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Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00AB/LSC/2010/0706

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT ACT 1985

Address: 25 Liberty Court, Stern Close, Barking, Essex, IG11 0XY

Applicant: Mr S Uddin

Respondent: Great Fleete Management No.5 Ltd

Application: 15 October 2010

Hearing: 4 May 2011

Appearances
Applicant
Mr T. Uddin Representative of the Applicant

Respondent
Did not attend and were not represented

Members of the Tribunal
Mr I Mohabir LLB (Hons)
Mr D I Jagger MRICS
Ms S Wilby

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for determination of his liability to pay and/or the reasonableness of the buildings insurance premium for 2008 and various estimated service charges claimed by the Respondent in respect of the service charge year ended 31 December 2010.

2. The Applicant is the lessee of the property known as Flat 25 Liberty Court, Stern Close, Barking, Essex, IG11 0XY ("the property") which he holds under a lease dated 18 June 1999 and made between (1) Bellway Homes Ltd and (2) Great Fleete Management No.5 Ltd and (3) Richard Martin Bagley for a term of 125 years less 10 days from 1 January 1999 ("the lease"). The Applicant took an assignment of the lease on 12 February 2007. It is not necessary to set out how the Applicant's contractual liability to pay the service charge contribution arises under the terms of the lease because he does not deny this liability *per se* nor that of the sums claimed by the Respondent recoverable as relevant service charge expenditure under the lease. The Applicant simply contended that the service charges in issue had either not been reasonably incurred or were excessive in amount. It is sufficient to note that the service charge year commences on 1 January and ends on 31 December in each year. The lease makes the Applicant contractually liable to pay a service charge contribution of 1/28 of the expenditure incurred ought to be incurred by the Respondent in any given year.

3. The Tribunal was told that the property is a two-bedroom flat in a purpose built block of flats which appears to be comprised of 28 flats in total. The block itself forms part of a larger estate of other purpose built blocks of flats. On 12 October 2009, Gem Estate Management Ltd ("GEM") were appointed as the managing agent in relation to the block and the estate generally. GEM prepared an estimated service charge budget £96,876 (including ground rent and insurance premium) for the year ended 31 December 2010. On 10 November 2009, Gem issued a service charge demand to the Applicant claiming a service charge contribution to the sum of £1,327. The net service charge contribution excluding ground rent and insurance premium is £878.

4. It was the Respondent's case that the Applicant failed to pay the service charge demand and it became necessary for GEM to pursue him for payment thereby incurring administration charges. On 15 October 2010, the Applicant issued this application seeking a determination as to the reasonableness of the service charges claimed by the Respondent.

5. At the hearing it was agreed that the Tribunal did not have jurisdiction to make any determination in relation to the arrears of ground rent claimed by the Respondent. In addition, the Tribunal ruled that any claim by the Respondent for administration charges incurred did not fall into this application because it had not been raised at the pre-trial review and, in any event, neither party had adduced any evidence in relation to this matter. The Tribunal's determination is, therefore, confined to the buildings insurance premium for 2008 and the net estimated service charges for the year ended 31 December 2010. The heads of service charge expenditure challenged by the Applicant are set out and dealt with below.

The Relevant Law

6. The substantive law in relation to the determination of this application can be set out as follows:

Section 27A of the Act provides, *inter alia*, that:

> *"(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."*

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges.

7. Any determination made under section 27A is subject to the statutory test of reasonableness implied by section 19 of the Act. This provides that:

"(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 provision of services or the carrying out works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly."

Hearing and Decision

8. The hearing in this matter took place on 4 May 2011. The Applicant was represented by his brother, Mr T Uddin. The Respondent did not attend and was not represented.

9. Mr T Uddin had appeared earlier that day before the Tribunal on his own account in relation to a service application regarding a flat he owned on a nearby estate, also managed by GEM. The heads of service charge expenditure challenged and the submissions made in relation to each were identical.

Weekly Cleaning & Fortnightly Gardening

10. A service charge contribution of £250 was claimed against the Applicant for this item of expenditure. He maintained that the cleaning of the communal areas is very poor. Frequently, items of litter are not picked up or swept both internally in the block and within the estate. In addition, the bin chambers are not cleaned adequately which has resulted in an infestation of vermin. The Applicant also asserted that the grounds maintenance is not carried out on a fortnightly basis and that some hedges have remained untouched.

11. In its statement of case, the Respondent stated that the gardening contractors, Care Group Limited, attended fortnightly between March and October and a monthly between November and February to carry out the grounds maintenance. As to the maintenance of the hedges and shrubs, he said that pruning could only be carried out during the growing season.

12. Apparently, the cleaning is also carried out by Care Group Limited who attend on a weekly basis. As part of their duties, the cleaners are required to pick up

any litter in the internal parts. Externally, this task is carried out by the gardeners. It was accepted that there was a persistent problem of residents' dumping household rubbish on the estate. The clearing of this rubbish is largely dependent on the local authority's collection programme. The use of a private company to deal with this problem was not possible because of the level of non-payment of service charge contributions by the lessees. The Respondent asserted that the refuse bins are cleared on a regular basis. However, if the residents did not place their refuse in the bins, the cleaning contractors could not be held responsible.

13. The Tribunal accepted the evidence of the Respondent regarding the cleaning and gardening without qualification. Having regard to the to the various invoices provided, the Tribunal found these to be *prima facie* evidence that the gardening was being carried out in the manner described by the Respondent.

14. As to the cleaning generally, the Tribunal accepted the Respondent's evidence that the litter complained of by the Applicant occurred between the cleaning visits. In the Tribunal's view, this is an inherent problem on estates of this kind including the incidents of dumping of household rubbish prevalent here. These matters did not render the sum claimed by the Respondent inherently unreasonable. The Tribunal also accepted the Respondent's evidence that these problems on the estate could not be addressed given the high level of default in payment of the service charge contributions by the lessees. Accordingly, the Tribunal found the budget estimate for gardening and cleaning to be reasonably incurred and reasonable in the amount.

Window Cleaning

15. An individual contribution of £85 is claimed from the Applicant. He simply complained that this was not carried out on a monthly basis. It was done on an ad hoc basis and the windows remained uncleaned for several months.

16. The Respondent maintained in its statement of case that the windows are cleaned on a monthly basis and relied on the relevant invoices from the contractor in the hearing bundle.

17. Having regard to the relevant invoices in the hearing bundle, the Tribunal was satisfied that the window cleaning was being carried out on a monthly basis and it found in those terms. Materially, no other tenant had made the same complaint which tended to support the view that the window cleaning was being carried out. The Applicant did not challenge the standard of the window cleaning or the quantum of the costs *per se*. Accordingly, the Tribunal found that the window cleaning costs had been reasonably incurred and were allowed as claimed.

Electricity for Common Parts

18. The Applicant submitted that a number of external lights on the estate were left on permanently and, therefore, the overall budget including the individual contribution of £30 was excessive and not reasonably incurred.

19. The Respondent accepted that a number of lights on the estate could not be switched off. In addition, it could not gain access to the supply cupboards because none of the leaseholders appear to have a key to unlock the cupboard. However, the necessary repairs could only be carried out if all of the lessees paid their service charge contributions promptly. It was for this reason that the budget estimate for the supply of electricity to the common parts had been set at this level.

20. The Tribunal found the budget estimate for the supply of electricity to the common parts had been reasonably incurred and was reasonable in amount. The Tribunal accepted the evidence of the Respondent that the budget level was perhaps somewhat higher than would have been desirable. However, it seems that the situation is unavoidable given the level of default in payment of the service charge contributions by lessees. To find otherwise, would leave the Respondent in the invidious position of receiving less income from service charge contributions and thereby not being able to repair and maintain the

block and the estate as it is obliged to do which would inevitably result in a further decline of the block and estate.

Buildings Insurance Premium

21. This was agreed by the Applicant in the sum of £150 including cover for terrorism and the Directors and officers of the Respondent company. The buildings insurance premium in issue regarding 2008 is dealt with below.

Annual Audit

22. This was agreed by the Applicants in the sum of £7.

Sundry/Minor Expenses/Repairs

23. An individual service charge contribution of £80 was claimed from the Applicant for this item of expenditure. He submitted, in terms, that this expenditure had not been reasonably incurred or was reasonable in amount because minor responsive repairs had not been carried out by the Respondent at all or in a timely manner. These included the replacement of communal door handles and the door entry system being inoperable for a number of years.

24. The Respondent repeated the arguments it had advanced above in relation to the expenditure for electricity. It stated that because of the cash flow problems experienced, the first priority of expenditure had to be in relation to important matters such as the buildings insurance. Consideration could then be given to how any remaining income should be spent by giving priority to some matters over others. In other words, it had to perform "a balancing act".

25. Largely for the reason set out at paragraph 20 above, the Tribunal found this estimated expenditure had been reasonably incurred and was reasonable in amount. Under the terms of the lease, the Respondent is obliged to repair and maintain the block. Otherwise, it may be subject to a claim for breach of covenant. It follows that it must make a budget provision to do so in the expectation that the lessees will pay the service charge contributions demanded. In the absence of this, the Respondent is obliged to carry out a

rationing process in relation to the income it does receive by spending that income on matters that command higher priority such as the buildings insurance. Despite this, it cannot be said that the provision for sundry/minor responsive repairs is unreasonable. Accordingly, it was allowed as claimed by the Respondent.

Entryphone Rental/Maintenance

26. A contribution of £30 is sought from the Applicant in relation to this item of expenditure. He complained that it took GEM until November or December 2010 to repair the intercom system.

27. The Respondent that the delay in carrying out this work had been exactly for the same reasons as set out in paragraph 23 above.

28. The Tribunal found that this estimated expenditure had been reasonably incurred and was reasonable in amount for the same reasons set out in paragraph 25 above.

Reserve Fund

29. Reserve fund contributions of £50 for internal works and £20 for external works is claimed from the Applicant. At the hearing, Mr Uddin agreed the reserve fund contribution of £50 in relation to the internal works. He did not appear to agree the contribution of £20 for external works.

30. In his written submissions, the Applicant contended that he had been paying a reserve fund contributions since he purchased the property yet no works have been carried out.

31. In answer, the Respondent stated that GEM did not inherit a reserve fund when it took over the management from the previous managing agents. Apparently, any such monies collected could not be accounted for. It was, therefore, necessary to create a new reserve fund to meet future liabilities.

32. The Applicant did not in principle object to the collection of a reserve fund contribution by the Respondent. His objection was that, having paid this contribution, no works were carried out to the building. If correct, the blame for this state of affairs may lie with the previous managing agents and not the Respondent. If the reserve fund collected by the previous agents has been misappropriated in any way, then a claim may lie against it by the Respondent. It may be prudent for the Respondent to investigate this matter further and possibly take any appropriate action to recover these monies. The absence of a reserve fund makes the case stronger for the establishment of a new fund. Therefore, the Tribunal found that the reserve fund contribution of £20 for proposed external works had been reasonably incurred and was reasonable in amount.

Company Secretarial Fees

33. This was agreed by Mr Uddin in the sum of £2.

Management Fees

34. A contribution of £155 is claimed by the Respondent in relation to the management fees of GEM. The Applicant contended that GEM had poorly managed the development and, therefore, the management fees were not reasonable.

35. GEM's management fees were calculated at 15% of the total service charge expenditure incurred in any given year plus VAT. The Respondent stated that this included the steps taken to collect the arrears of ground rent, insurance and service charges. It submitted, in terms, that the fees were reasonable.

36. In the Tribunal's judgement, the perceived management failures complained of by the Applicant were not deliberate on the part of GEM but were a direct consequence of the lack of finance which limited or constrained the overall management of the estate. Despite these constrains, it appeared that GEM was trying to provide a competent management service. Therefore, the Tribunal found the management fees to be reasonable and they were allowed as claimed.

Buildings Insurance (2008)

37. It was the Applicant's case that he had paid the buildings insurance premium demanded for 2008. By a letter to the Tribunal dated 18 May 2011, the Respondent's solicitors confirmed that the building insurance premium in the sum of £144 was in arrears. They also confirmed that arrears of £147 were also due from the Applicant in respect of 2009, but this sum was not challenged by the Applicant.

38. The Applicant's case was based on an assertion that he had paid the buildings insurance premium of £144 for 2008. On 4 May 2011, the Tribunal issued supplementary directions which included a direction that the Applicant file and serve any documentary evidence supporting his assertion that he had paid the buildings insurance premium for that year. No such evidence has been adduced by the Applicant.

39. The burden of proof was on the Applicant to prove he had paid the buildings insurance premium for 2008. The Tribunal found that he had not discharged that burden because he had not adduced any evidence of payment. A mere assertion is not evidence upon which the Tribunal could base a finding in those terms. The Applicant did not contend that the quantum of the premium was unreasonable. Accordingly, the Tribunal determined that the buildings insurance premium of £144 claimed in respect of 2008 was due and payable by the Applicant.

Section 20C & Fees

40. The Applicant had also made an application under section 20C of the Act seeking an order that the Respondent to be disentitled from being able to recover all or any part of the costs it had incurred in responding to the substantive application.

41. Section 20C of the Act gives the Tribunal a discretion to make an order when it is just and equitable to do so having regard to all the circumstances of the case.

42. The Tribunal recognised the Applicant's legitimate concern that he had historically paid the service charge contributions demanded of him without complaint but, nevertheless, it seems that various items of repair and/or maintenance were not being carried out at all. To this extent, the Tribunal considered that the application was properly brought and had merit. It appears that the sole reason for this state of affairs is because other lessees are failing to pay their service charge contributions in part or at all. No explanation was given by the Respondent as to what steps, if any, were being taken by it to recover the service charge arrears which we understood are substantial. Moreover, the estimated service charge budget for the year ended 31 December 2010 did not make any provision for debt recovery against the offending lessees. It cannot be correct for lessees such as the Applicant to continue to pay their service charge contributions, but as a consequence of the default of others, the building and the estate are not managed properly. The situation is intolerable. It appears to the Tribunal that the Respondent was either unable or unwilling to take any effective action to recover the service charge arrears from the default in lessees. For these reasons, the Tribunal concluded that it was just and equitable to make an order preventing the Respondent from recovering any costs it had incurred in these proceedings through the service charge account. For the same reasons, the Tribunal orders the Respondent to reimburse the Applicant the sum of £250, being the total fees paid by him to have this application issued and heard.

Dated the 30 day of June 2011

CHAIRMAN.....

Mr I Mohabir LLB (Hons)