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HM Courts
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LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

ON APPLICATIONS UNDER SECTIONS 27A AND 20C OF THE LANDLORD AND TENANT ACT 1985 AND SECTION 24 OF THE LANDLORD AND TENANT ACT 1987

Case References: LON/00AN/LAM/2011/0021and
LON/00AN/LSC/2011/0841

Premises: 383 North End Road, London SW6 1NP

Applicant(s): Ms Stephanie Holm and Dr Ravi Kaliappan

Representative: In person

Respondent(s): Mrs Ruth Law and Mrs Valerie Stickland

Representative: Ms K Helmsmore of counsel instructed by Mr R Hemingway

Date of decision: 21st March 2012

Leasehold Valuation Tribunal: Mr Adrian Jack, Mr John Barlow FRICS, Mr Alan Ring

Procedural

1. This matter was last before the Tribunal on 21st November 2011, when the matter was adjourned in order that the tenants might issue an application under section 27A of the Landlord and Tenant Act 1985 for determination of the service charges in the years 2009 to 2011. The tenants' application for the appointment of a manager was adjourned. The resumed hearing was fixed for 1st March 2012 when all matters would be deal with.
2. At the hearing on 1st March 2012, the parties were able to reach agreement on all aspects of the service charges apart from the management fee. The tenants indicated that they wished to continue with their application for the appointment of a manager.

Management fees

3. The managing agents originally sought to recover management fees, as follows: 2009, nil; 2010 £807.68; and 2011 £900.00. The tenants contended that the management fees should be reduced to nil. The landlord conceded that the management fees should be reduced by 50 per cent.
4. In our judgment, the service provided by the managing agents was poor. The fact that the service charges demanded have been reduced by agreement to such a large degree demonstrates this. There have also been instances of misallocation of costs. Nonetheless the managing agents have done some work and the tenants have had some benefit from their labour, as is shown by the sums which the tenants agreed should be paid for services provided.
5. In these circumstances, it is appropriate to reduce the management fees, but not to reduce them to nil. In our judgment the reduction of 50 per cent suggested by the landlord is appropriate.

Management order

6. The Tribunal has a discretion whether to appoint a manager. In the current case the performance of managing agents has been poor. However, we heard from both Mr Clein, who was the principal of Acland & Lensam and Mrs Dudley who had day-to-day running of the property.
7. Mr Clein became a member of the Royal Institution of Chartered Surveyors in 1965 and has extensive experience. Mrs Dudley also has extensive practical experience of property management. Both are approaching retirement and it seems that the business of Acland & Lensam is slowly been wound down. The poor performance indicated in the current case seemed to us to be out of character. It certainly seemed that Mr Clein, now that he was aware of the

problems, was going to take a greater personal involvement in the management of the property, if we did not appoint a manager.

8. The other matter which we considered relevant was that the premises are mixed use. There is a baker's on the ground floor. Although the existence of commercial premises in a block does not prevent the Tribunal appointing a manager, it is an important consideration. A landlord will generally have much more of a personal and pecuniary interest in managing mixed use premises than in managing purely residential accommodation. Mr Stickland, who gave evidence to us, and is the brother of the landlords, indicated that the landlord was keen to retain the services of Acland & Lensam.
9. In our judgment, although it is a close run decision, it is right to give Acland & Lensam a last chance to show that they can manage the block effectively. If problems persist, then the tenants can restore their application.

Costs

10. Tribunal has a discretion as to who should pay the fees payable to the Tribunal. These comprise a £150 application fee for the appointment of a manager, a £200 application fee for the service charge dispute and a £150 hearing fee.
11. In our judgment the tenants have won and it is appropriate to order that the landlord pays these monies to the tenants.
12. The tenants sought an order under section 20C of the Landlord and Tenant Act 1985. This allows the Tribunal to make an order preventing the landlord recovering the cost of the proceedings from the tenant through the service charge. The landlord conceded that such an order should be made

DETERMINATION

The Tribunal accordingly determines:

- (a) that the management fees be reduced by half;**
- (b) that the application for the appointment of a manager be adjourned generally, with liberty to restore the application after 1st March 2013, but that if no such application to restore is made before 1st July 2013, the application be regarded as withdrawn;**

Section 27A

- (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.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether 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.

Section 20C permits the Tribunal to make an order preventing the landlord from recovering its costs as part of the service charge.

The Landlord and Tenant Act 1987 provides in sections 47 and 48 that any demand made by a landlord must contain the landlord's name and address and must provide an address in England and Wales at which notices may be served. Failure to comply with either of these requirements makes the monies demanded irrecoverable until the default is remedied. Section 24 provides, so far as relevant:

- (1) A leasehold valuation tribunal] may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies—
- (a) such functions in connection with the management of the premises, or
 - (b) such functions of a receiver,
- or both, as the tribunal] thinks fit.
- (2) [A leasehold valuation tribunal] may only make an order under this section in the following circumstances, namely—
- (a) where [the tribunal] is satisfied—
 - (i) that [any relevant person] either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and
 - (ii)
 - (iii) that it is just and convenient to make the order in all the circumstances of the case;
 - [(ab) where [the tribunal] is satisfied—

- (i) that unreasonable service charges have been made, or are proposed or likely to be made, and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case;
- (ac) where [the tribunal] is satisfied—
 - (i) that [any relevant person] has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the M1 Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and
 - (ii) that it is just and convenient to make the order in all the circumstances of the case; or]
- (b) where [the tribunal] is satisfied that other circumstances exist which make it just and convenient for the order to be made.