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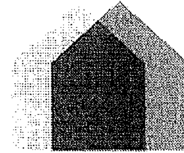

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
LANDLORD AND TENANT ACT 1985

LON/00AW/LSC/2010/0113

Premises:	Flat 1A, 38 Hogarth Road London SW5 0PU
Applicant:	Sinclair Gardens Investments (Kensington) Ltd
Represented by:	P Chevalier & Co solicitors First Management Ltd t/a Hurst Managements
Respondent:	Mr K Wong
Tribunal:	Mr NK Nicol Mr R Shaw FRICS Mrs J Dalal
Date of Hearing:	07/06/10
Date of Decision:	07/06/10

REASONS FOR DETERMINATION

1. The Applicant is the freeholder of 38 Hogarth Road, London SW5 0PU, a mid-terrace block of 9 flats. The Respondent is the lessee of Flat 1A. The Applicant issued proceedings in the county court for allegedly unpaid rent, service charge, advance service charge, insurance rent and administration charge for the year ended 29th September 2008 totalling £3,199.13. The dispute was transferred to this Tribunal, save in respect of the ground rent which is not within the Tribunal's jurisdiction.

2. The Respondent has taken no part in either the county court proceedings or the Tribunal proceedings, other than to lodge a brief handwritten Defence on the provided county court form. At the hearing before the Tribunal on 7th June 2010, the Applicant was represented by Mr Mark Kelly from the managing agents, Hurst Managements, but there were no other attendees. The Tribunal were satisfied from perusal of the Tribunal's main file that everything had been done to notify the Respondent of the hearing and so the Tribunal proceeded in his absence.

3. The Respondent raised a number of issues in his Defence which Mr Kelly addressed in his witness statement dated 23rd March 2010 and in his oral submissions to the Tribunal. No other issues were apparent or raised and so the remainder of this determination deals only with those issues.

4. As a preliminary point, the Respondent stated in his Defence, "I am contesting the claim along with a number of other leaseholders as there are many discrepancies." As far as the Tribunal is aware, there are no legal proceedings of any kind involving any of the lessees other than the Respondent and there is no evidence either of any complaints from any other lessees or of any discrepancies.

Roof

5. The Respondent stated in his Defence, immediately after the quote in the preceding paragraph, "e.g. billing for work done on small roof where the said roof has quite obviously been undisturbed for many years as reported by an independent surveyor." The Tribunal had no evidence of any independent

surveyor's report. As for work done on the roof, Mr Kelly pointed to the following invoices from Archgate Properties, maintenance contractors:-

7th January 2008	£411.25
18th January 2008	£734.38
17th April 2008	£3,466.25

6. This last item was large enough to engage the consultation provisions of s.20 of the Landlord and Tenant Act 1985. The Applicant complied with those provisions by notices dated 8th February and 10th March 2008. None of the lessees responded.

7. The Tribunal is satisfied that the Respondent's allegations in respect of the roof are unfounded. The Tribunal has no reason to think that the invoiced work was not carried out and that these charges are anything other than reasonable and payable.

Reserve Fund

8. The Respondent further stated in his Defence, "The billing 3y in advance of works where 1y is mandatory." The Respondent's lease, at clause 5.5(q), permits the Applicant to set aside sums of money for future expenses which they do in the form of a Reserve Fund. Any surplus in each accounting year is transferred into the Reserve Fund and the balance of each lessee's contribution is collected through the service charge.

9. There is no rule, in statute or elsewhere, that a Reserve Fund is limited to any particular future period, including one or three years. The Reserve Fund collection in this case appears to be entirely sensible and proper. There is no reason to think the Reserve Fund contributions are anything other than reasonable and payable.

Entryphone

10. The Respondent next stated in his Defence, "an extortionately expensive rental scheme on the buzzers." "The buzzers" was assumed to be a reference to the entryphone to the building which is provided under a twenty-year rental

market and so entirely reasonable. Under his lease, the Respondent's share of the service charges is 19%.

15. In addition to the flat charge, the managing agents charge between 8% and 12½% as an administration fee on major works. For the relevant year, there were two such items:-

20th February 2008	Water connection cost £1,292.50; admin fee £129.25
24th April 2008	Roof works (see above); admin fee £433.28

16. Again, this appears to the Tribunal to be in line with the market and so entirely reasonable. The management fees are payable.

Hallway redecoration

17. The Respondent stated in his Defence, "redecoration which was never fully completed to this day." This is assumed, from the Respondent's letters to the managing agents, to be a reference to hallway decoration works carried out in 2007. There are no further details. Mr Kelly was unaware of any uncompleted works. The Tribunal was not provided with any evidence of any problem with these works. Even more significantly, there is no reason to think this complaint impacts on the reasonableness or payability of any element of the service charges being considered here.

Accounts

18. The Respondent stated in his Defence, "But they have never had any of their figures signed off by an independent chartered accountant thus making necessary for me to demand copies of documents of a supportive nature which they refuse to submit." The accounts were in fact certified by Spofforths chartered accountants, for which they charged £115.50. All charges for the relevant year were supported by invoices contained in a bundle presented to the Tribunal. Again, there was clearly nothing to the Respondent's allegations.

Administration charges

19. Mr Kelly dealt at length in his witness statement with the administration charges the Applicant seeks to impose under clause 3.9 of the lease:-

    3. THE Tenant HEREBY COVENANTS with the Lessors as follows:

        3.9 to pay to the Lessors all costs charges and expenses including solicitors' counsels' and surveyors' costs and fees at any time during the said term incurred by the Lessors in or in contemplation of any proceedings in respect of this Lease under Sections 146 and 147 of the Law of Property Act 1925 or any re-enactment or modification thereof including in particular all such costs charges and expenses of and incidental to the preparation and service of a notice under the said sections and of and incidental to the inspection of the Demised Premises and the drawing up of Schedules of Dilapidations such costs charges and expenses as aforesaid to be payable notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court.

20. Mr Kelly was unable to point to a document in which the actual charges imposed on the Respondent are listed, other than the Claim Form which included £153.19 for "Administrative Service Charge". He said that this sum was inclusive of the standard costs imposed under clause 3.9, namely:-

Section 166 notice	£6
Letter before action written by the managing agents	£18.75
Solicitors' letter	£105.75
Total	£130.50

21. Current law and practice requires lessors to go through certain steps prior to serving a s.146 notice. Those steps would include the three listed above. However, just because a step is a condition precedent to such a notice does not mean it is accurately described as "incidental to" such a notice. It is worth noting that a potential outcome to each of these steps is that no notice is ever served and it would be peculiar to describe something as being incidental to something which has never existed.

22. In the Tribunal's opinion, none of the listed steps may be regarded as incidental to the service of a s.146 notice or in contemplation of any proceedings within the meaning of clause 3.9 of the lease. Therefore, the sum of £130.50 is not payable.

Costs

23. The county court costs are, of course, not a matter for this Tribunal. There was no application in relation to the costs of the Tribunal proceedings under s.20C of the Landlord and Tenant Act 1985. In any event, the Tribunal could not locate a clause in the lease which would allow the Applicant to put the costs of these proceedings on the service charge.

Conclusion

24. The amount in dispute transferred to the Tribunal was £3,149.13. The Tribunal has determined that the entire amount is reasonable and payable other than the aforementioned sum of £130.50 which the Applicant sought to impose on the Respondent under clause 3.9 of the lease.

Chairman ....

Date 7th June 2010