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LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A (and 19A) OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00AL/LSC/2012/0842
Premises:	Flat 5, 71 Elmdene Road, London, SE18 6TZ
Applicant:	71 Elmdene Road RTM Company Limited
Representative:	Urban Owners Limited
Respondent:	Rosekey Limited
Representative:	Atwal Corporation Limited
Date of Paper Determination:	12th March 2013
Date of Directions:	8th January 2013
Leasehold Valuation Tribunal:	Mr S. Shaw LLB (Hons) MCI Arb Mr D Banfield FRICS
Date of Decision:	12th March 2013

DECISION

Introduction

1. This case involves an application made by the above-named RTM Company ("the Applicant") in respect of alleged outstanding service charges relating to Flat 5, 71 Elmdene Road, London SE18 6TZ (" the Property"). The Respondent is the freehold owner of the building of which the property forms part (the property is a 2 bedroom, top floor flat) and has retained ownership of the property, albeit not subject to a lease. Under clause 4(4) of the leases granted by the Respondent to other leaseholders in the building, the Respondent covenants to observe the tenant's covenants in such leases in relation to any flat retained by the landlord (the Respondent). There is no dispute in this case as to the Respondent's obligation to pay contributions to the service charges (either under the covenant mentioned or by virtue of section 103 of the Commonhold and Leasehold Reform Act 2002). The dispute is in respect of the quantum of specific charges made.

2. Directions were given by the Tribunal on 8th January 2013. It was directed that the case should proceed as a paper determination, unless either party requested an oral hearing. In fact an oral hearing has not been requested, and accordingly this case is being determined on the basis of the parties' respective written submissions, supplied in accordance with the Tribunal's Directions. It is proposed to deal with each of the contentious issues in turn, and to give the Tribunal's determination.

Service Charge Years 2011 and 2012

3. From the Submissions of the Respondent appearing at pages 65/66 of the bundle it appears that the Respondent was querying a charge of £98 being made by the Applicant (towards which the Respondent contributes 20%) in respect of cost of paint. The Respondent calls for *"an invoice or receipt from the shop h says he purchased the paint from. Without this evidence, any leaseholder could potentially submit a homemade invoice..."* The requested receipts have now been provided (see pages 72-74), and the Tribunal determines the charge a reasonable.

4. The Respondent challenges the charges made for cleaning, on the basis that part of the cleaning charge has not been supported by documentation (the period May-December of the relevant year). The Respondent does not challenge the quality of the cleaning specifically, but argues that the cleaner is paid cash, and it is to be inferred therefore does not declare this income. The Respondent contends that *"we do not condone persons working...without declaring an income or paying tax."* It may be that the Respondent also challenges the remainder of the cleaning charge on the basis that the invoices supplied (which contain the full name and address of the contrctor and VAT number) were prepared by the Respondent for the contractor.

5. Neither of these objections seem to the Tribunal to be good objections. Whether or not a contractor is failing to declare income to the Revenue (upon which the Tribunal makes no findings at all) is not a relevant consideration in considering whether there is a contractual or statutory obligation on the Respondent to make these contributions to the service charge – which are not challenged on any other basis, apart from an alleged lack of monitoring. The Applicant has dealt with this both in its submissions in reply (page 70) and the Cleaning Timesheet and Record at

page 71. The other invoices produced seem adequate to the Tribunal, and the Tribunal determines that these charges are reasonable and payable in full.

6. A debt recovery fee of £180 (3 chasing letters from debt recovery agents engaged by the Applicant) has been charged. The charge has been made exclusively against the Respondent's account. The Respondent argues that throughout 2012, in dozens of e-mails, it was requesting documentary evidence of the charges made, and the delay in payment was occasioned by the Applicant's own failure to produce these documents, either at all, or late in the day. It argues against recovery of the charges, or alternatively that the charge are excessive.

7. It does seem possible on the information that some of the documentary evidence may have been supplied in the context of this application, or at any rate was not available prior to the engagement of the recovery agents. The Tribunal does not have the full evidence in this regard as to the chronology – but doing the best it can, it allows as reasonable, within the provisions of the Act, 50% of the charge made, that is, £90. It is to be noted that if the charge were to be characterised as a service charge, it should be put to the service charge account, in which event it would be contributed to by all the leaseholders – a course which neither party is suggesting. It is recoverable directly against the Respondent under clause 3(4) of the lease, but that would be in the nature of an administration charge rather than a service charge, in respect of which no separate application has been made by the Applicant. However, given the sum involved, the Tribunal considers it disproportionate to require a separate application to be made, and for the reasons indicated above, determines that 50% of the sum claimed is recoverable against the Respondent.

8. The final contentious claim is over the charge for accountancy fees (the Respondent's contribution or balance outstanding being apparently £42). The Respondent argues that (see page 67) certified accountants are not required under the terms of the lease, and that the charge is unreasonable. The Applicant submits that the Directors of the Applicant – being 3 of the 5 leaseholders, considered it prudent to have the accounts certified to ensure accuracy. They rely on clause 5(6) of the lease, but that is not a service charge provision. In fact however, the Fifth Schedule to the lease, which lists the Service Charges, does make mention of auditors dealing wit the accounts (albit not on a mandatory basis) – see paragraph 8 of the Schedule. There is further reference to the inclusion of accountants' fees at paragraph 2 of that Schedule. The Tribunal rejects the objection of the Respondent, and determines this charge as reasonable.

Conclusion

9. For the reasons indicated above the challenges made by the Respondent as listed in this Application are not sustained by the Tribunal, with the exception of 50% of the recovery agents' fees in the sum of £90, which should be deducted from the charge. The balance is otherwise reasonable and payable.

Legal Chairman: S. SHAW

Dated: 12th March 2013