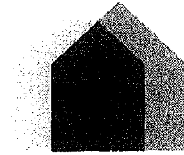
G061



RESIDENTIAL PROPERTY TRIBUNAL SERVICES

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985, SECTION 27A

COMMONHOLD AND LEASEHOLD REFORM ACT 2002, SCHEDULE 11

REF: LON/00AC/LSC/2010/0861

PROPERTY: **2A BOOT PARADE**
HIGH STREET
MIDDLESEX HA8 7HE

Applicant: METROPOLITAN PROPERTIES (COLMAN) LIMITED

Respondent GUNTER HEINRICH KRIEG

Appearances MR M THOMPSON (of Counsel)
ROGER ANDREW HARPER (Area Property Manager)
For the Applicant

THE RESPONDENT IN PERSON
MR L RICHMAN
For the Respondent

Date of Transfer from County Court: 2nd December 2010

Date of Pre-Trial Review and Directions: 1st February 2011

Date of Hearing: 11th and 12th May 2011

Date of Decision: 5th July 2012

Members of Tribunal: Mr S Shaw LLB (Hons) MCI Arb
Mr H Geddes RIBA MRTPI JP
Mrs G Barrett JP

DECISION

Introduction

1. This case has been transferred to the Tribunal by order of the Willesden County Court dated 2nd December 2010. In the County Court, Metropolitan Properties (Colman) Limited (which will here be referred to as "the Applicant") sued Mr G H Krieg (here to be referred to as "the Respondent") for alleged arrears of ground rent and service charge amounting to a balance of £4,921, as particularised in a Statement of Account appended to County Court proceedings. The claim relates to Flat 2A, Boot Parade, High Street, Edgware, Middlesex HA8 7HE ("the Property"). The matter has been transferred to this Tribunal so that the Tribunal can make a determination of reasonableness pursuant to the provisions of Section 27A of the Landlord and Tenant Act 1985 ("the Act").

The inspection and hearing

2. Directions were given by the Tribunal in this matter on 1st February 2011, on which occasion, amongst other things, it was directed that an inspection of the property would take place by the Tribunal during the morning of Wednesday the 11th May, and that the matter would proceed thereafter during the rest of that day and Thursday 12th May. That is indeed what happened, and insofar as matters arising out of the inspection become relevant they will be referred to later in this Decision. A hearing of the matter took place on the days stipulated before this Tribunal.

3. At the hearing the Applicant, which is part of the Freshwater Group of companies, was represented by Mr M Thompson of Counsel, who made submissions and relied on evidence contained within substantial documentation supplied to the Tribunal and given orally by Mr Roger Andrew Harper, who is an Area Manager with responsibility for the management of this particular property within the portfolio of the Group. The Respondent appeared in person and represented himself and relied on his own evidence and that of a Mr L Richman who is another resident in Boot Parade and happens also to be the Chairman of the Residents' Association.

4. The parties, as indicated, put before the Tribunal voluminous documentation contained within five separate files. The Applicant had prepared a Statement of Case supplemented by a full witness statement with exhibits prepared by Mr Harper. The Respondent also prepared a Statement of Case with supplementary documentation and a witness statement from Mr Richman (who also attended in person). The Applicants thereafter prepared a written response to the Respondent's Statement of Case. Other documentation, as sometimes occurs, materialised during the course of the hearing. Mr Thompson, at the inception of the hearing was asked to explain how the sum claimed in the County Court was referable to particular service charge years, and which composite parts were referable to specific service charge years, so that the Tribunal could make a finding in respect of the reasonable sums for the service charge years concerned. In fact, Mr Thompson told the Tribunal that at the Pre-Trial Review the Tribunal had concluded that the sums relate to the service charge years 2008/9 and 2009/10 (as indeed is set out at paragraph 4 of the preliminary in the Directions) but neither Mr Thompson nor the Respondent could explain to the Tribunal how that finding had been made, because

on neither of their cases were the sums restricted to those years. Mr Harper nonetheless initially endeavoured to persuade the Tribunal that it should restrict itself to those years, but frankly conceded that the sums claimed in the County Court were cumulative, and as set out in a running account attached to the Particulars of Claim, and in some respects it would be artificial to suggest that the sums claimed arose only in the years identified at the Pre-Trial Review.

5. Mr Harper also, by way of preliminary point or submission told the Tribunal that some of the issues raised, rather late in the day, by the Respondent were statute barred, and therefore should not be entertained by the Tribunal. In some cases in relation to these issues, it was not altogether easy to establish the date from which time might run for limitation purposes, given the running nature of the account relied upon by the Applicant, and the Tribunal preferred to look at the case in the round and to review at the end of the evidence whether there were matters which having heard such evidence, were clearly incapable of being pursued. Whilst not abandoning any points, Mr Thompson was content to proceed on this basis.

6. In addition, Mr Thompson helpfully conceded that there were sums claimed within the County Court proceedings which were not properly service charge sums and therefore outside the jurisdiction of this Tribunal. Having carried out the calculation he told the Tribunal that the sums referable to service charges, and in respect of which a determination was sought, amounted to £4,171.11p. It is accordingly on this figure that the Tribunal will make its determination.

The issues

7. At the inspection, and both in his written submissions and oral evidence, the Respondent identified several specific issues which he wished to rely upon, in diminution of, or in neutralising altogether, the claim for arrears. He did not essentially dispute the sum alleged to be outstanding from an arithmetic point of view, but essentially contended that he had stopped making payments of service charge (save in small sums) when he ran out of energy and patience in endeavouring to obtain attention by the Applicant's agents to the matters which were troubling him at the property.

8. The hearing therefore took the course, with the consent of both parties, of the Respondent giving evidence about the matters which he considered should be taken into account in reviewing the Applicant's claim. It is proposed therefore to deal with the matter on this basis, to summarise these points and the parties submissions on both sides, and then in relation to each matter give the Tribunal's determination.

Major works

9. During 2001, major works of external repair and decoration took place in respect of the fabric of the building of which the property forms part. In his written material, at the inspection and in oral evidence to the Tribunal the Respondent expressed concern about two aspects of that work. The first was that he was unhappy with the finish to part of the wall at the top of one of the flights of steps to his flat. Asked how much he considered it would cost to put that defect right he estimated approximately £50. He was also unhappy with the coping at the top of a wall again close to the stairs leading up to the property. He did not put a figure on the cost of

remedying this alleged defect. The Respondents contended that given that these works took place about a decade ago, the Applicant was now precluded from raising these matters. In any event, and from a more practical point of view, the issues were, in the scheme of things "de minimis". The Respondent's service charge percentage is 9.7% and so his contribution to the cost of remedying this rendering would be less than £5 and, as discovered by the Tribunal at the inspection, the complaint in relation to the coping was of a relatively minor kind. Moreover, the Tribunal was directed to a letter dated 20th May 2004 appearing at pages 1 to 3 in the exhibits to Mr Harper's statement which demonstrated (as did the account) that a credit had been applied to each leaseholder's account in the sum of £475 each relating to certain concerns about the major works. £200 of this was referable to a complaint about TV aerials which will be dealt with below but the remaining £275 was referable to matters of the kind raised under this head by the Respondent – thus demonstrating that some credit had already been afforded in relation to these matters.

10. So far as the Tribunal is concerned, the matters raised were of an historic nature, minimal in both their nature and cost of repair, and the Tribunal can see no real basis for making any adjustment to the service charge account in respect of these matters, and does not do so.

TV aerial

11. The Respondent told the Tribunal that in 1999 his TV aerial was removed during the major works. He recognised that £200 had already been allowed for compensation in this regard on behalf of the Applicant and put to his account.

However he said that this was in respect of loss of reception and not referable to the fact that he had been deprived of reception altogether. He said he wanted more than the £200 and another £100 for the loss of his aerial.

12. In response to this, the Applicant through Mr Thompson said that this was not really a service charge matter and was more in the nature of a claim for trespass to the Respondent's goods. If this is right, the matter cannot at this stage be raised by way of counterclaim or set off to the service charge claim because it is now well statute barred. In any event it was contended that the £200 compensation was more than sufficient to cure any disturbance. The Applicant pointed out that it had taken the Respondent four years to replace his aerial, suggestive of the fact that he may not have suffered significant loss?

13. There was evidence that the Respondent had obtained an estimate for the cost of supplying and installing a new aerial system and that this was £125, which he paid for in cash on 20th January 2003 (see section 5 of the Respondent's document). The Tribunal agrees with the Applicant that now, about a decade after the original incident, it is far too late for the Respondent to be raising matters of this kind but that, even if this were wrong, adequate compensation for both the replacement of the aerial and any disturbance which may have been suffered has already been paid and accepted by the Respondent. No adjustment is made to the sums claimed by reference to this complaint.

Water damage

14. At paragraph 9 of his witness statement, the Respondent contends that there was extensive water damage caused to the interior of his property by penetration from the roof of the building, consequential upon alleged lack of maintenance and care by the Applicant. The water damage caused mould and other deterioration to the interior of his property. Once again, this all occurred a very long time ago, initially in 1999, and thereafter there was according to the Applicant some recurrence in 2001.

15. It seems to the Tribunal that for the reasons argued on behalf of the Applicant, these matters do not avail the Respondent in terms of a reduction of the service charge account under the Act. First, insofar as it is to be taken into account as a set-off by way of counterclaim, the cause of action of any such counterclaim would be a breach of repairing covenant, and certainly in relation to the earlier alleged damage, the matters to which any loss relates are on the cusp of, if not outside, the limitation period of 12 years, bearing in mind the lease is under seal. The limitation point is compelling in terms of evidential difficulties, but the Tribunal prefers to base itself in rejecting this part of the Respondent's claim on the Applicant's main contention, which is that there has been settlement in respect of these matters. At paragraph 18 of Mr Harper's evidence, and in his oral evidence (and indeed as frankly conceded by the Respondent) the claim for the water damage was initially settled by the Respondent obtaining from the Applicant's insurers a sum of £3,700 in full and final settlement (see the letter of 30th July 1999 from the loss adjustors appearing at section 6 of the Respondent's documents). It seems that a further sum of £2,200 was credited to his account on 14th August 2006 (which the Respondent accepted)

but the Respondent contends that this was not enough and that he paid £3,500 in cash to contractors to remedy further damage. He thus received a total of not less than £5,900 in all arising out of this incident. He was unable to show the Tribunal any documented proof of what further work had been carried out by any other contractors nor any receipt nor any other evidence to confirm his suggestion that a further £3,500 had been paid. The Tribunal was not satisfied on the evidence that this was made out by the Respondent and again, no reduction of the sum claimed is made under this head.

16. The Respondent also raised some issues about distortion to his door brought about by lack of maintenance by the Applicant but there is correspondence to the effect that the Applicant sought, on a without prejudice basis, to remedy the position and in any event there was no evidence from the Respondent as to how in monetary terms he asserted this should be taken into account in this claim.

Car parking

17. The Respondent drew attention to a letter dated 25th April 1995 appearing at enclosure 7 of his documents, a letter written by the then managing agent some 16 years ago to a predecessor in title of the Respondent. The letter states that there is no legal right to park a vehicle at the rear of the block of which the property forms part (as is conceded) but indicates that there is enough space for all the flats to have one parking space and that an area has been marked out for the Respondent's predecessor to use in the area at the back of the block. As understood by the Tribunal, the Respondent complains that the Applicant or its agents make insufficient efforts to ensure that third parties who are not tenants of the building do

not use this parking area and that one of the consequences of this (apart from the fact that he and his visitors have difficulty in parking) is that there are increased cleaning costs for which he has to pay.

18. The Respondent has no such parking rights, as was demonstrated by reference to his lease. At best, he is permitted by the Applicant or its agents by way of informal licence, to park gratuitously at the back of the building. It seems to the Tribunal that there is no legal obligation on the Applicant to restrict access to that area in the way suggested by the Respondent, but even if this was so, it is not a matter directly pertinent to the service charges.

19. The Respondent also asserted that because third parties cars or other vehicles are left in that area, this increases the difficulty of cleaning that area (this point was not well understood by the Tribunal) and therefore 50% of the cleaning costs referable to such cleaning should be deducted from his service charge account.

20. The Tribunal accepted the evidence of Mr Harper, as supported by the documentary evidence, that the residential tenants do not in fact pay for cleaning referable to the car park. Even if this were not so, the Tribunal could not see that such cleaning costs as there were, were in any significant way increased by the lack of restriction on the persons using the car park. The number of cars or vehicles capable of fitting into that area is finite and the point made by the Respondent seemed to the Tribunal to be misconceived. No deduction is made under this head.

21. An associated issue related to a complaint (shared by Mr Richman) that the Applicant had failed to arrange for the installation of a barrier, or some other system, to regulate entry into the rear parking area. So far as the Tribunal is concerned, this does not arise as a service charge matter, and would have to be pursued by the Respondent through some other route, if so advised.

Toys etc on patio/walkway

22. At paragraph 11 of the Respondent's statement he asserts that the landing to the building is *"incredibly hazardous and untidy"* because often there are children's bicycles and toys on the landing which may block emergency exit points and cause a health and safety hazard. He told the Tribunal that despite frequent complaints to the Applicant's agents nothing was ever done about this.

23. Mr Harper's evidence to the Tribunal both in his statement and orally was to the effect that the landing is not *"incredibly unclean"*. Indeed on the Tribunal's inspection it seemed in good order, although the Respondent said that this was not typical. Whatever the position, Mr Harper said that there were young families now living in the building and that the Applicant could not police on a daily basis the leaving of toys or other children's equipment on the patio area. The Applicant's agents relied upon other leaseholders to keep a careful log and photographic record of the matters complained of, with which evidence the agents may be able to take the matter up with the leaseholders. However he had had no real complaints from anyone other than the Respondent or possibly Mr Richman. He said that there was a limit to how much the Applicants could do in such circumstances since the ultimate sanction was a threat to forfeit these people's leases, and it was extremely

unlikely that any court would take such action. However the legal costs, by comparison with the mischief to be cured, would have been disproportionate.

24. The Tribunal can see arguments both ways in respect of these matters raised by the Respondent. Taking it at its highest from his point of view, the Tribunal considers that it might reflect upon management charges, but overall the Tribunal recognised the reality of the point being made by Mr Harper. Unfortunately for the Respondent, it simply appears that the nature of the occupancy of this building has changed over the years, and it does not seem to the Tribunal that the matters he raises in this regard really touch upon service charge issues, save in the respect referred to by the Tribunal – and even in this respect, the Tribunal does not consider that it amounts to any compelling reason to adjust the service charges which have been raised.

25. The Respondent did not expressly challenge in his written evidence the claim for accountancy fees included within the service charge account and the Tribunal considered that it would not be right for such a challenge to be raised at the hearing and without notice to the Applicant. However, having said that, the Applicant did include in its own bundle the invoices and narrative from its accountants (see an example in tab 8 of their bundle), dated 16th February 2011, itemising fees for the years ending 2008 and 2009. However the issue arose when the Tribunal considered the service charge expenditure in the accounts for each year and it does appear that the accountant's fee is generally in the order of £1,000. This seems to the Tribunal on the high side in relation to a relatively small block and unexceptional accounts. However Mr Harper told the Tribunal that the accountants

scrupulously check every voucher and record and spend some time over these matters. The Tribunal takes the matter no further at this stage save to note these charges are very much at the upper end of the scale which might be expected for accounts of this kind.

Conclusion

26. For the reasons indicated above, the Tribunal is not satisfied that the Respondent has demonstrated to the Tribunal that any of the charges levied against him are unreasonable on any of the evidence put forward by him. The Tribunal would add that it has taken into account the evidence of Mr Richman, but did not consider that this really advanced the Respondent's case in a significant degree. Many of the Respondent's issues with the service charges were now very stale, and either could not be well investigated on the evidence or had been compromised or adequately compensated for in the context of previous discussions between the parties or their agents. The Tribunal is satisfied that the balance outstanding in the sum of £4,171.11p is reasonable as claimed and so determines.

27. The Respondent invited the Tribunal to make a direction under Section 20C of the Act to the effect that no part of the costs incurred by the Applicant in the bringing of this application should be put upon the service charge account. It seems likely that if this account is not discharged by the Respondent, the matter may have to return to the County Court which has simply delegated the question of making a determination as to reasonableness to the Tribunal. It seems to the Tribunal that there was no alternative option to the Applicant to the bringing of proceedings, the Respondent having withheld the payment of charges. If there is power in the lease

to put the cost of these proceedings on the service charge account, (about which the Tribunal makes no finding) then the Tribunal is disinclined to make the direction asked for by the Respondent because the Applicant was compelled to bring proceedings, and has succeeded in respect of this determination. The Tribunal does not therefore make any order under Section 20C, nor does it make any other order in respect of costs which, if they are to be pursued, should be brought before the County Court.

Legal Chairman: S. Shaw

Dated: 5th July 2011