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Case reference: LON/00AU/LSC/2012/0203

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

Property:	**34C Cloudesley Square, London N1 0HN**
Applicant:	Southern Land Securities Limited
Respondent:	Ben Goldring
Date heard:	13 June 2012
Appearances:	Mrs Kath King, Hamilton King Management Limited, for the applicant Maurice Goldring FRICS for the respondent
Tribunal:	Margaret Wilson Raymond Humphrys FRICS
Date of decision:	13 June 2012

Introduction and background

1. This is an application by the landlord of a house converted into four flats under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine the liability of the leaseholder ("the tenant") of one of the flats, Flat C, to pay service charges in respect of the years ending 29 September 2011 and 2012. The tenant does not dispute the reasonableness of the service charges which are the subject of the application or, subject to a set-off, his liability to pay them, but he claims, in effect, that he is entitled to set off against his liability to pay those service charges an amount which, he says, has been wrongly demanded of him by way of service charges for the year ended 29 September 2010. He has withheld payment of the service charges which are the subject of the landlord's application pending resolution of his dispute as to his liability to pay service charges for the previous year. He has issued a separate application for an order under 20C of the Act to prevent the landlord from placing its costs of the present proceedings on any service charge.

2. The applications were considered at a hearing on 13 June 2012 at which the landlord was represented by Mrs Kath King of Hamilton King Management Ltd, its managing agent, and the tenant by Mr Maurice Goldring FRICS, the tenant's father.

The statutory framework

3. By section 27A of the Act an application may be made to the tribunal to determine whether a service charge is payable and, if it is, the amount which is payable. "Service charge" is defined by section 18(1) of the Act to include insurance. It is settled law (see *Continental Property Ventures Inc v White, 2007 L & TR)* that in determining a tenant's liability to pay service charges the tribunal has jurisdiction to consider whether the tenant is entitled to a set off and that it may exercise that jurisdiction if to do so is appropriate.

The issue

4. The background to the dispute as it emerged from the documents and submissions is as follows:

a. The landlord's accounting year for service charge purposes ends on 29 September. The tenant purchased the remainder of the long lease of the flat from its previous leaseholder, Ms Flintoff, on 2 August 2010. He instructed Fridays, solicitors, in connection with the purchase, and the vendor instructed Mowbray Woodwards, solicitors. The completion statement prepared by the vendor's solicitors showed an apportionment to the tenant of the service charges, other than insurance premiums, due for the period from 2 August 2010 to the service charge year end, a period of some 59 days, of £171.87 and, of the insurance premium for the same period, of £87.37. The completion statement prepared by the tenant's solicitors showed an apportionment to the tenant of the service charges, other than the insurance premium, of £816.56 and an apportionment of insurance premium of £87. The apportionment of the service charges other than insurance made by the tenant's solicitors was incorrect by a wide margin. The apportionment made by the vendor's solicitors was also in our view inaccurate for reasons which we will expand. The tenant's solicitors subsequently went into administration and the tenant complained to the administrators about the incorrect apportionment which his solicitors had made and he has reached a settlement with the administrators which is satisfactory to him. It is agreed that any dispute, now resolved, between vendor and purchaser would not in any event have been a matter for this tribunal.

b. By paragraph 2 of schedule 5 to the lease the tenant is required to pay on account on 25 March and 29 September in each year 25% of one half of the amount of the maintenance, or service, charge, for the immediately preceding maintenance year and any deficiency between the amount paid on account and the amount subsequently certified by the landlord's accountant or managing agent is due immediately on production of the certificate.

c. The present landlord bought the reversion in November 2009. The managing agent employed by the previous landlord had collected the service charges only in arrears and on the handover to the new managing agents in May 2010 their accounts were not available. In May 2010 the new managing agent wrote to Mowbray Woodwards confirming this (page 82 of the hearing bundle) and that Ms Flintoff's arrears, if any, would need to be cleared and an invoice would be forwarded to the purchaser's solicitors before completion took place. The letter also confirmed that service charge accounts had not yet been received from the previous managing agent and also that it was difficult to speculate on expenditure and that there might be an excess service charge and they advised that a retention should be held on completion as a precaution.

d. Having taken over the management, Hamilton King produced a budget for their period of management from May 2010 until 29 September 2010 which is at page 89 of the bundle and which was sent to Ms Flintoff under cover of a letter dated 17 June 2010. We were shown the letter, which is not in the bundle, which demanded an interim payment of half this amount, due on the 25 March 2010, and confirming that the accounts had been received from the previous managing agent showing a zero balance.

e. Accordingly, Mrs King said, the only sum which the landlord could properly demand of Ms Flintoff was the March 2010 payment, and no further sum could be demanded in accordance with the terms of the lease until the end of the accounting year, and this would be shown as a demand for an excess service charge which was submitted to the new owner on 19 October 2010 (page 91 of the bundle). This demand included a request for ground rent and an advance interim service charge due on 29 September 2010 for the period September 2010 to March 2011. She said that the correct information was given to the vendor's solicitors prior to the sale and that it was apparent that it had been passed by them to Mr Goldring's solicitors because they could not have prepared the completion statement, albeit that it contained errors, without such information.

f. Mrs King produced a request for payment of service charges and ground rent dated 12 June 2012 and invited us to determine that the amounts there give by way of service charges due from the tenant were correct and payable.

g. Mr Goldring submitted that the tenant was liable to pay only the difference between the final account for the year to 29 September 2010, namely £1145.25, and the estimated sum of £1063.25, namely £82. He maintained that the estimated sum of £1063.25 was all due to be paid in September 2009 and March 2010 and should have been collected from Ms Flintoff before completion. He submitted that even if the landlord had not collected these sums from Ms Flintoff, they were not due from the tenant because they became due before he completed the purchase.

h. Mr Goldring said that the tenant had paid the excess service charge of £613.62 for September 2010 when demanded, but the excess service charge he ought to have been required to pay was £82, and he was thus entitled to set off the balance, namely £531.63, against the service charges which he was admittedly liable to pay for subsequent years.

Decision

5. This dispute has become confused, especially in the eyes of the tenant, by the contents of the completion statements, which included within the service charges amounts which had been neither billed nor paid by the vendor. In other words, the vendor had made only one payment, demanded in June 2010, based on the new managing agent's estimate for the remainder of that year. We accept Mrs King's evidence that the statement at page 89 of the bundle related to the period from May 2010, when her firm took charge, until the end of the service charge year on 29 September 2010. We can understand Mr Golding's confusion because, at first sight, the service charge estimate at page 89 does not identify the start date of the period to which it relates. Mr Goldring did not accept that the statement related to only part of the year, not only because that was not expressed in the document at page

89 but also because it was very close to the usual annual amount for service charges which the tenant had been led to expect. He was not, however, in a position to challenge the reasonableness of the charges for 2010, and Mrs King, in answer to a question from the tribunal, confirmed, and we accept, that her firm had receipts and vouchers to support the service charge costs for that year. While we have not seen those documents, we observe that the sums include surveyors' and professional fees of £465, annual buildings insurance for the year 2010/2011, and management fees of £552, all of which would not appear to be unusually high. The other costs appear acceptable for the period concerned.

6. In these circumstances we accept Mrs King's submission that the tenant has not overpaid in respect of the service charges for the period 2 August to 29 September 2010 and that he is not entitled to any set off. He is liable therefore liable to pay to the landlord, forthwith, the sum of £1898.72 which appears in the demand dated 12 June 2012.

7. The Landlord and Tenant Covenants Act 1995, which we raised with Mrs King and Mr Goldring, appears on reflection to have no relevance to the present dispute because the arguably relevant parts of it apply only to tenancies created after it came into force, which do not include the tenant's lease.

Costs

8. The tenant had asked for his costs incurred in connection with these proceedings to be paid by the landlord, but we do not have such jurisdiction save in the exceptional circumstances envisaged by paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002, which do not apply in this case. He also asked for an order under section 20C of the Act for an order preventing the landlord from placing its costs referable to the proceedings on any service charge. Mrs King accepted that the lease does not permit recovery of such costs as a service charge although she

maintained that the landlord was entitled to recover them from the tenant as flowing from the breach of his covenant to pay service charges. Whether that is correct is not a question within our jurisdiction under section 27A. In the circumstances we do not propose to make any order under section 20C of the Act.

9. Mrs King also asked for an order under paragraph 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 that the tenant reimburse to the landlord to fees of £250 which it had paid in respect of the application and the hearing. She said that the tenant's withholding of all the service charges and ground rent due for 2011 and 2012 was unjustified and that he should, at the least, have paid the undisputed charges and argued about the balance. She said that the tenant's actions had required the landlord to fund the tenant's share of the expenditure, including the insurance, for two years. Mr Goldring said that the tenant had offered to pay the service charges for 2011 and 2012 and to argue separately about the disputed charges for 2010, but Mrs King said that he was not prepared to do so unless the landlord submitted a fresh invoice to him which excluded the balancing payment for 2010, which the landlord was unwilling to do.

10. In our opinion the landlord was left with no alternative but to come to the tribunal. Admittedly the dispute was not adequately expressed in the application, but the issue, which related to the 2010 balancing charge, rapidly became plain, and required both the application and the hearing. The landlord has been successful and in these circumstances we order that the tenant should reimburse to the landlord the application and hearing fees, amounting to £250, which it has paid.

11. It is regrettable that this narrow dispute has required a determination and it is unfortunate that the parties chose not to attend the pre-trial review when they might have taken the opportunity to identify and resolve the dispute.

CHAIRMAN...

DATE: 13 June 2012