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Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL for the

LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985, as amended, Sections 27A & 20C

Ref :LON/00AL/LSC/2010/0199

Property: 7 Elmdene Road, Plumstead, London SE18 6TZ

Applicant: Mrs Elaine Moss

Represented by: Mr R.S. Bradshaw

Respondents: Pier Management Limited (1)

Regis Group (Nationwide) Limited (2)

Date of Tribunal's:

Paper determination: 7 June 2010

Leasehold Valuation

Tribunal: Mrs S O'Sullivan

Mrs A Hamilton- Farey FRICS LLB

Background

1. Applications were made under section 27A of the Landlord and Tenant Act 1985 (the "Act") and under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 on 14 March 2010. The application under section 27A of the Act challenged the Applicant's liability to pay a management fee for the year 2009/10 in the sum of £91.94 and the application under Schedule 11 challenged the Applicant's liability to pay what were described as administration charges in the total sum of £93.00. An application was also made under section 20C of the Act.
2. Directions were made dated 24 March 2010 which provided for a telephone mediation following which a hearing was scheduled to take place on 9 June 2010 if that was unsuccessful. The Applicant however chose not to pursue mediation due to her past poor relationship with the First Respondent and the parties agreed that the application could be dealt with by way of a paper determination.
3. By letter dated 4 May 2010 the First Respondent wrote to the Tribunal and confirmed that it *"had made a commercial decision to concede and waive the charges in dispute...the charges will be cancelled from her account and will not be demanded.... We would respectfully ask that the application be dismissed as there are no remaining issues in dispute"*.
4. However the Applicant did not agree to the applications being withdrawn as she would like the Tribunal's decision on whether the sums demanded were payable under the terms of the lease. Thus, although the First Respondent had conceded all sums which were the subject of the applications the Tribunal declined to dismiss the applications and agreed that a determination of the liability to pay would be beneficial to all parties.
5. This matter was therefore considered by way of a paper determination on 7 June 2010 and the Tribunal's decision is set out below. The Applicant submitted a bundle on 10 May 2010. The First Respondent failed to submit any statement of case in accordance with the directions and failed to make any statement in relation to the issue of liability as requested by the Tribunal in a letter dated 13 May 2010.
6. The First Respondent is a management company. The freeholders are stated on the service charge demands to be Regis Group (Nationwide) Ltd. The Tribunal considers that the freeholder should also be a party to the proceedings and hereby of its own volition orders that Regis Group (Nationwide) Ltd be joined to the proceedings.
7. The Applicant is represented by Mr R. S Bradshaw, a chartered accountant.

The Lease

8. The Applicant holds the property known as 7 Elmdene Road, Plumstead, London SE18 6TZ under a lease dated 28 July 1976 made between Charn Davis (1) and Thomas Douglas Norsworthy (2) (the "Lease").
9. The Tribunal considered the provisions of the Lease. The lessee's covenants are contained at clause 2 of the Lease.
10. By clause 2(i) the lessee covenants to pay the rent reserved at the times and in the manner aforesaid without any deduction
11. By clause 2(ii) the lessee covenants:

"to pay and discharge all rates taxes duties assessments charges and outgoings whatsoever whether parliamentary parochial or of any other description which are now or during the term hereby granted shall be imposed or charged on the demised premises or the Lessor or Lessee or occupier in respect thereof except for Income Tax or other tax charged on the rent by the Income and Corporation Taxes Act 1970 or any Statutory re-enactment or modification thereof for the time being in force or on the Lessor specifically by any other enactment".

By clause 2(iii) the lessee covenants:

"From time to time during the said term to pay all costs charges and expenses incurred by the Lessor in abating any nuisance on the demised premises.."

By clause 2(xx) the lessee covenants:

"To pay to the Lessor all expenses (including Solicitors costs and Surveyor's Fees incurred by the Lessor incidental in the preparation and service of a notice under section 146 of the Law of Property Act 1925) notwithstanding forfeiture is avoided otherwise than by relief granted by the Court"

12. The covenants set out above are the only clauses in the Lease which relate to a covenant on the part of the lessee to pay any monies to the Lessor. The Tribunal found that there are no express provisions contained in the Lease to pay any service charges or management fees. Likewise there are no express provisions which relate to the payment of any administration fees.
13. The Tribunal went on to consider whether any of the sums in issue could be claimed within the covenants set out above. The Tribunal concluded that they could not. Clause 2(ii) is clearly limited to the recovery of rates and taxes. Clause 2(iii) is concerned with the recovery of the costs of abating any nuisance at the Property and clause 2(xx) is limited to the recovery of costs and expenses incidental to the preparation and service of a section 146 Notice.

14. The Tribunal therefore concluded that there is no liability in the Lease on the part of the lessee to pay any service charges, management fees or administrative fees as claimed by the Respondents.
15. The application under section 27A also contained an application under section 20C of the Act. If the Tribunal were to make such an order this would have the effect of precluding the landlord from recovering the costs of these proceedings through any service charge. The Tribunal has found that costs are not recoverable under the terms of the Lease save in the case of costs which are incidental to the preparation and service of a notice under section 146. Any costs incurred in these proceedings would not fall within this provision and therefore the Tribunal concludes that legal costs are not recoverable. However the Tribunal has an application under section 20C before it which it must decide and therefore, for the avoidance of doubt, the Tribunal makes an order under section 20C.
16. The Applicant also made an application for the reimbursement of her fees paid in respect of the applications under paragraph 10 of the Residential Property Tribunal (Fees) (England) Regs 2006. The Tribunal considers it appropriate to make such an order in all the circumstances and orders that the Respondents do pay the sum of £100 to the Applicant within 14 days of the date of this application.

Chairman
Sonya O'Sullivan



Dated: 7 June 2010