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**LEASEHOLD VALUATION TRIBUNAL**

**APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985**

**REF : LON/00BK/LSC/2010/0047**

**PREMISES : Flat 1, 5 Warrington Crescent, London W9**

**APPLICANTS :** Ms Nousha Hariri and Mr Paul Kiers

**REPRESENTATION :** Mr Paul Kiers

**RESPONDENTS :** Pembertons Residential Management Limited
County Estates Management Co
5 Warrington Crescent Limited

**REPRESENTATION :** Mr Andrew Dymond of Counsel

**TRIBUNAL :** Mr O.E. Abebrese BA, LLM
Mr H Geddes RIBA, MRTPI, JP
Mrs J Clark MSR, DMS, CQSW, JP

**DATE OF HEARING :** 13th May 2010

**Date of Decision :** 7th July 2010.

## Introduction

1. This is an application pursuant to Section 27A of the Landlord of Tenant Act 1985 for a determination of the liability of the Applicants to pay service charges for the years 2005-2009 and an assessment for the year 2010. The property is a period terraced house, (the block) converted into six flats. The freehold registered proprietor of the block is 5 Warrington Crescent of which the Applicants hold a share. The Applicants are long leaseholders of flat 1 in accordance with a lease dated 19th November 1984 for a term of 125 years. The Respondents are the managing agents of the block. The Tribunal noted that the property is now managed by Westbourne Estates, this is confirmed in a letter dated 10th March 2010.

2. The Applicants in the application contend that
    1) the service charge accounts have not been calculated in accordance with the lease
    2) there has been a large increase in the service charges
    3) the Respondents have failed to maintain separate account ledgers for main and interior block maintenance
    4) revenue reserves do not appear to have been recorded and collected from the previous managing agents
    5) no information has been provided to the lessees reflecting provisions made in the balance sheets
    6) accountants certificates have not been issued in accordance with the lease provisions
    7) service charge expenditure accounts have only been made available a long time after the period to which the accounts relate
    8) the Respondents have failed to respond to requests for information about service charge demands
    9) the insurance premiums for the property are uncompetitive the Respondents have failed to serve valid Section 20 notices
    10) the Company has failed to hold Board meetings.

3. The Tribunal are therefore requested to determine whether the Applicants are liable to pay the re-charges, whether the Respondents have complied with the statutory provisions for recovery of re-charges and whether the charges are reasonable

## Service charge provisions under the terms of the lease

4. Service charges are apportioned by floor area with the Applicants contributing 21.7221% of the re-charges in respect of the Main Block Expenditure and 26.9961% of the Interior Block Expenditure. The main block expenditure is defined as *(a) the landlord costs in observing and performing those covenants on its part contained in clause 3.* Clause 3.18 includes an obligation to keep in good and substantial repair the structure of the block and common parts, external decoration and lifts etc. Clause 3 also deals with the cost incurred in calculating the expenditure of the main block, management and administration costs and other expenditure incurred in the management of the block, which includes accountants, solicitors and surveyors fees. Internal block expenditure is defined as those re-charges relating to the decoration, fixtures and fittings and lifts. Schedule 3of the lease sets out the provisions regarding when service charges must be paid and how they will be calculated.

## Hearing and the evidence

5. The Tribunal noted as a preliminary issue that, although directions had been served on all the parties, the directions had not been complied with. It was determined that the hearing of the application should proceed on the basis that all relevant parties to the proceedings were deemed to have been served with notice of the hearing and the contents of the directions issued at the pre-trial review. At the commencement of the hearing the Applicant Mr Kiers took the Tribunal through the essential provisions of the lease. As indicated clause 3 of the lease deals with the costs of the landlord in performance of covenants in relation to the block. Schedule 3, states that the financial year to which the service charges relate is the 25th day of December in each year to the 24th day of December in the following year or such other annual period which the landlord may determine from time to time. The 'relevant financial year' means the financial year for which the amount of service charge is being determined. Clauses 5 and 6 of the 3rd Schedule submitted are important in the context of the application. Clause 5 deals with the expression Main Block Expenditure and this "*includes respectively not only the cost of expenses and outgoings which have actually been disbursed incurred or made by the Landlord during the Relevant Financial Year in respect of the Main Block Expenditure or Interior Block Expenditure but also such sum or sums on account of any other costs expenses and outgoings which the Landlord shall have incurred at any time prior to the commencement*

*of the Relevant Financial Year or may incur after the Relevant Financial Year in respect of the Main Block Expenditure or Interior Block Expenditure"* at the discretion of the accountant.

6. Clause 6 states that as soon as the accountant has prepared the total amount of service charges for the relevant financial year a certificate should be prepared containing a summary of the costs expenses and outgoings incurred by the landlord during the relevant financial year in respect of the main block and the interior block expenditure. It was submitted that the effect of clauses 6-9 of the 3rd Schedule of the lease is that the certificate must be provided at the end of the financial year and payment is based on performance of the lease. Furthermore, no accounts were provided in 2006 and 2007. Accounts were provided in 2009. The accounts for the year 2007 were not broken down between main and internal block expenditure and the sums payable by the leaseholder were not broken down as between the main and internal block expenditure. No accounts were issued for 2005 but in the accounts for 2006 there is a comparison with 2005. In the 2006 accounts there is no breakdown of the headings. It was submitted by Mr Kiers that the above points are relevant to the issue of liability to pay, in particular whether the property is being properly managed. The sums being claimed, it is submitted, do not comply with the provisions of Section 19 of the Landlord and Tenant Act 1985 as they had not been reasonably incurred. It was noted that the Applicant ..(does not provided)..? figures to the Tribunal suggesting the amount of deduction that should be made by the Tribunal except that the deduction should be made under the heading of general management of the property and accounting fees.

7. Mr Kiers submitted further that he has been paying charges for the last six months and he has not been credited for this. This is shown on Tab 4 of the hearing bundle and the bill dated 7th August 2009 for £18309.35. He says that he pays by cheque and this is not formally recognised by the Respondents as the accounts are not properly set out.

**Management fees**

8. The Applicant requested that the Tribunal set an appropriate sum in respect of management fees. There was a change of management in 2007 and they were not notified. The Applicants said that they had not been made aware of the existence of a reserve fund and the costs claimed by the managing agents had not been reasonably incurred. The Applicants submit further that as a matter of good management practice any transfer

of management should have been made after prior consultation and notification.

**Section 20 notices under The Landlord and Tenant Act 1985**

The Applicants submit that there has been no compliance on the part of the respondents with Section 20 of the Landlord and Tenant Act 1985.The managing agents have failed to provide information to the applicants which the applicants claim had been legitimately requested. The relevant items in question are water pressure repairs, boiler repairs, roof repairs and bituminous type material applied to the area in front of the front door entrance. On the latter point the applicants do not know who authorised these works to be carried out. The water pressure demands were in excess of £820 and therefore notice and consultation is required. The respondents claimed that notices had been provided to the applicants. Furthermore there are no provisions in the lease for water tanks and in any event all tenants would have to agree on the installation of water tanks. The Tribunal were referred to a letter written by the managing agents on page 62 of the hearing bundle. The letter according to the applicant does not make sense as there is no common boiler on the premises. The letter also fails to address the position of the reserve funds. According to the Applicants the balance sheets show that the amount of monies in the reserve funds is £3,498.58. The works have not been done in any event. The Respondents in reply claim that it was necessary for the application of bituminous material to be applied to the common parts of the property. The Respondents also informed the Tribunal that they were no longer pursuing a claim for repairs and surveyors fees for the years 2004, 2005, 2006 and 2007.

**Insurance claims**

10. The Applicant claims that the insurance premium for his property is excessive and non competitive. The Applicant provided the Tribunal with the premiums for 17 Warrington Crescent where the premium charged is £2,319.13. The charge applied by the managing agents is £4,301. The Applicant did not provide the Tribunal with photographs of 17 Warrington Crescent.

## Cleaning contract

11. The Applicant claims that the cost of cleaning charges are also excessive. The cost of cleaning of the interior of the premises is £930. In 2007 he was charged £10215.30. The Applicant was not able to provide the Tribunal with the terms and the conditions of the contract or how much he had paid in 2008 and 2009.

## Decision

12. The Tribunal in reaching a decision in respect of the items in dispute between the parties considered Section 18 of the Landlord and Tenant Act 1985 ('The Act'). Section 18(1) of the Act states that *: "Service charge 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 landlords cost of management, and*
*(b) the whole or part of which varies or may vary according to the relevant cost".*
Section 19(1) of the Act states : *(1) Relevant cost shall be taken into account in determining the amount of the 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 the services or the carrying out of works, only if the services or works are of a reasonable standard and the amount payable shall be limited accordingly.*

13. Section 20 (1) of The Act deals with limitation of service charges, estimates and consultation and subsection(3) where relevant costs incurred on the carrying out of any qualifying works exceed the limit specified, the excess shall not be taken into account in determining the amount of a service charge unless the relevant requirements have been complied with or dispensed with by the court and the amount to be paid will be limited accordingly.

**Items of expenditure claimed to which Section 20 notices apply.**

14. The Tribunal found that the Respondents had not complied with the provisions of Section 20 of the Act. The items of expenditure which apply include water pressure repairs, boiler repairs and roof repairs. In respect of the boiler the Tribunal makes a finding of fact that there is no common boiler on the premises and the Respondents failed to adduce sufficient amount of evidence to persuade the Tribunal that the works that were carried out applied to the Applicants. The Respondents had failed also to provide an acceptable explanation to the Tribunal for the dissipation of the reserve funds. The Tribunal found on the evidence that the expenditure in respect of the water tank is not claimable.

The amount of £821.78 was sought by the Respondents. The requirements of Section 20 apply to the works carried out and the Tribunal found on the evidence that the requirements had not been complied with. The Tribunal make a finding of fact that there is a separate water tank for the use of Flat 1 the subject premises. The sum of £4,200 which is being claimed is not claimable by the Respondents. The Tribunal were referred to page 156 of the hearing bundle and on balance agreed with the Applicant that the liability to pay was inserted after the event. In respect of the roof repairs the Tribunal found no evidence that the works had actually been carried out. The sum being claimed £3,498 is not allowed on the basis of the reasons provided above. The Tribunal also found that the cost of the works to the vaults is not claimable as this item of works was hidden under the heading of decorations.

**Insurance premiums**

15. The Tribunal were not persuaded on the evidence provided by the Applicant that the insurance premium charged to the property is excessive. The Applicant submitted that 17 Warrington Crescent is a comparable property in respect of insurance. The premium charged for 17 Warrington Crescent is £2319.13. The Applicant is presently being charged a premium of £4,301. The Applicant however failed to provide the Tribunal with evidence of the features of his comparable property such as photographs and on balance the Tribunal did not find his evidence to be persuasive. The Tribunal on this issue concluded that the premium charged to the Applicant is not excessive.

**Fees of managing agents**

16. The Tribunal found on the evidence presented by both parties that the management fees in total are also not claimable by the Respondent. The Respondent had failed to deal with queries and questions raised by the Applicants. For example the applicants had not been informed of a change of management in 2007 and they had also failed to explain to Applicants the existence of a reserve fund. The issues which had specifically been pointed out as being relevant in the pre-trial review had not been dealt with for example those raised under paragraph E of the Directions. If the managing agents had acted upon the concerns of the Applicant this might have saved the need for a substantive number of the issues before the Tribunal.

**Accountants fees**

17. The Tribunal found on the evidence provided that the Respondents had not followed the provisions of the Schedule 3 of the lease regarding the charging of the accountant's fees but had nevertheless provided late accounts. The Tribunal allow the sum of £425 for each year. The Tribunal also found that the accounts provided were often not set out in accordance with the provisions of the lease and this created further confusion for the Applicants.

**Flashing repairs**

18. The Tribunal also found that the flashing repairs should not have been charged to the Applicants, therefore the sum of £379.50 is not recoverable.

**SUMMARY**

In summary the tribunal found in the main that the claim of the Respondents did not fulfil the requirements of Sections 18, 19 and 20 of the 'Act' and are therefore disallowed, the exception being the insurance premium which the Tribunal did not find to be excessive. The Tribunal also on the evidence accept the claims of the Applicant that service charge expenditure accounts have only been made available after

numerous request by the Applicants, accountants certificates have not been provided in accordance with the lease and lastly that revenue reserves on the information before us do not appear to have been recorded and collected from previous managing agents.

**Costs**

19. The Applicants made an application for costs of the application and hearing. The Tribunal in light of the findings above allowed the application and made an award of £250 to the applicants. The Applicants also made an application under **Section 20C** of the Act that all or any of the cost incurred should not be added on to any service charges that may be payable by the Applicants. The Applicant's application is allowed.

Date : 13th July 2010.

Signed : Owusu Abebrese, Chairman Lawyer