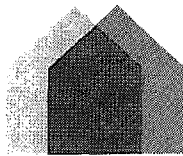


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Residential
Property
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**

LANDLORD AND TENANT ACT 1985/1987 as amended – Section 27A

Ref: LON/00AP/LSC/2006/0336

Property: 39 James Place, Tottenham, London, N17 8NR

Applicants Mr R A Hynes and Mrs A I Hynes

Respondent: London Borough of Haringey

Tribunal Members: S Shaw LLB (Hons) MCI Arb
Mrs H Bowers BSc (Hons) MSC MRICS

Date of Hearing: 23rd November 2006

Date of Decision: 29th November 2006

DECISION

INTRODUCTION

1. This case involves an application for a determination of the reasonableness of certain service charges pursuant to the provisions of Section 27A of the Landlord and Tenant Act 1985. The Applicants are Mr and Mrs Hynes ("the Applicants") who are the tenants of 39 James Place, Tottenham, London, N17 8NR ("the Property"). The freehold owners and landlords are the London Borough of Haringey ("the Respondent").
2. By application dated 20 September 2006, the Applicants sought a determination as to the reasonableness, as indicated, of certain service charges. When asked to list the years for which determinations were sought, as required in the Tribunal's standard form, they gave three reference numbers and indicated in the latter part of the form, where further details are requested, that "*I am unsure what specific items these charges are for ...*" They generally indicate in the form that although they surmise that the charges relate to service charges, they are unclear about the matter.
3. The matter came before the Tribunal for directions on 11 October 2006. On that occasion there was an oral pre-trial review and the Respondent was represented by a Ms Awoloto, a senior legal assistant employed by the Respondent. The Applicants failed to appear. The information then supplied to the Tribunal was that the three reference numbers detailed in the application were in fact the claim numbers in three sets of proceedings which had been instituted by the Respondent in the Edmonton County Court against these Applicants. The Tribunal was informed that in each case the Respondent had obtained judgment against the Applicants, and that indeed there was a fourth case pending which had been stayed before the County Court, (pending a determination by the Tribunal), and was not the subject matter of this application. Upon the basis of this information, the Tribunal declared that, if the information was correct, the Tribunal had no jurisdiction by virtue of the provisions of the Landlord and Tenant Act 1985 Section 27A. Section 27A(4) of the Act states that:-

"No application under subsection (1) or (3) may be made in respect of a matter which - ...

(c) has been the subject of determination by a court ...”

4. In those circumstances, the Tribunal indicated that it was minded to dismiss this application, subject to provision by the Respondent of copies of the judgments obtained by them in the three actions referred to. In addition, the Tribunal directed that the Applicants should have the opportunity of being heard upon the issue of jurisdiction before any dismissal or other order was made, and that they should make any request in this regard by 4pm on 22 November 2006. In the event, the Applicants' daughter has written a letter to the Tribunal, dated 6 November 2006, to which reference will be made below.

5. Consequent upon the Directions given, the Respondent has forwarded to the Tribunal details of the three relevant judgments. They are as follows:-

An order made in the Edmonton County Court in Case No 4ED03396, dated 23 November 2004. This Order records that the original judgment made against the first named Applicant was on 5 August 2004 for a sum of £1,515.07 and a further £222 for costs. The Order of 23 November 2004 varied that Order to the extent of permitting the first named Applicant (the defendant in that case) to pay the outstanding sum by instalments of £10 per month. The case number in that matter is precisely the first reference given by the Applicants in their application. In addition, the Respondents have supplied the Particulars of Claim in the case coupled with the breakdown of the claim which relates to service charges and major works. It would appear to this Tribunal that that is indeed a determination of the matter now sought to be put before the Tribunal, consideration of which is precluded by Section 27A(4)(c) for the reasons already indicated above.

Details of a second judgement in the same court in Claim No 5ED00113 have also been supplied. In particular, by order against both Applicants dated 30 March 2006, an earlier judgment given on 1 March 2005 for payment of £1,685.13 together with £222 for costs, was varied so as to enable the

Applicants to pay by instalments of £64 per month. In the event, that order was itself subsequently varied by further order dated 30 June 2006 so as to make the judgment payable forthwith. Once again, this is precisely the reference number given by the Applicants in their application.

Details of the third judgment have also been supplied. This is a judgement dated 11 September 2006 against the second named Applicant for a sum of £1,342.07 and a further £222 for costs making £1,564.07 in all. In this case as with the other cases, the Particulars of Claim and annexed schedule show that the claim in the main related to service charges and the costs of works.

6. In a letter dated 6 November 2006 from the Applicants to the Tribunal, they indicate that they will not be attending the Hearing on 23 November 2006 before the Tribunal. The reason given is that the first named Applicant has a hearing deficiency. They record in that letter that they had not appreciated the limits to the Tribunal's jurisdiction in the event of a court judgment having been given. They express regret that they had failed to act earlier in respect of those judgments. The reason given for the failure so to act is that they were awaiting legal advice which they had sought through legal aid, but ultimately were informed they were not in fact entitled to legal aid. It was as a result of advice given by the Citizens Advice Bureau that they referred the matter to this Tribunal. Generally in this letter, they take issue with the service charges claimed and express difficulty, as old age pensioners, in being able to meet these charges. They also assert that the property is in any event in a poor state of repair and is badly maintained. They assert that their rights to privacy, respect and family life have been breached as enshrined in the Human Rights Act 1998, Article 8. In summary, they ask for the application not to be dismissed.

DECISION

7. Whilst not unsympathetic to the Applicant's predicament, it seems to this Tribunal that the Tribunal's hands are tied in respect of this application, because the matters which have been referred to in the application are indeed the subject matter of three orders already made in the County Court which, again, so far as the Tribunal is concerned, amount to determinations for the purposes of the Landlord and Tenant Act 1985. In the circumstances it is not open to the Tribunal to proceed with this

application, these determinations already having taken place and there being court orders in respect of each of them. The reason for a degree of sympathy with the Applicants is that they appear to be an elderly and unwell couple and, on the information provided, it would appear that they took no or no sufficient action to defend any of the claims in respect of which judgments have been given. As a result of this, default orders or judgments were made against them. It does not appear on the papers before the Tribunal that there has ever been a hearing on the merits in respect of these matters nor has there ever been any attempt to have these judgments set aside so that a determination on the merits could take place, perhaps before the Tribunal. Obviously, from the point of view of the Applicants, it would have been desirable had there been an examination of the merits in these matters, and perhaps in respect of any further proceedings which may occur. However, sadly, their failure to take any appropriate action in relation to these cases does mean, for the reasons already indicated that the Tribunal has no jurisdiction in respect of the application presently before the Tribunal, and accordingly the application is dismissed.

Legal Chairman: S.SHAW



Dated: 29th November 2006