5448

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**54A Park Road, Westcliff-on-Sea, Essex SS0 7PQ**
Applicant	:	**Jeffrey Pincott**
Respondents	:	**(1) Bobble Properties Inc. (2) William Tanner**
Case number	:	**CAM/00KF/LSC/2010/0097**
Date of Application	:	**28th July 2010**
Type of Applications	:	**To determine reasonableness and payability of service charges and administration charges**
Tribunal	:	**Bruce Edgington (lawyer chair) Stephen Moll FRICS David Cox**
Date and place of Hearing	:	**4th November 2010 at The Ilfracombe House Hotel, 9-11 Wilson Road, Southend-on-Sea, Essex SS1 1HG**

DECISION

---

1. Reasonable service charges due and payable by the Applicant to the Respondents for the year 1st June 2009 to 31st May 2010 are nil.

2. The Respondents are ordered to repay the fees incurred by the Applicant in making this application i.e. £70 application fee and £150 hearing fee making a total of £220. This is payable forthwith.

Reasons

Introduction

3. This is a straightforward case. The Applicant is the long leaseholder of the property and the Respondents are said to be the freeholders. According to the Applicant the Respondents were also the long leaseholders of Flats B and C in the same building and they acquired the freehold in December 2009.

4. The freehold was formerly owned by Forcelux Ltd. That company sent a service charge demand to the Applicant dated 29th June 2009 to cover the period 1st June 2009 to 31st May 2010. A copy of this demand is in the papers submitted to the Tribunal by the Applicant. It simply says "*Interim Service Charge in accordance with the Terms of the Lease. Period 1st June 2009 to 31st May 2010 (to include Building Insurance)...£600.00*".

5. The Applicant paid this amount and there is a receipt in the bundle. The Applicant says that the Respondents, in their capacity as leaseholders, refused to pay their demands.

6. In January 2010 the Applicant says that he was approached by the new freeholders and was given a bill for £231.73 made up as to £98.63 for buildings insurance up to 31st March 2010 and a management fee of £133.10 for the period up to 30th June 2010. He has refused to pay these amounts and asks the Tribunal to decide whether these charges are reasonable.

7. He adds that according to his investigations, the property was removed from the insurance policy of Forcelux Ltd. at the time of the Respondents' acquisition of the freehold title in December 2009. This accounts for the need for the Respondents to put in hand their own insurance.

8. The Respondents did not comply with any of the terms of the Directions Order made by the Tribunal on the 18th August 2010. Two days before the hearing a bundle arrived from the Respondents which contained most of the documents already submitted by the Applicant in his bundle plus some further correspondence and a statement from Andrew Judge who is said to be a property manager on behalf of Bobble Properties Inc. He does not suggest that he also represents William Tanner.

9. Mr. Judge says that he will be out of the country on the day of the hearing and will not be attending. He does not seek an adjournment. He says that the Applicant's case is without merit. He says, in particular, that it is up to the Applicant to recover any funds from Forcelux Ltd.

The Law

10. Section 18 of the **Landlord and Tenant Act 1985** ("the 1985 Act") defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.

11. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. A Leasehold Valuation Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable.

12. If it is reasonable then section 27A of the 1985 Act gives this Tribunal the jurisdiction to decide whether service charges are payable.

The Lease

13. The Tribunal was provided with a certified copy of the lease which is for a term of 99 years from the 1st July 1985. There is also produced a copy of

a Land Registry Official Copy of a Deed of Variation dated 19th March 1987 which has no relevance to this application.

14. The ability of the landlord to collect monies from the lessee for service charges is in Clause 4(ii) where the lessee covenants to "*Contribute and pay one third of the costs expenses outgoings and matters mentioned in the Fourth Schedule hereto SUBJECT TO such costs being ascertained and certified by the Accountant or Managing Agent of the Landlord at the time of such demand*".

15. The Fourth Schedule simply contains a list of those items of expenditure which the landlord can collect from the tenant including "*all other expenses (if any) reasonably incurred by the Landlord in and about the maintenance and proper and convenient management and running of the Building*". As a managing agent is mentioned in clause 4, the Tribunal considers that this would be wide enough to enable the landlord to recover the reasonable cost of such managing agent.

The Inspection

16. The Tribunal inspected the property in the presence of the Applicant. It is a semi detached property built in the early 20th century of partially rendered brick under a slate roof. The Applicant's flat is on the ground floor.

17. The Applicant confirmed that he had seen the new bundle from the Respondents including the statement from Mr. Judge. As it was clear that Mr. Judge would not be attending the hearing, the Applicant was asked if there was anything else he wished to say to the Tribunal. If not, he may wish to save his time by not coming because his case was clear from the papers. He agreed and said that he was happy for the Tribunal to consider the case in his absence.

The Hearing

18. The Tribunal was somewhat surprised to see that the hearing was attended by Ciaran Foynes, a trainee solicitor from BTMK, the Respondents' solicitors. He could give no explanation as to why BTMK had not followed the procedure set out in the correspondence to the parties by telling the Tribunal office in advance that he was attending. He was also unable to explain why the Respondents had taken it upon themselves to ignore the Tribunal's Directions Order.

19. He was then asked what representations he was intending to make. He simply said that he would be responding to any further points the Applicant wanted to make. It was explained to him that the Applicant would not be coming because the Respondent's case was that its witness would not be coming. Mr. Foynes did not seek to make any further representations and the Tribunal therefore decided that they would not send a message to the Applicant suggesting that he now attended the hearing.

Conclusions

20. As Mr. Judge, in his statement, acknowledges that the facts as outlined by the Applicant are correct, the Tribunal finds the facts as set out by the Applicant which are recorded in the introduction to these reasons.

21. The lease does not allow the landlord to collect service charges in advance i.e. on account of future charges to be incurred. Accordingly the demand from Forcelux was, technically, not payable. Furthermore, amounts payable by way of service charges must be certified by the landlord's accountant or managing agent. The demand from Forcelux did not record any such certification.

22. The Applicant decided to waive these technical breaches and he paid the £600. The Tribunal, using its knowledge and experience, would have determined that a reasonable amount to include insurance and management fees for that year would be less than £600 but that amount has been agreed and paid, and the Tribunal has no further jurisdiction to consider the reasonableness of that amount.

23. Whatever agreement may have been reached between Forcelux Ltd. and the Respondents in December 2009, it seems abundantly clear to this Tribunal that the Applicant should not have to pay for extra insurance because of the removal of the property from Forcelux's insurance policy. The Applicant did not cause this to happen and he has paid insurance for the year. To suggest that he now has to apply for a refund from Forcelux Ltd. is plainly wrong.

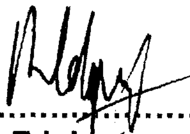
24. The Applicant should also not have to pay for further management costs because of a change in management. The amount paid was more than enough to cover both insurance and management costs for the year in question.

25. One of the documents produced by Mr. Judge is a demand for £718.73 dated 30th July 2010. The Respondents should be aware of the following:-

    (a) Since the 28th February 2005, a demand for ground rent must be in the form prescribed by the **Landlord and Tenant (Notice of Rent) (England) Regulations 2004** and is not payable until such form of notice is sent
    (b) The ground rent of £50.00 demanded is wrong. The Sixth Schedule to the lease makes it clear that the ground rent is only £35.00 per annum.
    (c) The lease does now allow the Respondents to demand monies in advance of service charges to be incurred.
    (d) If the insurance premium has been incurred, the demand for payment must contain the information prescribed by Section 21B of the 1985 Act and this amount is not payable until then.
    (e) No service charge is payable in any event until it has been certified in accordance with the terms of the lease.
    (f) A management fee of £200 for this flat in this property is probably excessive. The range of management fees which are deemed to be reasonable in the Southend area is £150-£200 but only if a good service is provided. There has been no evidence before the Tribunal that the managing agents have done anything apart from make demands for rent and service charges which include threats that are, frankly, unlawful.

(g) The administration fee of £25 is not reasonable because the 'Outstanding Overdue Arrears' are not reasonable or payable. It is also not payable because there is nothing in the lease which would allow for such charges to be levied, particularly if the *contra proferentem* rule of interpretation is applied.

26. The Tribunal has the power to order a Respondent to reimburse the fees paid to this Tribunal and the test is that it would be 'just and equitable' to do so. The Tribunal finds that as the Respondents have not provided any justification for the amounts claimed to the Tribunal, they have displayed a real ignorance of current landlord and tenant law, they have ignored the Tribunal's procedural directions and the application has succeeded, it would be just and equitable to order such reimbursement.



....

Bruce Edgington
Chair
5th November 2010