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Residential
Property
TRIBUNAL SERVICE

Case reference: LON/00AU/LSC/2010/0526

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON
MATTERS REFERRED TO THE TRIBUNAL UNDER PARAGRAPH 3 OF
SCHEDULE 12 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT
2002
(SECTIONS 27A AND 20C OF THE LANDLORD AND TENANT ACT 1985)**

Property: Flat 1, 147 Highbury Grove, London N5 1HP

Applicant: Ridgeway Property Developments Ltd (Freeholder)

Respondent: Ms Hayley Elston (Lessee)

Date heard: 12th October 2010

Appearances: Mr J Jeevanjee director of Ridgeway Property
Developments Ltd.

Ms Hayley Elston

Tribunal: Dallas Banfield FRICS
Trevor Sennett MA FCIEH
Leslie Packer

Background

1. By an application to Clerkenwell and Shoreditch County Court dated 26th May 2010 the Applicants, Ridgeway Property Developments Ltd (the Landlords) sought to recover unpaid service charges and ground rent of £3,674.37 including interest from the Respondent Ms Hayley Elston (the tenant). By an order of the court the matter was transferred to this tribunal on the 26th July 2010.

The landlord purchased the freehold of the building in 2003 and is also the lessee of one of the flats which he lets on an Assured Shorthold Tenancy

2. At a Pre Trial Review held on 18th August 2010 at which the tenant was neither present nor represented it was explained to the Landlord that the tribunal has no jurisdiction over ground rents. The landlord stated that the only payment he had received from the tenant was for £409.54 in December 2006 and that service charges are calculated and demanded from November each year to the following October. The service charge years claimed were 2005/6, 2006/7, 2007/8, 2008/9 and 2009/10.

3. Following the issue of directions on 18th August 2010 an agreed bundle was submitted and the matter came on for hearing on 12th October 2010.

4. The subject flat forms part of an end of terrace house converted into three flats and one maisonette. Access to the three flats is from a common hallway and staircase whilst the maisonette enjoys its own separate entrance.

5. Prior to the commencement of the hearing a copy of a lease relating to the rear maisonette situated on ground and first floors was supplied but missing the plan referred to in section 1. It was initially believed that this lease was common to all four units but during the course of the hearing the original lease for Flat 1 was provided which contained a coloured plan and from which it was clear that there were minor differences.

The relevant lease clauses are as follows:-

Those clauses common to both leases included;

1. the flat included, *the floors and ceilings of the flat but not the joists supporting them.*

The common parts were defined as *Those parts of the property not demised to tenants of the flats in the building namely*

(a) the main structural walls of the Building

(b) the roofs (excluding the roof void) and foundations of the Building

(c)

(d) the path porch hallway and staircase shown edged brown on the plan annexed hereto.....

(e) the joists of the floors and ceilings

(f) the gutters and rain water pipes....

2.....by way of further or additional rent from time to time a sum or sums of money equal to one quarter part of the amount which the Lessors may expend in effecting or maintaining the insurance of the building against loss or damage by fire and such other risks (if any) as the Lessors think fit

4(1)(f) to pay all expenses (including solicitors costs and surveyors fees) incurred by the Lessors incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than be relief granted by the court;

5(2) contribute and pay the sum of Fifty pounds on the signing hereof and thereafter annually one quarter part or Fifty pounds whichever shall be the greater towards the cost charges fees expenses outgoings and matters mentioned in the Fourth Schedule hereto

6. The Lessors hereby covenant with the Tenant as follows:-

(1)

(2).....will at all times..... insure and keep insured.....

(3)

(4).....the Lessors will maintain and keep in good and substantial repair and condition the Common parts

(5)keep clean and reasonably lighted and as often as reasonably required decorate the passages landings staircases and other parts of the Building used in common by the Flats in the Building

(6)decorate the exterior of the Building.....

Fourth Schedule

1. All reasonable costs and expenses incurred by the Lessors for the purpose of complying or in connection with the fulfilment of their obligations under sub-clause (2) (4)and (6) of Clause 6 of this Lease (excluding any such costs and expenses relating to the area shown edged brown on the plan annexed hereto)

2.....

3. The reasonable cost of management of the property and in particular the costs of employing managing agents to provide the services covenanted by the Lessors.

The lease for Flat 1 had an additional section to the Fourth Schedule;

Second Part

Costs Expenses and Outgoings and Matters in respect of which the Tenant is to contribute one third

All reasonable costs and expenses incurred by the Lessors for the purpose of complying or in connection with the fulfilment of their obligations under sub-clause (5) of Clause 6 of this Lease and also under sub-clause (4) thereof to the extent that these relate to the area shown edged brown on the plan annexed hereto

6. At the start of the hearing it was agreed that the County Court judgement for £783.80 (p 38 of bundle) related to the 2005/6 service charge year. The chairman explained that by virtue of S.27A(4)(c) of the Landlord and Tenant

Act 1985 the tribunal did not have jurisdiction to consider matters that had been the subject of determination by a court and service charge year 2005/6 would not therefore be considered. It was further confirmed that the tribunal did not have jurisdiction with regard to Ground Rent.

7. It was agreed that the helpful schedule prepared by the tenant (p.63) listed all the points at issue between the parties and that they could be summarised as;

Interest	all years
Management fee	all years
Insurance	2006/7, 2008/9 and 2009/10
Repairs	2007/8 and 2008/9
Administration	2010/11

8. The landlord was asked to take each item separately, identifying first of all where in the lease the charge was permitted and then to justify the amount claimed.

9. Interest

2006/7	£58.23
2007/8	£34.60
2008/9	£148.74
2009/10	-

The landlord said that he considered that the Fourth Schedule to the lease permitted him to make a charge for interest and that he applied the usual rate adopted in the market of 4% over base. He said that the lease only permitted collection of service charges in arrears and that he had to provide funds to enable the expenses in maintaining the building to be met. He allowed a reasonable amount of time to pay after which he considered it reasonable for him to charge interest on money due.

The tenant said that the lease did not permit the charging of interest on late payments; and if it did, the interest rate charged was excessive. She further

took the view that once an amount was disputed any interest charges should be suspended until the dispute had been resolved.

Decision

We can find nothing in the lease that permits the charging of interest on late payments of invoices and this is therefore disallowed. Whilst we appreciate that under the provisions in the lease the landlord is liable to incur costs in advance of service charges being payable, which leads to him incurring interest charges, it is nonetheless established case law that such charges are not recoverable through service charges, unless the lease makes specific provision for this, which the lease in this case does not. Accordingly, this element of interest also is disallowed.

10. Management fee

2006/7	£75.00
2007/8	£100.00
2008/9	£125.00
2009/10	£150.00

The landlord said the fee was permitted under the Fourth Schedule as a cost of managing the premises. He said that he visited the flat that he lets some 2 or 3 times a year and looks at the exterior of the property "when issues occur" such as roof leaks or security issues with the front door. He emphasised that he only visited when needed in order to keep his costs low. He said his charges were modest compared to employing a Managing Agent and that he was experienced in managing his own portfolio of 70 flats. He agreed that he did not prepare annual service charge accounts but considered that the annual demands he prepared, which included copies of invoices paid and the insurance schedule, were sufficient.

In answer to questions from the tribunal he said that the charges were purely an estimate of his costs and were intended to cover printing, telephone, stationery and travel. He thought that in reality they were an underestimate and that he was probably losing money.

The tenant said that there was nothing in the lease to permit such a charge and that for the first two years none was made. She further pointed out that the charge had increased from £75 in 2006/7 to £150 in 2009/10 and couldn't understand why. She agreed that there must be costs in managing the building but thought that they should be prior agreed with the lessees before being incurred.

Decision

There is nothing in the lease to permit the landlord to charge a specific management fee to the service charge account. The lease does not allow the tenant to be charged for time spent but does allow the recovery of reasonable incurred costs. We note that the amount charged has doubled from 2006/7 to 2009/10 and do not accept that this can be solely attributed to costs incurred and that the amounts must include some time element which we do not allow. The landlord has given details of the number of visits to the property. He was not able to document in detail his incurred costs such as postage, but on the basis of its knowledge and experience the tribunal allows the sum of £12.50 per year for such items.

Insurance

2006/7	£212.04
2007/8	£262.53 (not challenged)
2008/9	£248.83
2009/10	£196.93

The landlord referred to the letter from Coversure Insurance Services (p.32) setting out the costs of insurance for each year and stating that the inclusion of cover for loss of rent (complained of by the tenant) had not increased the premiums paid. In answer to questions from the tribunal the landlord said that despite the description of the property on the Policy Schedule (p.44) as "End-terraced House" the insurers were aware that it was in fact 4 flats and that it was covered as such.

The landlord referred to the modest cost of insurance and said that he had been able to bring the costs down over the years since he had been involved.

The tenant complained that whilst she had seen the policy schedule giving the basic cover she had been refused sight of the policy document itself which would have provided full details of the cover effected. She said that as she had a basement which might possibly flood, it was important that she was aware of any restrictions in cover that might exist.

She said that subject to being satisfied as to the adequacy of cover she withdrew her objections and accepted that she should pay the amount due.

The landlord undertook to provide a full copy of the policy by email later in the day.

Decision

On the landlords' undertaking that he will provide full details of cover to the tenant and that cover is for a house converted into flats we allow the sums claimed in full.

11. Repairs

2006/7	£47.50 (not challenged)
2007/8	£87.50
2008/9	£162.50
2009/10	£125.00 (not challenged)

The tenant explained that she considered that whilst the responsibility for costs relating to the main roof were divided between the 4 flats she believed that the roof to the ground floor kitchen to the maisonette was included in their lease and any cost should be solely their responsibility.

The relevant lease clauses were then examined and it was agreed that the roof to the maisonette's kitchen was not included in that demise, and that it must therefore be a "common part" and as such any costs incurred were properly chargeable to the service charge account to which the tenant must contribute one quarter. The tenant accepted that this was correct.

The invoice for roof repairs (p.45) for £350 was examined and the work undertaken explained by the landlord. As there was no challenge to the cost of the works and the tenant accepted that this related to the main roof she agreed that it should be charged to the service charge account.

The tenant said that she no longer maintained her objection to the invoice for works to the maisonette roof (p.49) as she now accepted that this formed part of the common parts. She also said that she did not challenge the cost of the works.

Decision

We have determined that the maisonette kitchen roof is part of the common parts and therefore costs relating to it are properly charged to the service charge account. As such we allow the sums claimed in full.

12. Administration

It was agreed that the cost of £35 referred to had not yet been charged and that it would in any event form part of the 2010/11 service charge year which was not under consideration on this occasion.

No determination has therefore been made on this item.

13. Legal costs

2009/10 £845.00

The landlord referred to the account for legal fees dated 25th September 2009 (p.52) for £845.00 and said that it related to the costs incurred in considering the service of a Notice under s.146 of the Law of Property Act 1925 and in writing to the tenant in respect of sums due. He confirmed that a s.146 notice had not been served and said that the invoice covered the period from 17th June 2008. He also confirmed that the fee did not relate to either of the applications made to the County Court.

The landlord said that the clause 4 (1) (f) of the lease permitted him to recover costs relating to the service of a s.146 notice.

The tenant said that no letters had been received from the solicitors concerned but accepted that reference to taking legal proceedings against her had been contained in the landlords' invoice dated 6th November 2009 (p.50).

Decision

Clause 4 (1) (f) of the lease refers to the recovery of costs incidental to *the preparation and service* of a section 146 notice. The landlord has said that no such notice was ever served and as such the amount claimed is disallowed.

14. It is not disputed by the landlord that the tenant paid the sum of £409.54 in December 2006. The tenant has however accepted that the County Court judgement dated 19th June 2006 ordering payment of the sum of £783.80 properly relates to service charges claimed for the year 2005/6. The tribunal therefore consider that the payment made is in part settlement of the judgement and not part payment for the years subject to our determination.

15. Determination

By virtue of s.21B of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002 demands for service charges must be accompanied by a summary of the rights and obligations of tenants of dwelling houses. Until this has been provided any sums demanded do not become payable. This requirement came into effect on the 1st October 2007 and applies to any demand made after that date.

Accordingly we determine that the tenant is now liable to pay the sum relating to 2006/7 and will become liable for the remaining years when properly demanded. All as shown on the table beneath.

	<u>2006/7</u>	<u>2007/8</u>	<u>2008/9</u>	<u>2009/10</u>
Insurance	212.04	262.53	248.83	196.93
Repairs	47.50	87.50	162.50	125.00
Costs	12.50	12.50	12.50	12.50
<u>Total due</u>	<u>£272.04</u>	<u>£362.53</u>	<u>£423.83</u>	<u>£334.43</u>

16. Costs

The tenant has also applied for an order under section 20C of the Landlord and Tenant Act 1985 preventing the landlord recovering the costs of the current proceedings from them under the service charge. The landlord has incurred costs of £185 which he wishes to place on the service charge account. Whilst it is apparent that the lessee has succeeded in a number of matters it is also noted that she has paid nothing since December 2006. In these circumstances we consider that the landlord had little choice but to bring proceedings and as such a large proportion of the costs are properly charged to the service charge account. We therefore make an order under S.20C limiting the amount that may be placed on the service charge account to £150, having regard to the elements of the application on which the applicant succeeded.

CHAIRMAN...Dallas Banfield.....(signed electronically).....

DATE.....27th October 2010.....