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**Residential
Property**
TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

LON/00AP/LSC/2010/0080

Applicant: Ms C Isichei

Respondent: Elm Place Residents Association

Property: Flat B Elm Place 16 Bruce Grove,
London N 17 6UU

Appearances for Applicant: Ms Isichei appeared and represented herself

Appearances for Respondent: Mr Alan Smith of Symon Smith Managing Agents appeared on behalf of the Respondent.

Leasehold Valuation Tribunal: Ms Helen Carr
Ms Evelyn Flint

Date of Decision 17th May 2010

DECISION

The Tribunal determines that the Applicant is liable for 50% of the administration charge i.e. £302.50p

PRELIMINARY

1. The Applicant seeks a determination under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (CLARA) of the reasonableness and/or liability to pay an administration charge.
2. The application relates to Flat B, Elm Place, 16 Bruce Grove, London N17 NUU (the property). Elm Place is a Grade 2 listed building which was converted into 13 flats some twenty years ago.
3. The Applicant, Ms C Isichei is the lessee of the property. She does not reside in the property which is sublet.
4. The Respondent, Elm Place Residents Association (Bruce Grove) Ltd is the freeholder of the property. All the lessees of Elm Place are members of the company. The Respondent is represented in this matter by Symon Smith and Co. who are the Managing agents of Elm Place.

DETERMINATION

Background

5. The hearing of this application took place on 17th May 2010. The Tribunal heard evidence from Ms Isichei, her husband Mr Sesay, Mr Alan Smith from the Managing Agents and from two lessees, Mr

Barry Branch and Mr Clinton Brooks. The salient evidence is dealt with below under the relevant headings.

6. The facts in brief are as follows: The application arises from the difficulties caused by Ms Isichei's tenant, Mr Kwame Sarfo. Mr Sarfo's tenancy commenced in 2007 and terminated in October 2009. During that time the smells from his cooking have caused some of the other lessees in Elm Place considerable difficulty. Evidence was given by Mr Brooks and Mr Branch that the smells were very pungent and permeated the building. The cooking smells prompted the Respondent to instruct solicitors.
7. The events relating to Mr Sarfo's occupation have caused considerable tensions between the Applicant and the Respondent, tensions which concern the Tribunal as they may affect future relationships between the parties. The Tribunal urges the parties to depersonalise the management of the property and to try to prevent disputes escalating in the future.
8. However there is only one issue before the Tribunal which requires determination. This relates to an administration charge of £605 which has been levied on the Applicant which arises from the legal charges in connection with Mr Sarfo's occupation. What the Tribunal is required to determine therefore is whether the Applicant is liable for the administration charge and whether the charge made is reasonable.

Liability

9. Ms Isichei's liability for the administration charge is determined by the terms of the lease of the property.
10. The relevant clause of the lease is clause 2(x) which requires the Lessee to pay the landlord all costs, charges and expenses including legal costs which may be incurred in or in contemplation of any proceedings under section 146 and 147 of the Law of Property Act 1925, that is forfeiture proceedings.
11. The clause is clear on the issue of liability. The Tribunal **determines** that Ms Isichei is liable for legal costs in connection with forfeiture proceedings. However the invoice prepared by the Respondent's lawyers, Messrs Kostice, Hana and Herskovic, does not state that it is limited to costs incurred in or in contemplation of forfeiture proceedings. Moreover the Respondent gave evidence that it instructed lawyers to sort out the problem that Ms Isichei's tenant was causing to the other residents of the property. It did not give specific instructions in connection with forfeiture proceedings. The Tribunal therefore has to determine the extent to which the costs charged by the lawyers relate to forfeiture proceedings.

12. The Tribunal was shown letters prepared by the lawyers. The first of these letters is dated 4th March 2009. This letter specifically refers to the covenants within the lease, and refers to a section 146 Notice. The Tribunal therefore determines that this letter was written in contemplation of forfeiture proceedings. The second letter is dated 18th April 2009. This letter presented the Tribunal with more difficulty. The letter is not headed with the flat number, simply referring to Elm Place. Moreover it is concerned with gathering evidence for an injunction and also refers to service charge arrears. The Respondent was not able to provide further clarification of the contents of the letter. The Tribunal found it difficult to be sure that this letter was written in contemplation of forfeiture proceedings.
13. The third letter is in effect a letter before action, which contains a suggestion that proceedings could be avoided by Ms Isichei terminating the possession of her tenant. However the letter does contain a reference to a s.146 Notice and forfeiture proceedings.

Reasonableness

14. The Tribunal considered that there were two elements to consider when deciding whether the charge was reasonable or not. The first is whether it was reasonable to instruct solicitors to take forfeiture proceedings. The second issue is whether the charge levied is reasonable. However in this case, the Applicant did not challenge the level of charges made by the solicitors.

Reasonable to instruct solicitors

15. Deciding whether or not it was reasonable to instruct solicitors and therefore incur legal costs at the time that the Respondent did has caused the Tribunal some considerable difficulty.
16. The chronology of events in this matter as far as the Tribunal was able to establish from the papers provided is as follows:
 - a. Mr Sarfo moves into the property in February 2007.
 - b. Complaints about cooking smells are made under Any other Business (AOB) at the Annual General Meeting (AGM) of the Residents Association in November 2007. Ms Isichei does not attend the AGM.
 - c. A letter is written to Mr Sarfo asking him to open windows when he cooks in December 2007.
 - d. One lessee complains of the smell to the managing agent by e mail in April 2008
 - e. On 8th May 2008 the managing agent writes to Ms Isichei in connection with the cooking smells. Ms Isichei responds saying that she has advised Mr Sarfo to open the windows and use the extractor fan when he is cooking.

- f. In June 2008 the managing agent suggests the installation of a fan that vents externally.
 - g. In November 2008 the matter was again raised in AOB at the AGM when it was decided to gather evidence of the extent of the problem.
 - h. An EGM was called on 15th January 2009 for a meeting on 3rd February. One of the two agenda items was the cooking smells and the nuisance caused.
 - i. On Monday 19th January Ms Isichei writes to the Managing Agents explaining what action she has taken in connection with the problem, her willingness to talk further about the problem, and her inability to attend the EGM.
 - j. At the EGM it was decided to instruct solicitors and they were duly instructed by letter from the Managing Agents dated 12th February 2009.
17. A log of complaints was produced for the solicitors and shown to the Tribunal. This shows complaints and problems from 24th March 2008. The last bad food smell recorded on this schedule was 6th April 2009. The Schedule appears to have been prepared during March and April 2009. The Tribunal is concerned that a lot of the complaints are recorded retrospectively and that until November 2008 the solution proposed appears to have concerned improving the ventilation. No suggestion that Mr Sarfo should leave the property seems to have been made formally prior to the EGM.
18. The Tribunal also noticed that there was a gap in the complaints made between 6th December 2008 and 6th March 2009. This period appears to coincide with the installation of a new cooker hood by the Applicant. The Respondent was unable to explain why the EGM was called at a time when no complaints were being made.
19. The reasonableness of the Respondent's response has proved a very difficult issue for the Tribunal to determine. On the one hand there has clearly been a serious problem to at least some of the lessees caused by Mr Sarfo's cooking. On the other hand the Managing Agents, who are the professionals in this matter do not appear to have arranged a meeting with the Applicant; nor do they seem to have suggested to Ms Isichei that she terminate Mr Sarfo's tenancy. The Tribunal consider that this would have been a reasonable step to take prior to incurring substantial legal costs.
20. However, due to the breakdown of the relationship between the parties, the Tribunal consider that it is unlikely that Ms Isichei would have agreed to this course of action. Moreover it is clear that she was concerned that the other lessees were racially motivated, which would have made any proposed eviction more complex.
21. Balancing the lack of clarity of the letters from the solicitors, and the possibly precipitous action by the Managing Agents, with an

understanding that something needed to be done to respond to the Respondent's concerns, the Tribunal determines that it is reasonable for the Applicant to pay 50% of the administration charge, the remaining 50% being apportioned between the other lessees.

22. The Tribunal hopes that this solution provides an appropriate balance between the parties which will lead to a more harmonious future.

Signed

Helen Carr

A handwritten signature in cursive script, appearing to read 'Helen Carr', written in black ink.

Dated

17th May 2010