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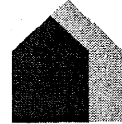


LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985

AND DIRECTIONS ON AN APPLICATION UNDER SECTION 24 OF THE LANDLORD AND TENANT ACT 1987

Case Reference: LON/00AH/LSC/2011/0871

Premises: 232 London Road, Croydon, Surrey CR0 2TF

Applicant: Mr MZA Khan

Respondent: Mr SH Shah

Date of hearing: 12th December 2012

Appearance for Applicant: In person

Appearance for Respondent: Did not attend

Leasehold Valuation Tribunal: Mr NK Nicol
Mr WR Shaw FRICS
Mr ON Miller

Date of decision: 12th December 2012

Decisions of the Tribunal

(1) The Tribunal determines that no service charges are payable by the Applicant to the Respondent for the years 2007-2012.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the Respondent's costs of the Tribunal proceedings, if any, may be passed to the Applicant through any service charge.

(3) The Tribunal determines that the Respondent shall pay the Applicant £500 within 28 days of this determination, in respect of the reimbursement of the Tribunal fees paid by the Applicant.

(4) The Tribunal determines that the Respondent shall further pay the Applicant £150 within 28 days of this determination, in respect of the Applicant's costs of these proceedings.

(5) The Applicant's application for the appointment of a manager under s.24 of the Landlord and Tenant Act 1987 is adjourned to Friday **22nd March 2013** on the directions set out at the end of this determination.

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 amount of service charges payable by the Applicant in respect of the service charge years 2007-2012. The Tribunal held a pre-trial review on 26th September 2012 and issued directions on the same day.

2. The Applicant also submitted an application for the appointment of a manager under s.24 of the Landlord and Tenant Act 1987 immediately after the directions hearing on 26th September 2012. By letter dated 9th October 2012 the parties were informed that the applications had been consolidated and would be heard together. However, in the absence of any appropriate directions, the Applicant had not provided a statement from his proposed manager nor required them to attend the hearing on 12th December 2012, which meant that the Tribunal was not in a position to consider appointing them as manager. Therefore, this application has been adjourned on the directions given further below.

3. The Respondent did not attend the pre-trial review. By letter dated 1st October 2012 he said he would have been unable to attend on 26th September 2012 (the letter mistakenly says "December") because he had been ill. He said he would be unable to comply with the directions because he would be away until 1st November 2012. Accordingly, the directions were amended extending the time for compliance and setting a new hearing date of 12th December 2012. Unfortunately, the Respondent did not comply with any of the directions or

communicate with either the Tribunal or Applicant to explain why or to ask for further amendments to them.

4. Only the Applicant attended the hearing on 12th December 2012. The Tribunal is satisfied that the Respondent was properly notified by means of the amended directions and by the Applicant serving his hearing bundle by courier. Therefore, the hearing went ahead in his absence.

5. The relevant legal provisions are set out in the Appendix to this decision.

The issues

6. The subject property is a 3-storey building with commercial premises on the ground floor. The Respondent has been building an additional storey but it is not clear if that has been completed yet. The local authority, the London Borough of Croydon, has served notices on the Respondent under s.80 of the Environmental Protection Act 1990 for a nuisance caused by an ingress of surface water due to building work not being made watertight. The Applicant told the Tribunal that Croydon had carried out works in default of any by the Respondent but then charged him for the work. This is somewhat mystifying but the Tribunal has no jurisdiction on that issue and the Applicant should take legal advice if he wants to pursue it further.

7. The Applicant has a long lease of the second-floor flat. The first floor flat is leased to Ms C de Felici who has taken no part in these proceedings save that, in an e-mail dated 17th May 2012, she told the Applicant that she had not paid any service charges because the Respondent had never provided any details despite her requests.

8. The Applicant assured the Tribunal that his bundle of documents prepared in accordance with the directions for the hearing contained all documents received from the Respondent in respect of service charges. The bundle included the following:-

   a) A letter dated 21st August 2007 to the Applicant's predecessor-in-title, Mrs H Mohammed, from Chiltern Hills Estate Agents who appear to be the Respondent's agents (the Applicant said that the principal of that firm is the Respondent's son). The letter stated that they intended to carry out various repair works to the building and demanded payment of £3,000 within 7 days. There appears to have been no compliance with the statutory consultation requirements of s.20 of the 1985 Act and the Service Charges (Consultation Requirements) (England) Regulations 2003.

   b) Each year, starting on 30th April 2008, the Applicant wrote a letter (in similar form, using similar wording) demanding that the Respondent comply with the obligation in clause 3(ii)(a) of the lease for the service charges to be certified by auditors, accountants or managing agents. Neither the Respondent nor their agents ever responded and there are no service charge accounts, certified or otherwise.

c) A letter dated 20th August 2008 to the Applicant from Chiltern Hills Estate Agents demanding payment of £215.50 for rent and unspecified "administration charges" and threatening court action if it was not paid. The letter also attached a "Statement of sums owed by Humera Mohammed" totalling £14,780.78, including insurance sums, administration charges for chasing arrears, management charges and an amount for "service charges" which was not broken down. The letter did not give the Respondent's name and address, contrary to sections 47 and 48 of the Landlord and Tenant Act 1987, nor the summary of rights and obligations required by s.21B of the 1985 Act.

d) A letter dated 3rd September 2009 to the Applicant from Chiltern Hills Estate Agents purporting to be a "Formal notice and demand for payment plus forfeiture of your leasehold" and demanding payment of £17,143.89 within 7 days. This was said to be made up of money owed by his wife as predecessor-in-title (£15,205.78), ground rent (£75), "Utility bills and admin" (£215.20) and "Management and insurance charges" (£1,647.91). Again, the letter did not comply with the aforementioned statutory requirements of the 1985 and 1987 Acts.

e) Letters to the Applicant's mortgagees, Birmingham Midshires, from Chiltern Hills Estate Agents demanding that they pay the Applicant's alleged liability to avoid forfeiture. Birmingham Midshires did pay the sum of £17,143.89. The Applicant complained to them. By letter dated 28th November 2011 they asserted they had not made a mistake but nevertheless re-credited his account with the full sum. They also promised to re-credit any additional interest charged but the Applicant claims that this has not been done and he is pursuing a further complaint.

f) One of the letters from Chiltern Hills Estate Agents to Birmingham Midshires dated 14th October 2011 attached an Addendum entitled "Break down of sums claimed as at 6th July 2011" totalling £6,790.78, including management charges for each year from 2009 to 2011 (£1,250 each year), electricity charges for 2010 (£203.28), unspecified "Service charges provision" for 2010 and 2011 (£1,200 each year), ground rents for March 2009 to March 2011 and "Administration Charges" (£325). There are no documents explaining or detailing any of these amounts.

9. On the available evidence, it is clear that the Respondent, through his agents, has demanded large sums of money for service charges but has failed to comply with either the terms of the lease or the statutory requirements referred to above. Both the certification of the service charges and compliance with the statutory requirements are conditions precedent to the Applicant's liability for those service charges. Those conditions have not been met and so none of the charges are payable. (It would seem that the same applies to the ground rent but the Tribunal has no jurisdiction over that.)

10. The alleged service charges were also not explained and seemed excessive but it was not necessary to consider them further in the light of the finding that they are not payable in any event.

Application under s.20C and refund of fees

11. The Applicant made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that he had paid in respect of the application (£350) and the hearing (£150). There can be no doubt that there have been serious failings in the Respondent's management of the property. His agents seem to have little, if any, idea as to what they are supposed to be doing. It should not have been necessary for the Applicant to bring these proceedings in order to point out such basic failings. In the circumstances, it is appropriate that the Respondent reimburse the Applicant's fees of £500.

12. The Applicant also applied for an order under section 20C of the 1985 Act prohibiting the Respondent from adding his costs incurred in these proceedings to the service charge. Given the Respondent's lack of participation in these proceedings, it seems unlikely that he has incurred any costs, let alone any which may be recovered through the service charges. However, he may attempt to recover costs. The Tribunal is satisfied, for the reasons already given, that it is just and equitable to make such an order.

13. The Tribunal is also satisfied that the Respondent's serious management failings and complete failure to comply with any of the Tribunal's directions constitute frivolous, vexatious and unreasonable behaviour so that it is appropriate to order him to pay the Applicant's costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. The Applicant informed the Tribunal that he had spent money on couriers to file and serve his statement and his bundles, photocopying those bundles and travelling to the Tribunal at a total cost of £150. The Tribunal is satisfied that this money was spent in pursuing these proceedings and that the Respondent should pay them.

Directions for appointment of manager application

14. The Tribunal makes the following directions in relation to the application for the appointment of a manager under s.24 of the 1987 Act:-

    a) The Applicant shall, by 4pm on **16th January 2013**, file with the Tribunal and serve on the Respondent a statement from the person he proposes the Tribunal should appoint as the manager of the subject property and the statement must include the following:-

        i. The proposed manager's qualifications and experience, including any as an appointee of the Tribunal;

        ii. A plan as to how the property will be managed, including the minimum length of time for the appointment;

        iii. Details of the proposed manager's fees; and

        iv. The proposed manager's terms of service.

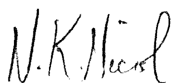
b) The Respondent shall, by 4pm on **30th January 2013**, file with the Tribunal and serve on the Applicant a statement of case setting out why the application for the appointment of a manager is opposed. At the same time, the Respondent shall serve on the Respondent any documents which are relevant and on which the Respondent intends to rely.

c) The Applicant shall prepare a bundle to supplement the one filed with the Tribunal for his application in relation to the service charges which shall contain any documents relied on by either party which are not already in the existing bundle. Again, the bundle must have an index and be numbered on each page. Bearing in mind that the Applicant is away during February 2013, the Applicant shall, by 4pm on **8th March 2013**, file four copies of the supplemental bundle with the Tribunal and serve one copy on the Respondent.

d) The application will be heard by the Tribunal on Friday **22nd March 2013** at **10 Alfred Place, London WC1E 7LR** starting at **10am**. The time estimate is one day. If either party considers that this is an unrealistic estimate, they must write to the Tribunal at least 14 days before the proposed hearing date, together with reasons. The Tribunal will make its own arrangements with the parties at the hearing if it wishes to inspect the property.

IMPORTANT NOTE:

- **These directions are formal orders and must be complied with**
- **They are intended to help the parties and the tribunal deal with applications swiftly and economically**
- **If you fail to comply with them your case may be prejudiced**
- **Whenever you send a letter or email to the tribunal you must also send a copy to the other parties and note this on the letter or email**

Chairman: 

Mr NK Nicol

Date: 12th December 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 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
  (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
  (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
  (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 21B

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

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.

Landlord and Tenant Act 1987

Section 47

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—
  (a) the name and address of the landlord, and
  (b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—
  (a) a tenant of any such premises is given such a demand, but
  (b) it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge or an administration charge ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of service charges or (as the case may be) administration charges from the tenant.

(4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Section 48

(1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.

(2) Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.

(3) Any such rent, service charge or administration charge shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of rent, service charges or (as the case may be) administration charges from the tenant.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—
  (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
  (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
  (a) £500, or
  (b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a

determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.