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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**9 Maltings Close, Cambridge CB5 8EB**
Applicant	:	**Joanna Blakeman**
Respondent	:	**(1) Michael Laurie Magar Ltd. (2) Michelham Property Investments Ltd. (3) McCann Homes Ltd.**
Case number	:	**CAM/12UB/LSC/2010/0066**
Date of application	:	**22nd May 2010**
Type of Application	:	**To determine reasonableness and payability of service charges**
The Tribunal	:	**Bruce Edgington (lawyer chair) David Brown FRICS MCI Arb**
Date and venue of determination	:	**18th August 2010 Unit C4 Quern House, Great Shelford, Cambs. CB22 5LD**

DECISION

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1. The Tribunal finds that the amount of service charges payable by the Applicant is nil.

2. The Tribunal makes an order pursuant to Section 20C of the **Landlord & Tenant Act 1985** ("the Act"). In other words the Respondents' costs of representation before this Tribunal shall not be regarded as relevant costs in determining any service charge payable by the lessees in this block of flats.

3. The Respondents shall repay the application fee of £100 to the Applicant on or before the 10th September 2010.

Reasons

Introduction

4. This dispute concerns service charges claimed from the Applicant and other lessees of a relatively new block of 19 flats developed by McCann Homes Ltd. in

about 2007 and 2008. Their interest in the freehold title was sold to Michelham Property Investments Ltd. on the 24th November 2009. Upon sale, the management of the block was taken over by Michael Laurie Magar Ltd.

5. The Applicant purchased her leasehold interest in one of the flats i.e. the property on the 16th October 2009. On or soon after the completion of her purchase, she was asked for, and paid, an Initial Service Charge of £629.50. On the 26th March 2010, the managing agents wrote to the Applicant saying that they had re-examined the budget upon which the first Initial Service Charge demand had been calculated and had revised it upwards. The sum of £803.59 was demanded for the second half of the service charge year.

6. The Applicant's complaint is that she thought that the first Initial Service Charge was excessive but she paid it. Now she is being asked for even more. She now questions whether either service charge demand is reasonable.

7. Following receipt of the application, a Pre Hearing Directions order was made by the Tribunal chair. The Applicant was ordered to file a statement by 25th June 2010 setting out her case and why, in particular, she was challenging service charges claimed. She did so by 22nd June 2010 and the managing agents, who assumed the responsibility of representing the Respondents, confirmed in a letter dated 29th June that they had received their copy of that statement.

8. The Respondents had been ordered to file and serve a response by 9th July 2010 and each party had been ordered to file and serve any documents and witness statements by 16th July. A clear and specific warning in bold print was given that if any document or statement was late, it **'may mean that the Tribunal will refuse to consider'** such document. It was initially anticipated that an oral hearing would take place but the parties requested that the Tribunal determine the issues on the basis of the papers submitted in the hearing bundle.

9. In their letter of the 29th June, the managing agents asked for an extension to the timetable set by the directions *"...to allow us to fully evaluate the case, with the hindsight of all documentation."*. The writer of that letter also said that he would be on holiday for 2 weeks from the 21st July. In response, the Applicant pointed out that 10 of the 11 documents referred to in her statement emanated from the Respondents. By letter dated 6th July 2010, the application for an extension of time was refused.

10. By a further letter dated 14th July 2010 the Tribunal office notified the parties that the Tribunal would inspect the property on the 18th August 2010 and, after the inspection, would deal with the issues on the basis of the papers filed. Any party which wanted an oral hearing could request one. No such request was received. In the same letter the managing agents were reminded that they must serve the Respondent's' evidence in good time to enable it to be commented upon by the Applicant and all representations could then be contained within the bundle to be filed 10 days before the determination.

11. The Respondents' evidence was received at 4.45 pm on the 17th August 2010 i.e. the day before the inspection and subsequent consideration of the

documents. The managing agents put themselves forward as being chartered surveyors specialising in the management of over 100 developments of property with offices in London and Birmingham. Further, they admit in their statement that they had involvement with this development earlier than November 2009 because they had 'input' into the first budget prepared in 2008.

12. Therefore, they should know better than to just ignore directions orders given by the Tribunal. Because of the late filing and service of the Respondents' evidence, the Tribunal paid little, if any, regard to it. Not only was it late but the Applicant had been given no opportunity to comment on it.

The Inspection

13. The inspection had been planned for 12.15 pm on the 18th August. When the members of the Tribunal considered the documentation and, in particular, the terms of the lease, they realised that the decision in this case was going to be made on the basis of what was in the lease for reasons which will become clear. Accordingly, the Tribunal chair checked with the Respondents' agents who confirmed that they were not attending the inspection.

14. He also contacted the Applicant to explain that it would not be necessary for the Tribunal to inspect and she accepted this without question.

The Lease

15. The original application tendered by the Applicant included what appeared to be a copy of the lease dated 16th October 2009. It had clearly been executed by McCann Homes Ltd. and the Applicant. In the bundle submitted by the Respondents a precisely similar copy was submitted and the Tribunal therefore satisfied itself that, on the balance of probabilities, these copies were true copies of the final executed lease.

16. The term is for 125 years from the 1st October 2007 with a ground rent of £250 per annum which, according to Schedule 8, doubles every 25 years. The tenant's covenants are contained in the 6th Schedule. As to the service charge, the combined effect of Schedule 6, the definitions and Schedule 3 means that the scheme is as follows.

17. On signing the lease, the tenant was to pay 50% of the Initial Service Charge. On 1st April 2010, the tenant was then to pay the other 50% of the Initial Service Charge.

18. Thereafter, at the end of the service charge year on the 30th September 2010, an account will be prepared of the actual service charges incurred and the tenant will either be credited with any over payment or will have to pay any underpayment.

19. In subsequent years, the interim demands are made as from 1st October in each year from a budget prepared by or on behalf of the landlord. They are payable in equal proportions on the 1st October and then 1st April. Another reconciling account is prepared as from the following 30th September and credits or demands are made as before.

20. The main problem with this particular lease, and the reason why the Tribunal wanted to be sure that it had seen the actual lease, is the definition of Initial Service Charge. It is on page 8 of the lease and says "*the amount set out in column 5 of Schedule 9 adjacent to the plot number for the property.*". One then turns to Schedule 9 and finds that there is nothing in column 5 against any of the properties, let alone Plot 18, which appears to be what the property was then known as.

21. Thus, it is clear that the Initial Service Charge is nil and nothing was payable either on signing the lease or on the 1st April 2010.

22. Furthermore, even if an Initial Service Charge had been payable on the 1st April 2010, it would have had to be the same amount as was payable on the signing of the lease. There is no provision for adjustments to be made in the budget half way through the service charge year. There is a provision for some sort of Special Contribution towards service charges but the Respondents are not suggesting that such a situation is relevant in this case.

The Law

23. Section 18 of the 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 landlords' costs of management which varies 'according to the relevant costs'.

24. Section 19 of the 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.

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

26. Section 20C of the Act enables a Tribunal to order that the costs of a landlord's representation before a Tribunal shall not be demanded from tenants as part of a future service charge. The Applicant asked for such an order to be made in this case.

27. The Tribunal also has the power to order the repayment by a Respondent of any fee paid to the Tribunal by an Applicant. Orders made under Section 20C or for the repayment of fees are considered on the basis of what is fair and reasonable.

Conclusions

28. The service charge provisions in the lease are clear and are set out above. The effect of the various provisions is that no service charge demands should have been sent to the Applicant on the signing of the lease or on the 1st April 2010. Accordingly, the service charges demanded are not payable.

29. Having made this finding, the question of their reasonableness becomes irrelevant. As the Applicant has been completely successful, the Tribunal does consider it to be fair and reasonable both for the Section 20C order to be made

and for the refund of the fee paid by the Applicant.

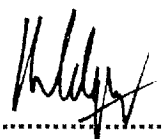
30. It should also be said that even if there were a figure set out in column 5 of Schedule 9 of the lease, the reason why the application was made was because the Respondents asked for a higher amount in April 2010 than had been paid in October 2009. That is not permitted by the lease and the orders as to costs and fees would have been the same.

The Future

31. This decision has been based upon what is actually in the lease. The reality of the situation is that tenants usually prefer to pay service charges by instalments and it may be that the Applicant will allow the managing agents to keep the initial payment of £629.50 on the basis of good housekeeping. She may even agree to pay some further amount for the period up to the 30th September 2010 as a gesture of goodwill.

32. The reason for this is that even though, technically, nothing is payable in advance for this initial period, the managing agents will be able to claim the whole of the actual service charges incurred for the period ending 30th September 2010 when the reconciliation accounts are prepared. They will then be able to claim an amount on account of the new service charge year.

33. If the Applicant should decide that the service charges actually incurred and claimed for the year ending 30th September 2010 are unreasonable or have been unreasonably incurred, she will be able to make a further application to this Tribunal for a determination as to whether they are reasonable.



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Bruce Edgington
Chair
19th August 2010