



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CHI/29UG/LIS/2014/0019**

Property : **Flat D, 14A Milton Place, Gravesend
Kent, DA12 2BT**

Applicant : **Mr Muziwakhe Skosana**

Respondent : **Mr R Laxman**

Type of Application : **s27A LTA85**

Tribunal Members : **Judge D Dovar**

Date of Decision : **17th September 2014**

DECISION

1. This is an application for the determination of the payability of service charges. This is a written determination, the parties having been notified by the Tribunal of its intention to proceed to a determination without a hearing pursuant to rule 31 of the Tribunal Procedure Rules 2013 on 17th April 2014. Directions were given on that date for the sequential provision of schedules, statements of case and documents and evidence in support. Further directions were given on 3rd July 2014 for the parties to provide further particulars of their cases. Following those directions, the Applicant decided that he would only proceed with the following issue:

'Whether the Respondent can legally claim from the Applicant the service charges in respect of the service charge year 2012/13 when the Applicant did not purchase the property until on or about 26th April 2013'

2. That prompted the Tribunal to make further directions on 21st July 2014, providing for the parties to set out their case on this issue in more detail; which they did.
3. The Respondent claims service charges for the year end 2013 from the Applicant. The Applicant purchased the property, by taking an assignment of the leasehold interest, in about April 2013.
4. The lease provides that the service charge year runs from 25th December each year (clause 1 (6)). Further, by Clause 4 (4), the tenant covenanted to pay the service charge (recoverable as rent in arrear) in accordance with the Fifth Schedule. The Fifth Schedule provides for the payment of an interim service charge in equal payments in advance on 24th June and 25th December each year. It also allows for a further charge in the event that the actual costs exceed the interim charge.
5. When the Respondent purchased the assignment to the lease, a sum was set aside to provide for a service charge liability that had been mentioned by the Respondent on enquiries before sale. This related to an on account demand for the year ending 2013.
6. The Applicant states that the demand was originally sent to the original owner whose lease was repossessed by their mortgagee. The mortgagee refused to pay the sum and it was a condition of the sale of the lease to the Applicant that he settle that sum. The Applicant's conveyancing solicitors are holding the sum, pending resolution of this issue.

7. The Tribunal has been provided with a demand dated 5th August 2013 to the Applicant. Part of the sums claimed relates to ground rent. The Tribunal has no jurisdiction in relation to ground rent and so cannot make any determination in relation to that sum.
8. In relation to the remainder of £513.08, the Respondent has said that £70 is not payable in any event. In relation to the balance of £343.08, that relates to sums demanded and due from the previous owner. As set out above that was not paid by the previous owner and the Respondent seeks to recover those sums from the Applicant. The Respondent has not taken issue with the fact that the sums presently claimed were claimed from the previous owner.
9. An assignee is not liable for rent falling due before the assignment. As set out above, service charges are recoverable as rent. The Tribunal considers that as they were demanded and due from the assignor, they are not due from the Applicant. The liability for those sums rests there, with the assignor. The fact that the Applicant appears to have given an indemnity to the assignor (or their mortgagee) is not a basis upon which those sums will be payable as service charges by the Applicant to the Respondent.
10. Accordingly on the basis that the sums claimed by the Respondent were due and demanded from the Applicant's predecessor, they are not recoverable from the Applicant as service charges.



Judge D Dovar