7033

Residential Property
TRIBUNAL SERVICE

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LON/00AY/ LSC/2011/0011

DECISION UNDER SECTION 10 Schedule 12 Commonhold and Leasehold Reform Act 2002 and Section 20C of the Landlord and Tenant Act 1985

Premises: Flat 3, 24 Tritton Road, London SE21 8 DE

Applicants: 24 Tritton Road, Management Limited

Respondents: Mr J Smith and Ms N Robertson

Date of Paper Determination 07 July 2011

Members of the Leasehold Valuation Tribunal

Ms M W Daley LLB (Hons)
Mr T Johnson FRICS

Date of Decision 07 July 2011

Background

1. The Tribunal received an application dated 30/12/10 seeking a determination of:-(a) liability to pay and reasonableness of service charges under section 19 & 27A of the Landlord and Tenant Act 1985 and (b) an application for an

order that a breach of covenant or condition in the lease has occurred under section 168(4) of The Commonhold and Leasehold Reform Act 2002 ("CLARA").

2. A pre-trial review took place on 8th February 2011, both sides being legally represented. Direction 2 stated -: It appears that the application under s27A of the 1985 Act may be misconceived and the Tribunal directs that it is Stayed for a period of 28 days so that the Applicant may consider whether or not to pursue it.." Following negotiations between the parties the application was subsequently withdrawn. Direction 3 stated -: " The Tribunal has therefore issued directions only on the application under s 168(4) of the Commonhold and Leasehold Reform Act 2002". Again the application was subsequently withdrawn by agreement reached between the parties.
3. Subsequently the Respondents have made an application for costs under section 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002("CLARA") for their cost incurred in resisting the two applications, (in the sum of £780.00 including VAT) and an order under section 20 C, restricting the landlord's recovery of any cost incurred as a service charge.
4. Further Directions were issued to the parties on 26 May 2011 inviting submissions for consideration of the Tribunal in making its determination on the question of costs.
5. Point B of these directions state-: *The parties are reminded that the Tribunal can only award costs to a maximum of £500.00 and only where a party has in the opinion of the Tribunal, acted frivolously, vexatiously, abusively or otherwise unreasonably in connection with the proceedings.*
6. In compliance with the directions further representations were received from both parties. In a letter dated 6 June 2011 the Applicant, set out the history of the application, and the circumstances that lead to the application being brought. In lengthy terms they set out the negotiations, which took place, between the parties and their solicitors and the subsequent withdrawal of the Application .At paragraph 9 of the letter they state -: *We have in all the circumstances tried hard to compromise with the respondents. We have never acted frivolously, vexatiously, abusively or otherwise unreasonably in connection with the proceedings...* "
7. The only additional document which has been provided by the Respondent's in compliance with the directions of 26 May 2011 was a letter dated 7 June 2011 in which the Respondent's ask for an order to be made in their favour under section 20 C of the Landlord and Tenant Act 1985. The Respondents conclude their letter by stating-: " *We apologise for the delay in making this further application, but we have only just become aware of the provisions of section 20C.* "

The Determination

8. Section 10 of Schedule 12 of CLARA states that a Leasehold Valuation Tribunal may determine that a party to proceedings shall pay the costs incurred by another party in the following circumstances-: He has made an Application to the leasehold valuation tribunal which is dismissed in

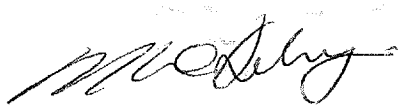
accordance with regulations made by virtue of paragraph 7 or he has in the opinion of the leasehold valuation tribunal acted frivolously, vexatiously abusively or otherwise unreasonably in connection with these proceedings.

9. The Respondent in their application although not stated explicitly would appear to be relying mainly on the last limb that is that the Respondent had acted unreasonably in connection with these proceedings.

10. The Tribunal in the course of this determination have considered the background. Although the Tribunal is not fully acquainted with all of the circumstances leading to the withdrawal of the applications, they have noted that whilst the application under section 27A may have failed (had it proceeded to be determined by the Tribunal), there is some evidence that there were good grounds for bringing the application under section 168(4) of CLARA. In the letter dated 12 April 2011 written by the Respondents (page 12 of their bundle) penultimate paragraph, the Respondent's state-: Thank you for the assurance that in the meantime there is no objection to our sub-letting on condition that the terms of the Lease are abided by. As you know we have sub-let for a three year term..."
11. It appears to the Tribunal on the correspondence before it, that it is not maintained by the Respondent that the sub-letting of the premises in the first instance accorded with the terms of the lease. Accordingly the Applicant may well have succeeded in establishing a breach of the terms of the lease in reliance upon this ground.
12. In all of the circumstances, the Tribunal consider that whilst the application did not proceed, there is nothing set out by the Respondent that leads the Tribunal to conclude that the Applicants in bringing these proceedings acted frivolously or vexatiously and accordingly the Tribunal refuses the Respondents Application under section 10 of Schedule 12 of CLARA 2002.

13. The Tribunal having considered the lease have concluded that nothing within the lease provides for recovery of the cost as a service charge.
The Tribunal noted that clause 15 of the lease, provided for the recovery of legal cost where forfeiture proceedings were contemplated. However in our view the withdrawal of the section 168(4) proceedings, stops short of contemplating forfeiture, accordingly the Tribunal concludes that the Applicant in all the circumstances in this case, is unable to recover the legal cost as a service charge. Accordingly no order is made under section 20C of the Landlord and Tenant Act 1985.

14. Accordingly the Application for cost under section 10 Schedule 12 is refused and no order is made under section 20C of the Landlord and Tenant Act 1985.

Signed 

Dated 4 - 7 - 2011