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MAN/00BQ/LSC/2011/0083

HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985
SECTION 27A (1)
SECTION 20C

Property: 52, Nowell Court, Middleton, Manchester M24 6EY

Lease: Lease dated 28 October 1982 made between Nowell Rise Housing Society Limited (1) Nowell Court Management Limited (2) and June West (3)

Applicant: Nowell Court Management Company Limited (represented by Regalty Estates Limited ("Regalty"))

Respondent: Mr.M.D.Lermer

Tribunal: Mrs.C.Wood (Chairman)
Mr.D.Bailey

Date of decision: 4 January 2012

DECISION

Background

1. The Applicant is the management company for the premises known as Nowell Court ("the Premises"). The Applicant was represented by Regalty who acted as the managing agent for the Applicant.
2. By an application dated 12 September 2011 the Applicant sought a determination under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") in respect of the Respondent's liability to pay service charges for the periods 1 March 2010 – 30 April 2011, and May 2011 – April 2012. The matter was transferred to the Tribunal by order dated 1 August 2011 of the Croydon County Court. The Applicant had issued

proceedings against the Respondent for recovery of arrears of service charges on 10 June 2011.

3. Directions were issued to the parties dated 4 October 2011 pursuant to which the following written evidence had been submitted by the parties:
 - 3.1 Applicant's Statement of Case dated 21 October 2011;
 - 3.2 Respondent's comments on Applicant's Case dated 14 November 2011;
 - 3.3 Applicant's Reply to Respondent's Case dated 16 November 2011;
 - 3.4 Respondent's Further Reply dated 17 November 2011;
 - 3.5 Witness Statement of Mr.A.T.Williamson of Regalty for the Applicant dated 24 November 2011;
 - 3.6 Witness Statement of Mrs.J.C.Lawson of Regalty for the Applicant dated 24 November 2011;
 - 3.7 Letter dated 2 December 2011 from the Applicant to the Tribunal;
 - 3.8 E-mail dated 7 December 2011 from the Respondent to the Tribunal.

Inspection

4. The Tribunal inspected the Premises at or about 1000 on Monday 12 December 2011. Mr.Williamson of Regalty attended the inspection for the Applicant.

The Lease

5. The relevant provisions of the Lease for this purpose are as follows:
 - 5.1 paragraph 14 of the Seventh Schedule which obliges the Respondent to indemnify the Applicant "from and against a proportion of all costs charges and expenses incurred by the Company in carrying out its obligations under the Eighth Schedule...and in respect of the management and general expense of the Company such proportion to be calculated by reference to the number of Flats erected on the Property"; and,
 - 5.2 paragraphs 15 – 16 of the Seventh Schedule which contain provisions, inter alia, relating to the procedure for the demand and payment of service charge.

The Law

6. Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:
 - (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.

7. Section 19 provides that –

(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 provision 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.

8. Section 27A provides that -

(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 date at or by which it is payable, and

(d) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3)

(4) No application under subsection (1)...may be made in respect of a matter which -

(a) has been agreed by the tenant.....

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

9. In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

The hearing

10. Mr.A.Williamson and Mrs.J.Lawson, both of Regalty, attended the hearing. The Respondent did not attend, having previously advised the Tribunal that he did not intend to do so.

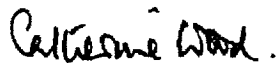
11. Having regard to the written and oral submissions of the Applicant and the written submissions of the Respondent (and, in particular, in this respect, paragraph 10 of the Respondent's statement dated 14 November 2011), the Tribunal confirmed that the questions for determination were (i) whether the Applicant had sent to the Respondent the summary statement of the rights and obligations of tenants of dwellings in relation to service charges as required under section 21B of the Landlord and Tenant Act 1985 ("the 1985 Act"); and (ii) whether such statement was in the prescribed form.
12. Mr.Williamson gave oral evidence that:
 - 12.1 up until September 2011, Mr.Keats (a former employee) had been responsible for the invoicing of service charge and whilst he believed that the necessary statements had been enclosed with the service charge demands, he accepted that he could not be sure of this;
 - 12.2 on or about 16 April 2011, he had sent copies of all invoices in dispute together with the summary statements to the Respondent;
 - 12.3 this evidence conflicted with the written evidence of the Respondent. Mr.Williamson explained that he was disappointed not to have the opportunity to cross-examine the Respondent on his evidence.
13. A copy of the statement which had been sent out with invoices had been given to the Tribunal during the course of the hearing. The Tribunal noted that it was a copy of the Statutory Instrument 2007/1257 entitled "The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007".
14. In response to the Tribunal's questions, Mr.Williamson confirmed that this comprised what was sent out with the invoices. In response to the Tribunal's confirmation that this would not constitute a summary statement compliant with the requirements of section 21B of the 1985 Act, Mr.Williamson acknowledged to the Tribunal that there had been a failure of compliance, obviating any need for further evidence to be submitted.

Determination

15. The Tribunal must apply a three stage test to the application under section 27A:
 - (1) Are the service charges recoverable under the terms of the Lease?
This depends on common principles of construction and interpretation of the lease.
 - (2) Are the service charges reasonably incurred and/or services of a reasonable standard under section 19 of the 1985 Act?

(3) Are there other statutory limitations on recoverability, for example consultation requirements of the 1985 Act as amended?

16. Accordingly, the Tribunal determined as follows:
- 16.1 that, in accordance with the terms of the Lease, the Respondent is liable to pay service charge as calculated in accordance with paragraph 14 of the Seventh Schedule of the Lease;
 - 16.2 that (as acknowledged by Mr.Williamson to the Tribunal) to send out a copy of the Statutory Instrument 2007/157 rather than a summary statement in the prescribed form constituted a failure of compliance with section 21B of the 1985 Act entitling the Respondent to withhold payment of service charges invoiced until such time as the default had been remedied;
 - 16.3 that the Respondent's application under Section 20C of the 1985 Act is granted.
17. The Tribunal noted as follows:
- 17.1 that the Respondent had raised no issues regarding the reasonableness of the service charges invoiced;
 - 17.2 no determination was made with regard to the conflict in the oral and written evidence of Mr.Williamson and Mrs.Lawson and the written evidence of the Respondent;
 - 17.3 that no evidence had been produced to the Tribunal of any costs incurred by the Respondent.



Catherine Wood
Chair
Dated 4 January 2012