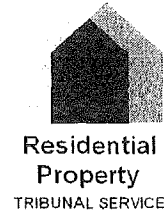


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LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER PARAGRAPH 5 of SCHEDULE 11 to COMMONHOLD and LEASEHOLD REFORM ACT 2002

Case Reference: LON/00AE/LVA/2012/0003

Premises: Flat 45 Danes Court, North End Rd, Wembley
Middlesex

Applicant: Mr Robin Davis

Representative: In Person

Respondents: LKB Investments Limited

Representative: Freshwater Group (LK Investments)

Date of hearing: 14 June 2012

Appearance for Applicant: In Person

Appearance for Respondent: Mr Fieldsend of Counsel

Leasehold Valuation Tribunal: Ms E Samupfonda LLB (Hons)
Mr KM Cartwright FRICS
Mrs R Emblin

Date of decision: 27 June 2012.

Decision of the Tribunal

The Tribunal determines that the application dated 13 March 2012 be dismissed.

The application

1. The Applicant seeks a determination pursuant to paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to whether legal fees demanded by the Respondent are variable administration charges payable by the Applicant.
2. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge

The hearing

3. The Applicant appeared in person at the hearing and Mr Fieldsend of Counsel represented the Respondent. Ms Judd, his instructing solicitor was also in attendance.
4. Mr Fieldsend set out the history of proceedings clearly and succinctly in his skeleton argument

The issues

5. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of variable administration charges relating to legal fees.
 - (ii) Whether the application to the Tribunal should be dismissed pursuant to paragraph 5 (4) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
6. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The Tribunal's decision

7. The Tribunal determines that the application be dismissed.

Reasons for the Tribunal's decision

8. The Tribunal considered the history of proceedings as set out in the skeleton argument. Mr Fieldsend stated that the legal fees that form the subject matter of these proceedings formed part of the costs that were claimed in the County Court proceedings claim no. 1UD65335. The court heard that claim on 23 March 2012 and the court determined that the Applicant was liable for costs and assessed the amount payable at £2,990.
9. The Applicant, Mr Davis admitted that he had paid the legal fees that are the subject matter of this application on 18 May 2012. However, he sought to challenge payability on the basis that at the time the amounts were debited from his account there was no liability to pay.
10. As the Applicant has admitted and paid the costs in issue, the Tribunal does not have jurisdiction to consider matters further pursuant to paragraph 5 (4) to Schedule 11 of the 2002 Act (see below) and the application is dismissed.
11. There was no application for costs and no application made under section 20C of the Landlord and Tenant Act 1985.

Chairman: Evis Samupfonda

Date: 27 June 2012

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).