RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

S.27A of the Landlord &Tenant Act 1985 as amended

DIRECTIONS

Case Number: CH1/29UH/LIS/2009/0073

In the matter of 36 Stagshaw Close, Maidstone, Kent, ME15 6TN

Date of Hearing: 16th December 2009

Tribunal: **Mr. S. Lal LLM (Barrister), Chairman**
Miss. C D Barton Bsc MRICS
Mr T J Wakelin

Date of Decision: 18th December 2009

Applicant: Mr. Lazano (in person)

Respondent: Home Group Ltd

Appearance: Mr. Allison, Barrister
Elise Longman-Leasehold Consultant for Home Group
Douglas Murray, Senior Building Surveyor for Home Group

DECISION

Preliminary

1. The matter comes before the Tribunal pursuant to an application to determine the reasonableness of service charge demands for 2007/08 and 2008/09 and estimated for 2009/10. No dispute has been raised concerning the identity of the person by whom such a charge would be payable or the liability to pay.

2. The subject property was the subject of a LVT decision, CH1/29UH/LSC/2008/0035 in respect of service charge years 2005-2007. That Tribunal considered the estimated, at that time, service charge for 2007/08 and decided that no liability was incurred because of the absence of an estimated budget provided to them by the Respondent's surveyor. The Tribunal explicitly left open the possibility of the Respondent charging an actual sum, if the budget was provided in the correct format.

3. The service charge amount for 2007/08 remain in dispute, the Applicant stating that even a nominal sum demanded was unreasonable. In any event 2008/09 and 2009/10 remain in dispute.

4. The matter was the subject of a Pre-Trial Review on 24th September 2009. Both parties to the proceedings have complied with Directions and the Tribunal has an Applicant's Statement of Case and Reply as well as a Respondent's Statement of Case. The Tribunal was in addition supplied with written submissions on the morning of the hearing by Mr. Allison, Counsel for the Respondents.

Inspection

5. The Tribunal inspected the subject premises on the morning of the hearing. It is a purpose built (approx 5 years ago) block designed to be affordable housing for key workers. The construction is of modern design with brick and tile hung elevations under a tiled roof. There is a communal entrance hall with stairs to the upper floors. The Tribunal observed mould in the entrance hall area and in two of the flats inspected. The Tribunal further observed that the uPVC patio door to Flat 36 had "dropped" and the Applicant had difficulty closing it. There are very small strips of garden to the front and left hand side of the property. The premises benefits from a designated parking area.

The Hearing

6. The Tribunal decided at the outset of the hearing that it lacked jurisdiction to deal with matters that related to an alleged breach of covenant as described in the Applicant Statement of Case. These were matters that could not properly form part of the Tribunal's consideration under Section 27A of the Landlord and Tenant Act 1985. The Tribunal was limited, therefore, in respect of the application before it to a consideration of the service charge elements only and the reasonableness of the same. The fact that the Applicant had invited the Tribunal to "fine" the Respondent and or decide fitness to manage or that the Respondent was managing the building in a negligent manner, were outside of our present jurisdiction in respect of the current application. Matters concerning negligence and or alleged breach of covenant were properly matters for the County Court in so far as this application had been made under s.27A.

7. The Tribunal asked the Applicant what matters he submitted were unreasonable in respect of the actual amounts demanded in 2007/08 and 2008/09 and the estimated amounts in respect of the 2009/10 service charge. It was confirmed to the Tribunal by Mr. Allison on behalf of the Respondent that his Note to the Tribunal was the extent of the Applicant's historical and future liability. These figures were given for the whole block and therefore would have to be divided by six to obtain an individual liability.

8. The Tribunal has due regard to the totality of the written material before it and the submissions which were advanced therein and those in oral submission are summarised below.

2007/08

9. In respect of 2007/08, the Applicant disputed the amount of £31.71 as he said that this was an unreasonable amount for someone to look at the roof and assess tile damage. He queried the Reserve fund of £1100 in that he could not understand what that was for and how that amount had been arrived at.

10. In reply, Mr. Allison said that the amount of £31.71 was a perfectly reasonable amount for a tradesperson to attend and assess any potential matters in need of repair. In respect of the Reserve fund he said that any prudent landlord would build up a reserve fund in case major works needed to be done. This would prevent the leaseholders being "hit" with a large amount to pay in one go.

2008/09

11. In respect of 2008/09 the Applicant disputed the Management fees demanded of £637.88. He submitted that the subject premises were not managed and that he had seen no evidence of active management. He called Miss. Tomes to give evidence to the effect that she had never seen anyone carrying out, as alleged, a 6 weekly inspection of the property. He queried again the Reserve fund amount which had now jumped up to £2912 per annum in respect of the subject premises.

12. Mr. Allison said on behalf of his client that the evidence of Miss. Tomes was disputed and that the subject property had been inspected. Both parties were content for the issue of the level of inspection to be decided on the basis of the documentary evidence before the Tribunal, in particular the inspection reports and the three "calling cards" left by the Respondent Company when carrying out an inspection. He reiterated his submissions about how a prudent landlord would have a Reserve fund but Mrs. Longman did accept that the Tenants had never been told for what the reserve fund maybe used for other than the very general obligations to be deciphered from the Lease.

2009/10 Estimated

13. In respect of the estimated service charge for 2009/10, the Applicant disputed the management fee of £750, the fire and safety equipment test fee of £100 and the Reserve fund for £2000. Similar arguments were employed in respect of the management fees and the Reserve fund. In respect of the fire test he stated in his written submissions that the Tenants had not had sight of any report.

14. Mr. Allison reiterated his submissions in respect of management fees and the Reserve fund and in respect of the fire assessment confirmed that an assessment had been carried out and details would be provided in due course.

15. It was accepted by both parties that since the Tribunal in 2008, the Tenants had assumed control and responsibility for gardening and cleaning.

The Law

16. The statutory provisions primarily relevant to applications of this nature are to be found in section 18, 19 and 27A of the Act. The Tribunal has of course had regard in making its decision to the whole of the relevant sections as they are set out in the Act, but here sets out what it intends shall be a sufficient extract form each to assist the parties in reading this decision. Section 18 provides that the expression "service charge" for these purposes means:

"an amount payable by a tenant of a dwelling as part of or in addition to the rent-

a. which is payable directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
b. the whole or part of which varies or may vary according to relevant costs."

"Relevant costs" are the cost or estimated costs incurred or to be incurred by the landlord in connection with the matters for which the service charge is payable and the expression "costs" includes overheads.

17. Section 19 provides that :

"Relevant costs shall be taken into account in determining the amount of a service charge payable for a period:

a. only to the extent that they are reasonably incurred, and
b. where they are incurred on the provision of services or the carrying out of works only if the services or works are of reasonable standard

and the amount payable shall be limited accordingly."

18. Subsections (1) and (2) of section 27A of the Act provide that :

"(1) An application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is payable and, if it is, as to-

a. the person to whom it is payable
b. the person by whom it is payable,
c. the amount which is payable,
d. the date at or by which it is payable, and
e. the manner in which it is payable.

19. The notion of something being reasonable has been held to mean that the landlord does not have an unfettered discretion to adopt the highest standard and to charge the tenant that amount; neither does it mean that the tenant can insist on the cheapest amount. The proper approach and practical test were indicated in Plough Investments Ltds v Manchester City Council [1989] 1 EGLR 244 that as a general rule where there may be more than one method of executing in that case, repairs, the choice of method rests with the party with the obligation under the terms of the lease.

20. Further the tenant cannot insist on the cheapest method and a workable test is whether the landlord himself would have chosen the method of repair if he had to bear the costs himself. Ultimately it is for the court or tribunal to do decide on the basis of the evidence before it and exercising its own expertise. In that regard the LVT is an expert tribunal and is able to bring its own expertise and experience in assessing the evidence before it.

The Tribunals Decision

2007/08

21. The Tribunal finds that the deputed sum of £31.71 is a reasonable sum for a workman to attend and inspect matters relating to the roof. The Tribunal finds that the Reserve fund amount of £1100 is a reasonable sum for the subject premises (equating to £15.27 per flat per month) for a prudent landlord to demand in respect of major works contingencies and to prevent the Tenants being subject to a huge service charge amount if that were to happen. The Tribunal accept that the subject premises will have a cyclical programme of works such as decorating the common parts that will occur over the years and the existence of the Reserve fund and the amount asked is in the circumstances a reasonable sum.

2008/09

22. The Tribunal does not accept that the Management fees of £637.88 are a reasonable sum. The Tribunal notes that following the Tribunal hearing in 2008, some management functions have been taken over by the Tenants. The Tribunal is of the view that the management and maintenance functions such as they are, have been narrowly confined. The Tribunal need not make findings as to the frequency of inspection visits, which is not the real issue. The real issue is whether the premises have been actively managed as opposed to merely being inspected. The Tribunal finds that the premises show no real evidence of active management. In fact the Tribunal was able to observe mould in the communal parts, noted that the slipped roof tiles notified in 2007 were only repaired in September 2009 and the uPVC patio door has dropped. If there has been management, at its best it can only have involved the most cursory of inspections. The reality for the Tenants is that they have had no experience of active management and indeed the Tribunal noted with concern that the Respondent's have only progressed certain matters as a result of the LVT in 2008 in September 2009. In the circumstances it does not accept that the sum of £637.88 is a reasonable sum but instead considers a sum of £300 per year to be a reasonable sum to reflect the Respondent's reduced management role following the last LVT. In real terms as 2008/09 has been calculated for a period of 6 months plus a notional £50 to cover the earlier LVT decision, the reasonable sum will be £200 (i.e. £50 for the first part of the year and £150 for the remaining six months).

23. The Tribunal finds that the Reserve fund amount of £2912, nearly three times what it was in the year before is an unreasonable sum. No explanation has been given in the absence of contemplated major works, why this amount has increased in the way it has. The Tribunal having already found that £1100 is a reasonable sum for 2007/08 finds that £1100 will continue to be a reasonable sum for 2008/09.

2009/10 Estimated Account

24. The Tribunal finds that the estimated sum of £200 for day to day maintenance is a reasonable sum. This seems to be prudent amount in respect of any matters that may arise in respect of a block of this size and routine minor maintenance matters. The Tribunal finds that £100 is a reasonable amount in respect of the testing of the fire and safety equipment, this would include the proper annual testing of smoke alarms and emergency lighting.

25. The Tribunal does not accept that the sum of £750 per year is a reasonable sum for management fees. The Tribunal finds it strange that the Tenants were able to negotiate this down from an original sum of £1250 to £750. It would suggest that no real thought had gone into the level of management charge originally set. In any event the Tribunal finds that the Respondent's remaining management duties for the subject premises in the event of many matters having passed to the control of the tenants should be set at a more reasonable sum of £300 per annum.

26. The Tribunal found little evidence of actual active management, one example being that the roof tiles were not actually fixed until some two years after the matter was raised. The Respondent's accepted that they were still learning. That may or may not be the case; the reality is that the management charge of £750 is unreasonable given the lack of evidence of active day to day management.

Summary

27. Following the above the Tribunal finds that all sums demanded for 2007/8 are reasonable, this would result in a liability per flat per month of £23.02. The Tribunal finds that management fees and Reserve fund demands for 2008/09 are unreasonable in their present form (the former to be £200 and the latter to be limited to £1100) so that the liability should be £20.96 per flat per month instead of the £52.90 as set by the Respondent. The Tribunal finds that the estimated service charge for 2009/10 is unreasonable to the extent that management fees should be limited to £300 and the Reserve fund to £1100. This would leave a monthly amount of £26.26 per flat as opposed to the £52.78 presently set. The monthly amount reflects the transference of many of the management and maintenance functions to the Lessees over the last 2 years.

Section 20C & Fees

28. The Respondent indicated that they would not seek to recover their fees and upon that declaration the Tribunal makes no formal order as to Section 20C. It does however make an order that pursuant to Regulations 9 of the Leasehold Valuation (Fees) (England) Regulations 2003, it would be just and equitable for the Respondent to reimburse the Applicant's the total fees of £250 incurred by them in bringing this application. In the material aspects of the management charge and Reserve fund the Applicant has succeeded in having the sums demanded reduced as unreasonable sums.

Chairman.....

Date.....18/12/09.....