RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

County Court Transfer
S.27A Landlord &Tenant Act 1985 as amended

DECISION AND REASONS

Case Number: CH1/00LC/LSC/2010/0071

In the matter of Flats 1, 2 & 4
288-290 High Street,
Chatham
Kent, ME4 4BP

Applicants (Landlord): Mr. H Kemal c/o T G Baynes, Solicitors

Respondent (Lessees): DDL 16 Ltd

Date of Transfer: 27th April 2010

Tribunal Members: Mr. S Lal Ll.M, Barrister (Legal Chairman)
Mr. T. Wakelin

Date of Hearing: 16th August 2010

Date of Decision: 18th August 2010

Application

1. The Applicants applied to the Dartford County Court in order to recover service charge arrears in respect of the subject premises for the years up to 2009. The liability to pay has never been in dispute nor has the proportion due under the lease, namely a 20% share in respect of the five flats that make up the premises. The matter was transferred to the Tribunal by order of Dartford County Court on 27th April 2010.

2. Directions were issued on 19th May 2010. The Applicant has complied with Directions and the Tribunal as well as the Respondent had been supplied with a copy of the Applicant bundle. The Respondent had not complied with the Directions and presented no documentary evidence whatsoever to the Tribunal.

Inspection

3. The Tribunal inspected the common parts of the subject premises in the presence of both the Applicant and the Respondent on the morning of the hearing. The subject premises consist of five flats above a fast food restaurant in the centre of Chatham High Street. The Tribunal was unable to gain access to any of the individual flats but an inspection of the common parts showed a generally poor condition with scuffed flooring, lights that did not work and some damage to the walls.

The Hearing

4. The Applicant was represented at the hearing by Mr. Warwick, Counsel who was accompanied by Mr. Elisha, the Managing Agent. The Respondent was represented by Mr. Sandhu who described himself as a Director of the Respondent Company. He was accompanied by Mr. Malek who was the lessee of Flat 3. Mr. Malek was in any event not a party to these proceedings.

Preliminary

5. Mr. Sandhu applied to have the matters adjourned so he could respond to the Applicant's Statement of Case. He said that his secretary had been dealing with the matter but had left two weeks ago and he had only instructed solicitors last week and the solicitor in question was on holiday. He conformed that he had been aware that Directions had been made. This application was opposed by the Applicant who pointed out that the Respondent had not responded to Directions, there was no solicitor as being on the record and that the Respondent had failed to respond to any correspondence.

6. The Tribunal decided to proceed with the matter. It was singularly unimpressed by the explanation put forward by Mr. Sandhu that an employee had been dealing with the matter but that she had left his company two weeks ago. The Directions were made in mid May and the Respondent has failed to respond to them although he was clearly aware of them. The Tribunal decided that the Respondent has had proper Notice of the Hearing, had received the Directions but has chosen to ignore them for reasons best known to himself. It does not accept his explanation about his missing secretary or instructing lawyers as being credible. The Tribunal was satisfied that he had received the Applicant bundle and that no prejudice would be caused in hearing the matter today.

7. In respect of other matters, Mr. Warwick indicated that the Applicant would only proceed in respect of Flats 1, 2 and 4. He indicated that Flat 3 had a different lessee and that Flat 5 had paid the service charge in any event.

The Law

8. 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.

9. 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."

10. 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.

The Issue

11. The only matter in dispute was the reasonableness of the service charge up to 2009/10.

The Case for the Applicant

12. Mr. Warwick relied on the Applicant Statement of Case which the Tribunal has read in full. He added in oral submission on behalf of the Applicant said that Clause 3(d) of the Lease allowed for service charges to paid both for actual expenditure incurred but also for such reasonable expenses to be paid in advance. He pointed out that in respect of Clause 4 (6) of the Lease; the Lessor was not obliged to carry out his repair and maintenance obligations subject to the payment of the service charges. He highlighted the Landlord's obligation to insure the property.

13. In respect of the subject of the County Court claim, he said that the half yearly amount in respect of each flat, namely £330 was based on a professional estimate carried out by Mr. Elisha for subject premises of this kind. He pointed out the insurance certificate as evidence of insurance together with producing a letter dated February 2008 from the Managing Agents to the Respondent informing the latter of their role and respective obligations. He pointed out that the Respondent has never paid any service charge.

The Case for the Respondent

14. The Respondent, as had been noted has not complied with Directions. Mr. Sandhu addressed the Tribunal in oral submission. He said that he had no problems with the insurance element of the Service Charge demand but thought that the rest of it was "outrageous." He submitted that these were figures plucked from thin air. He said that the Respondent had not been able to contact the Freeholder at any time and had repaired the roof of the premises as well as insured the premises out of their own expenses. He had no documentary proof to this effect. (It should be noted that even if he had produced the same at the hearing, the Tribunal would not have accepted it due to the abject failure to comply with Directions. As already noted the Tribunal views the explanation given as highly dubious)

The Tribunal's Decision

15. 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.

16. 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.

17. The Tribunal are satisfied that the yearly service charge sum of £660 (two half yearly amounts of £330) plus the sum of £229.20 per flat in respect of insurance is payable by the Respondent. This equating to the total sum as described in the County Court Particulars of Claim as being £2667.60 in respect of the three flats in the subject premises which are before the Tribunal. The Tribunal deems this a recoverable and reasonable sum under the terms of the Lease.

18. Mr. Sandhu conceded at the hearing that he had no problems in paying the insurance but the Tribunal were not satisfied that the sum of £660 was a figure plucked from thin air. The Tribunal were satisfied by the costing relied on by Mr. Elisha as being a reasonable sum for this type of property. The Tribunal noted that the Flats were all sub let and that there was considerable wear and tear in the common parts in line with this type of letting.

19. The Tribunal did not accept the explanation that the Applicant was un-contactable; the Respondent knew in February 2008 who they had to deal with, that is the Managing Agents. Even if the Respondent had carried out roof repairs and insured the property, which the Tribunal does not accept he did, these were not their obligations under the Lease and they cannot now seek to off set that against any potential service charge liability that does arise under the Lease.

20. The Tribunal notes with concern that the Respondent has never paid any service charge at all, even though they knew in February 2008 to whom they should pay it and certainly they would have known in 2007 when the lease was executed of their obligation to pay it.

21. The Tribunal therefore finds in favour of the Applicant. The sum of £2667.60 is the amount that the Tribunal determines is recoverable and reasonable. The matter of costs and any ancillary matters arising will be determined by the County Court when the matter is transferred back to Dartford County Court.

Chairman...

Date.....18/8/10.....................................