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THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL AS TO ITS JURISDICTION TO DETERMINE AN APPLICATION UNDER S27A OF THE LANDLORD AND TENANT ACT 1985

Property: **118B St Julian Farm Road, London SE27 0RR**

Applicant: Ms S E Rymer (tenant)

Respondent: The Court Group of Companies (landlord)

Determination without an oral hearing under regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003

Members of the Leasehold Valuation Tribunal:

Lady Wilson
Mrs J McGrandle BSc MRICS MRTPI
Mr D L Edge FRICS

Date of the tribunal's decision: 23 May 2006

Background

1. The tenant, Ms Rymer, has made an application to the tribunal under section 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination of her liability to pay service charges in respect of 111B St Julians Farm Road SE27, a flat, in a house converted into three flats, which she sold on 24 February 2006. The charges which, according to the application, she wishes to challenge are:

Excess service charges end March 2006	£1760.14
50% tribunal costs	£3312.58
Legal fees to March 2003	£763.75
Legal fees to March 2004	£1653.80
Legal fees to March 2006	£1469.34

2. The landlord, The Court Group of Companies, says through its solicitors, Thackray Williams, that by virtue of section 27A(4)(a) of the Act the tribunal has no jurisdiction to determine the application because all the matters raised in the application have been agreed or admitted by the tenant. A preliminary hearing has accordingly been directed to consider whether:

(a) the tenant's payment to the landlord of £5000 in full and final settlement of the outstanding service charges is a binding contract which precludes any consideration of the payability and reasonableness of those charges;

(b) because of section 27A(4)(a) of the Act this application can be made; and

(c) all or any part of the application has already been determined by a tribunal in a

previous application.

3. At the pre-trial review at which the preliminary issues were identified directions were made as to the filing of statements and documents in relation to those issues. The tenant did not comply with the directions in that she filed her statement late, but we have taken her statement fully into account in the interests of justice.

4. The tenant had in 2004 made a previous application to the tribunal under section 27A of the Act for a determination of her liability to pay service charges claimed by the landlord for the years 2000 to 2004. Included in the charges which she challenged in those proceedings were legal fees charged in the year 2002, 2003 and 2004. The tribunal determined at paragraph 33 of its decision dated 22 October 2004 that the costs were reasonable and payable. It also determined at paragraph 34 of the decision that interest could be properly claimed by the landlord on the sums outstanding. And it also determined under section 20C of the Act that one half of the landlord's costs incurred in connection with the proceedings should be regarded as relevant cost to be taken into account in determining the amount of "the service charges", and, inferentially, that one half of those costs should not be so regarded.

5. Under cover of a letter dated 24 February 2006, three days before the present application was dated, if not issued, Henry Hughes & Hughes, the solicitors then acting for the tenant, sent to the landlord the tenant's cheque for £5000, the letter stating that the cheque was sent "in full and final settlement of all outstanding service charges payable by Ms Rymer".

The landlord's case

6. The landlord's solicitors said, first, that the tenant's present application duplicated some of the matters which were determined in the tribunal's decision dated 22 October 2004 in that

the legal fees which she now sought to challenge had been determined by the tribunal to have been reasonably incurred. They said that immediately after the tribunal's decision was received it became clear that the parties could not agree as to the meaning of the tribunal's decision in relation to legal fees.

7. They said that, whatever the decision meant, it was clear that by January 2006 more than £7000 was due to them from the tenant. This sum included, they said, not only legal fees but also interest, ground rent, service charges and insurance, items which were, in the landlord's view, not controversial and clearly payable. They said that in late 2005 they had become aware that the tenant was marketing her flat for sale and in December 2005 she asked for a meeting with them. The landlord, through its director Mr Hugh Court and its accountant Mr D A McKenzie, met the tenant in January 2006 to discuss outstanding matters. Agreement was not reached at that meeting, but it was followed by correspondence.

8. They said that on 20 January 2006 Henry Hughes & Hughes wrote to the landlord on the tenant's behalf to say that there seemed to be a difference of opinion about liability for legal costs incurred in connection with the recovery of the alleged service charges and the application to the tribunal in that the tribunal took the view that the landlord's legal fees should be recoverable through the service charge, whereas the landlord took the view that they should be recovered from the tenant and therefore in full. They said that they favoured the view that the legal costs were due as a service charge and therefore divisible between the three flats in the building. In the letter they offered £4000 as a compromise, a sum which, they said, would cover "service charges and ground rent to date together with all expenses in full and final settlement of any claim you may have."

9. The landlord's solicitors said that by a letter dated 24 January 2006 Mr McKenzie wrote to say that the landlord disagreed with the tenant's interpretation of the tribunal's decision but

that it would not wish to jeopardise the sale of the tenant's flat and offered to "agree to a figure of £5000 in full and final settlement", and that if payment of £5000 was made remitted to them from the proceeds of sale "this would then bring this matter to an end for both parties". On 24 February 2004 the tenant's solicitors wrote: "Further to your letter of 24th January we enclose our cheque for £5000 in full and final settlement of all outstanding service charges payable by Ms Rymer".

10. In these circumstances, the landlord's solicitors said, it was clear that all outstanding matters were compromised, and, commenting on advice that the tenant said that she had received from her solicitors and from LEASE (the government sponsored leasehold advice service), that the tenant had made no suggestion to the landlord when the agreement was reached and the cheque accepted that the tenant was reserving a right to pursue any argument as to her liability to pay any charges.

The tenant's case

11. The tenant said that it had been confirmed to her by LEASE that legal fees were a service charge and should thus be divided between the leaseholders in the proportions given in their leases. She said that she had been advised by her solicitor on 15 December 2005 to pay what the landlord was asking for "even if you pay it under protest so that you can continue the argument afterwards". She said that the correspondence did not show that her payment was in full and final settlement of either party's claim against the other and that she was therefore entitled to pursue the present claim.

Decision

12. Section 27A(4)(a) of the Act provides that no application under section 27A may be made "in respect of a matter which has been agreed or admitted by the tenant". We have no doubt that the matters in dispute have been "agreed or admitted" by the tenant and that the application cannot be pursued. The correspondence shows with the utmost clarity that, whatever may have been the tenant's private views on the matter, her solicitors, acting, it must be assumed, on her instructions, sent the landlords a cheque in full and final settlement of all outstanding disputes. We can well understand that the previous tribunal decision might be regarded as ambiguous in that it did not make entirely plain whether the legal charges, or, indeed, interest, were service charges, and thus payable by all the leaseholders in the proportions given in their leases, or were not service charges, in which case the tribunal did not have jurisdiction to determine whether they were payable. Nevertheless, it is clear that the final figure of £5000 which the tenant paid and the landlord accepted was intended to "bring this matter to an end for both parties" as the landlord said in its letter of 24 January 2006. It does not appear to us to be reasonably arguable that the settlement was intended to bring to an end the landlord's claim against the tenant but not the tenant's claim against the landlord.

Costs

13. The landlord has asked for an order to be made against the tenant under paragraph 10(1) of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which provides, at paragraph 10(2), that an order may be made in the following circumstances:

(b) [a person] has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

The tribunal has no power to award costs other than under paragraph 10(1) - (3) of Schedule 12.

14. The tenant has asked for an order that the landlord pay all the costs of the proceedings because, she says, if the landlord had taken the advice given by LEASE, there would have been no need for the application.

15. We have come to the conclusion that the tenant's application was entirely unjustified and should not have been made. Because of it, the landlord has been put to the expense of dealing with it and we have no doubt that the costs it has incurred in so doing must exceed £500, which is the limit imposed on any amount awarded under paragraph 10 of Schedule 12. We are satisfied that in the circumstances it is right to order that the tenant pay to the landlord £500 towards the costs it has incurred in dealing with this application on the ground that the tenant has acted frivolously, vexatiously or otherwise unreasonably in bringing and pursuing an application which was wholly without merit.

CHAIRMAN.....

DATE: 23 May 2006