10445

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAK/LSC/2014/0416 & 0481**
Property	:	**Flat 4, Empire House, Great Cambridge Road, Weir Hall Avenue, London N18 1EA**
Applicant	:	**Mr N M Salama Applicant in Case No 0416 And Respondent in Case No. 0481**
Representative	:	**Mr N Salama**
Respondent	:	**Empire House Residents Association Limited Applicant Case No 0481 and Respondent in Case No. 0416**
Representative	:	**Mr Constantas (Director of Empire House Residents Association Limited)**
Type of Application	:	**The liability to pay service charges and restriction on costs under Sections 27A and 20C of the Landlord and Tenant Act 1987**
Tribunal Members	:	**Tribunal Judge Dutton Tribunal Judge Cowen Mr T W Sennett MA FCIEH**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR on 13th November 2014**
Date of Decision	:	**27th November 2014**

DECISION

DECISION

In case No 0416 the Tribunal finds that the Applicant, Mr N M Salama should pay the Respondents, Empire House Residents Association Limited (EHRA) the sum of £786.19 within 28 days or such other period as may be agreed between the parties.

The Tribunal declines to make any order for costs in favour of Mr Salama or to order the refund of the hearing or application fee.

The Tribunal makes no order in respect of the application made by Mr Salama under Section 20C of the Landlord and Tenant Act 1985 (the Act) for the reasons set out below.

In case No 0481 the Tribunal consents to the withdrawal of same.

BACKGROUND

1. On 9th August 2014 Mr Salama, the leaseholder of Flat 4 Empire House, Great Cambridge Road, Weir Hall Avenue, London N18 1EA (the property) applied to the Tribunal for a determination under Section 27A of the Act. In the application it is said that the items in dispute related to the pavement in the communal area with a value of £786.19. The questions we were asked to determine related to the failure by EHRA to provide Mr Salama with a receipt from the contractor and also a failure to provide confirmation that all other members of ERHA had paid their share.

2. The matter came before the Tribunal for directions on 28th August when the matters were slightly extended in that it is recorded that we were to determine the cost of paving works and whether the landlord was able to prove payment of such works in the absence of a formal receipt. In those directions the landlord, that is to say EHRA, indicated that there were outstanding monies owed by Mr Salama and that a further application may be made. In response to this it appears that Mr Salama indicated that there had been failings on the part of EHRA to follow Section 20 procedures.

3. Prior to the Hearing we received a bundle of papers prepared by Mr Salama which contained various documents, some going back in time, copies of demands, some Section 20 notices and associated correspondence, correspondence passing between Mr Salama and EHRA, the lease, the application and directions. The bundle also included an application on behalf of EHRA and the directions made in respect thereof. This application is in case LON/OOAK/LSC/2014/0481 and is a claim by the residents association for non-payment of outstanding service charges. We will deal with that matter briefly in due course, but as a result of the request by Mr Constantas, on behalf of the residents association EHRA, the application was withdrawn. It is, however, helpful if we record certain matters that were discussed between the parties and the Tribunal relating to this application in the hope that matters may be resolved between the parties without the need for another application to be issued, or if it is, that the terms of same may be limited.

4. Returning to the application ending 0416, we heard firstly from Mr Salama with an objection to the late delivery of a bundle of documents prepared by Mr Constantas on behalf of EHRA. This bundle contained the memorandum and articles of association

of the residents association, a newsletter, details of works undertaken in 2011 and 2012 which proved to be of assistance, email correspondence from Moyglen Construction and a statement by EHRA through Mr Constantas.

5. On this point, Mr Salama told us that he had received the bundle of papers on 6th November by email and that if we were in agreement that they could be admitted then he would not take the matter further. We were in agreement, particularly as little of the documentation was of great relevance other that the schedule of the works undertaken in 2011/12 and the statement.

6. Mr Salama, not to be outdone, also produced some late documentation which included some photographs purporting to show the "storage" on site of a small blue and orange tractor and some accompanying equipment.

7. The issue for us to determine in respect of Mr Salama's application was the evidence required to satisfy him that the sum of £786.19 was payable as proof that the monies had been paid to the paving contractor. It appeared clear on investigation that he had received the appropriate Section 20 documentation. He complained that he had not seen the copy of the estimates which were put forward in a letter of 8th January 2014 but that letter clearly indicates that he is offered the right to inspect, giving two addresses in the block where he could do so. He did not, therefore, pursue the Section 20 point with any vigour. His real complaint was that he had not seen a receipt from Moyglen and wanted to know also that other leaseholders had paid their share.

8. The evidence that EHRA relied upon was contained in the original bundle submitted by Mr Salama. At page 43 of the bundle we had been provided with a copy of a Moyglen Construction Limited invoice dated 27th March 2014 in the sum of £7,200 being the first instalment in respect of works of tarmacadam to be carried out at Empire House. This showed the total contract sum of £23,585.65. At page 44 was a letter from Moyglen dated 29th April 2014 which accompanied an invoice of 29th April 2014 showing the balance of the sum, namely £19,686.64, less a 5% retention. On the first invoice in manuscript is reference to a cheque numbered 101319 purportedly cleared on 29th April 2014 and on the April 2014 invoice references to two cheques numbered 101322 in the sum of £19,281.67 with the word error in brackets thereafter and cheque 101526 in the sum of £406. To further support the case of EHRA we were referred to an email from James Radcliffe at Moyglen dated 14th October 2014 which indicates that the company do not issue other receipts relying solely on the invoice sent for payment. Finally, at page 52 of the bundle was a redacted copy of the business current account of EHRA numbered 30338036, with Barclays, showing two cheques numbered 101322 and 101326 passing though the account on 6th June 2014 in the sums we referred to earlier and 29th April a cheque numbered 101319 in the sum of £7,200. It was said by Mr Constantas that the invoices, the cheque numbers written on those by him and the bank statements proved, in his view, that payment had been made.

9. It was put to Mr Salama that in any event, the lease in the fourth schedule part 1 under the heading "Costs, expenses, outgoings and matters in respect of which the lessee is to contribute" at clause 1 contained the following wording: *"The costs and expenses incurred by the management company in carrying out its obligations under clauses 5 and 6 of the lease"* and meant that Mr Salama's liability arose when the costs had been incurred, not when they had been paid by EHRA. In truth he had no real answer to

this point but complained that the bank statements should not have been redacted as they should show the balances that were held in the account at that time.

10. Mr Constantas apart from the statement that was contained in the documents filed on 6th November told us briefly of the circumstances around the undertaking of these and other works. Following a meeting in August 2010 it had been put to the residents that they could pay a deposit of £250 and then £30 per month to build up sufficient funds to discharge the costs of various items of works that were planned for the future. In fact, the deposit was reduced to £100 and a number of residents have made those payments. We were told that of the 36 lessees, 9 had fully paid the monies that had been asked for, 8 had not paid anything, including Mr Salama, and the balance were still paying £30 per month contribution. It is not suggested that Mr Salama has not paid the monthly contribution in respect to general items such as cleaning, management and insurance. The costs outstanding relate to repairs to the building and common parts. However, as a result of the withdrawal of the application by EHRA it was not necessary for us to go into any further detail in respect of these earlier works but we will record below certain matters that we think might be of assistance to the parties in resolving the outstanding issues.

11. Mr Salama was asked whether he still sought costs in respect of his application and he said he did. His statement at page 87 indicated that he had incurred costs of £1,375.33 including advice from solicitors, the application and hearing fee, loss of earnings and an overpayment by him to EHRA in the sum of £216 which is admitted and has, so Mr Constantas says, been taken into account in the final figures. This has no bearing on the monies due in respect of the resurfacing works of £786.19.

THE LAW

12. The law applicable to this application is set out below.

FINDINGS

13. The two issues that Mr Salama asked us to consider related to proof that payment had been made by EHRA for the paving works, thus giving rise to his liability of £786.19 and proof that other leaseholders had made their contributions.

14. Insofar as the latter element is concerned it seems to us that this is not an issue for Mr Salama to raise in this application. His liability arises under the terms of his lease which was included within the papers before us and whether other leaseholders are in breach of covenant is not of relevance to him as a leaseholder. It may be as a member of EHRA he does have concerns and that is something he could explore with Mr Constantas. It is not, however, a service charge issue.

15. He makes no complaint as to the standard of work or the costs of the paving works. His only issue is that he did not consider he had received evidence that the invoice from Moyglen had been paid and that therefore he disputed a liability to reimburse EHRA for this expense.

16. The invoices clearly show a liability to Moyglen has been incurred. The handwritten details of the cheques accords to the copy of the bank statement that we were provided with and we consider that the evidence clearly supports EHRA claim that payment has

been made. It is a great pity that Mr Constantas decided to produce redacted bank statements, more so as of course Mr Salama is a member of the residents association and would be entitled to see the accounts. It is also a great pity that EHRA instructed a company to carry out the work who for reasons are not clear was unwilling to provide a receipt. However, we are satisfied on the evidence provided to us that the costs have been paid, although it does seem to us that the lease creates a liability for Mr Salama once the costs have been incurred. Be that as it may, Mr Salama is liable to EHRA in the sum of £786.19 and should discharge that liability within the next 28 days or such other period as the parties can agree.

17 As to costs and fees we consider that the lack of success on the part of Mr Salama justifies a refusal to make an order under s20C and to refund the fees he paid to the Tribunal.

18. Although not part of the decision in this case, following the withdrawal of the application by EHRA, we think it might be of help if we gave certain indications as to the issues arising in case ending No 0481. These are not intended to be findings and are not binding on the parties or indeed any other Tribunal if the application has to be recommenced. In the bundle produced just before the Hearing Mr Constantas provided a breakdown of works undertaken in the period 2011/12. This showed that no item of work would have required consultation. It seems that each item of work was free standing and no part of a larger scheme. There are 36 flats in the building and accordingly costs under £9,000 would not have required consultation. The most expensive item appears to have been a roof repair at £4,608 and the total costs which we were told had been spent in this period were £32,387 giving Mr Salama a liability of just short of £900. If one were to add £786.19 it would give a total liability of £1,685.82 and not the £2,150 which Mr Constantas in the witness statement at page 101 appeared to argue was due and owing. We also pointed out to Mr Constantas that the demands that we had seen did not appear to comply with Sections 47 and 48 of the Landlord and Tenant Act 1987 or Section 21B of the Act. These are matters that can be easily resolved but it does throw into doubt the late payment charge of £39.31 which would need to be reviewed.

19. It is to be hoped that the parties will be able to reconsider their positions in respect of this second application. Mr Constantas made it clear that Mr Salama was welcome to visit him and to view the invoices and bank statements to satisfy himself that the costs had been incurred and given that Section 20 issues do not appear to arise, this is we believe a matter that could and should be resolved without the need to return to us. If, however, that is not possible hopefully the issues can be reduced and if a further application is required then so be it.

Judge: *Andrew Dutton*

A A Dutton

Date: 27th November 2014

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 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 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 that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.