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REF LON 00BA/LAC/2010/0004

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE-MATTER OF THE COMONHOLD AND LEASEHOLD
REFORM ACT 2002 SCHEDULE 11

AND IN THE MATTER OF 2 Kennedy Close Mitcham Surrey CR4
2AR

Applicants

Wandsworth Place
(Mitcham)
Management
Company Limited

Respondent

Martin Clapham

The Tribunal

Mr P Leighton LLB (Hons)

Date of Transfer

24th May 2010

Date of Decision

6th September 2010

Introduction

- 1 On 20 January 2010 the Applicant commenced proceedings in the Croydon County Court against the Respondent for the sum of £818.75 in respect of service charges and administration charges together with a court fee of £65 and solicitors costs of £70 making a total of £953.75.
- 2 On 24th May 2010 District Judge Banks sitting at Uxbridge County Court transferred the proceedings to the Tribunal for determination. A pre trial review was held on 14 June 2010 when directions were given for the conduct of the application. It was directed that the application could be determined on consideration of the papers alone in accordance with regulation 13 of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003. Neither party requested an oral hearing and the matter falls to be determined on the basis of the documents supplied by the parties
- 3 The Tribunal wishes to state at the outset that the bundle of documents supplied by the Applicant was inadequate and failed to comply with the directions given at the pre trial review. In particular the bundle omitted a number of the documents from the County Court, it also omitted two pages from the statement of case submitted by the Respondent and all correspondence received from the Respondent in the course of the proceedings. By producing only the correspondence sent by the Applicant the documents created a slightly misleading impression and also involved the Tribunal having to make separate reference to the documents, which have been submitted separately by the respondent on the file. If parties desire the Tribunal to deal with these applications by way of paper determinations then it is vitally important that the documents are properly prepared in accordance with the directions given

The Lease

- 4 The Respondent holds under the terms of a 999-year lease at a peppercorn rent dated 29 June 1996 which runs from the 1 January 1980.
- 5 . By clause 6 and the sixth schedule part 1 it is provided that the landlord as soon as practicable after 1st January in each year shall prepare a schedule of estimated expenditure for the year and after adjusting to reflect any credits or debits shall send a notice of the estimate to the leaseholder
- 6 By paragraph 2 of the sixth schedule the lessee covenants to pay to the management company ' a sum equal to the total amount specified in such notice divided by the number of flats within the property and development within 14 days of receiving the notice referred to in Paragraph 1
- 7 ' The administration ' is defying in part II paragraph 10 of the sixth schedule and is the costs of administering the management company including the costs of preparing and auditing accounts, the expenses of the council members and the secretary the printing and sending out of notices circulars report or accounts are holding a meeting this and all fees payable to the government or any other party. '
- 8 By the third schedule clause 11 the lessee covenants to pay all expenses (including solicitors costs and surveyors fees incurred by the company incidental to the preparation and service of any notice under section 146 of the Law of Property Act 1925 (or any statutory modification re enactment or replacement thereof) notwithstanding the forfeiture is avoided otherwise than by relief granted by the court.

The Facts

- 9 According to the statement of case of the Applicant it sent to the Respondent the Service Charges (Summary of Rights and Obligations and Transitional Provision) (England) Regulations 2007 together with

the notice for the service charge demand dated 23 February 2009 for the 2009 service charge.

- 10 The Applicant then stated that it sent a final demand dated 20 October 2009 to the Respondent and then waited for a period of 57 days for a response after which it instructed solicitors to recover payment on its behalf. The letter of 20th October 2009 indicated that if payment was not received within 14 days steps would be taken to instruct solicitors.
- 11 The Respondent stated that he responded by letter dated 28 November 2009 asking for extra time to pay the service charge but the Applicant alleges that he did not receive the defendant's letter and therefore did not respond. In the statement of case the Applicant stated that it only became aware of the letter from the bundle of papers, which the Respondent sent to the Tribunal in his letter dated 28 February 2010.
- 12 The Respondent made further payments towards the service charges and in April 2010 made a payment of £300, which the Applicant stated, would be applied to the existing arrears and costs. The Applicant contends that the Respondent having paid £739.75 remains indebted to the Applicant in the sum of £214 when taking account of all service charges and administration charges.. The Applicant maintains that it is entitled to apply all monies received from the respondent towards the clearance of this debt and thereafter payments will be credited to the 2010 service charge debt which it alleges amounts to £851.
- 13 The Respondent offered payment by postal orders in January 2010 but these were originally returned by the managing agents and only finally accepted by the agents on the advice of the Applicant's solicitors in April 2010. The Respondent paid a total of £400 which he maintains should have been applied towards the service charges for

the year 2010. He complains that the bulk of his payment has been applied to the previous debt of £339 75 for the original arrears of service charge debt as at 31 December 2009 plus administration charges.

- 14 The Respondent denies ever having received any document setting out a summary of rights and obligations and further maintains that the document exhibited in the Applicants bundle is incorrect in that it makes no reference to administration charges and therefore does not comply with schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")

The Law

- 15 Paragraph 1 (1) of Schedule 11 of the 2002 Act provides that an administration charge means an amount payable by a tenant of the dwelling as part of or in addition to the rent which is payable directly or indirectly
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant or
 - (d) in connection with a breach or alleged breach of covenant or condition in his lease
- 16 Paragraph 4 of Schedule 11 provides as follows
- "(1) A demand for the payment of an administrative charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges
 - (2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations
 - (3) A tenant may withhold payment of an administration charge which has been demanded from him if subparagraph (one) is not complied with in relation to the demand.

(4) Where a tenant withholds an administration charge under this paragraph any provisions of the lease relating to non-payment of a payment of administration charges do not have the effect in relation to the period for which he so withholds it"

A variable administration charge is defined as one not specified in the lease and the Schedule provides that the imposition of such charges are only recoverable if they are reasonable.

The Tribunal's Decision

- 17 The Tribunal is of the opinion that the Respondent is correct in stating that whether or not he received any notice setting out a summary of rights and obligations, that notice did not comply with the provisions of paragraph 4 of schedule 11 and consequently the demands for administration charges are not valid until such demand is served. It is by no means clear in a paper determination to ascertain whether or not the summary of rights and obligations was in fact served, bearing in mind that it is heavily disputed. It is clear, however, that the notice exhibited in the papers does not comply with the summary of rights and obligations relating to administration charges which is in a different form from that relating to service charges
- 18 There is nothing, however, to prevent the landlord serving a demand in the future with the appropriate notice to recover the administration charges but by reason of paragraph 4 (4) no further administration charges can be made during the period within which the Respondent was validly withholding payments of administration charges.
- 19 Where a debtor makes no stipulation as to where a payment is to be allocated then the creditor is entitled to allocate that payment as he pleases and will generally clear earlier debts before applying the payment towards later debts.
- 20 On the other hand where a debtor specifies that the payments made are to be applied to the later debts, particularly where earlier debts

may be disputed then the creditor must apply the monies as requested.

- 21 In this case the Tribunal is satisfied that the Respondent was disputing his liability for administration charges and he maintains that they are not payable unless they are held to be reasonable by the Tribunal. The Tribunal is satisfied that he stipulated that payment should be made to the later service charge obligations as the administration charges were disputed. .
- 22 The Respondent alleges that the administration charges in this case are unreasonable on the following grounds
- (a) The Applicant failed to respond to the request to allow further time of the payment as requested in the letter of 28 November 2009
 - (b) The Applicant did not assist in having the matter transferred from Uxbridge County Court to the Tribunal
 - (c) By failing to attend the pre trial review listed on 31st of March 2010 and failing to notify the Tribunal or the Respondent that they would not attend they were acting unreasonably
 - (d) By failing to respond to the respondent's offer to settle the matter in the sum of one hundred pounds plus VAT or 15%
- 23 Whilst the Tribunal does not consider that the Applicant has been particularly helpful in the conduct of this matter it does not consider that any of the above matters would disentitle it to recover administration charges if they are recoverable under the terms of the lease
- 24 The Tribunal considers that if the Applicant serves the appropriate notice together with the summary of rights and obligations appropriate to administration charges it would be entitled to recover an administration charge in respect of the delay in payment

- 25 The subsequent claims for administration charges arising out of the non-payment of the original demand are not allowed at the applicant and the Tribunal considers that an appropriate figure for the late payment in this case would be £200
- 26 However on the basis that the Tribunal finds that the appropriate summary of rights and obligations has not yet been served the present application is not allowed and the Tribunal determines that the respondent is not liable to pay the administration charges claimed. Accordingly all payments made by the respondent shall be credited to his service charge account and any claim for administration charges should be billed separately.

Chairman Peter Leighton
Dated 7th September 2010

