



Residential
Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 SECTION 27A

35 Conrad House, Clifton Grove, London E8 1DL

Ref: LON/00AM/LSC/2009/0758

Mr Jamie Watson

Applicant

Family Mosaic Housing Association Limited

Respondent

Date of hearing: 24 June 2010

Tribunal: Mr M Martynski (Solicitor)
Mr I Thompson BSc FRICS
Mr A D Ring

Appearances: Ms T. Freestone (Housing Officer for Respondent)

DECISION

Summary of decision

1. Management charges payable for the service charge years 2002/3 to 2006/7 are reduced by 10% per year resulting in a total deduction from those charges of £128.90.
2. The Respondent is to reimburse the Applicant in the sum of £250.00 being the fees he has paid to the Tribunal in this application.
3. The Tribunal makes an order that none of the costs of the Respondent incurred in connection with these proceedings are to be payable by the Applicant.

Background

4. The building in question, Conrad House ('the Building'), is a Grade 2 listed Victorian building. It was formerly a hospital and has been converted into 39 flats. 15 of those flats are let on long leases, the other flats are let on periodic Assured tenancies.

5. The Applicant purchased the lease of number 35 on 31 October 2001. The Applicant's lease says that he should pay a service charge of varying percentages of costs incurred in respect of the Building. The percentage payable depending on the type of cost. There are three percentages, 2.56 (block costs), 1.69 (external common parts) and 3.33 (internal common parts). By clause 7(9) of the lease, the landlord is given the power to vary (by written notice) the proportions in which the tenant pays towards the service charge. The Tribunal was told at the final hearing by the Respondent's representative that the way in which the Applicant's service charge contribution has been assessed is by way of attributing a proportion of the overall costs to the 15 long leaseholders and then dividing that cost between them equally. The Tribunal was not shown any written notice making this variation.

6. The lease obliges the landlord to maintain a reserve fund for such matters as cyclical decorations. In July and August 2007 leaseholders in the Building were notified of the Respondent's intention to carry out external and internal common parts cyclical works and decorations. The (revised) estimated cost of the works was in the region of £147,000 giving a leaseholder share of £3,792.11. One of the letters sent to leaseholders recorded the fact that the reserve fund stood at approximately £12,000.

7. After scaffolding was put up for the works, it was discovered that the brickwork to the Building required extensive repair and that the costs of the works would be higher than as notified to the leaseholders. Dispensation from the requirement to consult regarding these extra works was later granted by another Tribunal.

8. The Applicant asked for the hearing of his application to be dealt with in his absence. This request was agreed by the Tribunal.

The issues and the Tribunal's decisions

9. In his application and subsequent statements of case, the Applicant raised a number of issues, some of those issues overlapped. The Tribunal, in trying to understand the Applicant's case, took the issues to be as follows:-

- (a) There was a failure of management in that insufficient sums were collected and put into the sinking fund
- (b) The costs (or part of those costs) of the brickwork repairs carried out in 2007 should have been paid for by way of an insurance claim
- (c) A disputed sum of £326.80 demanded by way of a balancing charge in respect of the brickwork/cyclical repairs.

Management

10. It is evident that no proper provision was made by the Respondent in respect of the sinking fund. In the year 2001/2 the sinking fund stood at £9,488. Nothing was added to the fund until 2004/5 and even then the amount added was only £1,500. Nothing was added in 2005/6 and then just a further £1,000 was added in 2006/7. A sinking fund of £12,435 as at the date of the cyclical works in 2007 was woefully inadequate by any measure. It was entirely foreseeable that the fund should have been built up earlier and to a greater total. The failure to make proper provision in the sinking fund was self evidently a failure of management. Despite the fact that this failure was admitted to (twice) in writing by the Respondent, the Respondent chose to then resile from the admissions in its reply to the Applicant's case filed in these proceedings.

11. The Tribunal finds that there needs to be a 10% reduction in management fees charged from 2002/3 through to 2007/8 to reflect the failures set out above. This results in a total reduction of £128.90.

12. Given the confusion over the way in which the brickwork repairs and decoration works were managed, the Tribunal would have reduced any management fee charged in respect of this. The Respondent has however checked this and confirmed that no management fee was charged.

Insurance claim for brickwork repairs

13. In the Tribunal's experience, no insurance would normally be available in respect of the costs to brickwork that had fallen into disrepair over the course of time. There is no indication that there was such insurance and the Respondent did not make any investigations into an insurance claim presumably because there was no such insurance. The Tribunal accordingly rejects this challenge.

Balancing charge of £326.80

14. The Tribunal was unable to understand the Applicant's objection in relation to this sum and has to reject it in the absence of further explanation.

Costs and fees

Fees

15. Given that the Applicant has been partially successful in the application and that he had to pursue the application in the light of the Respondent's failure to properly deal with his complaint regarding the reserve fund, the Tribunal orders the Respondent to pay to the Applicant the fees that he has paid to the Tribunal in the total sum of £250.00.

Costs

16. Although the Applicants do not place the costs of Tribunal proceedings on the service charge, given the Tribunal's findings in this case, it is appropriate for the Tribunal to make an order under section 20C Landlord and Tenant Act that none of the costs incurred, or to be incurred, by the Applicant in connection with these proceedings before the Tribunal are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents.



Mark Martynski – Tribunal Chairman

20 July 2010