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Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
IN AN APPLICATION UNDER
LANDLORD AND TENANT ACT 1985 Section 27A

LON/00BE/LSC/2009/0789

Premises: 61 Montague Square
Peckham
London
SE15 2LR

Applicant/Freeholder: London Borough of Southwark

Respondent/Leaseholder: Mr Cecil Bertie

Date of Hearing: 17 May 2010

Members of Tribunal: Ms F Dickie, Barrister
Mr R Humphrys, FRICS
Mrs J Clark, JP

Date of Decision: 25 May 2010

1. This application was transferred to the Leasehold Valuation Tribunal from Lambeth County Court on 30 September 2009. That claim was issued on 28 July 2009 for the sum of £1,192.37 plus interest and Court fee. The claim comprised:-
 - Balance outstanding on estimated service charges of £1,336.90 for the year 2008/2009.
 - Estimated service charges for the first two quarters of the year 2009/2010 in the sum of £774.18.
 - Outstanding ground rent at £10 per annum was claimed in addition to these figures, though the Tribunal has no jurisdiction in respect of this.

2. The Tribunal's jurisdiction is under S.27A Landlord and Tenant Act 1985. The Tribunal issued Directions at an oral Pre-trial Review on 12 January 2010 at which the Applicant was represented but the Respondent did not appear. The inspection of the premises notified to the parties in those Directions was subsequently cancelled by the Tribunal. The premises are understood to be a one bedroom flat in a purpose built block within a larger estate. The hearing of this application took place on 17 May 2010 at 2pm at which the Applicant was represented by Mr Orlando Strauss, in-house legal officer, and Mr G Dudhia in-house accountant also attended. The Respondent did not appear.

The Lease

3. The lease is dated 26 October 1998 and is between the Applicant on one part and the Respondent on the other. The premises were demised for a period of 125 years from 26 February 1990. The relevant clauses of that lease provide:

***IN THIS LEASE** the following expressions shall where the context admits have the following meanings:-*

...
 "The Services"

Means the services provided by the Council to or in respect of the flat and other flats and premises in the building and on estate and more particularly set out hereunder.

- (i) heating
- (ii) hot water supply
- (iii) caretaking, lighting and cleaning of common areas
- (iv) maintenance of common television aerial or landline

- (v) maintenance of estate roads and paths
- (vi) estate lighting
- (vii) maintenance of gardens or landscaped areas
- (viii) un-itemised repairs

...
2. **THE** lessee hereby covenants with the Council:-

- (1) ...
- (2) ...
- (3) (a) to pay the Service Charge contributions set out in the Third Schedule hereto at all the times and in the manner there set out.

...
4. **THE** Council hereby covenants with the Lessee:-

- (1) ...
- (2) To keep in repair the structure and exterior of the flat and of the building (including drains, gutters and external pipes) and to make good any defect affecting that structure
- (3) To keep in repair the common parts of the building and any other property over or in respect of which the Lessee has any rights under the First Schedule hereto
- (4) As often as may be reasonably necessary to paint in a good workmanlike manner with two coats of good quality paint all outside parts of the building usually painted and also all internal common parts of the building usually painted
- (5) To provide the services more particularly hereinbefore set out under the definition of ("services") to or for the flat and to ensure so far as practicable that they are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services
- (6) To insure the building to the full insurance value thereof...

THIRD SCHEDULE

ANNUAL SERVICE CHARGE

1(1) *In this Schedule "year" means a year beginning on 1st April and ending on 31st March*

...

2(1) *Before the commencement of each year (except the year in which the lease is granted) the Council shall make a reasonable estimate of the amount which will be payable by the Lessee by way of Service Charge (as hereinafter defined) in that year and shall notify the lessee of that estimate*

(2) *The Lessee shall pay to the Council in advance on account of Service Charge the amount of such estimate by equal payments on 1st April, 1st July, 1st October and 1st January in each year (herein after referred to as "the payment days")*

6(1) *The Service Charge payable by the Lessee shall be a fair proportion of the costs and expenses set out in paragraph 7 of this Schedule incurred in year*

(2) *The Council may adopt any reasonable method ascertaining the said proportion and may adopt different methods in relation to different items of costs and expenses*

7. *The said costs and expenses are all costs and expenses of or incidental to*

(1) *The carrying out of all works required by sub-clause (2)-(4) inclusive of Clause 4 of this lease.*

(2) *Providing the services hereinbefore defined*

(3) *Insurance under sub-clause (6) of Clause 4 of this lease*

...

(6) *The maintenance and management of the building and the estate (but not the maintenance of any other building comprised in the estate)*

(7) *The employment of any managing agents appointed by the Council in respect of the building or the estate or any part thereof **PROVIDED** that if no managing agents are so employed then the Council may add the sum of 10% to any of the above items for administration*

The Hearing

4. Mr Strauss on behalf of the Council contended that the service charges claimed had been calculated in accordance with the lease and were for

costs properly incurred and recoverable from the Respondent under its terms. In correspondence to the Tribunal dated 17 December 2009 the Respondent had disputed the landlord's entitlement to charge interest on the service charge debt, had sought an explanation as to how his proportion of the service charge had been calculated, asked for a statement of the balance of his account for the three years ending March 2010, and sought the opportunity to pay by monthly instalments.

5. Notably, Mr Bertie did not raise any challenge to the reasonableness or payability of any of the items claimed by the landlord. He had not submitted a statement of case in these proceedings, though he had been required to do so by the Tribunal in its Directions. Mr Strauss explained that he had sent items of correspondence in these proceedings to Mr Bertie by recorded delivery but that each had been returned since the item had not been collected from Royal Mail in response to the card left at the premises.
6. The Applicant had submitted a statement of case and a paginated bundle of documents. This included the County Court Pleadings and Orders, the Leasehold Valuation Tribunal Directions, various correspondence, the service charge demands and a copy of the lease. The tenant having made no application under this provision, it was unnecessary for the Tribunal to consider its jurisdiction under Section 20C of the Act. In any event Mr Strauss confirmed that the Applicant would not be seeking to add the costs of these proceedings to the service charge account.
7. It appeared from the County Court documents and from correspondence that a matter of substantial concern to the Respondent was his inability to pay his service charges. Mr Strauss explained that in respect of annual maintenance service charges there were limited options offered by the Council for payment by instalments. The Tribunal observed that although Mr Bertie is understood to be out of work, in giving details of his expenditure to the County Court it is apparent that he is not currently in receipt of any benefits. The Tribunal considers it may be in the interest of the Respondent if he were to seek independent advice as to his benefit entitlement, if any.

Estimated Service Charges for the year 2008/2009

8. Mr Strauss confirmed that actual service charges for the year 2008/2009 had now been calculated and balancing charges applied. In fact the actual charges for this year were £1,250.10, slightly lower than the charges estimated. However, it is the estimated charges that are the subject of the County Court proceedings transferred to this Tribunal and in respect of which the Tribunal gave directions and has reached its determination. Service charges (forming the subject of these proceedings) comprise:

Insurance premium	£171.11
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Heating and hot water	£623.79
Care and upkeep	£240.20
Communal TV	£ 4.82
Ground maintenance	£ 36.15
Un-itemised repairs	£111.26
Estate lighting/electricity	£ 28.03
Administration costs at 10%	<u>£121.54</u>
Total	£1,336.90

Mr Strauss produced a copy of the demand for payment for these estimated service charges, referring to an enclosed Statement of Rights. He also produced documentary support for each item.

Estimated Service Charge for the year 2009/2010

9. One-half of the following estimated service charges for this year, (representing two quarters of the year) were claimed in these proceedings:

Insurance premium	£183.09
Heating and hot water	£749.53
Care and upkeep	£242.85
Communal TV	£ 4.82
Ground maintenance	£ 36.66
Un-itemised repairs	£150.51
Estate lighting/electricity	£ 40.13
Administration cost at 10%	<u>£140.76</u>
Total	£1,548.35

Again Mr Strauss produced supporting documents for each of these items charged as well as a copy of the invoice demanding payment.

Apportionment

10. Mr Strauss explained the method by which the council apportioned the service charges. It applies a bed weighting system and as the flat has one bedroom it attracts a bed weighting figure of 5. In calculating apportionment of heating and hot water charges a slightly different process is adopted. A multiplier of 4.52 is applied to the bed weighting figure in this case leaving a product of 23 (5 x 4.52). The total bed weighting figure for all the properties served by the boiler house is 16,394 making a contribution of 23 over 16394 expressed as a percentage this is 0.00140295% of the total costs of operating the boiler system.

DETERMINATION

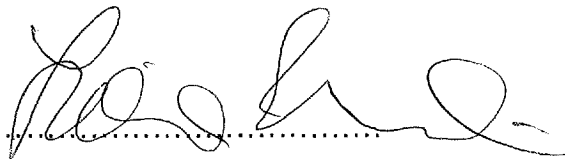
11. The Council is entitled under Clause 7 of the Lease to adopt any reasonable method in ascertaining a fair proportion of the costs and expenses payable as a service charge by the Respondent. The Tribunal is satisfied that the Council's bed weighting method of apportioning service charges is reasonable and complies with the requirements of the Lease. In respect of each item of service charge expenditure and for both of the service charge years in question, the Respondent has failed to raise a specific dispute. In his letter dated 17 December 2009 the Respondent said that he wanted this case referred back to the Lambeth County Court so that an appropriate monthly payment amount could be determined. He said he was more than prepared to settle the matter out of Court saving time and costs. His challenge to the interest sought by the landlord is not within this Tribunal's jurisdiction, but is an item claimed in the County Court proceedings. The Tribunal has no power to order the Applicant to accept payment by instalments.
12. Having considered the items claimed and the terms of the lease relied upon, the Tribunal is satisfied that each of those items is recoverable under clause 2, 3a and the Third Schedule. The amounts have been lawfully demanded and the Tribunal is satisfied that they are reasonable. In summary the Tribunal finds that the following amounts that are claimed under this application are reasonable and payable:

2008/2009 estimated service charges of £1,346.90

2009/2010 estimated service charges of £ 774.18 for half the year

The above sums exclude the ground rent payable, in respect of which the Tribunal has no jurisdiction.

Signed:



Dated: 25th May 2010