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Case Reference: LON/00BE/LSC/2012/0857

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

Property: Flat A 18 John Ruskin Street, London SE5 0NE

Applicant: Sinclair Gardens Investment (Kensington) Limited

Representative: Mr Wijeyaratne of Counsel instructed by P Chevalier & Co
Solicitors

Respondent: Michael Leigh Osborne

Representative: No appearance by Respondent

Date of Receipt

Of County Court transfer: 19 December 2013

Date of Hearing: 3 April 2013

Leasehold Valuation Tribunal: Mr S Carrott LLB
Miss M Krisko BSc (EstMan) BA FRICS

Date of Decision: 26 June 2013

SOPD

Background

1. This is an application under section 27A of the Landlord and Tenant Act 1985 for a determination of the tenant's liability to pay and the reasonableness of service charges.
2. The Applicant landlord, Sinclair Gardens Investment (Kensington) Limited issued proceedings in the Northampton County Court for the sum of £4768.85.
3. The Respondent completed the Form N11M defence form stating that the service charges requested were unreasonable and not recoverable under the lease.
4. The claim was then transferred to the Tribunal.
5. The Respondent did not attend the pre-trial review although he did write to the Tribunal. However he has not taken any further part in this application.
6. At the hearing of this application the Applicant was represented by Mr Wijeyaratne of Counsel. Also in attendance was Mr Mark Kelly of First Management. Mr Kelly explained to the Tribunal that First Management is the trading name of the managing agents Hurst Management.
7. There was no appearance by the Respondent. Mr Kelly told the Tribunal that as far as he was aware the tenant resided at the subject property Flat A 18 John Ruskin Street, London SE5 0NE although his address for service was Unit 5, The Galleria, 180-182 George Lane, South Woodford, London E18 1AY and that is where correspondence has been sent. The Tribunal therefore accepted that the Respondent had received notice of the hearing.

Evidence

8. The Applicant relied upon the written evidence of Mr Mark Kelly. In his witness statement Mr Kelly explained the various heads of service charge and also referred to the relevant provisions of the lease.
9. The claim in the County Court was however based upon advance service charges for 2010, 2011 and 2012 and as Mr Kelly explained in his oral evidence, with regard to the actual figures there was a credit due to the Respondent of £922.13. In addition the Applicant stated that it was no longer pursuing the administrative service charge of £192.19.
10. The actual figures were therefore as follows based upon the statement of service charges
2010 - £1744.87
2011 - £1265.21
2013 - £ 143.90 (to May 2012)
11. Thus on the evidence before the Tribunal the total amount of service charges in dispute was £3153.98. Mr Wijeyaratne submitted to the Tribunal that insofar as the Respondent challenged this sum, the burden was on the Respondent was to prove that the service charge costs were either not payable or not reasonable.

Determination

12. The Applicant had provided documentary evidence, including invoices to show that the landlord had incurred the costs of £3513.98. The Applicant had additionally shown that so far as the insurance was concerned that it had been placed in the ordinary course of business and that on the facts of this particular case there was nothing to show that the insurance payments could be regarded as excessive. Moreover although the management charges were perhaps a little on the high side, in the absence of a specific challenge to these charges, the Tribunal would not interfere with these figures.

13. The Tribunal nevertheless considered that the service charges for 2011 required readjustment on the basis of the individual invoices contained within the trial bundle and that some figures should be disallowed.
14. At page 100 of the bundle there was a charge of £180 for a second visit to a Flat 6. The complaint by the tenant was that the communal satellite dish was defective. In fact the defect turned out to be to the tenant's skybox and not the satellite dish. This charge could therefore not be attributed to the Respondent.
15. At page 103 a repair was carried out in Flat 10 to a defective ballcock. Under the terms of the lease the sum of £210.00 could not be attributed to the Respondent.
16. At pages 107 and 108 the sum of £96 is duplicated.
17. At page 115 there is an invoice where the sum of £114 was charged for replacing a plug on a lead within the flat itself. There is a handwritten endorsement on the invoice by the managing agents stating that a letter has been sent to the tenant requesting the tenant to make payment.
18. The items mentioned in paragraphs 14 to 17 above are the total costs incurred by the landlord in respect of those items. The total costs incurred by the landlord for repairs in 2011 was £3916.12. Having regard to the sums which have been disallowed above that leaves a total figure of £3316.12 for repairs.
19. The Respondent's individual contribution to that figure assessed at 7.2% is £238.40 rather than £281.96 which the Applicant charged him. The service charge demand for 2011 is therefore £1222.01 as opposed to £1265.21.

Decision

20. Accordingly, the reasonable service charge payable for the 2010 is £1744.87, for 2011, £1222.01 and for 2012, £143.90 (to May 2012).

Chairman: S Carrott LLB