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HM COURTS AND TRIBUNALS SERVICE

File Ref No. MAN/00BN/LSC/2013/0008

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A LANDLORD AND TENANT ACT 1985.

in relation to

73a, Church Road, Northenden, Manchester, M22 4WD

Applicant: Barnaby Ross

Respondents: Deborah Jane Bookbinder

Property: 73, Church Road, Northenden, Manchester, M22 4WD

Application: For a determination of liability to pay and reasonableness of a service charge under section 27A (and 19) of the Landlord and Tenant Act 1985

Date of Decision: 25 March 2013

Members of the Leasehold Valuation Tribunal (the Tribunal): Mr. P. W. J. Millward LLB (Chairman)
Mrs E. Thornton-Firkin BSc MRICS

The Application

1. By the Application dated 7 January 2013 and issued on 23 January 2013 the Applicant seeks a determination as to liability to pay and reasonableness of service charge demands issued by the Respondent relating to the Property. The Applicant paid the application fee of £50.00. The Residential Property Tribunal Service (RPTS) notified the Respondent that it had received the Application and sent her a copy with all documents which accompanied it and thereafter an Order for Directions (the Directions) was made by a Chairman of the Leasehold Valuation Tribunal on 11 February 2013 and sent to the parties on that date. Neither party requested a hearing pursuant to paragraph 4 of the Directions and the matter was set down for determination on papers provided.
2. Pursuant to the Directions both parties provided Statements of Case with supporting documentation to enable the Tribunal to proceed to a determination under section 27A of the Landlord and Tenant Act 1985 (the Act), as to the payability and reasonableness of the service charge in respect of the Property.
3. The Application relates to demands for service charges in respect of emergency call out to repair the communal front door of the property and subsequent re-glazing thereof both dated 22 October 2012 and in the sums of £150.00 and £110.00 respectively. The Applicant is alleged to be

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responsible for 50% of the total sum due under the said invoices. The total service charge outstanding is therefore in the sum of £130.00.

The Lease

4. The Applicant is the lessee of the Property under a lease made between the Respondent (1) and the Applicant (2) for a term of 999 years from 1 January 2004 (the Lease).
5. By clause 7.1 (3) of the Lease the Respondent covenants to contribute and pay "the service charge".
6. "The service charge" is defined in clause 1.8 of the Lease as "the percentage of the costs and expenses incurred by the lessor as detailed in parts 1 and 11 of schedule 2 of the Lease".
7. The "percentage" is defined as 50% in clause 1.7 of the Lease.

The Law

9. Section 18 of the Landlord and Tenant Act 1985 (the 1985 Act) provides:
 - (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 provides that

- (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 provision 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.

Section 27A provides that

- (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 date at or by which it is payable, and
 - (d) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3)

- (4) No application under subsection (1)...may be made in respect of a matter which –
 - (a) has been agreed by the tenant.....
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

The Inspection

10. The Leasehold Valuation Tribunal (the Tribunal) did not inspect the Property or the common areas of the block in which the Property is situated.
11. The Property is a first floor flat in a terraced building, and situated over shop premises. There is a communal entrance to the building. Both the Property and the shop premises pay 50% of the service charge.

The Submissions of the Parties

12. The Applicant's statement includes (amongst other things) the following submissions:-
 - 12.1 It included copies of the disputed invoices and relevant correspondence.
 - 12.2 It confirmed that the invoice relating to emergency boarding up was in error in that the work had been undertaken in the morning and not in the evening as stated in the invoice. The Applicant described the error as fraud and said a "wrongful deception" had taken place. The Applicant contended that as the work had been carried out on a Saturday morning it fell within the normal working week and not out of hours.
 - 12.3 He confirmed that the Respondent had issued County Court proceedings to recover the service charge but that as the proceedings had been brought in the name of the Respondent's managing agent the Court had dismissed the claim. Within those proceedings the Applicant had issued a counterclaim against the Respondent's managing agents and had incurred a Court fee of £35.00.
 - 12.4 That even though the claim had been dismissed by the court, the managing agents continued to pursue the recovery of the service charge and the Respondent threatened to "repossess the apartment and terminate the lease".
 - 12.5 The Applicant confirmed that the tenant of the shop premises had paid the sum of £130.00 to the Respondent although she was unhappy about having to do so.
 - 12.6 The Applicant confirmed that he wished the Tribunal to make an order for costs against the Respondent, including an order under s.20C of the Act.
 - 12.7 In response to the Respondents submissions the Applicant further stated as follows:-
 - 12.7.1 No extra evidence has been provided by the Respondent. Repairing the door on Saturday morning is completely different and the glass could probably be re-instated the same day by Didsbury Glass.
 - 12.7.2 it is untrue that the Applicant tried to unsettle the tenant of the shop. The tenant remains unhappy at what she has had to pay.
 - 12.7.3 In fact it is the Respondent who has wasted the Applicant's time rather than the other way around.
 - 12.7.4 The Applicant's solicitors have had difficulties with ABC Estates in 2004 having identified problems with the Lease as drawn. It is "cut and pasted" and is not specific to the Property. ABC Estates have refused to address the issues raised and the Lease remains exactly as originally drawn. The Applicant asked the Tribunal to consider the Lease and judge whether there is indeed a problem with ambiguity and whether this affects the way maintenance charges and ground rent is collected. The Applicant provided copies of correspondence between his solicitors and those acting for the Respondent at the time the Lease was entered into.
13. The Respondent's statement (prepared and filed by ABC Estates as the Respondent's managing agents) includes (inter alia) the following submissions:-

- 13.1 The Applicant's bundle of documents is unsurprisingly one-sided and he has cherry-picked elements of correspondence to show himself in a good light. The Respondent enclosed what it believed to be a full transcript of correspondence between the parties.
- 13.2 The Respondent has appointed ABC Estates as managing agents in relation to 73 Church Road Northenden, of which the Respondent is the freeholder. ABC Estates manage the ground floor retail unit and collect rent from the Applicant, as well as carrying out ad hoc repairs to the premises and re-charging the expenditure to the tenants.
- 13.3 Under the terms of the respective leases of the 2 tenancies each tenant is to pay 50% of any such expenditure. Although the Lease allows the landlord to collect £200.00 in advance each year this advance payment has never been demanded as it was felt that by implementing such a system would add the costs of professional fees, including fees levied by ABC Estates as managing agents, to the service account. ABC Estates is in fact acting for free in its capacity as managing agents at the present time and have committed many man hours in response to the Applicant's correspondence and objections.
- 13.4 Despite the best efforts of the managing agents, the Applicant appears to have difficulty in understanding that the Respondent is not liable to pay for any repairs whilst the ground floor shop is tenanted. The Applicant has gone out of his way to unsettle the ground floor tenant by providing her with false and misleading information which he has no right to give.
- 13.5 The Respondent has acknowledged that there was a typographical error in the invoice rendered in relation to the emergency boarding up. The Respondent reported the timing of the work on the back of the information in the invoice. The Applicant has suggested that work carried out on Saturday morning would be within normal working hours and not out of hours. The Respondent would dispute this. The building trade would normally treat all of Saturday as out of hours. The Respondent considers the charges raised – for attending at the premises, boarding up and thereafter cutting glass to size to replace that broken glass is reasonable.
- 13.6 In relation to the Applicant's claim for costs under s.20C of the Act, the Respondent's understanding is that he is not able to do this as the purpose of s.20C is to restrict a landlord from charging professional costs to the claimant for a landlord's unsuccessful defence.
- 13.7 The relevant clause of the Lease are as follows:-
 - 13.7.1 Schedule 2, part 1. This sets out the obligations of the lessor, which include (inter alia) an obligation to keep in repair the entrance lobby, hall, stairs and landing of the building
 - 13.7.2 Details of how the service charge is to be apportioned in clauses 1.7 and 1.8.
- 13.8 The invoices remain outstanding.

The Hearing

14. Neither party requested a hearing.

The Tribunal's Determination

15. The Tribunal considered very carefully the written submissions of the parties and the documents provided.
16. The Tribunal has no application before it in relation to the terms of the Lease and is therefore unable in this application to make a determination as to whether there is indeed a problem with ambiguity in the Lease terms and whether this affects the way maintenance charges and ground rent is collected as requested by the Applicant in his submissions.
17. The issues to be determined by the Tribunal are (a) is the demand for the service charge valid and if so (b) to what extent is the demand reasonable and if so (c) to what extent (if any) the

Respondent should pay towards the same.

18. The Tribunal considered firstly the reasonableness of the service charge demand. The Respondent's managing agents have taken a pragmatic approach to service charges, and have not requested the advance payment authorised by the Lease. To have done so would have incurred administration fees and professional charges even in years when no services had been carried out. The managing agents issued invoices only when work had been carried out under its obligations set out in the Lease.
19. The Tribunal determined that the accounts rendered were in relation to the Respondent's obligations under the Lease and were reasonable. The Tribunal were not persuaded by the Applicant's argument that work undertaken on a Saturday morning was not work undertaken "out of hours". The Tribunal also considered it reasonable that the work was undertaken in two parts, the first to secure the Property and the second to fit new glass.
20. However service charge demands are only payable when the landlord supplies to the tenant the statutory information as set out in section 21 of the Act. It is clear to the Tribunal that the statutory requirements have not been met and accordingly the demands submitted by the Respondent are not payable until they are met.

Costs

21. The Tribunal does not consider that an order under s.20C of the Act is appropriate in the present case. The Respondent has not charged any administration fees in relation to the Applicant's service charge liability and accordingly there is nothing for the Respondent to add to the service charge account.
22. Both parties requested an order for costs up the maximum £500.00 permissible. However, although the Tribunal has determined that the charges are reasonable and will be payable in due course (possibly with the addition of VAT), they are not payable until the Respondent complies with the requirements of s.21 of the Act. Neither side has therefore "won" in the accepted sense of the word and the Tribunal determined that it would make no order for costs. For the same reason it will not order a refund of the application fee by the Respondent to the Applicant.

5th June 2013

P W J Millward – Chairman