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Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION BY THE LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985, Section 27A and Section 20C

Ref :LON/00BA/LSC/2007/0511

Property: Eve Court, 64 Graham Road, Mitcham, Surrey, CR4
2HA

Hearing date: N/A (Paper Determination)

Applicant: Mr B Harvey and Others (Leaseholders of the 9 Flats
at Eve Court

Represented by: N/A

Respondent: M Gizzard and D Coates

Represented by: N/A

Members of the Tribunal:

Professor James Driscoll LLM LLB Solicitor

P M J Casey MRICS

Date of Determination: 14 February 2008

BACKGROUND

1. These are applications to the Leasehold Valuation Tribunal made by Mr B Harvey and others being the long leaseholders of the nine flats which comprise Eve Court, 64 Graham Road, Mitcham, Surrey, CR4 2HA, for a determination under S27A Landlord and Tenant Act 1995 of liability to pay service charges and for an order under S20C of that Act limiting the respondent Landlords right to recover any costs of the proceedings through the service charge. The dispute concerns a 15% addition made by the respondents to the insurance premium in the service charge years 2006 and 2007.
2. Both the applicants and the respondent Landlords have agreed that the question in issue should be determined by the Tribunal by means of a paper hearing and accordingly have provided a bundle of documents for consideration.
3. A copy of the lease of Flat 5 and its garage is included in the bundle and the other flats are apparently let on identical terms. The lease was granted on 24 October 1973 for a term of 199 years from the 25 March 1973 at an annual rent in respect of the flat of £30 pa with provision for this sum to increase in future years. Under Clause 4(22) the lessee covenanted to reimburse to the lessor a sum, "the service charge", equal to 1/9th of the costs etc of matters mentioned in the First Schedule to the lease. Under Clause 6(2) the lessor covenanted to insure the building and under Clause 6(3)-(7) to carry out certain repairs maintenance cleansing and lighting of the building. The First Schedule itemized those costs etc to which the lessee is to contribute through the service charge including insurance of the building and fees of the lessor's managing agents.
4. The majority of the matters the lessor covenanted to perform are dealt with through managing agents. The Tribunal were not given any details of who they are nor were any copy documents supplied relating to the operating of the service charge provisions of the lease by them.

5. The respondent landlord, the lessor, chose however to deal with the insurance of the buildings themselves not through the managing agents. The reimbursement of the premium is made by the lessees to the respondents who send a bill to each lessee for their share together with the demand for the half year ground rent for the flat (and for the garage). The only such demand seen by the Tribunal is dated 12 September 2007.
6. Although the respondent landlord bills the insurance separately from any service charge demands made by their managing agents the provisions in the lease relating to payment of the service charge apply equally.

THE EVIDENCE

7. The Applicants make no complaint about how they are billed for their share of the premium or to the amount of the premium or indeed the sum insured under the policy. They do suggest that they could get the same cover for less and the respondent landlords has said they will let the lessees insure if they pay to have the leases varied but that is not the issue before the Tribunal.
8. In the demands sent on 12 September 2007 the Respondents sought to recover from the Applicants in addition to their share of the premium an addition of 15% said to be for "admin Costs". They also included a further identical sum said to be "correction of an arithmetical error in the calculation of the insurance premium for the previous account" but clearly an attempt to retrospectively charge a similar 15% "admin costs" addition for the previous year.
9. In their response dated 28 January 2008 to the Applicants' statement of case the Respondents say that this addition is to cover the work involved in administering the insurance which entails:

Annual discussion with insurance brokers

Appraising and taking responsibility for rebuilding costs

Financing the premium before reimbursement ...

Apportionment between the flats and record keeping

Supplying Insurance Schedules free of charge to the lessees or their solicitors
Dealing with solicitors' enquiries
Perusing claims that the landlord as policyholder receives from the managing agent, directing the claim to the broker and involvement in ensuing discussions

They go on to claim that the £224.19 they seek to recover under the nine leases is far less than the value of the service that they provide.

10. The Applicants for their part simply say that there is no provision for such a charge in their leases and as such are not recoverable under the service charge provisions and if it is meant as an administration charge then the Respondents have failed to provide them with a summary of their rights and obligations in breach of their statutory obligations under Schedule 11 of the Commonhold and Leasehold Reform Act 2002

DECISION

11. The only aspect of the Respondents' "admin costs" addition which falls within the definition of an Administration Charge under the provisions of Schedule 11 is the provision of insurance schedules. The lease makes no provision for making such a charge. The only Administration Charge provided for is the sum of £5 in respect of registration of assignments etc. It is not therefore recoverable as such even in part.

12. The addition is in the Tribunal's view akin certainly in the main to a management charge but again the lease makes no provision for the Respondent lessors to make such a charge. It specifically provides that the lessors' managing agents' fees to be recovered from the Applicants. If the managing agents undertook the work of insuring the building and as a consequence raised their managements fees such higher fee, subject to the test of reasonableness would be recoverable through the service charge but if

the lessors opt to perform this obligation personally the lease makes no provision for the cost of performing the function to be paid by the lessees.

13. The 15% "admin costs" addition which the Respondents seek to add to the insurance premium properly recoverable under the service charge provisions of the lease is therefore not payable by the Lessees.

SECTION 20C

14. The Applicants also seek an order from the Tribunal under S20C of the 1985 Act to limit the Respondents' recovery of any costs they may have incurred in these proceedings. In view of the Tribunal's decision that "admin costs" are not payable it orders that none of the Respondents' costs are so recoverable.

James Driscoll

Professor James Driscoll LLM LLB Solicitor

Chairman

Dated: 21 February 2008