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LON/00AD/LAC/2006/0001

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF LEASEHOLD VALUATION TRIBUNAL for the LONDON
RENT ASSESSMENT PANEL

Commonhold and Leasehold Reform Act 2002 Schedule 11

Property: 6 Columbus Square, Erith, Kent, DA8
2PN

Applicant: Mr I Stringer

Respondent: Sinclair Gardens Investments
(Kensington) Ltd

Respondent's Representative: Hurst Managements

Tribunal: Mrs H Bowers BSc(Econ) MRICS
MSc.

Date of the Tribunal's Decision: 8th May 2006

Decision made without a hearing in accordance with regulation 13 of the
Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003.

Background.

1. This is an application dated 9th March 2006 for the determination of the liability to pay administration charges.
2. In a letter dated 10th November 2005, Hurst Managements, acting as agents for Sinclair Gardens Investments (Kensington) Limited, made a request for payment from the Applicant. The stated sum outstanding was £94.42 and comprised £70 for the ground rent, £24.21 for administrative service charges and £0.21 for interest.
3. It is acknowledged by the Respondent's agents that the ground rent of £70 has been paid. The administrative service charge of £24.21, comprises £6 for the cost of service of a notice under S166 of the Commonhold and Leasehold Reform Act 2002 (the Act) and £18.21 relates to the costs of Hurst Managements in producing a "Letter Before Action".
4. A lease for the subject property, which is dated 16th October 1989, was made available to the Tribunal.
5. The definitions in the lease state:

"Management Expenditure" All costs and expenses (including the cost of calculation certification and collection) and if appropriate any professional and managing agents fees audit fees including all such reasonable amounts by way of reserve for future expenditure as the Company shall consider reasonable for the future expenditure incurred or proposed to be incurred within any relevant Management Expenditure Year by the Company in relation to any of the matters specified in the Fifth Schedule hereto.

"Management Charge" The annual contribution payable by the Tenant under the provisions of this lease which shall be such proportion of the Management Expenditure as shall be certified (such certification to be final and binding) annually by the accountants and/or auditors of the Company or its or their managing agents as soon as reasonably practicable at the end of the Management Expenditure Year to which such certificate relates and which is intended to be 13.442 per cent of the Management Expenditure in respect of the matters specified in Part One of the fifth Schedule hereto and a one Four Hundred and Twelfth part of the Maintenance Expenses in respect of the matters specified in Part Two of the Fifth Schedule hereto.

"Maintenance Expenses" The monies actually expended or reserved for periodical expenditure by or on behalf of the Company at all times during the Term in carrying out the obligations specified in the Fifth Schedule hereto.

"Prescribed Rate" 4 per centum per annum above base rate of Barclays Bank PLC from time to time or if the same shall be incapable of determination above such reasonable rate of interest as the Landlord may from time to time specify in substitution therefore such rate to apply as well after as before any judgement.

6. The Third Schedule Part 1 paragraph 12 states:
"To pay to the Landlord
(a) All expenses (including proper and reasonable solicitors costs and surveyors fees) incurred by the Landlord incidental to the preparation and service of
(i) Any notice under Section 146 or 147 of the Law of Property Act 1925 notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court"
7. The Fourth Schedule sets out that interest is payable at the prescribed rate in relation to any Management Charge that is overdue. The Fifth Schedule sets out the obligations of the Landlord and amongst other matters includes the insurance, the repair and maintenance of the property and the common parts.
8. The Applicant states that no prior notification of application for payment of Ground Rent was received. There is a copy of a letter from Hurst Management dated 16th November 2005, in which a copy of the Application for Payment, which had previously been sent on 30th September 2005 was enclosed. The Tribunal did not have a copy of the Application for Payment.
9. In a letter dated 4th January 2006 Hurst Managements stated that there is no obligation in the lease to send an Application for Payment. Additionally the costs are expenses incurred under the Third Schedule Part 1 paragraph 12(a)(i) of the lease and the interest on the arrears of the ground rent is based upon the provisions of the Fourth Schedule in the lease.
10. In a letter dated 10th April 2006, Hurst Managements stated that the Respondent has reluctantly agreed to waive the full sum of £24.42.

Law.

11. Section 166 of the Act and the Landlord and Tenant (Notice of Rent)(England) Regulations 2004 set out the requirement necessary to notify long leaseholders that rent is due.
12. Schedule 11 of the Act sets out the provisions for the consideration of the reasonableness of administration charges.

Decision.

13. In coming to a decision the Tribunal acknowledged the comments made by the Respondent's agent to the effect that the amount of £24.41 has been waived.
14. The Tribunal have no jurisdiction in respect of Section 166 of the Act. However, it seems clear that a long leaseholder is not liable to pay ground rent under a lease until a Notice of Rent has been received. It would seem a natural consequence that no interest, if payable under the lease is due until the necessary period after the rent has been formally demanded.
15. There appears to be a disagreement between the parties as to whether the relevant notice under section 166 had been sent out. The Tribunal determine that the sum of £6 relating to the Notice for Rent in respect of section 166 of the Act is not an item of Management Expenditure and does not come within the Fifth Schedule of the lease. As such the Tribunal have found that there are no provisions in the lease for the recovery of this item. Therefore the sum of £6 is disallowed.
16. The £18.21 relates to the costs of Hurst Managements' "Letter Before Action." The Respondent's have relied upon Schedule 3 Part 1 paragraph 12(a)(i) in respect of this item. The question is whether the Letter Before Action was incidental to a Section 146 notice as a preliminary step to forfeiture of the lease. The Tribunal does not consider it so. The letter would seem to be a more standard letter. There are several ways of enforcing payment under a lease without necessarily serving a Section 146 notice and proceeding to try and forfeit a lease. The Tribunal therefore determines that the letter does not come within a description of expenses (including proper and reasonable solicitors costs and surveyors fees) incurred by the Landlord incidental to the preparation and service of any notice under Section 146 or 147 of the Law of Property Act 1925. No such notice has been prepared and might never be. The Tribunal determine that this cost is not recoverable from the Applicant.
17. In respect of the interest of £0.21, consideration has to be made of the interest provisions in the lease. The Respondent relies upon the Fourth Schedule of the lease that states interest at the prescribed rate, is chargeable on Management Expenses if they are late. As ground rent does not come within the definition of Management Expenses it follows that interest is not recoverable. The Tribunal determine that this item is not recoverable from the Applicant.

Chairman:  (H Bowers)

Date: 8th May 2006