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LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER [SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985

Case Reference: LON/00AE/LSC/2013/0117

Premises: First Floor 40 Pember Road, London NW10 5LS

Applicant: Mr .MW Davis

Respondent: Cedar Edge Property Limited

Date of paper determination: 18 June 2013

Leasehold Valuation Tribunal: Ms M W Daley LLB (Hons)
Ms S Coughlin MCIEH

Date of decision: 18 June 2013

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Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £511.6 is payable by the Respondent in respect of the service charges for the year 1.1. 2012 to the year ending 31.12.2012.
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985
- (3) **The Tribunal determines that the sum due shall be payable upon the Applicant producing:- (a) a notice sent to the Respondent in accordance with clause 12 of the lease, for the sum due as On Account Payment (b) a Certificate of the amount due for Maintenance Rent certified in accordance with clause 11.**
- (4) The Respondent shall pay the Applicant £511.61, such sum to be payable within 28 days of the Applicant complying with paragraph 3 above.
- (5) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Brighton County Court.

The application

1. The Applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge year 1.1.2012 to 31.12.2012
2. Proceedings in this matter were originally issued in the Northampton County Court (subsequently transferred to Brighton County Court under claim no. 2YN51036) and then in turn transferred to this Tribunal, by order of Brighton County Court dated 13 February 2013.
3. The relevant legal provisions are set out in the Appendix to this decision.

The background

4. The property which is the subject of this application is a First floor flat in a building containing two flats, situated on Pember Road NW10.
5. The Respondent 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 (a) an On Account Payment (b) Maintenance Rent, both of which constitute variable service charges as defined in section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act").

6. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

7. An oral Pre-Trial review was held on 20 March 2013, which was attended by Solicitor instructed by the Applicant and Mr T Allan on behalf of the Respondents. At the Pre-Trial Review hearing the parties identified the relevant issues for determination as follows:
- (i) Liability to pay estimated service charges for 1.1.2012-31.12.2012
 - (ii) Whether the costs demanded are reasonable, both by reason of the charge levied and the standard and reasonableness of the service provided.
 - (iii) Whether an order under section 20C of the 1985 Act should be made
8. The parties agreed that it would be appropriate for the application to be dealt with entirely on the basis of written representations and documents; without the need for the parties to attend and make oral representations at the hearing.

Service charge items for the period 1.1.2012-31.12.2012

Accountancy Fees	£105.00
Building Insurance	£1157.00
Management Fees	£476.00
General Repairs/Maintenance	£300.00

9. The Applicants in their Scott Schedule state the following in relation to the charges:- *Accountancy Fees*: that the lease enables the Landlord's Agent to certify the charges, and that the sum of £105.00 charged is a reasonable fee for the work undertaken. *Building Insurance*: that the sum charged for this of £1162.01 was actually incurred and that the lease permits the landlord to insure against very broad risks for example "other risks usually insured". *Management fee*: That the fee charged equates to £238 per unit, which in the absence of any alternative figures put forward is a reasonable rate for the work undertaken, and compares well with other fees charged in the London Area. *General Maintenance*: That the £300.00 incurred relates to an invoice from a professional surveyor, Stuart Radley & Associates, for carrying out a re-valuation of the building so as to insure that the reinstatement value for the purpose of the insurance was accurate.

10. The Applicant in the Statement of Case dated 7 May 2013, referred to the provisions of the lease, the particulars of which provide that (a) The payment dates are the usual quarter days (b) the Maintenance Rent is 50% of the service charge incurred and (c) The On account payment is £250.00 per annum.
11. By clause 1 of the lease, the Respondent covenanted to pay -:"...*(b) the Maintenance Rent on the Payment Dates The first of such payments or a due proportion thereof as to the Rent and a due proportion of the On Account Payment in respect of the Maintenance Rent to be made on the First Payment Date...*"
12. In the Statement of Case, the Applicant submits that the lease allows the Applicant considerable discretion to charge either the On Account Payment or the Maintenance Rent on the quarter days as long as the "Applicant has incurred the cost."
13. Clause 11 and 12(the relevant parts) of the lease states:- "*The cost of the foregoing services shall be ascertained and certified by the Lessor's Managing Agents (whose certificate shall be final and binding on the parties hereto) to the Maintenance Year End and payment shall be made within one month of production of such certificate...the Lessee shall pay on account of the Maintenance Rent the amount of the On Account Payment by equal payments on the Payment Dates in each year and shall receive credit thereof against the next Maintenance Rent Payment. 12. If in the opinion of the Lessor's Managing Agents the amount of the On Account Payment shall be insufficient to cover the costs of the items contained in this Schedule they shall be entitled to serve one months notice requiring an increase in the On Account Payment which shall upon the expiry of such notice become the future On Account Payment...*"
14. The Tribunal noted that the Respondent has not set out their objections to the payment of the service charges.
15. The Respondent's have not complied with the Directions, and have not set out their objection to the service charges in issue. The only information provided by the Respondent was that set out in the Allocation Questionnaire which stated:-"*...The Freeholder ... has in our opinion needlessly applied to a court for payment of sums which he will not properly justify...We believe the leasehold valuation Tribunal should be allowed to adjudicate on this matter, as we are dissatisfied that the claimant is denying us what we are properly and rightfully entitled to. We are therefore filing an Application with the LVT*
16. To date no application from the Respondent has been received by the Leasehold Valuation Tribunal

The Tribunal's decision

- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).