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Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00BE/LSC/2010/0329

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT
ACT 1985**

Address: Flat 60, Brydale House, London, SE16 2PU

Applicant: London Borough of Southwark

Respondent: Mr R Alharazim

Date of Transfer: 7 May 2010

Hearing: 6 September 2010

Appearances

Applicant

Miss E Sorbjan Litigation Officer
Mr G Dudhia

Respondent

Did not attend and was not represented

Members of the Tribunal

Mr I Mohabir LLB (Hons)
Mr P S Roberts DipArch RIBA
Mrs J Clark JP

DECISION

Introduction

1. On or about 10 February 2010 the Applicant issued a claim against the Respondent in the Woolwich County Court for arrears of service charges and in the sum of £946.35. The Respondent served a Defence denying liability for the sum claimed by the Applicant. By an order dated 7 May 2010 made by District Judge Lee, the proceedings were transferred to the Tribunal.

2. The Respondent is the present long leaseholder of the premises known as Flat 60, Brydale House, London, SE16 2PU which he holds under a lease dated 21 December 1998 granted to him by the Applicant for a term of 125 years from 21 December 1998 ("the lease").

3. Essentially, clauses 4(2)-(4) of the lease obliges the Applicant to maintain the building. By clause 2(3)(a), the Respondent covenanted to pay the service charges set out in the Third Schedule. By paragraph 2(1) of the Third Schedule, the Respondent covenanted to pay the service charge estimates in each year in advance on account by equal payments on the usual quarter days. The service charge year commences on 1 April in each year and ends on 31 March of the following year. By paragraph 7(1) of the Third Schedule, the Respondent covenanted to contribute a proportion of the actual or estimated service charge expenditure incurred ought to be incurred by the Applicant. Paragraph 6 (2) of the Third Schedule provides that the Applicant May adopt any reasonable method to calculate the lessee's proportion of the service charges.

4. It was common ground that the service charges in issue are recoverable as relevant service charge expenditure under the terms of the lease. The Respondent takes no point about the method of calculation adopted by the Applicant to calculate his service charge liability.

The Issues

4. The total sum of £946.35 claimed by the Applicant is comprised as follows:
 - (a) A sum of £101.09 represents the outstanding arrears for the final account adjustment for 2007/08 (£57.61) and the final quarter payment for 2008/09 (£194.60) less a payment of £151.12 made by the Respondent.
 - (b) A sum of £56.12 is claimed as a balancing charge for 2008/09.
 - (c) A further sum of £789.14 is claimed in respect of the 2009/10 budget estimate.

5. A pre-trial review took place on 22 June 2010 at which the Tribunal attempted to identify the challenges being made by the Respondent, as he did not attend the hearing. Pursuant to the Directions issued on that occasion, the Respondent filed a statement of case dated 17 July 2010. The Respondent's pleaded case is as follows:
 - (a) The Respondent concedes that the sums of £57.61 (final account adjustment for 2007/08) and £194.60 (final quarter payment for 2008/09) are due and payable.
 - (b) The balancing charge of £56.12 for 2008/09 is not payable by operation of section 20B of the Landlord and Tenant Act 1985 (as amended) ("the Act").
 - (c) The service charge estimate for 2009/10 in the sum of £789.14 is payable by four instalments. However, the Respondent contended that his service charge account was in credit by £184.63 and a recent payment of £151.12 also had to be credited to his account.

6. In summary, the Respondent placed his outstanding liability at £648. The only issue to be determined by the Tribunal was the extent of the Respondent service charge arrears by determining points (b) and (c) above.

The Relevant Law

7. The substantive law in relation to the determination of this application can be set out as follows:

Section 27A of the Act provides, *inter alia*, 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 amount which is payable,*
- (d) the date at or by which it is payable, and*
- (e) the manner in which it is payable.*

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

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges.

8. Any determination made under section 27A is subject to the statutory test of reasonableness implied by section 19 of the Act. This 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 works, only if the services or works are of a reasonable standard;*
- and the amount payable shall be limited accordingly."*

9. Section 20B of the Act provides:

"(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been

incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge."

Decision

10. The hearing in this matter also took place on 6 September 2010. Miss Sorbjan, a Litigation Officer employed by the Applicant, appeared on its behalf. The Respondent did not attend and was not represented.

Final Account Adjustment for 2008/09

11. The Respondent submitted that the amount of £56.12 claimed in respect of this matter was not recoverable by the Applicant by operation of section 20B of the Act. This was because it had not been demanded until 20 November 2009 and was, therefore, outside the relevant 18 month time limit imposed by the section.
12. Miss Sorbjan, for the Applicant, told the Tribunal that the final account for 2008/09 had been sent to the Respondent by a letter dated 18 November 2009. The estimated service charge account for this year had been sent on 27 March 2008. She submitted that section 20B did not apply in this instance for three reasons. Firstly, the relevant demand is when the estimated service charge account was served on the Respondent. Secondly, the lease provides that time is not of the essence for service of any notice under the Third Schedule in relation to the annual service charge.
13. Thirdly, if section 20B is construed as "costs incurred" then the relevant date is 17 May 2008. Miss Sorbjan said that if the section was applied strictly than any costs incurred before 17 May 2008 were not recoverable (when counted back from 18 November 2009). However, after a short adjournment and having taken further instructions, Miss Sorbjan conceded that the final account adjustment of £56.12 was not recoverable.

Estimated Service Charge for 2009/10

14. The only issue to be decided by the Tribunal was the extent of the Respondent's liability. The Applicant was claiming the sum of £789.14. The

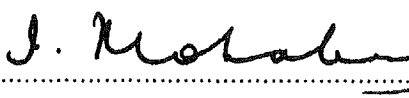
Respondent placed his liability at £648 when a credit of £184.63 and a payment of £151.12 were taken into account (excluding any other amounts payable). As stated above, the Respondent did not challenge either his liability to pay and/or the reasonableness of these estimated costs.

15. By reference to two supplemental account statements in relation to the Respondent service charge account, Miss Sorbjan explained that the credit of £184.60 claimed by the Respondent was the opening balance for the account as at the end of 2007. However, this credit had then been applied to defray his liability for the 2007/08 estimated service charge account in the sum of £600.27. Therefore, the Respondent had already received the benefit of this credit and to reapply it to his service charge account amounted to be double counting. In relation to the payment of £151.12 made by the Respondent for the 2009/10 estimate, Miss Sorbjan said that this payment have been applied to earlier outstanding amounts for the final account adjustment for 2007/08 and the estimated invoice for the final quarter of 2008/09 thereby reducing his liability from £252.21 to £101.09. Therefore, the Respondent's liability for the 2009/10 estimated invoice dated 1 January 2010 remained at £789.14.
16. The Tribunal had the benefit of a full audit trail to substantiate the explanation given by Miss Sorbjan for the 2009/10 estimated service charges and found that the Respondent's liability for this year was in fact £789.14. It was clear from the accounts that the Respondent had misunderstood how and when the credit of £184.62 and later payment of £151.12 had been applied to his service charge account.
17. Accordingly, the Tribunal determined that the Respondent's remaining liability for the final account adjustment for 2007/08 and the estimate for the final quarter of 2008/09 is £101.09 and his liability for the estimated service charges for 2009/10 is £789.14. The Respondent's total liability is, therefore, £890.23.

Other Matters

18. In the Tribunal's Directions a potential issue was raised in relation to whether or not the Respondent had been served with a summary of rights and obligations pursuant to section 21B of the Act when the demand for the estimated 2009/10 service charge account had been served on 1 January 2010. This appeared to have been a consequence of this point having been taken by the Respondent in the Defence he had filed in the County Court. However, in his statement of case filed in these proceedings, the Respondent appeared to have abandoned this point. For the avoidance of doubt, the Tribunal was satisfied that he had been served with a summary of the appropriate rights and obligations required by section 21B, as this was expressly mentioned in the covering letter sent with the demand.
19. Miss Sorbjan told the Tribunal that the Applicant intended to pursue the Respondent for statutory interest and fixed costs claimed in the County Court. As these matters do not fall within the Tribunal's jurisdiction, they are remitted back to the County Court for determination.

Dated the 11 day of October 2010

CHAIRMAN.....
Mr I Mohabir LLB (Hons)