2010

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00AN/LAC/2005/0006

IN THE MATTER OF 15A KENYON STREET, FULHAM, LONDON, SW6 6JZ

BETWEEN:

O J RAISBECK

Applicant

-and-

ERNLE ESTATES LIMITED

Respondent

THE TRIBUNAL'S DECISION

Background

1. This is a paper determination of an application made by the Applicant pursuant to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the Act") as to the reasonableness of administration charges demanded by the Respondent. The administration charges that are the subject matter of this application are the total costs of £657.31 for the preparation and service of a s.146 Law of Property Act 1925 notice dated 25 February 2005 ("the s.146 notice") on the Applicant in respect of service charges and ground rent arrears. However, in their counter submission dated 28 November 2005 the Respondent's managing agents, Circle Residential Management Limited, limits the amount claimed from the Applicant to £440.63 (£375 plus VAT),

being the cost of preparing and serving the s 146 notice on the Applicant. It is submitted on behalf of the Respondent that the Tribunal does not have jurisdiction under Schedule 11 of the Act to make a determination in relation to an additional sum of £99.18 claimed as interest on the service charges and ground rent arrears. The issue of jurisdiction is dealt with below in this Decision

2. The Applicant occupies the subject property by virtue of a lease dated 29 July 1999 granted by Nationcraft Limited to Lucy Ann Nicholas for a term of 99 years from 1 January 1997 ("the lease"). It is common ground between the parties that the tenant's covenant in clause 3(x) of the lease requires the Applicant to:

> *"... pay all proper and reasonable expenses (including Landlord's solicitors costs and surveyors fees) incurred by the Landlord incidental to the preparation and service of notice under section 146 of the Law of Property Act 1925 notwithstanding that forfeiture is avoided than by relief granted by the court."*

The sum claimed for interest is made under clause 3(xix) of the lease which is allowed in relation to *"... rent or any other sums of money payable by tenants to the Landlord under the terms of this lease..."*. The rate of interest to be applied to any arrears is 4% above the minimum lending rate of the (then) Midland Bank plc, which is the standard rate of interest claimed in most residential leases of this nature.

Decision

3. The s 146 notice before me and relied on by the Respondent is materially defective in a number of ways. Although the notice dated 25 February 2005 is

addressed to the Applicant, in the particulars, it refers to a lease dated 2 January 1986 granted by Charles Dawn Properties Limited to Carola Elizabeth Bennion. This is a completely different lease from the Applicant's. The notice also states that by his alleged non-payment of ground rent and service charges, the Applicant had variously breached clauses 2(f)(i) and (m) in the lease. No such clause exists in the Applicant's lease. The relevant service charge clause in the Applicant's lease is in fact set out at clause 3(iv).

4. Although it is not expressly stated in clause 3(x) of the lease, it is nevertheless implicit that the landlord is only able to recover its costs for the preparation and service of a s 146 notice if the notice is valid. In my judgement, the s.146 notice in this instance is both invalid and unenforceable against the Applicant because the particulars set out in the notice are wholly incorrect. The notice could never found a claim for forfeiture of the lease against the Applicant. I find, therefore, that the Respondent is not entitled to recover from the Applicant the administration charges of £440.63 for the preparation and service of the s.146 notice.

5. Turning to the issue of the Tribunal's jurisdiction regarding the interest claimed under the lease, I find that the Tribunal does have jurisdiction to consider this matter. Paragraph 1(1)(c) and (d) of Part 1 Schedule 11 of the Act defines an "administration charge" very widely. It can be either an amount payable as a consequence of a failure on the part of a tenant to pay an amount to the landlord under the terms of a lease or in connection with a breach or alleged breach of a covenant in the lease by a tenant. The interest

claimed by the Respondent in this instance is a direct consequence of having failed to pay the ground rent and service charges demanded. Non-payment also amounts to a breach of the tenant's covenant to do so in clause 3(iv) of the lease.

6. On the limited evidence before me, it appears that ground rent and service charges totalling £1,440.66 were demanded from the Applicant by the managing agents on 1 January 2005, being the commencement of the annual service charge period in the lease. Payment by the Applicant was tendered by cheque, which apparently was dishonoured when presented to his bank. As a result, additional bank charges of £111.63 incurred by the managing agents were added to the Applicant's service charge account. The total amount outstanding was therefore £1,552.29. This was paid by the Applicant by two payments of £702.26 and £597.74 on 4 March 2005 and with a further payment of £252.29.

7. There is no evidence before me that the Applicant had disputed the total amount of £1,552.29 claimed and, if so, on what basis. The Applicant's complaint against the managing agents, in his response to the Respondent's counter submission, is that they had not written to him as alleged on 11 January 2005 or at all about the non-payment of the ground rent and service charges. It is not denied by the Applicant that when payment of the ground rent and service charge demand was made by him on or about 4 January 2005, that there were insufficient funds in his bank account to meet that demand. Even if the Applicant had received the letter sent by the managing agents on

11 January 2005, the ground rent and service charges would have been more that 14 days in arrears and under the provisions of clause 3(xix) of the lease, the Respondent would have been entitled to claim interest on the arrears. It appears that, having received the purported s.146 notice, the Applicant paid the arrears fairly promptly

8. Under paragraph 2 of Schedule 11 of the Act, the test to be applied in relation to the interest claimed by the Respondent is one of reasonableness. As the provisions of clause 3(xix) in the lease are fairly standard for residential leases, I find the ***rate of interest*** claimed to be reasonable. However, I do not find that the total amount of interest claimed in the sum of £99.18 to be reasonable. At paragraph 1.3 in their counter submission, Mr Paine of Circle Residential Management Limited, states that the interest claimed is only in relation to these arrears of ground rent and service charges. The Applicant appears to have paid the outstanding amount in full by 31 March 2005. Accordingly, I find that the Respondent is only entitled to recover interest on the arrears for the months of January, February and March 2005 totalling £53.44 and that is the sum I allow to be reasonable.

Reimbursement of Fees

9. As the Applicant has been successful on the substantive issue of this application I direct that the Respondent reimburse the Applicant the total fees paid by him to the Tribunal (if any) in bringing this application and that any such sum is to set off against the award of interest above. I make that

direction pursuant to Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.

Dated the 27 day of February 2006

CHAIRMAN ..... I. Mohabir .....

Mr I Mohabir LLB (Hons)