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LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER [SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985] [& SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002]

Case Reference: LON/00BA/LSC/2012/0184

Premises: Flat 2 Cavendish Place 4 Cavendish Road
London SW19 2EU

Applicant(s): Mr Anthony Peter Coopey

Representative: Hampton Wickes Estates Ltd

Respondent(s): Miss Shanina Osman

Date of hearing: 12 June 2012

Appearance for Applicant(s): Mr C Case Property Manager

Appearance for Respondent(s): In person

Leasehold Valuation Tribunal: Mrs E Flint DMS FRICS IRRV
Mr C Gowman MCIEH MCMI BSc
Mr O N Miller BSc

Date of decision: 13 July 2012.

Decisions of the Tribunal

- (1) The Tribunal determines that the sums of £740 and £730 are payable by the Respondent in respect of the service charges for the years ending 29 September 2011 and 2012 respectively.]
- (2) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Croydon County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2010, 2011 and the estimate for 2012.
2. Proceedings were originally issued in the Chichester County Court on 2 November 2011. The claim was transferred to the Croydon County Court and then in turn transferred to this Tribunal, by order of District Judge Major on 29 February 2012. The order for transfer to the tribunal which was drawn up on 5 March 2012 stated that "The question whether the service charges claimed by the claimant are reasonable is referred to the leasehold valuation tribunal."
3. The claim was in the sum of £2,464.82 for arrears of service charge and ground rent. Mr Case had accepted at a pre trial review held on 28 March 2012 that the tribunal did not have jurisdiction to deal with the ground rent.
4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. The Applicant was represented by Mr C Case, the property manager and the Respondent appeared in person.
6. At the commencement of the hearing the Respondent requested a postponement on the grounds that she had received the bundle on Saturday 9th June, she had not received the Applicants statement of case prior to this and had not had an opportunity to look at the papers and take the appropriate advice. The Respondent accepted that she had not given written notification of her address to the managing agent but had advised the applicant's solicitor of her address on 12 July 2011. It was accepted by the parties that by 29 February 2012 the managing agent was aware of the correct postal address. There was no explanation regarding the delay in sending the bundle or where the applicant's statement of case had been sent.
7. Mr Case requested the tribunal proceed without any further delay. He said that there had been earlier proceeding involving the Respondent.

8. After a short adjournment the Respondent stated that she was no longer seeking a postponement.

The background

9. Cavendish Place is a two storey block of five flats. The property which is the subject of this application is a ground floor flat with exclusive use of part of the garden and an allocated parking space.
10. The Respondent's lease which is dated 18 January 1988 is for a term of 99 years from 29 September 1987. The lessee covenants (clause 4(2) and the First Schedule) to contribute via a variable service charge account 1/5th of the costs incurred by the landlord in repairing and maintaining the structure of the building, walls and fences, maintaining the external decorations, insuring and managing the premises. The lease also provides (Fifth Schedule) that the Landlord may retain reasonable sums in a reserve fund.
11. Neither party requested an inspection and the Tribunal did not consider that one was necessary.

The issues

12. Following the adjournment the tribunal queried the amount of the claim. Mr Case confirmed that the only sums which had been demanded since the previous claim were as follows:

29 September 2010: ground rent at £75 pa and Interim service charge £855

29 September 2011: ground rent at £75 pa and Interim service charge £855.

The remainder of the claim related to amounts outstanding in respect of the previous judgement which the Respondent stated she understood had been paid by her building society.

During the hearing the Respondent confirmed that the only issues for determination had been reduced to:

The payability and/or reasonableness of service charges for 2010 relating to the transfer to the reserve fund and management fees and for 2011 relating to management fees.

13. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Reserve fund

14. Mr Case explained that any sums remaining in the service charge account at the end of each year were transferred to a reserve fund, for the year ending 29 September 2010 £632.55 was charged to the service charge account. He confirmed that there was no management plan in place. He considered the building to be in reasonable condition as the roof had been replaced in the 1980's. The 2010 budget had included a sum for external decorations which had not been carried out because the building had been partially redecorated in 2010 under a party wall award when 2 Cavendish Road was redeveloped. External decorations were to be undertaken later this year; he estimated the work would cost approximately £10,000 to include redecoration and carpeting of the common parts.
15. Miss Osman was of the opinion that the amount in the reserve fund was excessive because no works had been carried out. She proposed that a reasonable sum would be £200 pa.

The Tribunal's decision

16. The Tribunal determines that £400 pa is a reasonable sum to be paid into the reserve fund.

Reasons for the Tribunal's decision

17. There are 5 flats in the building, the internal common parts comprise a small lobby, staircase and landing serving the two first floor flats, the ground floor flats each have their own entrance door. The parties agreed that redecoration is the only major works required in the foreseeable future. The sum determined is a reasonable contribution to the cost of the works if collected from each of the flats it should be reviewed regularly once a management plan is drawn up.

Management

18. The management charges were £315 per flat for the year ending 29 September 2010 and £325 per flat for 2011.
19. Mr Case confirmed that there was no written agreement with the freeholder; it was a rolling 3 month agreement. He inspected the building externally regularly as he walked past on the way to his office about 100 yards away. Historically there had been an issue with fly tipping at the rear however since No. 2 had been redeveloped this was no longer a problem. He discussed his fees with the freeholder annually; the freeholder had not questioned the level of his fee. He understood that competitors' fees ranged from £150 to £495 per unit. He would not consider taking on the management of any block for less

than £300 per flat. In addition to the management fee he received 10% commission for arranging the building insurance.

20. Miss Osman considered that there was very little work undertaken as the lessees cleaned the common parts; paperwork to support the service charges was not provided. She was aware of other blocks where the service charges ranged from £400 - £800 pa but they related to blocks with more extensive common areas including gardens. Miss Osman considered that the management charge should not exceed £200 per flat and referred to a previous tribunal decision in respect of another flat in the block where the management charge had been fixed at £100 per flat.
21. Mr Case explained that at the previous tribunal hearing, which he thought had taken place in 2007, he had made a mistake when describing the management agreement with the landlord and consequently the tribunal had treated the agreement as being a long term agreement and the charge had been capped because there had been no consultation in respect of the management charges.

The Tribunal's decision

22. The Tribunal determines that the amount payable in respect of management fees is £200 per flat for the years in dispute.

Reasons for the Tribunal's decision

23. The Tribunal has read the decision in respect of Flat 4 dated 15 July 2010 and accepts that the management contract is determinable by either side on 3 month's notice and is not a long term agreement. The Tribunal has taken into account the relative simplicity and limited amount of work necessary to manage this block of 5 flats and that the commission received by the managing agent for placing the insurance has been retained by the agent and not credited to the service charge account.
24. The Tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Croydon County Court.

Chairman:


Evelyn Flint

Date:

13 July 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means 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.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (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 provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

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, if 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.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the Tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.