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MAN/00CB/LSC/2010/0041

**LEASEHOLD VALUATION TRIBUNAL
OF THE
NORTHERN RENT ASSESSMENT PANEL**

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

**LANDLORD AND TENANT ACT 1985
SECTION 27A (1)
COMMONHOLD AND LEASEHOLD REFORM ACT 2002
SECTION 168**

Property: 5 Newburn, 2 Lorne Road, Birkenhead, Wirral, CH43 1XB

Applicants: Liverpool Housing Trust

Respondent: Mr Philip David Griffiths

Chairman: Mr G C Freeman
Mrs E. M. Thornton-Firkin B. Sc. M.R.I.C.S.

Date of Decision: 5th August 2010

ORDER

- 1. The service charges for the periods referred to in the application are reasonable and payable by the Respondent to the Applicants to the extent they have been properly demanded in the correct form of notice.**
- 2. No order is made under section 168 of the Commonhold and Leasehold Reform Act 2002**

Application

1. By their application dated 7th April 2010 the Applicants seek a determination of the liability to pay and reasonableness of service charges for the above property where costs have been incurred, or are about to be incurred, for the service charge years 2006 to 2010. The Applicant also seek a determination that the Respondent is in breach of his lease under section 168 of the Commonhold and Leasehold Reform Act 2002, by virtue of having parted with possession of the Property. The Applicants named the Respondent in their application as their tenant.

2. The Applicants are represented by Brabners Chaffe Street, Solicitors. The Respondent was not represented and did not make any representations to the Tribunal.

Directions and Inspection

3. The Tribunal issued directions on 11th June 2010. The Applicants filed a statement of case stated 8th July 2010. The Tribunal inspected the exterior of the Property on 5th August 2010. It appears to consist of a flat in a block of similar properties in a pleasant residential area of Birkenhead, close to shops and transport facilities.

The Lease

4. The Applicants produced a copy of the Lease of the Property. It is dated 11th July 2006 and is made between Rodney Housing Association Limited of the one part and the Respondent of the other part. Rodney Housing Association Limited has subsequently merged with the Applicants.
5. Clause 3(2)(b) of the Lease requires the Respondent to pay the service charge in accordance with clause 7. This clause provides for the Respondent to pay a proportion of the costs of repairing managing and maintaining the common parts of the Property during the account year which runs from 1st April to 31st March. That proportion is 6.67%. There is also provision for a sinking fund to be set up to cover the cost of cyclical repairs.
6. The service charge in respect of any account year is to be computed before the beginning of the account year (clause 7 (3)). By clause 7(6) as soon as reasonably practicable after the end of each account year the Applicants are to determine and certify the amount by which the estimate referred to in paragraph 5 above exceeds or falls short of the actual expenditure.
7. The Applicants produced a copy of accounts for the service charge prepared by Mitchell Charlesworth, registered auditors, for the periods in question. The expenditure is shown under the headings gardening, window cleaning, insurance, management, audit fee and repairs and included provision for transfers to a sinking fund as envisaged by the Lease.

The Law

8. Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:
 - (1) In the following provisions of this Act "service charge" means" an amount payable by a tenant of a dwelling as part of or in addition to the rent –
 - (a) which is payable directly or indirectly , for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose-

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

9. Section 19 provides that

(1) relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works only if the services or works are of a reasonable standard:

and the amount payable shall be limited accordingly.

10. Section 27A provides that

(1) an application may be made to a leasehold valuation tribunal for a determination whether a service 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 date at or by which it is payable, and

(d) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3)

(4) No application under subsection (1)...may be made in respect of a matter which –

(a) has been agreed by the tenant.....

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

11. No guidance is given in the 1985 Act as to the meaning of the words "reasonably incurred". Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.

12. In *Veena v S A Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that

the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].

13. Section 153 of the Commonhold and Leasehold Reform Act 2002 inserted an additional section 21B into the 1985 Act as follows:-

“21 B Notice to accompany demands for service charges

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.*
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.*
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.*
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period of which he so withholds it.*
- (5) Regulations under subsection (2) may make different provision for different purposes.*
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament”.*

14. The Regulations referred to in section 21B (6) are contained in the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (England) Regulations 2007 (S.1.2007 No 1257) which came into force on 1 October 2007. These provide that a summary of rights and obligations must accompany a demand for service charges. Among other requirements, it is a requirement that a tenant must be informed of his right to apply to a Leasehold Valuation Tribunal for a determination of reasonableness and payment of service charges.

The Tribunal’s Conclusion

15. The Tribunal concluded that the amount payable by the Respondent for the provision of services within the Property was a variable service charge within the meaning of the Act and that they had jurisdiction to consider the reasonableness of the amount payable.
16. Having decided this, the Tribunal had to apply a three stage test to the application under section 27A:-

- 16.1 Are the service charges recoverable under the terms of the Lease? This depends on common principles of construction, and interpretation of the Lease.
- 16.2 Are the service charges reasonably incurred and/or for services of a reasonable standard under section 19 of the 1985 Act?
- 16.3 Are there other statutory limitations on recoverability, for example consultation requirements of the Landlord and Tenant Act 1985 as amended
17. Applying the recoverability test under paragraph 16.1 above, the Tribunal noted that the Lease permits the Applicants to recover service charges. The Tribunal considered the accounts produced by Mitchell Charlesworth which appear to conform within the requirements of the Lease. The Tribunal considered that the amounts charged for the respective heads of expenditure were reasonable, and properly incurred.
18. The Tribunal noted that no demands for service charge had been produced which conformed to the requirements of section 153 of the Commonhold and Leasehold Reform Act 2002

Section 168 of the Commonhold and Leasehold Reform Act 2002

19. Clause 3(15) of the Lease provides that the Respondent may not “assign underlet, mortgage, charge or part with possession of part only” of the Property. Similarly, clause 3(16) provides the Respondent may not “assign, mortgage or charge the whole of the Property without the Applicants’ consent, such consent not to be unreasonably withheld”
20. The Applicants allege that the Respondent is in breach of this clause and seek a declaration to that effect from the Tribunal. It was evident from the Tribunal’s external inspection that the Property is furnished and occupied. The Applicants adduced no evidence to show who is living at the Property or to substantiate their claim. Accordingly, the Tribunal declined to make an order under section 168.

6th September 2010

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G.C.Freeman
Chairman