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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985 SECTION 27A

LON/00AL/LSC/2010/0565

Premises: Flat 4 St James Heights, Burrage Road, London
SE18 7HH

Applicant: DPS Property Holdings Limited

Represented by Mr Jonathan Upton- Counsel instructed by Manis
Solicitors

Respondent: Mr L Nicol

Represented by Mr Richard Mobbs- Counsel instructed by Cuff &
Gough LLP

Date of Hearing: 16 November 2010

Also in Attendance: Mr Amit Patel –Manis Solicitors
Mr Carlo Camachi DPS Properties

Tribunal: Ms M Daley LLB (Hons)
Mr Jarero BSc FRICS
Mrs Clark CQSW JP

Date of decision: 16 November 2010

Background

- (a) The property, which is the subject of this application, is a flat situated on the first floor of a development of 11 flats situated on the former site of St James Church Burrage Road Plumstead.
- (b) The case was transferred from Winchester County Court by Order of District Judge Mills on 13 August 2010. At the pre-trial review held on 8 September 2010, the Tribunal identified the issue to be determined as the reasonableness and liability to pay service charges for unspecified years in the sum of £3896.89.
- (c) The Directions required the Applicant to provide to the Respondent the invoices in support of the costs challenged together with witness statements, if appropriate in support of those costs.

The Hearing

1. At the hearing it was apparent that one of the issues between the parties was the actual sum outstanding, as the sum claimed included sums, which had been the subject of previous court proceedings firstly on £1492.78 in proceedings issued on 28 November 2007 and £1,072.64 issued in March 2008. The parties did not agree the extent to which these sums had been included in current service charges, in dispute before this Tribunal.
2. Mr Mobbs submitted that if these sums were included in the service charges, then notwithstanding the Judgments, it was legitimate for the Tribunal to consider the charges and determine the reasonableness and payability of these sums, Mr Upton submitted that the matter had already been determined by the County Court and as a result, the Respondent could not re-open these issues in fresh proceedings.
3. The Tribunal agreed with this, and stated that if the Respondent were minded to go down that route he would have to set aside the Judgement, which had been obtained.

4. The Tribunal asked for information on the service charges that made up the undetermined sums and the period that this sum related to. In reply Mr Upton informed the Tribunal that the period in issue was 24 June 2008- 23 June 2009, and the period 2009/10, (although the amount outstanding was the estimated charge rather than the actual).
5. Counsel for the Applicant and the Respondent asked for a brief adjournment to narrow the issues in dispute. Upon return Mr Upton informed the Tribunal that the amount agreed as outstanding by the parties was £2671.88, there was a credit to be applied to the Respondent's account accordingly the sum outstanding was £2167.50. The Respondent admitted that this sum was payable.

The Tribunal noted that the effect of this admission, was that section 27A (4) of the Landlord and Tenant Act 1985 applied this section states:-

- (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.*

6. Counsel for both parties accepted that the Tribunal no longer had jurisdiction on the issue of the reasonableness and payability of the service charges. There was however the issue of the cost occasioned by the Tribunal hearing and (i) the extent to which it was recoverable as a service charge (ii) in the event that it was, the reasonableness of that sum and (iii) the Respondent's Application which was made at the hearing under section 20C of the Landlord and Tenant Act 1985.
7. Mr Upton provided the Tribunal with a schedule of cost in the sum of £9739.09. He submitted that these cost were recoverable (save for a small proportion of them which were associated with the County Court Cost) He referred the Tribunal to clause 1 (2) in the Second Schedule of the Lease which stated:-

" ... [I] n connection with the performance of the Landlord's obligations and powers and with the apportionment and collection of those expenses and fees between and from the several parties liable to reimburse the Landlord for

them and of the expenses and fees for the collection of all other payments due from the tenants of the flats in the Building not being the payment of rent to the Landlord."


8. Mr Mobbs considered that the relevant section that dealt with legal fees was paragraph 3.14, in his submissions this was the proper section that the Tribunal should consider, and in his view this did not provide for the recovery of the legal cost as a service charge. If he was wrong on this, he indicated that he wished to make an Application under section 20 C of the Landlord and Tenant Act 1985. The ground upon which he sought to rely was the fact that the sum admitted was substantially less than the sum claimed. He also asked that the Tribunal consider the cost schedule, as the Applicant had drawn it up on the basis that the total time spent at court would be eight hours and this had not occurred, there were expenses which related to the county court expenses, he also cited the fact that the bundle that was prepared for this hearing had not been put together particularly well.
9. Mr Upton did not accept these submissions although he indicated that he was content to leave the matter for the Tribunal.

The decision of the Tribunal

10. The Tribunal having considered the submissions made by the parties have determined that the legal cost are recoverable as a service charge under *1(2) of The Second Schedule of the Lease*. The Tribunal in determining whether to grant an application under Section 20C of The Landlord and Tenant Act 1985 have determined that the Applicant has substantially succeeded upon its claim. The Tribunal noted that Mr Nicol had not paid the charges, as he had been unsure as to what they related, and part of this confusion may have arisen as a result of the Applicant demanding the service charges together with sums that had been the subject of County Court proceedings.
11. However any confusion that may have arisen could have been clarified by asking for additional information, and given that there were solicitors acting for Mr Nicol, the Tribunal considers that these matters could have been resolved. Given this we find that it is not reasonable in all the circumstances to grant the section 20C order sought. The Respondents application is refused.
12. The Tribunal have considered the cost schedule and have determined that under the heading work done on documents, the time taken to deal with the

matter of 18 hours and 44 minutes was excessive. The Tribunal consider that the Applicant or their solicitor ought to have acted proportionately to the sum outstanding given this we find that 16 hours was the upper limit of the amount of time needed to deal with this matter. We also consider that this time allowed sufficient time to be spent writing any letters or making any telephone calls that were considered necessary. **The Total time allowed in therefore 16 Hours.** In respect of the attendance at Tribunal, the Tribunal have noted that the matter was determined in less than 2 hours and given this the time allowed for attendance at hearing and travel **should not exceed 3 hours.** In reaching this decision we noted that both parties were fully represented by Counsel, and there is an issue as to what extent it was also necessary to seek the attendance of a solicitor (a grade 1 Partner/ Senior Solicitor). The Tribunal have also determined that the court fees and the allocation questionnaire are county court expenses, which are not payable in relation to dealing with this claim. We also accept that the total amount allowed for the bundle preparation should not exceed £150.00.

- 13. We find that the total sum payable by way of legal expenses recoverable as a service charge item should not exceed £6500 inclusive of VAT.**

CHAIRMAN... 

DATE... 16th November 2010