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Residential
Property
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LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00AC/LAC/2007/0001

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SCHEDULE 11 OF THE COMMONHOLD & LEASEHOLD REFORM ACT 2002

Applicant: Mr Gavin Hovingh

Respondent: Pier Management

Premises: 88 Darycott Close, London NW2 1UW

Date Of Application: 15 January 2007

Date Of Directions: 19 january 2007

Members of Leasehold Valuation Tribunal:
Mr I Mohabir – Chairman

Date of Tribunal's Decision: 21 March 2007

IN THE LEASEHOLD VALUATION TIBUNAL

LON/00AC/LAC/2007/0001

BETWEEN:

GAVIN HOVINGH

Applicant

-and-

GROUND RENT (REGIS) LIMITED

Respondent

THE TRIBUNAL'S DECISION

Background

1. This is an application made by the Applicant pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act (as amended) ("the Act") for a determination of his liability to pay and/or the reasonableness of various administration charges claimed on behalf of the Respondent.

2. The administration charges in issue are:

   (a) £164.50 – preparation of s.146 Law of property Act Notice dated 23.02.05.

   (b) £58.75 – Land Registry search.

   (c) £235 – referral to mortgage provider.

3. The Applicant occupies the subject property by virtue of a lease dated 10 August 2001 granted by Fairview New Homes PLC and Somerton Road (Cricklewood) Flat Management Co. Ltd to Jacqueline Hannah Owusu-Awuah for a term of 99 years from 24 December 2000 ("the lease"). The Applicant took an assignment of the lease on or about 19 April 2005.

4. It is common ground that clause 2(5) and 2(12) of the lease, as a matter of contract, allows the lessor to recover the administration charges in issue. It is, therefore, not necessary to set out these provisions here.

5. Having completed the purchase of the lease, the Applicant received a demand dated 29 April 2005 from the Respondent's managing agent, Pier Management Ltd ("Pier") seeking payment, *inter alia*, of the sums in issue. The costs were incurred by Pier, on behalf of the Respondent, to recover ground rent arrears of £50 owed by the Applicant's predecessor in title for the period 25 December 2004 to 23 June 2005. By a letter dated 11 May 2005, the Applicant's solicitors, Altermans, wrote to Pier denying that the sums claimed were payable or at all. In subsequent correspondence with Pier, Altermans maintained that position. No substantive response was obtained from Pier until 18 April 2006, who asserted that the sums in issue were due and payable. Pier did not attempt to deal with the arguments raised by Altermans in their initial letter of 11 May 2005. On 10 January 2007, the Applicant issued this application. The Tribunal issued Directions on 19 January 2007, which have not been complied with at all by the Respondent.

Decision

6. The Tribunal's determination took place on 21 March 2007 without a hearing and was based entirely on the documentary evidence before it. No evidence was filed or adduced by the Respondent.

7. The Applicant's case is that all of the sums in issue had not been properly incurred and were not payable by him. It was not necessary to prepare a s.146 Notice because, it is submitted, that it was not required to forfeit a lease for rent arrears, especially where no other breach of covenant had occurred. This submission is correct. Moreover, at the relevant time, s.167 of the Act specifically prohibited a landlord from taking any action to forfeit the lease provided that the rent arrears did not exceed £500 and was no more than 3 years old. The rent arrears in respect of which the s.146 Notice was prepared was £50 in total. It follows that, as the rent arrears could never be recovered in the way contemplated by the Respondent, the cost of preparing the s.146 Notice (£164.50) was not reasonably incurred and are disallowed completely.

8. It appears that the Respondent had incurred total costs of £58.75 in pursuance of the attempt to forfeit the Applicant's lease for the rent arrears. However, in view of the Tribunal's finding above, it also follows that these costs, including any disbursements, must also be disallowed for the same reasons. As the Respondent could never have forfeited the lease in the way envisaged, these costs were not reasonably incurred and the Applicant's submission was also correct in this regard.

9. As to the fee of £235 for the referral to the mortgage provider, the Tribunal, again, agreed with the Applicant's submission that these costs were unnecessary. It would only have been necessary to do so if the mortgage provider's security was at risk. However, this could never have arisen because the Respondent could not have forfeited the lease for the reasons already stated above. Accordingly, these costs were not reasonably incurred and are also disallowed.

Section 20C – Costs & Fees

10. In the originating application, the Applicant made this application to disentitle the Respondent from recovering any costs it had incurred in these proceedings through the service charge account. There was no evidence before the Tribunal that the Respondent had incurred any such costs. However, in any event, having regard to the fact that the Applicant has succeeded entirely in the application, the Tribunal makes an Order under s.20C of the Act that any such costs incurred by the Respondent are not relevant costs and are not recoverable against the Applicant as a service charge. For the same reason, the Tribunal also directs the Respondent to reimburse the Applicant the issue fee of £50 paid to the Tribunal pursuant to Regulation 9 of the Leasehold Valuations Tribunals (Fees) (England) Regulations 2003.

11. As to the Applicant's application for costs in the sum of £500 plus VAT, the only basis on which the Tribunal could make such an order is pursuant to Schedule 12 paragraph 10(3). To do so, the Tribunal would, firstly, have to make a finding that the Respondent had acted frivolously, vexatiously,

abusively, disruptively or otherwise unreasonably in connection with the proceedings. As stated earlier, the Respondent has not responded at all to these proceedings. It, therefore, cannot be said that it had ***acted*** frivolously, vexatiously, abusively, disruptively or otherwise unreasonably. Accordingly, the Tribunal does not grant the Applicant's application for costs.

Dated the 21 day of March 2007

CHAIRMAN.....

Mr I Mohabir LLB (Hons)