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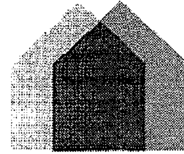

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
LANDLORD AND TENANT ACT 1985

LON/00AP/LSC/2007/0291

Premises:	25 Boreham Road London N22 6SL
Applicant:	Ms Maria Odysseos
Respondent:	Mr Thomson Fatodu
Tribunal:	Mr NK Nicol (Chair) Mr JM Power FRICS Mrs R Turner JP
Date of Hearing:	15/10/07
Date of Decision:	15/10/07

REASONS FOR DETERMINATION

1. The Applicant is the leaseholder of the subject property, 25 Boreham Road, London N22 6SL, a ground floor flat. The Respondent is the freeholder who has retained and rents out the other flat in the building, 27 Boreham Road, on the first floor. The Applicant has recently tried to sell her flat. As part of that process, her solicitors asked the Respondent to set out what, if any items, he said the Applicant owed him for ground rent and service charges. By letter dated 25th April 2007 the Respondent's solicitors set out the following items said to be owing:-

(i)	Ground Rent	1998-2007	£900
(ii)	Roof maintenance	1998-2003	£825
(iii)	New Roof total cost £6,000		£3,000
(iv)	Add interest 12% late payment		£900
(v)	Chimney Stacks repair		£251
(vi)	Drainage repair		£187

2. While the Applicant accepted that she owed some ground rent (which she says was offered and refused), she did not accept either the full amount of the ground rent or any part of the other service charges claimed. The Respondent maintained his position and the Applicant's proposed sale, and her consequent purchase of another property, fell through. The Applicant then applied to this Tribunal on 31st July 2007 for a determination under s.27A of the Landlord and Tenant Act 1985 as to the payability of the above disputed items. She also claimed that she had lost money as a result of the lost sale and purchase and asked the Tribunal to consider that as well.

3. The Tribunal heard the application on 15th October 2007. A bundle of documents was provided containing all the documents which the two parties had put forward in support of their case. Each party represented themselves. The above issues are dealt with in turn below.

Ground Rent

4. Clause 1 of the lease specifies that the ground rent is to be £20 per year other than when it is reviewed. The review provisions are set out in clause 5. The Respondent conceded that there had not been any review in accordance with clause 5. He said that the Applicant's predecessor-in-title had been asked for and paid £50 per year. Bearing in mind that a tenant in a neighbouring property was paying £100 per year, he thought it appropriate to charge the same, although he had previously demanded £80 per year.

5. The Tribunal has no jurisdiction to determine the payability of ground rent. However, the Respondent's approach to this issue would appear to be symptomatic of his entire approach to the management of the building and the collection of service charges. He would appear to have ignored the clear provisions of the lease and, without legal advice and in ignorance of any relevant law, he has proceeded as he thought was appropriate. This is not a fair or efficient way to proceed and is probably the main reason this case has ended up in a hotly-disputed application to the Tribunal. The Tribunal would strongly recommend that the Respondent take suitable legal advice on his rights and obligations in future. It does not even need to cost money as the Leasehold Advisory Service (known as LEASE) provide a free telephone advice service to both lessors and lessees on such issues.

Roof maintenance

6. The Respondent said that the roof of the subject building has been in a poor condition for a number of years. He said slates had been slipping and falling which could be dangerous for anyone below. He also said there had been leaks and woodworm. He said he had carried out patch repairs over a number of years. His problem is that the only evidence he had of any of this was a single handwritten invoice from Greens Roofing dated 24th March 2002 which referred to unspecified works costing £150.

7. It is doubtful that the Respondent could be said to have established any part of the service charge of £825 on the evidence provided. However, the issue is decided by consideration of s.20B of the Landlord and Tenant Act 1985, which states:-

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

8. The Respondent claims to have incurred the charges under this head in 2003 or earlier. He concedes that he did not demand payment from the Applicant until he responded through his solicitors in the aforementioned letter of 25th April 2007. That means that the relevant costs were incurred more than 18 months before a demand for payment of any service charge and so the Applicant is not liable for any subsequent service charge in accordance with s.20B. The Respondent says that he followed this course because the Applicant refused to co-operate with his efforts to recover ground rent or manage the building. Assuming that were true, that is a reason for ensuring compliance with provisions such as s.20B – it is certainly not a reason for ceasing to comply with them.

New roof

9. Due to the perceived problems with the roof mentioned above, the Respondent decided to replace it rather than to continue repairing it. In 2002 he had a contractor, Morrisons, look at the roof and they quoted £7,750 for replacing the roof. The Respondent says that he sent a copy of this estimate to the Applicant and talked to her about the need for a new roof. The Applicant does not accept the Respondent's version of events, but it is not necessary to go into the detail of this for reasons which are set out further below.

10. During 2003 the Respondent sought planning permission from the London Borough of Haringey to carry out a conversion of the roof space at the subject building into accommodation which would add to and expand the first floor flat. The Applicant opposed the grant of planning permission and, according to correspondence in December 2003, refused access to the Respondent's architect

who wanted to take measurements in her flat on the basis that some ongoing works were causing inconvenience and she had a number of other concerns.

11. By letter dated 23rd April 2004 Nationwide Loft Conversions Ltd quoted for the loft conversion work at £32,900 and the cost of replacing the roof at £5,875. There is no document which sets out the condition of the roof at the time and the Respondent had no evidence that the roof was in such a condition at that time as to require replacement rather than further patch repair. The Nationwide quote gave some detail on the loft conversion work but none on the roof work. By handwritten letter dated 21st May 2004 the Respondent informed the Applicant that roof works to install a new roof would commence on 14th June 2004. The works started on time and took until September 2004 to complete.

12. The Applicant objects that the Respondent failed to consult her in accordance with the detailed legal requirements under s.20 of the Landlord and Tenant Act 1985. She obtained her own estimate of works but was only able to do so on the day the works commenced. Further, her contractor, Tokka Roofing, stated that repair at a cost of £950 was an adequate alternative to complete replacement.

13. The Respondent sought to assert that he had complied fully with s.20 and refused the Tribunal's invitation to apply for dispensation from the s.20 requirements. However, there can be no doubt that there has not been compliance. The requirements are very specific and sending the odd quote or talking it over with the tenant are no substitute. The penalty for non-compliance is that the costs recoverable through the service charge are limited to no more than £250.

14. However, even then the Respondent again falls foul of s.20B, already referred to above. The work was completed in September 2004 and demanded in the same letter in April 2007, 2½ years later. The Respondent claims that Nationwide sent the Applicant an invoice dated 21st September 2004 for her share but, even if that were true, the document in question is clearly insufficient. Nationwide do not purport in the invoice to be acting on behalf of the Respondent in recovering the money. It does not convey with any clarity that the Respondent would in due course require the Applicant to pay the sum set out in the invoice. Indeed, when the Respondent did finally demand the money, he claimed £3,000, not the sum of

£2,937.50 set out in the invoice. For these reasons, the sum claimed in respect of the New Roof is also not payable.

Interest

15. The Respondent sought to claim interest on the alleged late payment of the service charge of £3,000 in respect of the New Roof, at a rate of 12% over 2½ years, totalling £900. He was not able to point to any power in the lease or elsewhere which permitted him to do this. He said he had paid for the works with his credit card and had paid interest himself, although he did not present any evidence of this.

16. The interest claim is the most egregious of the Respondent's claims. He had no right to charge it. He appears to have plucked the interest rate out of thin air. As held above, in any event he was not entitled to charge the sum on which the interest claim is based. Therefore, this item is also not payable.

Chimney Stacks repair

17. In 2005 the local authority, the London Borough of Haringey notified the Respondent that they had assessed the chimney stack at the subject building and found it to be in a dangerous condition. They required him to remove the defective brickwork. The Respondent contacted a contractor he found through the local newspaper and whose name he cannot now remember. He paid him a cash sum of £502 to demolish the chimney stack. The work was done in November 2005.

18. The Applicant accepts that the chimney stack is no longer there. The Tribunal is satisfied that £502 is a reasonable sum for such work. The Respondent demanded the sum of £251 from the Applicant within 18 months in the aforementioned letter of 25th April 2007. Therefore, the service charge in respect of this item is payable, such to the set-off referred to below.

Drainage repair

19. In 2004, at around the same time as the loft conversion works, the Respondent arranged for a contractor to repair a defective drainage pipe to the rear of the building. He produced a photo of the relevant pipe. However, again, he did not demand any payment for this item until the aforementioned letter of 25th April 2007, 2½ years later. Again, this charge falls foul of s.20B and is not payable.

Counterclaim and set-off

20. The Applicant claims that the Respondent negligently mis-stated her ground rent and service charge liability to her solicitors and, when the sale and purchase collapsed as a result, caused her the following loss:-
    (a) Substantial inconvenience and distress.
    (b) A favourable mortgage deal incorporating a rate fixed for 6 months, since when mortgage rates have increased.
    (c) A survey fee of £415.
    (d) Solicitors' costs of £260.75.

21. The Tribunal's jurisdiction was previously limited to the reasonableness of service charges. It now extends to their payability. This means that, if a service charge is not payable because the tenant has a set-off arising from a counterclaim, then the Tribunal has the jurisdiction to determine the counterclaim to the extent of any set-off. In this case, that means the Tribunal may determine whether the Applicant has a good counterclaim and, if so, whether it amounts to more than the £251 which has been held to be payable.

22. The Respondent asserts that he did not negligently mis-state anything because he was asked whether the Applicant owed any ground rent and correctly answered that she did. This is disingenuous. The Respondent was not able to produce any legal justification for the amount of ground rent he has charged and all but one of the service charges were not owing because he had never properly demanded payment of them. The Tribunal has no doubt that he was under a duty to do the best he could to ensure that the information he gave was reasonably accurate. He has clearly failed in that duty.

23. Further, whatever the precise extent of the Applicant's loss, the Tribunal is satisfied that it is significantly more than £251. Therefore, the Applicant's counterclaim may be set-off against her liability of £251, leaving no service charge payable. The balance of any claim by the Applicant may not be determined by the Tribunal and, if necessary, would have to be decided by the county court.

Costs

24. The Applicant applied under s.20C of the Landlord and Tenant Act 1985 for an order that the Respondent's costs of attending the Tribunal should not be added to the service charge. In fact, the Respondent did not assert he had incurred any cost other than having to miss work. Moreover, he accepted that there was no power in the lease to recover any such costs. The Tribunal would have made a s.20C order save that there would appear to be no point.

25. The Applicant paid a £100 application fee and a £150 hearing fee for her application. The Tribunal has the power to order the Respondent to reimburse those fees to the Applicant under reg.9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003. The Applicant has succeeded in reducing her service charge liability to nothing and so the Tribunal is satisfied that it is appropriate to order reimbursement.

Conclusion

26. In respect of the items in dispute between the parties and listed in paragraph 1 above, the Tribunal has no jurisdiction to decide the payability of ground rent but does hold that the Applicant is not liable for any of the alleged service charges except for the sum of £251 in respect of the chimney stack work. However, that sum is also not payable because the Applicant has a counterclaim of a higher value which, when offset against her liability, leaves nothing to be paid. Therefore, on the matters within the Tribunal's jurisdiction, it is held that nothing is payable by the Applicant to the Respondent.

27. The Tribunal orders the Respondent to reimburse to the Applicant the sum of £250 for the fees she has paid.

Chairman......N.K. Nicol......

Date 15th October 2007