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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL FOR THE EASTERN RENT ASSESSMENT PANEL

IN THE MATTER OF THE LANDLORD & TENANT ACT 1985 SECTION 27A ("THE ACT")

CASE NUMBER CAM/26UJ/LSC/2010/0037

IN THE MATTER OF FLAT 4 DUNSMORE THE HOE CARPENDERS PARK WATFORD HERTFORDSHIRE WD19 5AU

Parties	:	Dunsmore Flats Limited	Applicant
		Mr R G A Sentance	Respondent
Representations	:	For Dunsmore Flats Limited:- Miss Finella Wilkie of the Managing agents John Whiteman & Company Miss Rowana Agajanian Mr James Tuck of Dunsmore Flats Limited Mr R Barrett of Kebbell Developments Mr Sentance represented himself	
Date of Transfer from Watford County Court	:	3 March 2010	
Date of Directions	:	17 March 2010	
Date of Hearing	:	8 June 2010	
Tribunal Members	:	Mr A A Dutton Chair Mr R Marshall FRICS FAAV Mr D W Cox	
Date of Decision	:	**18th June 2010**	

DECISION

The Tribunal finds that a reasonable sum payable by Mr Sentance as a contribution towards the costs of redecorating his windows is £450 for the reasons stated below. The Tribunal also orders that the provisions of Section 20C shall apply and that the costs of these proceedings shall not be recovered through the service charge regime. The Tribunal also orders that the Respondent, Mr Sentance, is not entitled to recover his application fee to the court as the Tribunal finds that this does not fall within paragraph 4 of the Leasehold Valuation (Fees) (England) Regulations 2003.

REASONS

A. BACKGROUND

1. This matter started life in the Banbury County Court when a claim was made seeking to recover the service charge of £700 representing the decorating costs to the window and a sum of £1,218.55, being estimated legal costs. A Defence was filed in those proceedings on the basis that the service charge in dispute was either invalid or, if valid, was unreasonable in amount. It was alleged that Section 20 of the Landlord & Tenant Act 1985 had not been followed and that estoppel applied. If the service charge was valid, it was alleged that it was an unreasonable amount because of the conduct of the claimant and the failure of the claimant to properly follow the procedure set out in Section 20. As a result of this Defence, the matter was transferred to the Watford County Court who in turn on an application by Mr Sentance, transferred the matter to the Leasehold Valuation Tribunal.

2. At the hearing we had a bundle of documentation agreed between the parties which contained statements made by Dunsmore Flats and by the Respondent, the Directions, the Lease and other documents which we shall refer to as necessary in the course of these Reasons.

B. INSPECTION

3. We inspected the subject premises before the hearing and were able to see the balcony, railings and door of the flat owned by Mr Sentance as he allowed us access. We then made an external inspection of the block which is a three/four storey property on a sloping site in a "T" shape. Mr Sentance's property was at the front on the first floor and appeared to consist of a row of four tilt and turn windows and two fixed windows, together also with, to the rear, four tilt and turn windows and one fixed window. It appeared to be the only property at the time of our inspection which still had wooden windows. We did not think that on inspection the windows were metal. The common parts windows had now been improved by the installation of UPVC double glazed units, and it appeared that the other leaseholders had replaced their windows at sometime in the past.

4. The development was in very good order. The grounds were particularly well cared for and the external decorations to the block were in good order. The property presented well and showed that care and attention was being spent in maintaining the development.

C. THE HEARING

5. At the hearing Miss Wilkie took us briefly through a statement that had been filed which really did nothing more than list a number of letters that had passed between John Whiteman & Co and Mr Sentance. In the bundle there were copies of Section 20 Notices as well as statements dealing with the proposed works and referring to quotations. It appeared that there had been two such Notices, the last being dated the 21st July in which the quotation from a Mr Paul Smith at £4,395 inclusive of VAT had in fact been accepted, this including additional works to the balconies and front elevation. With the papers we had copies of a number of the quotes provided as well as the specification. A demand of £700 had been made of Mr Sentance on the 24th October 2008 representing a "Window Redecoration Levy". This sum of £700 had been assessed on the basis of a letter written by Paul Smith, the contractor, dated 29th June 2008 to Finella Wilkie in which it had been stated that a sum of £300 was due for painting the first floor crital (sic), windows and timber sub-frames at £300 and for painting the first floor of the rear of front section crital (sic) windows and timber sub-frames, £400. The Applicant said that this additional charge to Mr Sentance because he had wooden windows, had been discussed at a committee meeting held on the 26th June 2007, which Mr Sentance had attended, and had been agreed. Furthermore, at a resolution passed at an AGM on the 2nd March 2000, it had been agreed that the directors had a discretion as to the allocation of costs associated with decoration works and, in particular, for example, whether a flat had wooden windows or not. Apparently Mr Sentance was a member of the management committee at that time.

6. Mr Sentance's defence is set out in a statement of case dated the 15th April 2010 which was with the papers.

7. Firstly, he disputed the recoverability of the legal costs which were out of proportion with the service charge and in any event the Lease did not contain provision for those costs to be recovered. Insofar as the service charge was concerned, he indicated that he wished to challenge the validity of the service charge only to establish why it is so high. He sought to allege in his written submission that the Section 20 Notices were defective and that the procedures had not been properly followed. He also sought to argue a question of estoppel arising from a letter sent to Mr Sentance we believe dated the 30th May 2008 which we will refer to later in these Reasons. He also, in any event, thought that the service charges were

unreasonable. Apparently in 2006 a cost of £400 had been mentioned as the likely additional charge for painting windows and he could see no reason why it should therefore be £700. There had apparently been a delay in dealing with the works, although it was suggested by the Applicant that this was a result of Mr Sentance objecting to the original Section 20 procedures.

8. At the hearing Mr Sentance indicated that he had no objections to the principle of being asked to pay additional costs because he retained wooden windows. He stood by the Minutes of the committee meeting held in 2000. As to the costs, he confirmed that although invited to do so in the Directions, the Applicant had not drawn to the Tribunal's attention any clause in the Lease that would enable them to recover these costs and that they were out of proportion. He told us at the hearing that he had no challenge to the initial notice under Section 20 and in truth did not really appear to be challenging the Section 20 procedures at all. He said that he had expected to see two separate quotes showing the costs of the works in respect of his own windows. With the acquisition of Mr Smith's quotation two such quotes had been obtained, although he did not, it appeared, inspect that later quote of Mr Smith. He thought that the Section 20 process fell down because he had not been given estimates showing the cost of the work for which he would be responsible. As to the estoppel point, he relied on the letter we referred to above (30th May 2008) in which he thought it gave an indication that he would not be charged individually for his windows and had not therefore sought to challenge Mr Smith's quotation. He thought that a reasonable figure for the decoration costs would be in the region of £400, although he would consider that £450 was a reasonable sum including works to his balcony door.

9. The Applicant believed that Mr Sentance had had ample chance to view the quote obtained from Mr Smith. He had certainly been able to see the earlier quotes obtained from Clifford & Gough and others. We were told that the Applicant had decided that they would not make an additional charge for the balcony door or the metalwork and that it would be included within the general division on a one tenth basis between all leaseholders. Insofar as the recovery of legal costs are concerned, they referred us to paragraph 3A(i)(a) and 4(B) and that the costs of the managing agents' attendance was £150 per hour.

D. THE LAW

10. Section 27A of the Landlord & Tenant Act 1985 governs the manner upon which we are required to determine these issues. If we decide that a service charge is payable, then we must also consider by whom it is payable, to whom it is payable, when it should be paid, the amount and the manner of payment. At sub-paragraph (4)(a) no application under sub-section (1) or (3) may be made in respect of a matter which has been

agreed or admitted by the tenant, although such admission is not evidenced by reason of the tenant having made a payment. Section 20C of the Act enables us to order that the costs of proceedings should not be recoverable as a service charge if we think it is "just and equitable in the circumstances".

E. FINDINGS

11. We will deal firstly with the question of the Section 20 procedure. Mr Sentance, in fairness to him, did not in reality pursue this matter. He accepted that the initial Notice had been properly dealt with and the subsequent Notice which had been amended to include the quote of Mr Smith was not challenged. It does seem surprising to us that the management company did not think it sensible to send a copy of Mr Smith's quote to Mr Sentance at the very outset so that he would have been able to have seen the basis upon which the sum of £700 had been calculated. In addition also it seems to us that by virtue of Section 27A(4)(a), Mr Sentance has accepted the principle that those lessees with wooden windows should bear the additional cost of decorating same, thus removing that liability from the other leaseholders. Indeed it appears he had been instrumental in obtaining the resolution in 2000 on this point As we have indicated above, he is in fact now the only lessee in the block with wooden windows, although there was one other lessee at the time that these works were undertaken. In those circumstances therefore it seems to us that the only issue in this case is the cost of those redecoration works which should be directly charged to Mr Sentance.

12. In this case we have had the benefit of seeing quotations obtained from Clifford & Gough and JNL Building Services where they had actually given specific figures for decorating these windows. In the JNL quotation, a figure for decorating the first floor windows of Mr Sentance's flat is £256, although we accept that there is a provisional sum allowed of £175 for carpentry work. Mr Sentance had told us that no carpentry work was in fact carried out. On the next page of the estimate a figure of £95 is shown as the cost of carrying out works to his rear windows, again with a sum of £175 shown as a provisional sum. The Clifford & Gough quote gives a figure of £135 for the front windows and £202 for the rear windows. These are the only two earlier estimates which give this breakdown. By contrast, Mr Smith's estimate obtained in June 2008, puts a figure of £300 for the front windows and £400 for the rear windows. This is in contrast not only to the sums involved but the fact that the quotes from the other two contractors allowed for a greater sum for the front windows than the rear, which we have thought appropriate as on our inspection there were more windows to paint. We bear in mind also the comments made at the AGM in 2007 when it is recorded that in 2006 the likely costs for decorating the windows would have been £400 per flat, and that a rebate in 1998 of £200 per flat had been allowed. Also in 2006 a quote had been obtained from

JNL where they had indicated a cost of £619 for Mr Sentance's flat for dealing with the windows and the balcony, and that the balcony above in Flat 7 had been valued at £165 which Mr Sentance told us was the same as his, leaving a sum therefore in the region of £450 as being the appropriate cost.

13. Doing the best we can with the information before us, it seems to us that the figure of £700 is on the high side. Mr Smith seems to have charged more for the rear windows than the front, which is odd given our inspection. In addition also, the other quotations obtained from builders who did not in fact proceed, show figures considerably below £700 for doing the two windows, notwithstanding that some provisional sums were allowed. In the circumstances therefore, taking the matter in the round and considering the various estimates we have concluded that the appropriate additional cost to be paid by Mr Sentance for decorating his windows is £450. That should be paid within 28 days.

14. So far as the legal costs are concerned, notwithstanding the clauses referred to by the Applicant at the hearing, it seems to us that if they are recoverable they are probably to be found at clause 7 under the Agreements and Declarations at 7.1(ii) which states as follows:-

"*To employ architects, surveyors, solicitors, accountants, contractors, builders, gardeners and any other person or firm, or company properly required to be employed in connection with or for the purpose of or in relation to the property or any part thereof and pay them all proper fees, charges, salaries, wages, costs, expenses and outgoings.*"

15. The Applicant told us that they had been advised that they could not commence proceedings for the recovery of service charges at the Tribunal. They were informed that this was not correct. Furthermore, it should be noted that under Clause 7 of the Lease, the incursion of these costs appeared to be on the basis that the previous consent of the lessor was required. There is no evidence that such consent was in fact sought. However, it seems to us more appropriately it is the lack of breakdown of the costs which we find unacceptable. There is a statement of account within the papers, but this makes no sense. The invoice shows a sum of £1,477.72, which includes VAT and disbursements. On the schedule attached there is an indication as to the activity undertaken, but it is impossible to tell how long that activity took, or the charging rates and the fee earner. In addition also, a number of the costs appear to be associated with correspondence and liaison between the Applicant and the solicitors, and would be costs that would not be recoverable in any event. However, it also seems to us that these costs are not recoverable in these proceedings, which is in effect a small claims case. The costs appear to relate to matters leading up to the commencement of proceedings, and as the claim itself would have been for £700, this is merely an attempt to

inflate it, but not above the small claims limit where in ordinary circumstances costs would not be recoverable. In those circumstances, we conclude that the claim for costs included in the proceedings, which are referred to in any event as estimated at the sum of £1,218.55, are not payable by Mr Sentance in this case.

16. We have also refused to refund him the £40 application fee. Certainly in the Tribunal's experience a transfer by the county court is done without the need for paying fee. In any event, it does not seem to fall within the regulations and therefore is not recoverable.

17. We hope that the parties can resolve their differences. It is always difficult when the residents are also the managing company. Costs incurred in these proceedings inevitably affect all lessees, whether recoverable under the service charge or not, and we cannot help but feel that if Mr Sentance had been provided with the letter in June showing the breakdown of the costs as set out by Mr Smith that it may not have been necessary for these proceedings to have arisen at all.

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Andrew Dutton Chairman

Date 18 June 2010