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Residential
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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL
LANDLORD & TENANT ACT 1985 SECTIONS 27A & 20C**

Ref: LON/00BJ/LSC/2009/0649

Property: First Floor Flat
(number 3) 8 Ulva Road
London
SW15 6AP

Applicants: (1) John Elliott Needleman
(2) Anne-Marie Wolfryd
(through their managing agents –
Stephen Michaels Management Services)

Respondent: Ralph Rettke-Grover

Appearances: Ms Corinne Iten (of Counsel)
Mr S Michaels (of Stephen Michaels
Management Services)

For the Applicants

The Respondent in Person

Date of Directions: 28 October 2009

Date of Hearing: 15 March 2010

Date of Decision: 23 March 2010

Members of Tribunal: Mr S Shaw LLB (Hons) MCI Arb
Mrs S Redmond MRICS
Mr L Packer

DECISION

INTRODUCTION

1. This case involves a claim for the determination of the payability of certain service charges pursuant to Section 27A of the Landlord and Tenant Act 1985 (“the Act”) and also a claim for a determination of the liability to pay a certain administration charge pursuant to Section 11 of the Commonhold and Leasehold Reform Act 2002. This latter claim was in fact abandoned at the hearing before the Tribunal, and therefore no finding is made in this regard.
2. This case was initiated in the Hitchen County Court and was transferred by Order of the Wandsworth County Court dated 7 October 2009 to this Tribunal. In the County Court a claim was made by John Elliott Needleman and Anne-Marie Wolfryd (“the Applicants”) for alleged arrears of service charge in respect of the First Floor Flat, (number 3), 8 Ulva Road, London SW15 6AP (“the Property”). The Applicants are the freehold owners of the house of which the property forms part, and the claim was made against Ralph Rettke-Grover (“the Respondent”) who is the long leasehold owner of the property.
3. In the Pre-Trial Directions, the issues to be determined were identified as the reasonableness of the service charges demanded during the service charge years 2006/2007 and 2007/2008. In addition there was, as indicated above, an issue about administration charges which no longer concerns the Tribunal. As it transpired when this matter came before the Tribunal it was discovered that the alleged outstanding arrears in the County Court (which were £1,882.47 after excluding the ground rent) were indeed in relation to these years, but included a running total from earlier years dating back to 2004, about which there was some argument. It was accepted before the Tribunal that to some extent the position going back to 2004 would have to be considered, if only to establish that the correct running total has been used, but in fact, if determinations were made about particular disputed items, the correct figures could then be calculated. Accordingly, the Tribunal established with the parties the main disputed items during these relevant service charge years. It is proposed to deal

with the disputed issues below on an individual basis, and the cumulative affect of the Tribunal's findings in terms of the sum now due from, or to be credited to the Respondent, will be referred to in the Decision, but can be explained in more detail in the Schedule attached hereto.

THE HEARING

4. At the hearing, the Applicants were represented by Ms Corinne Iten of Counsel, and Mr Stephen Michaels of Stephen Michaels Management Services (the Applicants' managing agents) also attended before the Tribunal. A bundle of documents had been prepared on behalf of the Applicants which were before the Tribunal. In addition the Respondent appeared in person and represented himself, and a further supplementary bundle of documents to which he wished to refer the Tribunal was also prepared and put before the Tribunal. Both parties had prepared useful Statements of Case and had prepared their own schedules to set out the alleged sums due or to be credited.
5. As indicated, it is proposed to deal with the disputed matters in turn.

MANAGEMENT FEE

6. In the accounts or statements of costs prepared on behalf of the Applicants for the years 2004 – 2008, a management fee has been included in a total sum ranging from £1,200 - £1,400 per annum. This was on the basis of a charge of a fixed fee. However, early in the proceedings, it was conceded on behalf of the Applicants that although this may be the usual way of charging a management fee, it transpired that the lease in question in this case does not provide for charging of a fee in this way, but has its own formula for such calculation, by reference to a percentage or fraction of the total amount expended by the lessor in any particular year, depending on the particular type of expenditure concerned (see page 20 for the relevant section of the lease within the Applicants' bundle). The result of this was that Ms Iten of Counsel on behalf of the Applicants frankly conceded that the sum included in the claim in the County Court and transferred to this Tribunal could not be sustained by

reference to the lease, and she therefore recalculated the sums due for the years 2004 – 2007 and which amounted to £165.33, £268.22, £87.76 and £84.50 respectively for the Respondent's property. This required credits totalling £644.18 to be made to the service charge account, and the interim charge for 2008 also had to be revised from £337.67 to £84.42. The overall credits in this regard are set out in the schedule attached hereto, and the appropriate deductions therefore made from the Respondents' service charge account.

ACCOUNTANCY FEE

7. The concession as to the reduction in management fees, restricted the ambit of challenge to various other particular heads of expenditure, the first of which was the claim made in respect of an accountancy fee. An annual accountancy fee charge was made to the service charge account for the years 2004 – 2008 in sums ranging from £350 per annum until the most recent year in the sum of £396.75. The Respondent's case in this regard was that 8 Ulva Road was a modest conversion involving just four flats the expenditure was uncomplicated, and the preparation of appropriate accounts was a very simple matter which the Applicant could have done himself without the assistance of any accountants. He also argued that a provision in the lease (see page 21 of the Applicants' bundle) provided that: "*a copy of the certificate for each such financial year shall be supplied by the lessor to the lessee on written request and without charge to the lessee*".
8. On this basis he said that the lease itself indicated that no charge could be made for accountancy services since this certificate had to be supplied gratuitously.
9. The Applicants argued that the lease requires the preparation of a certificate for each financial year, which itself is predicated upon proper expenditure accounts being prepared, and that it is perfectly reasonable in the circumstances to engage accountants to do this in a professional manner. They also argued that the provision referred to by the Respondent was simply indicating that the cost of provision of the certificate itself could not incur a particular charge, but that this did not preclude a reasonable charge for the preparation of accounts.

10. The Tribunal concurs with the position argued on behalf of the Applicants. The Royal Institution of Chartered Surveyors recommends that accounts be professionally prepared and in any event the Tribunal does not consider it unreasonable to engage accountants to carry out this function for the purposes of the Act. It seems to the Tribunal to be legitimately part of the "*total amount expended by the lessor*" (see page 20 of the bundle) for the purposes of calculation of the service charge under the terms of the lease. Moreover, the Tribunal accepts that the proper construction of the provision referred to in the lease above relates specifically to the provision of the certificate rather than the preceding work of preparing the accounts. The sum claimed is within the band of reasonableness so far as the Tribunal is concerned. It is fair to say that the Applicants' managing agents might perhaps have carried out better market research to see whether these relatively straightforward accounts could be prepared for somewhat less; however in the scheme of things, the Tribunal accepts that it is unlikely that a particularly significant saving would have been made, and of course applying the Respondent's proportion of contribution overall, the sum involved would have been relatively minimal. Accordingly the Tribunal allows for each of the relevant years the accountancy fee as charged.

BANK CHARGES

11. The Respondent challenged the inclusion in the service charge expenditure each year of sums varying between £11.73 to £52.00, in respect of bank charges. The Applicants' explanation of these charges was that they were perfectly ordinary bank charges made by the Applicants' bank in respect of a business account which, unlike a personal account, does attract some charges. The Respondent argued that these charges had come about because the Applicants or their managing agents had failed to credit to the management account some monies paid by the leaseholder of the top floor flat, and as a result overdraft charges have been incurred.

12. So far as the Respondent's allegation is concerned, there is no documentary evidence to establish that there had been such a misappropriation of funds, nor any supporting evidence from the top floor flat leaseholder. The sum involved is really very small indeed as far as the Respondent is concerned (one quarter of the sums referred to above, plus the Management fee of 15% of that sum) and it seems to the Tribunal that the argument in this respect was wholly disproportionate to the sum involved. These charges seemed to the Tribunal to be perfectly reasonable and no deduction is made in this regard.

LOFT REPAIRS

13. In 2005 some repairs were carried out in the roof space of the property, as a result of which there was expenditure a total sum of £479.81, part of which expenditure was put to the service charge account. The Respondent challenged the sum claimed on the basis that there were some trees growing close to the property, from which squirrels had managed to penetrate the roof space and do certain damage. He argued that competent management would have anticipated this eventuality, and that the trees should have been pruned previously so as to avoid this risk arising. Further, he argued that under the lease of the top floor flat (see page 147 of the Respondent's bundle) and under the relevant part of his own lease (see page 18 of the Applicants' bundle) he, as the Respondent, had no liability to pay for repairs within the roof space, and that these were all the responsibility of the top floor flat leaseholder. Alternatively he argued that only a small part of the costs were communal costs, and part of the work done in the roof space was effectively by way of improvement rather than repair for which he received no benefit.
14. The Applicants pointed out that under clause 2(3) of the top floor leaseholder's lease (see page 151) that leaseholder was demised only "*the ceilings and floors of and in the premises and the joists and beams which the said floors are laid upon... provided always that should the said joists or beams need repair, alteration or replacement such work will be carried out by the lessor at the expense of the lessee*".

without argument and so the accounts should be adjusted accordingly. Further as mentioned above, the administration fee of £200 was abandoned on behalf of the Applicants and the calculation of the sum due should also be adjusted accordingly.

COSTS

18. The Respondent requested the Tribunal to make a Direction under Section 20C of the Act confirming that no sum referable to the preparation for and conduct of these proceedings be added to his service charge account. Of course, so far as the Applicants are concerned, any such claim would have to be predicated upon a provision enabling such a deduction to be made within the lease. When the Tribunal requested Ms Iten on behalf of the Applicants to direct the Tribunal to the provision in the lease entitling any such charge for legal costs to be made, Ms Iten referred the Tribunal to the lessees' obligation (see page 25 of the Applicants' bundle):

"To pay all expenses (including solicitor's costs and surveyor's fees) incurred by the lessor incidental to the preparation and service of a Notice under Section 146 of the Law of Property Act 1925 notwithstanding that forfeiture is avoided..."

19. Of course this is not a provision which can be stretched to permit the costs before the Tribunal to be recouped, and does not amount to the "*clear and unambiguous*" type of covenant required on the authorities to enable such a charge to be made. Although not formally abandoning the point, Ms Iten, with the good sense demonstrated by her throughout the hearing, did not vigorously argue the point.
20. In the circumstances the Tribunal does indeed accede to the Respondent's request that a Section 20C Direction be made in this case, principally on the basis that there is no provision in the lease for recovery of such costs in any event. Accordingly no such costs should be added to the service charge account.

CONCLUSION

21. For the reasons indicated above, the service charges claimed will need to be adjusted as explained in the schedule attached hereto. An amount of £644.18 is due to the credit of Respondent for overcharges on the Management fee in the 4 years 2004-07. Although accounts for 2008 have been prepared, the Tribunal confirm only the on account request for £400. Thus for the period under review the sum now payable to the Applicants is £630.74. (This does not include the concession of £50 referred to in paragraph 17. above which would reduce the amount owing to £580.74.) – A Section 20C Direction is made as requested by the Respondent and no other Orders for costs are made.

Legal Chairman:
S. Shaw

Dated: 23rd March 2010

Flat 3, 8 Ulva Road, London SW15 6AP

Schedule of Management Fees determined to be payable for years ending 31st December 2004 to 2008

Service charge year	Total Service charge	Management fee Demanded	Total expenditure (net Management fee)	Management fee charged to flat 3	Revised Management fee	Share chargeable to Flat 3	Amount to be credited (Column 5 -Column 7)
2004	5808.92	1400.00	4408.92	350.00	661.35	165.34	184.66
2005	8352.53	1200.00	7152.53	300.00	1072.88	268.22	31.78
2006	3540.38	1200.00	2340.38	300.00	351.06	87.76	212.24
2007	3453.28	1200.00	2253.28	300.00	337.99	84.50	215.50
Total to be credited to Flat 3 in respect of period Service charge owing at 31/12/2007 (2004-2007)							£644.18

Breakdown of arrears the subject of Court Referral to LVT - excluding Ground Rent

Insurance	01/12/2006	434.50	agreed	434.50
Service Charge	31/12/2007	607.55	Determined by LVT - amount to be credited per schedule above	-644.18
Insurance	01/12/2007	440.42	agreed	440.42
Service Charge	24/06/2008	400.00	Determined by LVT	400.00
Total amount owing to Leaseholder excluding Ground Rent				£630.74