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**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
LANDLORD & TENANT ACT 1985
SECTIONS 27A AND 20C**

Ref: LON/00AD/LIS/2010/0017

Property: Flat 13 Oakenholt House
Hartslock Drive
London
SE2 9UX

Applicant: Ms Jade-Sophia Young

Respondent: Gallions Housing Association

Date of Application: 21st June 2010

Date of PTR and Directions: 13th July 2010

Date of Decision: 13th September 2010

Tribunal: Mr S Shaw LLB (Hons) MCI Arb
Mr M Mathews FRICS

DECISION

INTRODUCTION

1. This case involves an application dated 21 June 2010 for a determination as to the reasonableness and liability to pay certain specific service charges arising in the years 1998 (£147.07) and 2003 (£442.58). The application is made by Ms Jade-Sophia Young (“the Applicant”) in respect of Flat 13 Oakenholt House, Hartslock Drive, London SE2 9UX (“the Property”). The application is made against Gallion Housing Association (“the Respondent”) which Association is the freeholder owner of the Property. The Applicant is the leasehold owner of the Property.
2. Directions were given in this matter following a Pre-Trial Review, which took place on the 13th July 2010. The Applicant attended that hearing but the Respondent did not, and was not represented.
3. Consequent upon the Directions given, both parties have prepared full Statements of Case. Indeed the Applicant has produced 4 Statements of Case and the Respondent has produced 2 such Statements. These Statements coupled with other relevant documents have been collated in a bundle, which has been prepared by the Applicant. In so far as may be necessary, references will be made to page numbers in that bundle in the context of this Decision. The Tribunal directed that this case was appropriate to be dealt with on paper without the need for attendance by the parties. The Respondent was however given the opportunity of calling for an oral hearing but was no such oral hearing has been requested.. Accordingly this Determination is made on the basis of the written representations supplied to the Tribunal by both parties.
4. As mentioned above, the case involves a Determination in respect of two sums demanded of the Applicant by the Respondent. It is proposed to deal with these sums separately, to summarise the respective positions of the parties and to give the conclusion of the Tribunal in respect of each sum.

The claim for external decoration works in the sum of £442.58

1. The background in respect of this sum claimed appears to be that, originally the property was jointly owned by the Applicant and her then husband Mr G G Gower-Kerslake. However, the Applicant and her husband divorced sometime before March 200, and by letter dated 1 March 2002 received by the Respondent on 5 March 2002, The Applicant's former husband wrote to the Respondent (or its predecessors) informing it of the divorce proceeding, and saying that he would no longer be paying the service charge nor payment for the lift refurbishment (about which latter matter the Tribunal will deal below). That letter states that, following 1 April, these matters will be dealt with by the Applicant.
2. A similar letter was written by the Applicant's former husband's solicitors (Messrs Mundays) who by letter dated 15 March 2002 (B27 in the bundle) put the Respondent formally on notice of the matter noted above, and further that there would be shortly a transfer of the Property from the joint names of the Applicant and her husband to the Applicant alone.
3. By letter dated 1 July 20002 the Respondent gave notice under Section 20 of the Act, of certain majors works, (painting works) to be carried out at the Property. Notwithstanding the information given to the Respondent, that letter was addressed both to the Applicant's former husband and herself. The Applicant's evidence is that she never saw this notice.
4. Perhaps more importantly, the demand for payment of service charges consequent upon these works appears at page B57 in the bundle. The demand is in the form of an invoice dated 13 August 2003 (thus more than a year later) and has been addressed to ' Mr Gower-Kerslake.' The demand was thus made to the Applicant's former husband, despite the notice that he was no longer an owner of the Property in the correspondence referred above. The Applicant's evidence is that she never received the original copy of that invoice. She received demands for payment, which included a sum in respect of this external painting by virtue of letters dated 19 September 2007 and 10 October 2007 (see B7 and B8). Once

any funds paid into Open Accounts to the oldest outstanding invoice, which was in this case, the lift refurbishment invoice'.

8. Accordingly it seems to the Tribunal that these sums were indeed paid by the Applicant. Instead of being credited to the accounts for which the payments were intended, a computer system within the Respondents administration system had allocated the payments to another account, thus leaving the sum outstanding as against the Applicant. The costs in respect of which the service charge relates were incurred sometime during 2002/2003. No demand put before the Tribunal as against the Applicant was made during the 18 month period after which the costs were incurred. The only demand made was to her former husband, and this demand was made notwithstanding the fact that the Respondent had already been informed that he was shortly to be transferring his interest in the Property and would no longer be responsible (see the letters and other correspondence referred to above).
9. In all the circumstances and on the evidence put before the Tribunal, the Tribunal is not satisfied that a valid demand has been made for these sums to the Applicant within the statutory period, and accordingly the sums she has paid in discharge of the £442.58 should be credited back to her.

The sum of £147.07 in respect of lift refurbishment

1. This sum is outstanding on an account internally numbered by the Respondent as G31013 and relating to the Property. The account is in the sole name of the Applicant's former husband. It appears that notice was given to the Applicant's former husband of the intention to carry out lift refurbishment works by a letter dated 24 March 1997 appearing at page B29 in the bundle. The estimated contribution notified to the Applicant's former husband at that time was £818.21. It appears that the bulk of that sum was paid off, but that there is a balance outstanding on that account in the sum of £147.07.
2. Once again, the Applicant's position in relation to this balance is that nobody from the Respondent ever suggested to her when the Property was transferred into her

sole name in 2002, that there was an outstanding balance under this account. She was never supplied subsequently with any statements of account in relation to the account numbered G31013. Moreover after the transfer to sole ownership had been completed she was at pains to go the Respondent's office and was specifically told by a Mr Jim Bell the Home Owner Revenue Officer of the Respondent, that the only account she had to set up for monthly payments was a separate and differently numbered account and was told that there was no other account outstanding in relation to her flat. This assertion has not been contradicted in the Respondent's evidence and there is no contrary statement from the gentlemen referred to.

3. Moreover there is no evidence of an original demand in respect of this balance, served within the 18 month period referred to above, and set down by section 20B – although it may be that the sum claimed is the balance rather than the full sum. Whatever the position, the original section 20 notice was undoubtedly served upon the Applicant's former husband alone in 1997 (although she was co-owner at the time) and the subsequent correspondence chasing the alleged outstanding sum, extraordinarily, is addressed only to her former husband (see the letters of 19 September 20027 and 10 October 2007 appearing at B36 and B37). It is right to say that there is a separate letter dated 3 October 2007 addressed to the Applicant herself, but this appears to follow upon a conversation which she had with the Respondent concerning payment of the other sum alleged outstanding, relating to external painting as referred to above. So far as the Applicant is concerned, the only demand she has received in respect of this sum is in the form of that letter dated 3 October 2007.
4. Once again, the Tribunal can find no appropriate demand either for the primary sum or the balance outstanding in this account made to the Applicant within 18 months of the costs having been incurred for the purposes of Section 20B of the Act. Further, and independently, this relatively small balance seems to have been left in a separate account in the name of the Applicant's former husband and not drawn to her attention until many years after the event – and indeed the suggestion that the sum is due from her is not in accord with the assurances she received from the Home Owner Revenue Department as referred above in 2002.

For this further reason it seems to the Tribunal that it would not now be reasonable for this sum to be payable by the Applicant, given the background as already outlined above. This sum too therefore should be cleared or at any rate not charged to the Applicant's account.

5. The Applicant had requested the Tribunal to make a direction under Section 20C in the Act in her favour to the effect that no costs incurred by the Respondent in dealing with this application should be added to her service charge account. No representations have been made to the contrary by the Respondent in its Statement of Case, and it does seem to the Tribunal that the Applicant has had to make this application in order to reconcile problems which have arisen on the account. In the circumstances the Tribunal does indeed make a direction under Section 20C of the Act that no further costs should be added to the Applicant's service charge account in respect of this application.

Legal Chairman:

S Shaw



Dated:

13th September 2010