondent: Mr Njoh Litumbe

Appearances The Respondent did not appear and was not
represented

Tribunal: Dr Helen Carr
Ms Susan Coughlin
Mr Alan Ring

Date of Determination: 12 August 2010

Background

1. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as amended of the reasonableness and/or liability to pay service charges relating to the service charge years 2005, 2006, 2007, 2008 and 2009.
2. The Applicant is the freeholder of Portsea Hall within which is situated flat 31 - the property that is the subject of these proceedings.
3. The Respondent is the leaseholder of the property and has been so for thirty one years.
4. Portsea Hall is a prestigious 1930s mansion block near Marble Arch on the west side of Edgware Road. The block comprises 126 flats on 6 floors. The property is a fourth floor flat. The block is served by constant portorage and has the benefit of communal heating and hot water. The porters clean the common parts.
5. The case was transferred to the Tribunal from the County Court by an order of District Judge Silverman in the Central London County Court dated 9th February 2010. The claim in the County Court was for £21,702.
6. The Tribunal issued directions in this matter on 10th March 2010 and set a date for the case to be heard on 3rd June 2010. The Applicant made a successful application for an adjournment on 3rd June 2010 when further directions were issued.
7. Further documentation has been submitted by both parties. The applicant's Scott Schedule is particularly useful to the Tribunal notwithstanding the Respondent refused to complete it.
8. The issues before the tribunal as clarified by the Applicant's statement are as follows:
 - a. The total amount claimed by the Applicant in respect of service charge arrears is now £12,863,82p. The figure claimed at the County Court had been reduced by a payment of £5,363.00 made by the Respondent subsequent to the issue of proceedings. It has also been reduced by a £200 payment of the ground rent and legal costs of £3,314.38p, which are not a matter for this Tribunal.
 - b. The breakdown of the £12,863.82 is set out in page 1 of the Applicant's pink bundle.
 - c. The Applicant's claim relates to service charge years 2005 when the sum of £876.33 remains outstanding, 2006 when the relevant amount is £2,367.85, 2007, when the sum demanded is £4910.10 and 2008 when the relevant figure is £2450.00. The Applicant's total claim for services provided is £10, 604.28p
 - d. In addition the Applicant claims for outstanding contributions to the Capital Account. The relevant sums are £2,259.54, made up of £275 for 2005, £1,250 for 2006, £634.54 for 2007 and £100 for 2008.
9. The Respondent admits the capital claim for 2007 of £634.54 and 2008 of £100. He further admits liability for service charges and raises no issue about his liability for capital charges.

10. The Respondent's objections are to do with reasonableness and recoverability and are expressed in general rather than particular terms. However he draws the attention of the Tribunal to some particular issues. The Tribunal has read the Respondent's statement with great care and using its best endeavours to analyse that statement has identified the following arguments:
- a. The Applicant has failed to take into account a negotiated refund of £4,922
 - b. The capital demands prior to 2008 were part of a negotiated agreement reached with the Applicant's solicitor in August 2007 and are therefore no longer due.
 - c. This negotiated agreement required him to pay £3450 which he duly did but it was later returned to him following a disagreement as to how this had been apportioned.
 - d. The Applicant failed generally to consult the lessees.
 - e. The rate of increase of the service charge was unreasonable.
 - f. The actual expenditure substantially overran the budgeted expenditure in 2004 and in subsequent years.
 - g. The Respondent also objects to the failure of the managing agents to arrange for an independent audit of accounts.
 - h. The level of management fees and supervision fees for capital works is excessive
11. The documentation provided by the Respondent was of limited assistance to the Tribunal's understanding of his position. . However, it appears that what the Respondent is refusing to pay are the balancing charges demanded each year. In other words he objects to the fact that the Managing Agents appear unable to run the building within the budget that it proposes. The Tribunal considers that this is what has led to the difficulties between the Respondent and the Applicant.

The Hearing.

12. At the hearing the Applicant was represented by Ms Carol Cherriman who is a Property Manager with Michael Richards & Co, the Managing Agents. She produced two bundles being an orange bundle (the orange bundle) which was the original bundle from the last hearing and a pink bundle (the pink bundle) produced for this hearing. The Respondent had already indicated that he would not attend the hearing.
13. The Tribunal decided in the absence of the Respondent to run the hearing by asking the Applicant to respond to the arguments identified above.
14. This determination therefore deals with each of the arguments in turn.

The failure of the Applicant to take into account a negotiated refund of £4,922

15. The Applicant told the Tribunal that the alleged negotiated agreement was in connection with works carried out by the Respondent to replace pipework within the property. She denies that there was ever an agreement about repayment of these monies, although she stated that if the Respondent had

produced receipts for this work he would have been reimbursed despite the fact that the lease placed the responsibility for the maintenance of the pipe work within the property upon the lessee.

16. The document to which the Applicant referred the tribunal (at page 163 of the orange bundle) was the only document produced by the Respondent in connection with the Respondent's claim and it was not sufficient for the Applicant's purposes. The document simply refers to cheque book stubs and credit card payments which the Respondent himself is unable to attribute to individual items.
17. The Tribunal considered that this document does not provide sufficient evidence of the Respondent's expenditure and he provides no other documentation except for emails to his online bank asking for confirmation that monies had been paid. Nor does he provide evidence of a negotiated agreement between himself and the Solicitors for the Applicant.
- 18. The Tribunal therefore determines, that as it has insufficient evidence to substantiate the Respondent's argument, this money should not be deducted from the Applicant's claim.**

The capital demands prior to 2008 were part of a negotiated agreement reached with the Applicant's solicitor in August 2007 and therefore are no longer due.

19. As far as the Tribunal can work out, the Respondent's position derives from an email from the Applicant's solicitors dated 30th August 2007 (page 78 of the pink bundle). The final paragraph of this states:
'I have recommended to the Managing Agents that we try and resolve this issue so that the only outstanding issues between us are the reasonableness or otherwise of the service charge of the period in question (which I believe to be the financial years 2005/2006).'

The Tribunal considers that the Respondent has misunderstood this paragraph, the Applicant is entitled to pursue the capital sums demanded prior to 2008 and these sums are reasonable and payable by the Respondents.

This negotiated agreement required the Respondent to pay £3450 which he duly did but it was later returned to him following a disagreement as to how this had been apportioned.

20. There was no evidence that the Applicant agreed that £3450 was the total amount outstanding. It is agreed by all parties that a cheque was returned because of difficulties with the solicitors who wanted to deduct their legal costs from this amount which the Respondent was not prepared to agree to. The Tribunal considers that the sum of £3450 is relevant in so far as it represents what the Respondent considers to be reasonable and this amount seems to be based upon the previous year's budgeted accounts. This is however speculative since it is not explained in this way by the Respondent.

The Tribunal considers that the payment of £3450 is not otherwise material to the dispute.

The Applicant failed generally to consult the lessees.

21. The Respondent makes allegations that there was a failure of consultation and makes reference to the statutory consultation procedures. His case appears to be that when the actual expenditure exceeds the budgeted expenditure then s.20 of the Landlord and Tenant Act 1985 applies. The Applicant gave evidence that there were no occasions during the period in question when the statutory provisions were triggered and on a careful examination of the Scott Schedules provided the Tribunal agreed. The Respondent is mistaken in his belief that there is a statutory requirement to consult when the budget is exceeded.
22. The Applicant gave evidence that the Managing Agents regularly consult with the Residents Association and she attends its AGMs although she does not receive the minutes. When the Applicant was asked about the response of the Residents Association to the overspend, particularly in 2004, she indicated, but provided no direct evidence, that the Residents Association had not raised any objections. The Tribunal found more persuasive that as far as it was aware no applications were made to the LVT in connection with the overspend.

The Tribunal determines that there was no requirement to consult and therefore there is no statutory limit on the service charges which are payable.

The rate of increase of the service charge was unreasonable.

23. The Respondent accepts that a 10% rise would be reasonable but considers the actual rises to be unreasonable. The Tribunal noted from the Schedule at pages 31 – 32 of the pink bundle that the half yearly service charge had risen from £1598 for June-December 2005 to £2149 for December 2005 – June 2006 and then £2445 from December 2006 – June 2007, for example. The Tribunal put the Respondent's assertion directly to the Applicant. The Applicant explained that it was a prestigious building which had fallen into disrepair and which the managing agents had worked hard to restore to its former glory. It had particular problems associated with 1930s buildings including the embedded corroding pipe work within concrete floors. She also referred to the increasing costs of communal heating, staffing and general repair work associated with an older building
24. She also explained that the budgets were put routinely to the Residents Association. The Residents Association was informed of the actual expenditure against the budget, and future budgets were based upon actual expenditure. The audited accounts also include a breakdown of itemised actual expenditure which provides additional information. The Residents Association is required to approve the budget before the demands are sent out. As was explained above the Applicant informed the Tribunal that there have been no applications to the LVT and no evidence of general dissatisfaction with the level of service charge expenditure incurred. The Applicant also pointed out

the Respondent is rarely present in the building and has not appeared to engage directly with the Residents Association.

25. The Directions directed the Respondent to address the items in the Applicant's Scott Schedules directly. He declined to do so in very clear terms within his statement to the Tribunal. He wrote *'Respondent does not therefore see the necessity to make comments on various heads of expenditure, if there is no evidence that Applicant was contractually authorised by the leaseholders to incur those costs, or was otherwise exempted from doing so by the LVT'* (page 72 of the pink bundle).

26. The Tribunal, taking account of the evidence before it, determined that the increase in the service charge expenditure over the years in question had been explained properly by the Applicant and it was satisfied that it was reasonable.

The actual expenditure substantially overran the budgeted expenditure in 2004 and in subsequent years.

27. The Respondent's dissatisfaction with the Managing Agents appears to stem from 2004. In that service charge year the budget was £310,498 which he accepts as reasonable. However that budget overran by £137,896 and it is this overrun which has seemingly triggered the Respondent's dissatisfaction with the management of the building.

28. The Tribunal asked the Applicant to explain why there had been such a large overspend in 2004 when compared with previous years. The answers she provided to the Tribunal were not very clear or satisfactory, although her explanation that the building had been revalued in 2004 does provide an explanation for the large increase in insurance premiums paid. However the Tribunal notes that the service charge year 2004 does not now form part of the Applicant's claim, despite the fact that it seems to have formed the basis of the Respondent's dissatisfaction. The reason that it does not form part of the Applicant's claim is because the Applicant explained that the sum of £5363 paid by the Respondent in June 2009 had been applied to the earliest outstanding charges therefore eliminating his arrears from 2004. This had been done because the Applicant informed the Tribunal that the Respondent had not indicated what particular charges he intended his payment to cover.

29. As the claim does not include 2004 the Tribunal does not make a determination on the reasonableness of that year's service charge demands.

The failure of the managing agents to arrange for an independent audit of accounts.

30. The Respondent's case is that Glazers who are contracted to provide the independent audit are not independent because they also run the payroll on behalf of the Applicant and that makes them the equivalent of the Applicant's employee.

- 31. The Tribunal determines that Glazers are independent auditors, and that running the payroll is a service that they provide at a fee for the Applicant which does not create an employer employee relationship.**

The level of management and supervision fees

32. The managing agents' services are charged at 10% of the actual expenditure on the building. The Respondent argues that this provides no incentive for the managing agents to control expenditure and it is therefore not reasonable to pay at this rate. The Respondent suggests that the appropriate figure should be 5%.
33. RICS recommends as better practice to have a fixed management fee based on units because this enables the lessees to budget appropriately.
34. The Applicant admitted that the Respondent is being required to pay fees which are at the high end of the market. The fees vary between £360 inclusive of VAT in 2005 to £418 in 2008. She justified these fees on the prestigious nature of the building and the extensive work involved in returning the building to its proper status after years of neglect. She also stressed the high value input in providing an Estate Manager on a 24 hour basis, the close relationship with the Residents Association and the complex nature of the building with its communal service provision. She also reviews the supply of gas and electricity each year to ensure that the best value is obtained for the lessees.
35. There is no provision in the lease which determines the percentage to be charged. However it has always been charged at 10% and the Respondent appears to have been happy to pay this level of fee in the past.
36. The managing agents also charge a supervision fee of 7.5% for capital works. The Respondent proposes 2.5% as a reasonable level of charge.
37. The Tribunal draws on its own experience to determine that 10% is a normal market charge even though this results in high unit costs in certain circumstances when there is extensive expenditure on the building. The charge of 7.5% is a reasonable charge for supervision of capital works. **It therefore determines that the charges for management costs are reasonable.**

Conclusion

38. The Tribunal has considered the Respondent's arguments with care and has read the documents he has provided. However for the reasons set out above the Tribunal has reached the conclusion that the Applicant's claim for service charges including capital costs is both reasonable and payable. It therefore determines that the appropriate amount for the Respondent to pay in connection with the Applicant's claim is £12,863.82p and the matter is referred back to the County Court for determination of legal costs and disposal.

Costs

39. The Applicant made it clear to the Tribunal that she does not intend to put the costs of her application on to the service charge account..
40. The Respondent has made a claim for his costs of £500. The Tribunal has limited power to award costs and the Respondent has not indicated on what basis he considers he is entitled to them. In any event the Respondent has been unsuccessful in his dispute. **Therefore the Tribunal makes no order as to costs in connection with this application.**

Signed

Helen Caw

Dated

12th August 2010