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HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter Section 27A of the Landlord and Tenant Act 1985

Case No. CHI/29UL/LSC/2012/0045

Property: Flat 4, 6 Radnor Park West
Folkestone
Kent
CT19 5HJ

Between: (1) Mr Peter Jack Clayton
(2) Mr Mark David Esdaile
(3) Invicta Property Partnership LLP
(the Applicant)

and

Mrs Nicola Ann McFadzean
(the Respondent)

Date of hearing: 27th July 2012

Date of the decision:

Members of the Tribunal: Mr D. Dovar LLB (Hons)
Mr R. A. Wilkey FRICS

DECISION

Introduction

1. This is a transferred application from the Canterbury County Court in proceedings brought under claim number 1BE00911. By an order dated 16th March 2012, DJ Sullivan transferred the issues of payability of service charges and administration charges to the Tribunal for a determination.
2. Directions were given by the Tribunal on 10th May 2012. They required a bundle to be produced within 28 days by the Applicant setting out their case in detail and including statements of any witnesses of fact together with relevant documents (such as invoices and receipts). 28 days thereafter the Respondent was to file and serve a bundle in reply. A statement of case dated 23rd May 2012 with supporting documents was produced by the Applicant. On 16th July 2012, the Tribunal received documents from the Respondent which purported to show that she was not in arrears. The Applicant claims that they only received these documents on the morning of the hearing. The Applicant produced a further bundle for the hearing, a hearing bundle, which included for the first time a witness statement of Mr Stephen Alleyne and further documentation, including more documents from the county court proceedings.
3. The Applicants were represented at the hearing by counsel and Mr Alleyne, the managing agent attended. The Respondent appeared in person.
4. The freehold to the property is held by the Applicants and the Respondent. They constitute the landlord. However, the application was brought by the Applicants 'as managing agents'. This was despite the fact that they had (since at least 2006) appointed Stephen Alleyne & Co as managing agent for the property. Contained in the hearing bundle provided by the Applicants were signed confirmations from the Applicants authorising Stephen Alleyne to pursue the service charges on their behalf.

5. The Respondent holds the flat under a long lease dated 19th December 1962, which was varied on 30th October 1995.

Inspection

6. The Tribunal inspected the property in the company of Mr Alleyne and the Respondent. It is a Victorian house situated on the corner of a residential street facing an open park. The house had been converted in the 1960s into four flats. There was one entrance for flat one and another entrance for flats two to four. Flat four is the top floor two bedroom flat and had four dormer extensions which covered the kitchen, bathroom, living room and small bedroom. A number of items of disrepair were pointed out to the Tribunal by the Respondent, including two of the flat roofs of the dormer extensions. The Respondent also indicated a number of items of repair that had been carried out by the leaseholders independently of the managing agent.

The issues

7. The transferred application seeks a determination in respect of the payability of:
 - a. The service charge demands that had been made between June 2006 and the beginning of December 2010; and
 - b. An administration charge in respect of the Applicants' attempts to recover the service charge arrears from the Respondent.

The Interim Service Charge

8. The Applicants had charged £300 per annum by way of service charge on account. This was divided into two demands per year of £150. The last reconciliation that was carried out appears to have been in 2006 when a shortfall of £242.26 was identified. However, it was not clear to the Tribunal whether this sum had ever been demanded. Mr Alleyne said he thought it

would have been. It was also not clear to the Tribunal how the Applicants were able to charge £300 on account, when the lease provided at clause 3 for only £140 per annum.

9. However, whilst the Respondent had numerous complaints about the conduct of the managing agent, she did not seek to challenge the amounts claimed by the Applicants; her position was that she had paid all the amounts. It was explained to her that on this issue the Tribunal is only concerned as to whether or not sums were payable, not whether they had been paid. It was also explained that she could challenge the sums claimed even if she had paid them. The Respondent maintained her position that she did not object to the sums claimed. In those circumstances, the Tribunal therefore finds that the amounts claimed by way of service charge for the period June 2006 to the beginning of December 2010 are payable.

10. These were:

a.	25 th June 2006	Interim Payment	£150
b.	25 th December 2006	Debit Balance	£242.26
c.	25 th December 2006	Interim Payment	£150
d.	25 th June 2007	Interim Payment	£150
e.	25 th December 2007	Interim Payment	£150
f.	25 th June 2008	Interim Payment	£150
g.	26 th November 2008	Insurance Contrib.	£322.80
h.	25 th December 2008	Interim Payment	£150
i.	25 th June 2009	Interim Payment	£150
j.	26 th November 2009	Insurance Contrib.	£322.80

k.	25 th December 2009	Interim Payment	£150
l.	25 th June 2010	Interim Payment	£150
m.	26 th November 2010	Insurance Contrib.	£286.27
Total			£2,524.13

11. These figures do not take into account any payment by the Respondent. They are only the sums that the Applicants were entitled to charge.

Administration Charge

12. The Applicants seek a determination on the sum of £153.38 in respect of their costs of debt collectors and the land registry. They claim that they are an administration charge within the meaning of paragraph 1 of schedule 11 to the Commonhold and Leasehold Reform Act 2002 as they are payable by the Respondent for breach pursuant to clause 2 (14) of the lease. That clause allows the landlord to recover the costs of and incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925; i.e. as a preliminary for forfeiture.
13. No invoice or other voucher was provided in respect of these items. No details were given other than they were for debt collection. Therefore whilst they might have potentially been an administration charge upon which the Tribunal could make a determination, the lack of information means that the Applicants have failed to establish their case that it is payable. The Tribunal therefore determines that this sum is not payable.

Hearing fee and s20C application

14. The Respondent has not challenged the payability of the sums claimed, but defends the matter on the grounds that she has made all payments. This was different to her position in the County Court, where her defence was that she was not happy with the services provided by the managing agents.

She provided, late in the day, evidence of payment. However, the Tribunal did not consider that that evidence showed that there were no arrears. In fact, it appeared that even taking into account those payments, she would still have been in arrears for a figure of around £900.

15. Therefore given that the Respondent does not challenge the main issue before the Tribunal and that the Applicant has been successful in the majority of the sums claimed, the Tribunal requires the Respondent to reimburse the hearing fee to the Applicant (under regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003) and will make no order under section 20C.

Conclusion

16. The Tribunal determines that in respect of Flat 4:
 - a. for the period June 2006 to December 2010 (including insurance contributions) £2,524.13 is payable by way of service charge;
 - b. the administration charge/fee of £153.38 is not payable;
 - c. the Respondent is required to reimburse the hearing fee to the Applicant;
 - d. No order is made pursuant to section 20C limiting recovery of the costs of these proceedings under the service charge provisions of the lease.

D Dovar LLB (Hons)

Chairman