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Residential Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case References: LON/00AK/LBC/2010/0007 and 0008

DECISION on costs OF THE LEASEHOLD VALUATION TRIBUNAL on applications under section 168(4) of the Commonhold and Leasehold Reform Act 2002

Property:	Flat A, 545 Green Lanes, London N13 4DR
Applicant:	IZA Limited (Freeholder)
Represented by:	Mr P. Jarvis of Counsel
Also present:	Mr R. A. Shutler FRICS; Metropolitan Building Consultancy
Respondents:	
Flat A:	Ms Angela Cuffaro
Represented by:	No appearance
Flat C:	Mr Antonino Cuffaro
Represented by:	No appearance (Leaseholders)
Third Party:	Bank of Scotland PLC; Mortgagee of Flat C
Represented by:	Mr K. S. Lomas FRICS FBEng; Upsdales, Chartered Surveyors
Decision:	20th April 2010

Tribunal: Mr L.W.G. Robson LLB (Hons)
Mrs A. Flynn
Miss R.I. Emblin JP

Preliminary

1. The Applicant sought a determination under section 168(4) of the COMMONHOLD AND LEASEHOLD REFORM ACT 2002 relating to breaches of covenant in leases dated 6th February 1987 (Flat A) and 23rd April 2004 (Flat C) (the leases).

2. The Tribunal inspected the property on 12th March 2010, and agreed at the initial hearing to the request of both parties to adjourn the hearing until 19th April 2010. Prior to the adjourned hearing the parties agreed all matters save the question of costs. The hearing was therefore cancelled and the parties made written representations on costs, which the Tribunal considered.

Submissions

3. SE Law, solicitors for the Applicant, submitted in a letter dated 8th April 2010 that the remedial work had only been done in direct response to the applications made to the Tribunal. This showed that the applications had merit. They invited the Tribunal to make an order for costs in favour of the Applicant, and enclosed an estimate of their costs, noting their client's rights under Clause 3(9) of the leases.

4. On behalf of the mortgagee for Flat C, Wragge & Co, Solicitors submitted in a letter dated 13th April 2010 that no order for costs in the Applicant's favour should be made, but without giving reasons. Tucker Turner, Kingsley Wood & Co, solicitors for the mortgagee in possession of Flat A in a letter dated 14th April 2010 submitted that their client was prepared to pay reasonable costs, but noted that the estimate of costs submitted by SE Law, solicitors for the Applicant totalling £5,467.31 appeared to be joint costs for the two Respondents. The costs relating to Flat C should not be borne by their client. On 19th April Tucker Turner wrote again stating that their earlier letter was in error, and invited the Tribunal to make no order for costs. Neither Respondent took any formal part in the application or made submissions on costs.

Decision

5. For ease of reference extracts of the three (restricted) powers of the Tribunal relating to costs are set out in the Appendix below, as these are often not well understood. The submissions made to us suggested that there was some confusion over the Tribunal's powers.

6. The Tribunal decided that the submissions of the Respondents' mortgagees amounted to a Section 20C application. Dealing with the Section 20C application, the Tribunal noted the terms of the leases of the respective properties, from the evidence and from its own (in places limited) inspection of the properties that the Respondents had been in breach of clauses 3(4), 4(1) and 4(2) of the respective leases relating to repair, and that some defects were quite significant. The properties had substantially been put back into repair, apparently after pressure from the Applicant, and service of various notices.

Clause 3(9) of the Leases permitted the landlord to charge all the costs (including Solicitors', Counsels' and Surveyors' fees) in or in contemplation of any proceedings under Sections 146 and 147 of the Law of Property Act 1925. The clause is clear, and as an application under Section 168(4) of the 2002 Act is a necessary precursor to the service of a valid Section 146 notice, the costs incurred may be recovered by the landlord, subject to the terms of Section 20C of the 1985 Act.

7. The Tribunal decided that the Respondents had acted unreasonably when faced with the various notices from the Applicant, and the Tribunal proceedings, most particularly in the matter of communication. It was the Tribunal's own inspection which had established that work had been done, that the upper flat was tenanted, and on the market through agents. It was also clear on inspection that the Respondents had no system for collecting their mail. The mail for several months, including letters sent by the Tribunal, still lay in the hall of the common parts. The Tribunal considered that a more positive approach by the Respondents would have saved a great deal of cost and inconvenience, both to the Applicant and to the Respondents' own mortgagees.

8. The Tribunal decided that it would make no order under Section 20C in either case, thus allowing the Applicant to charge its costs under the terms of the leases. In doing so, the Tribunal notes that no final bill was produced to it, and although the principle of charging under Clause 3(9) of the leases has been decided, the amount of the costs, when finally demanded, may still form the basis of an application by the parties under Section 27A of the Landlord & Tenant Act 1985, if matters cannot be agreed. The Tribunal also noted the initial submission of Tucker Turner Kingsley Wood & Co dated 14th April 2010, relating to the appropriate division of the costs, which appears correct. It appeared equitable that such costs be divided equally between the Respondents for payment.

9. Dealing with reimbursement of fees under Paragraph 9, the Tribunal decided that the Applicant had been reasonable in making the application, but the cost was recoverable under the terms of the leases. In the light of the Tribunal's decision under Section 20C so no order was necessary.

10. Relating to Paragraph 10, again the Tribunal decided that no order was necessary, in the light of its decision under Section 20C.

Chairman .....
L. W. G. Robson
Date: 29th April 2010

Appendix

Section 20C Landlord & Tenant Act 1985

"(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal, or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application."

(2)……

(3) The court or tribunal to which application is made may make such order on the application as it considers just and equitable in the circumstances."

Commonhold and Leasehold Reform Act 2002
Schedule 12

Paragraph 9
"(1) Procedure regulations may include provision requiring the payment of fees in respect of an application or transfer of proceedings, or oral hearing by, a leasehold valuation tribunal in a case under-

(a) The 1985 Act (service charges and appointment of managers)
(b) – (e) ……..

(2) Procedure regulations may empower a leasehold valuation tribunal to require a party to proceedings to reimburse any other party to the proceedings the whole or any part of any fees paid by him

(3) The fees payable fees payable……shall not exceed-
(a) £500...."

Paragraph 10
"(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where-
(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) He has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed-
(a) £500, or
(b) ……."