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HM COURTS AND TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00HN/LSC/2012/0069

DECISION AND REASONS

Application : Sections 27A and 20C of the Landlord and Tenant Act 1985 as amended (“the 1985 Act”) transferred from Bournemouth and Poole County Court (claim number 2IR20252) by order dated 30 April 2012

Applicant/Landlord : Tudor Rose (A Private Unlimited Company)

Respondent/Leaseholder : Mr Dimitri Eikosipentarchos

Building : 268 Old Christchurch Road, Bournemouth, BH1 1PH

Premises : Flats 1, 3, 4, and 5 in the Building

Date of Initial Directions : 18 June 2012

Date of Directions Hearing : 18 July 2012

Date of Substantive Hearing : 15 October 2012

Venue : Court 8, Bournemouth County Court, Deansleigh Road, Bournemouth, Dorset BH1 1PH

Appearances for Applicant/Landlord : Mr N Berlinger, Hanover West Asset Management

Appearances for Respondent/Tenant : Mr Eikosipentarchos

Also in attendance : Ms S Elsworth, Mrs E Elliott, Mr K Powers and Mr H Tauras

Members of the Tribunal : Mr P R Boardman MA LLB (Chairman), Mr T E Dickinson BSc FRICS, and Mr J Mills

Date of Tribunal’s Decision and Reasons : 15 October 2012

Introduction

1. At the direction hearing on 18 July 2012 various matters were identified as issues for the Tribunal to determine at the substantive hearing of this application, including :

- a. whether the Respondent/Leaseholder was entitled to withhold payment of the whole or any part of the sums referred to in the statements dated 19 January 2012 attached to the County Court particulars of claim by virtue of section 21B of the 1985 Act
- b. whether, and, if so, to what extent, the costs incurred by the Applicant/Landlord in relation to these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent/Leaseholder

Documents before the Tribunal

2. The documents are :
 - a. a bundle containing :
 - the county court claim form and accompanying statements of account dated 19 January 2012
 - the defence
 - the court order transferring to the Tribunal the issues raised in the defence
 - the leases of the Premises
 - the Tribunal's directions dated 18 July 2012
 - b. the Applicant/Landlord's bundle, indexed as pages 2 to 243
 - c. the Respondent/Leaseholder's bundle, indexed as pages 246 to 375
 - d. an e-mail from Nicola Hewitson to the Applicant/Landlord dated 27 August 2012

Inspection

3. The Tribunal inspected the exterior of the Building, and the common parts, on the morning of the hearing on 15 October 2012. The Building was of four storeys, with a parapet, a pitched roof and dormer windows. There were shops on the ground floor, and 5 flats above. The facing of the Building was painted brick with rendered strings and pillars. There were 4 tie-beams and cracks near the top of the front elevation on the outer face of the front parapet wall, and 4 more tie beams on the right-hand elevation. The exterior was generally in a poor decorative state. The windows were double glazed UPVC. On the right-hand side was a down pipe and a soil and vent pipe with evidence of the lower section being replaced in each case. On the same elevation was a meter cupboard, with cables protruding near the base, 5 gas meter cupboards, and a fire exit for the shops. There was a communal entrance to Flats 1 to 5, with a new front door, and a non-functioning intercom on the wall on the left. There was a separate entrance to Flat 6
4. The front door led to a small lobby, which was tiled, and had a fire extinguisher. There was a cupboard with fuse boxes and a Newart Electronics fire alarm control panel. On the wall outside the cupboard was a repeater Radius fire alarm control panel
5. Stairs led to first floor and second floor landings, and to Flat 5 on the third floor, which were carpeted throughout. The carpets appeared new, and the decorative state throughout was good. There was a fire extinguisher, a fire alarm and a smoke detector on each floor. On the first and second floor landings were fire doors leading to the front doors of Flats 1 and 2 (via a small lobby with a wooden floor), and Flats 3 and 4 (via a small carpeted lobby), respectively

The hearing on 15 October 2012

6. The Tribunal indicated that it would hear as a preliminary issue the question whether the Respondent/Leaseholder was entitled to withhold payment of the whole or any part of the sums referred to in the statements dated 19 January 2012 attached to the County Court particulars of claim by virtue of section 21B of the 1985 Act
7. The Tribunal asked Mr Berlinger whether, prior to the county court proceedings, any summary of the rights and obligations of the Respondent/Leaseholder as tenant of the Premises had been served with any demand for the payment of the service charges claimed in the county court proceedings, in accordance with the requirements of section 21B of the 1985 Act and the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007. Mr Berlinger very fairly and properly conceded that no such summary had been served prior to the county court proceedings
8. Mr Eikosipentarchos said that he was exercising his right under section 21B of the 1985 Act and was withholding payment
9. The Tribunal indicated that the Tribunal was now proposing to consider the matter, and to announce a decision in that respect, so that, if the Tribunal decided that the Respondent/Leaseholder was not entitled to withhold payment under section 21B of the 1985 Act, the Tribunal would then proceed to hear the remainder of the issues identified in the directions dated 18 July 2012, but if the Tribunal decided that the Respondent/Leaseholder was entitled to withhold payment, then the only remaining issue before the Tribunal would be the Respondent/Leaseholder's application for an order that the costs incurred by the Applicant/Landlord in relation to these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent/Leaseholder
10. Mr Berlinger submitted that :
 - a. the Respondent/Leaseholder was not entitled to withhold payment under section 21B(3) of the 1985 Act because he had not previously notified the Applicant/Landlord that he was withholding payment because of section 21B of the 1985 Act, but had simply withheld payment in accordance with his usual practice of failing to pay moneys due; when the Tribunal put it to Mr Berlinger that the Respondent/Leaseholder had pleaded at paragraph 5 of his defence in the county court proceedings that he was withholding payment under section 21B of the 1985 Act, Mr Berlinger said that the Respondent/Leaseholder had not given any such notification prior to the county court proceedings
 - b. the Applicant/Landlord had now, with the Applicant/Landlord's bundle of documents, served summaries of the rights and obligations of the Respondent/Leaseholder which complied with section 21B of the 1985 Act, and, since those summaries had been served within 18 months of the county court proceedings, they retrospectively made payable the sums claimed in the county court proceedings by virtue of section 20B of the 1985 Act; when the Tribunal put it to Mr Berlinger that section 20B of the 1985 Act was concerned with the *timing* of service charge demands in relation to the *timing* of the incurring of the costs claimed in those demands, whereas section 21B of the 1985 Act was concerned with

the *form* of those demands, Mr Berlinger said that his understanding was that section 20B of the 1985 Act allowed him to send a section 21B summary of rights 18 months later

11. The Tribunal adjourned the hearing for 15 minutes to enable the Tribunal to consider the matter, and then announced its decision as follows :
 - a. Mr Berlinger had very fairly and properly conceded that no section 21B-compliant summary of the rights and obligations of the Respondent/Leaseholder had been served on the Respondent/Leaseholder prior to the county court proceedings
 - b. under section 21B(3) the Respondent/Leaseholder had the right to withhold payment of the service charges claimed in the county court proceedings
 - c. by virtue of paragraph 5 of his defence in the county court proceedings the Respondent/Leaseholder had exercised that right to withhold payment
 - d. in relation to Mr Berlinger's submission that section 20B of the 1985 Act applied to the timing of the service of section 21B summaries, section 20B and section 21B were aimed at different points; section 20B related to the *timing* of service charge demands and the *timing* of the incurring of the costs claimed in those demands, whereas section 21B of the 1985 Act was concerned with the *form* of those demands, and section 20B did not render payable retrospectively a demand, whether within 18 months or not, which did not comply with section 21B
 - e. therefore the Respondent/Leaseholder was entitled to withhold payment, he had exercised his right to do so, and the service charge sums claimed in the county court proceedings were accordingly not payable
 - f. the Tribunal's jurisdiction in this case was limited to the matters referred to it by the county court, and accordingly the Tribunal had no jurisdiction in this application to hear any other matters referred to by the parties, including events which had occurred subsequently to the county court proceedings

12. In relation to the Respondent/Leaseholder's application for an order that the costs incurred by the Applicant/Landlord in relation to these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent/Leaseholder, the Tribunal asked Mr Berlinger whether there was any provision in the leases enabling the Applicant/Landlord to include the costs of these proceedings in any future service charge. Mr Berlinger referred to paragraph r of Part I of the Third Schedule to each lease, namely the covenant by the lessee to pay costs incurred by the lessor in connection with any notice under section 146 of the Law of Property Act (in respect of which, when asked by the Tribunal whether any such notice had been served, Mr Berlinger said that the costs of these proceedings were in contemplation of the service of such a notice), but very fairly and properly conceded that there was no specific provision in the leases enabling the Applicant/Landlord to include the costs of these proceedings in any future service charge

The Tribunal's findings

The preliminary issue : section 21B of the 1985 Act

13. The Tribunal finds that the service charge sums claimed in the county court proceedings are not payable, for the reasons announced at the hearing

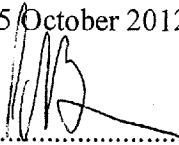
The costs of these proceedings : section 20C of the 1985 Act

14. The Tribunal :
- a. finds that paragraph r of Part I of the Third Schedule to each lease is a covenant by the lessee direct with the lessor, and is not a provision which entitles the Applicant/Landlord to include the costs of these proceedings in any future service charge; it is accordingly unnecessary for the Tribunal to make any finding about Mr Berlinger's submission that the costs of these proceedings are payable under that paragraph as being in contemplation of the service of a notice under section 146 of the Law of Property Act 1925
 - b. accepts Mr Berlinger's very fair and proper concession that there is no specific provision in the leases enabling the Applicant/Landlord to include the costs of these proceedings in any future service charge
 - c. accordingly orders that the costs incurred by the Applicant/Landlord in relation to these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent/Leaseholder

Transfer back to the county court

15. The Tribunal now transfers the matter back to the county court

Dated 15 October 2012



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P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor