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DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

Case Reference: LON/00AX/LSC/2012/0106

Premises: 1A ROSE WALK, BERRYLANDS, SURBITON,
SURREY KT5 8HR

Applicant(s): EDWARD ALLEN VICTOR THOMPSON

Representative: IN PERSON

Respondent(s): DANIEL McCARTHY

Representative: IN PERSON

Date of hearing: [PAPER HEARING] 8 OCTOBER 2012

Appearance for Applicant(s): N/A

Appearance for Respondent(s): N/A

Leasehold Valuation Tribunal: (1) MS L SMITH (LEGAL CHAIR)
(2) MRS L WEST

Date of decision: 8 OCTOBER 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sums of ££224.92, £236.13, £42.02 and £325.65 are payable by the Respondent in respect of the service charges relating to building insurance premiums for the years 2010/11, 2011/12 and 2012/13 respectively.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the payability of service charges relating to building insurance premiums by the Respondent in respect of the service charge years 2010/11, 2011/12 and 2012/13.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. Initially it had been directed on 13 February 2012 that the application be determined on the papers unless a hearing were requested. On 16 August 2012, the Tribunal gave notice of dismissal for the Applicant's failure to comply with directions. A hearing was fixed for 12 September 2012 to determine whether the application should be dismissed. On 30 August 2012, the dismissal hearing was vacated as the Applicant had filed his statement and bundles. Accordingly, the matter was determined on the papers on 8 October 2012, neither party having requested an oral hearing.

The background

4. The property which is the subject of this application is a 2 bedroom maisonette in a purpose built block of two maisonettes ("the Property").
5. Neither party requested an inspection and the Tribunal did not consider that one was necessary.
6. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease are referred to below, where appropriate.

The issues

7. In his statement of case, the Applicant identified the relevant issue for determination as the payability of service charges for the years 2010/11, 2011/12 and 2012/13 relating to building insurance premiums.

The Tribunal's decision

8. Having considered all of the documents provided, the Tribunal determines that the sums of £224.92 (service charge year 2010/11), £236.13 and £42.02 (service charge year 2011/12) and £325.65 (service charge year 2012/13) are payable by the Respondent.

Reasons for the Tribunal's decision

9. The Respondent is the successor in title to the leasehold interest of the Property pursuant to a lease dated 29th August 1956 ("the Lease"). The Applicant is the successor in title to the freehold interest in the Property.
10. Clause 1 of the Lease provides that the Tenant shall pay by way of further or additional rent "a sum or sums of money equal to one half of the amount which the Landlords may expend in effecting and maintaining the insurance of the said block of maisonettes".
11. The Applicant has provided copies of the demands for the insurance premiums paid in the relevant years as well as the insurance certificates evidencing the premiums paid. He has also provided e mail correspondence passing between him and the Respondent which indicates that the Respondent did not dispute the amount of the premiums paid. Indeed it is not entirely clear that he disputed the payability either but in the absence of payment, the Applicant was entitled to pursue this application.
12. It is noted that on 16 February 2012, LPA receivers were appointed in relation to the Property by the Respondent's lenders but they have not made any representations in relation to this application. Accordingly, the Tribunal determines that the sums are payable (insofar as not already paid).

Chairman:


Ms L Smith

Date:

8 October 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "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 Landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of 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.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.

- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.

- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the Tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.