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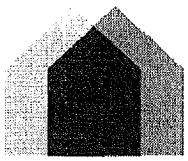

Residential
Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

LON/00AC/LSC/2009/0661

Applicant:	**Colman Court Limited**
Appearances:	**Mr Wagner of Wagner & Co**
Respondent:	**Mr Nadeyl Salimi-Tehrani**
Appearances:	**Mr Salimi-Tehrani appeared and represented himself**
Property:	**5 Colman Court, Christchurch Avenue, Finchley, London N12 ODT**
Leasehold Valuation Tribunal:	**Ms Helen Carr** **Mr Richard Shaw FRICS** **Mrs Jane Clark JP**

Date of Decision: **24th February 2010**

Decision

The Tribunal determined that the Respondent is liable for the service charges demanded but only to the extent of the actual expenditure incurred by the Applicant during the relevant service charge year. The Tribunal further determined that there is no power within the lease to require payments into a reserve fund and therefore that monies held in reserve on behalf of the Respondent should be credited to the Respondent.

Background

1. The Tribunal was dealing with an application made under section 27A of the Landlord and Tenant Act 1985, as amended (the 1985 Act) for a determination as to liability, and if so, the extent of, the Respondent's liability to pay service charges.

2. The application relates to 5 Colman Court, Christchurch Avenue, Finchley London N12 0DT (the premises).

3. The premises is one of 35 flats. Colman Court is in 2 blocks in a development which is approximately 40 years old.

4. The Applicant is the freeholder of the premises. The Respondent is the lessee of the premises pursuant to a lease dated 12th January 1977 and made between Calabar Developments Limited and Irving Robin Jules Zackheim.

5. An oral pre-trial review was held on 11th November 2009. At that stage the Respondent made an application for the Tribunal to consider limitation of landlord's costs of proceedings under s.20C of the Landlord and Tenant Act 1985.

6. The matter was set down for hearing on 3rd February 2010.

Appearances

7. Mr Wagner of Wagner & Co. Ltd appeared for the Applicant. He was accompanied by Mr Simon Gerrard of the Applicant's managing agents, Martyn Gerrard, who gave evidence for the Applicant.

8. Mr Tehrani appeared and represented himself.

The Hearing

9. The hearing of this application took place on 3rd February 2010.

10. At the commencement of the hearing the Respondent produced a bundle which he had not previously made available to the Applicant. There was a brief adjournment during which copies of the bundle were given to the Applicant's representative Mr Wagner who was given an opportunity to read the papers.

11. Mr Wagner agreed to proceed with the hearing. However there were certain issues raised by the Respondent which the Applicant had not had the opportunity to consider properly. The Tribunal therefore heard the evidence but issued directions which provided an opportunity for the Applicant to make further submissions in connection with matters raised by the Respondent. Those submissions were received by the Tribunal on 24th February 2010.

12. The Tribunal also made arrangements to inspect the common parts of the property following the hearing. The inspection took place on 19th February 2010.

13. The Tribunal identified the issues as follows:
    a. The liability of the Respondent for service charges demanded in years 2007/08 (in the sum of £2125.83) 2008/09 (in the sum of £1194.51) and 2009/2010 (in the sum of £2216.81)
    b. Payability of monies to a reserve fund
    c. The reasonableness of the service charge demands
    d. The consultation process in connection with major works which are intended to be carried out by the Applicant to Colman Court.

14. At the hearing the Respondent also raised the issue of a sum of £750 which he stated that he had paid to the Managing Agent in cash in part payment of service charge arrears some time in 2007. He did not get a receipt but received an acknowledgement of the payment some time later. Subsequently the money was debited from his account. Mr Gerrard believed that the £750 was wrongly credited to the Respondent as it had been paid by a different lessee in respect of a different property. It was for that reason that the money was subsequently debited. The Tribunal determined that the issue was one of debt and fell outside of its jurisdiction. The Respondent is urged to raise the matter formally with the Applicant's managing agent and to seek legal advice if the matter cannot be resolved.

15. The inspection of the common parts took place on the morning of 19th February 2010. The site was in good condition and appeared well cared for. The common parts were clean and tidy. The bin area was secure and clean. The Tribunal noted that the flooring and the walls to the entrance area were worn and appeared dated. The Respondent had requested that the Tribunal pay attention to the door closing mechanism to the block. The Tribunal noted that it required to be closed by the person entering or leaving the block and did not fully close automatically. The door mechanism at the entrance of another block which the Tribunal also inspected closed without the need for any additional pressure.

Determination

16. The salient evidence is dealt with under the appropriate headings below.

Liability

17. The liability of the Respondent to pay service charges is set out in the lease. Clause 3 of the First Part to the Eighth Schedule contains the covenant on the part of the tenant to pay his proportion of the Lessor's expenses. Clause 1 of the Seventh Schedule provides that the lessee's proportion is one thirty-fourth of the total. The Lessor's expenses are set out in the Sixth Schedule to the lease.

18. It is therefore clear that the Respondent is liable to pay service charges and the Respondent appears to accept that prima facie liability.

19. The issue however that the Respondent raises is whether he is liable to pay the full amount demanded. The amounts demanded are in anticipation of expenditure. However the expenditure has not, in the three years at issue, exhausted the amount demanded. In these circumstances the Applicant has retained the excess monies in a reserve fund rather than credit the payments against the next year's service charge demand.

20. The Respondent's argument is that there is no power in the lease that requires lessees to contribute to a reserve fund. This was the next issue that the Tribunal considered.

The Reserve Fund

21. Mr Wagner argues that the Sixth Schedule of the Lease provides the legal authority for the existence of a Reserve Fund.
22. The relevant provisions are as follows:

    The Lessor's Expenses

    Moneys actually expended or reserved for periodical expenditure by or on behalf of the Lessor at all times during the term hereby granted on the following:-

    1. Keeping the gardens and pleasure grounds clean tidy and cultivated
    2. Keeping all roads drives walks and paths of the Reserved Property in reasonable repair and clean and tidy
    3. Repairing re-building re-pointing or otherwise treating as necessary and keeping the Reserved Property in reasonable repair order and condition and renewing and replacing all worn or damaged parts thereof
    4. Painting with two coats at least of the best quality paint and in a proper and workmanlike manner all the inside wood iron stone and other work of

the Reserved Property which usually are or ought to be painted in every fourth year of the duration of the said term

23. Mr Wagner argues that the reserve fund is justified by the second limb of the first sentence of the Schedule. He argues that this allows the Applicant to collect monies that are then reserved for periodical expenditure. He says for instance that the Lessor could demand every year ¼ of the estimated cost of painting the inside of the Reserved Property as in point four of the Schedule.

24. The Tribunal disagrees with Mr Wagner's argument that the Applicant's handling of the Respondent's payments is justified by the Sixth Schedule. Firstly the Lessor has not done as Mr Wagner says. It has not estimated ¼ of the cost of the painting and demanded that money. What it has done is estimated service charge expenditure annually and then rolled over unspent money into a reserve fund as well as collecting a regular amount each year. The Tribunal considers that much clearer wording is required to justify the Lessor accumulating monies in a reserve fund in this way.

25. Mr Gerrard gave evidence suggesting that this is the only sensible way to manage a property. This may be so, however the Lessor can only do what the Lease entitles it to do. In this case the Tribunal **determines** that there is no power within the Lease to accumulate monies in a reserve fund. Therefore the Tribunal **determines** that the Respondent is only liable for the service charge monies actually expended during the service charge year.

Breach of covenant

26. The Respondent argues that the Applicant is in breach of its covenants. He points to the failure of the Applicant to carry out work on the internal common parts every four years and external works every three years. He states that these works are required.

27. The Tribunal has considered this argument. Careful reading of the relevant clauses of the Sixth Schedule suggests that there is no requirement upon the Lessor to carry out the work. The provision gives a power to the Lessor rather than imposing an obligation.

28. Even if that were not the case the Tribunal could not see any value in the Respondent's argument. If the Applicant had carried out work more regularly the Respondent would have been required to pay for it. Any failure of the Applicant to carry out work has therefore not caused any loss to the Respondent.

Lease percentage

29. The Respondent raised a query about whether his one thirty fourth share of the total of the service charges demanded for the block was a fair share for him to

pay. The Tribunal can only point to the provision in the lease that he pays that share. The Lease sets out his contractual obligation and there is no further help that the Tribunal can give on that matter.

Reasonableness

30. The Respondent raises several issues relating to the reasonableness of the service charges demands. He argues
    a. that the Applicant has failed to repair the door to the block properly leading to burglaries in the block
    b. that the intercom is not working properly
    c. that there is a problem with the management of rubbish on the site which the Applicant has failed to manage
    d. That the Applicant issues service charge demands on an irregular and an inappropriately frequent basis

31. These matters go to the reasonableness of the management charges which form part of the service charge demands

32. The Tribunal inspected the door mechanism and considered that the Applicant has kept it in reasonable repair.

33. When the Tribunal visited the property it appeared that the rubbish was well managed. The site was clear of rubbish and the bin store was clean.

34. It may well be that the site had been cleared on that day in anticipation of the Tribunal's visit. The Tribunal was conscious when carrying out its inspection of the evidence of the Respondent that the site was frequently rubbish strewn. However it accepted the evidence of the Managing Agent that whilst there was a problem with the management of rubbish on the site because tenants would not use the bin store, clearing of the site was organised frequently. The Tribunal considered that the Managing Agents were dealing with an intractable problem as well as they were able to.

35. The Tribunal is concerned that the Managing Agents do not appear to follow the provisions of the Lease in making their service charge demands. The final paragraph of Schedule 7 of the Lease provides that service charge demands will be made annually in advance for the year ending on the twenty fourth of June and then adjusted appropriately for the following year. The Managing Agents seem to issue accounts on an 'as and when' basis. No doubt they do this to ensure that lessees are fully aware of their financial obligations. However the Tribunal would like to make it clear that there is no power to issue accounts in this manner and would advise that they adjust their practices.

36. Nonetheless the Tribunal does not consider that the issues that the Respondent raises are sufficiently serious to enable it to determine that the management charges it demands are unreasonable.

37. A more substantial issue of reasonableness was raised by the Respondent. He argued that the work that the Applicant proposed carrying out to the communal areas of the premises were neither necessary nor essential.

38. He also argued that the Applicant had failed to comply with the consultation requirements required by section 20 of the Landlord and Tenant Act 1985. His point was that monies had been collected towards the work prior to the section 20 procedure.

39. The Applicant argued that it was entitled to carry out the works under the terms of the lease. It also argued that the lessees who had attended the annual general meeting had asked for the work to be carried out. Finally the Applicant pointed out that it had started the section 20 consultation process and that it would not have been appropriate to start it earlier. Consultation was not required before monies were reserved for work. It is required prior to the execution of the works.

40. The Tribunal considered the terms of the lease and in particular the clause set out above. It **determined** that the proposed works were authorised by the lease. It also considered that the Applicant was carrying out its responsibilities under the lease appropriately in refurbishing the common parts. The work was required to keep the property in reasonable condition. Also, after having read section 20 carefully, the Tribunal agreed with the Applicant, that the appropriate time for consultation was prior to the execution of the works and not prior to making demands for payments to the reserve fund, therefore it **determined** that there had been no breach of the statutory requirements.

41. The Tribunal noted that the Respondent has the opportunity to respond to the consultation and set out his concerns and, once service charge demands are made in connection with those works, he will be able to challenge these if he considers that the demands are not reasonable.

42. The Tribunal wishes to make some observations about this matter. Firstly the relationship between a lessor and a lessee is a long term relationship and it is important that it is maintained appropriately. Disputes between lessors and lessees appear to be almost inevitable, no doubt because the lessor is asking the lessee for money albeit to provide services that are ultimately for the benefit of the lessee. The onus is particularly on the professionals involved in that relationship to behave in a manner that stops disputes becoming personal. The Tribunal was concerned that during the hearing both Mr Wagner and Mr Gerrard made their feelings about the Respondent very clear through facial expressions and body language. The Tribunal was also concerned that Mr Wagner used the opportunity that the Tribunal provided for him to make legal submissions on particular issues to make personal comments about the Respondent. This was inappropriate. The Tribunal would like to reassure the Respondent that these observations played no part in the decision that it reached.

43. Secondly the Tribunal is aware that its interpretation of the lease may cause some difficulty for the lessor as it will no longer be able to require lessees to

make payments into a reserve fund. It reminds the Applicant that it can vary the lease if all parties agree, and the Tribunal can see the advantages to both the Lessor and the Lessee of the existence of a reserve fund and a power to issue service charge demands more regularly. If an agreement cannot be reached then an Application can be made to the LVT.

44. The Respondent also made an application under section 20C of the 1985 Act for an order that the costs incurred by the Applicant arising from the proceedings should not be included in any future service charges account Whilst it considered that it was appropriate that some charge be made by the Applicant for its appearance at the tribunal it considered that the Applicant's handling of the matter exacerbated rather than narrowed the issues in dispute. It therefore determined that there should be a limit of £250 on the costs.

Signed Helen Carr

Dated 24th February 2010

Helen Carr