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LON/OOAE/LSC/2010/0181

LEASEHOLD VALUATION TRIBUNAL (PROCEDURE)
(ENGLAND) REGULATIONS 2003

Correction Certificate under Regulation 18 (7) of the above Regulations:

Flat 10 and Garage 7, Shirley Court, Highfield Avenue London NW9 0QD

As Chairman of the Leasehold Valuation Tribunal which decided the above mentioned case, I hereby amend the first sentence of Paragraph 12 of the Decision dated 15 June 2010 to read as follows:-

"Prior to the sale of the Flat and the Garage, the Applicant's Solicitor sent enquiries to Mr J W Meek FRICS and to the Respondent."

Chairman: A Seifert

Date: 15 July 2010



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**THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

**THE LANDLORD AND TENANT ACT 1985 (as amended), Sections 27A
and 20C**

Case Reference: LON/00AE/LSC/2009/0181

Decision

**Premises: Flat 10 and Garage 7 Shirley Court, Highfield Avenue,
London NW9 0QD**

Applicant: Mr M Clancy

Respondent: Mr J W J Wallace-Jarvis

Appearances:

For the Applicant: Ms R Georgiou, Roulla Georgiou, Solicitors

For the Respondent: No appearance

Leasehold Valuation Tribunal:

**Miss A Seifert FCI Arb
Mrs H Bowers FRICS
Mrs J Clark JP**

Date of decision: 15th June 2010

**THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985 (AS AMENDED) SECTIONS 27A and 20C

Reference: LON/00AE/LSC/2010/0181

**Premises: Flat 10 and Garage 7 Shirley Court, Highfield Avenue, London
NW9 0QD**

The Tribunal's decision

Background

1. Mr Michael Clancy, the Applicant, submitted an application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") dated 1st March 2010. In the application he sought a determination as to his liability to pay and the reasonableness of service charges claimed in respect of leases of Flat 10 ("the Flat") and Garage 7 ("the Garage"), Shirley Court, Highfield Avenue, London, NW9 0QD ("the Block"). The Respondent to the application is Mr James Walter John Wallace-Jarvis.

Statutory Provisions

2. Section 18 of the Act provides:

(1) In the following provisions of the Act "service charge" means an amount payable by a tenant of a dwelling as part or in addition to the rent –

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord in connection with the matters for which the service charge is payable.

(3) For this purpose –

- (a) "costs" includes overheads, and
- (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

3. Section 19 of the Act provides:

- (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 of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
 - (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs are incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.
4. Under Section 27A(1) of the Act, 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.

The Hearing

5. A hearing was held on 15th June 2010 at which the Applicant was represented by Ms R Georgiou, Roulla Georgiou, Solicitors, who made submissions. For the hearing Ms Georgiou provided a bundle of documents, to which she referred.
6. Mr Wallace-Jarvis did not attend and was not represented at the hearing. The Tribunal was satisfied that notice of the hearing had been given.
7. The Tribunal had issued Directions in this case following an oral pre-trial review hearing on 20th April 2010. Amongst other matters, the Tribunal directed a statement of case to be served by Mr Wallace-Jarvis in response to the application. No statement of case or other response to the application has been served by Mr Wallace-Jarvis.

The Tribunal's conclusions

8. The Applicant purchased a leasehold interest in the Flat and the Garage on or about 16th December 1999. These interests are registered at Her Majesty's Land Registry under title numbers MX45991 and MX425560 respectively.
9. On 26th February 2010, the Applicant entered into a contract with a Mr Patel to sell his leasehold interest in the Flat and the Garage. The sale was completed on 5th March 2010. A copy of the title deeds and the contract of sale and Transfer were provided.

10. It was a term of the contract of sale that the Applicant upon completion retain from the purchase price the sum of £2,500 in respect of the Applicant's liability, if any, to pay any service charges to the Respondent in respect of any period up to the completion date. There was provision for release of the sum to the Applicant when the amount of service charges due to the Respondent, if any, was agreed or determined by a Court of the Tribunal.
11. The reason for the inclusion of this provision was that the Respondent had stated in correspondence that a sum of between £2,000 and £2,500 was due from the Applicant in respect of unpaid buildings insurance and the freeholder's solicitor's costs.
12. Prior to the sale of the Flat and the Garage, Mr Patel's Solicitors sent enquiries to Mr J W Meek FRICS and to the Respondent. Mr Meek had been appointed the Manager of the Block for a period of 5 years with effect from 4th March 2002. During his appointment Mr Meek was authorised amongst other things, to collect the various sums reserved under the Flat and Garage Leases including insurance rent and service charges. Although the period of Mr Meek's appointment has expired, Mr Meek has continued to act as Manager of the Block. The Tribunal were told by Ms Georgiou that Daejan Properties insures the Block under its obligations as lessor under the lease of the Flat. Daejan Properties is also the freeholder of the Block. In practice, amongst other things, Mr Meek collects the insurance contributions from the Lessees of the various flats in the Block and reimburses Daejan Properties.
13. In practice Mr Meek has also collected the services charges in respect of major works from the lessees and these are payable to the Head lessee, Mr Wallace-Jarvis. A letter from Freshwater Group Legal Services Limited dated 21st September 2009 to Ms Georgiou stated "Whilst Daejan Properties Limited is the immediate Landlord to the occupying Leaseholder there is a Head Lease on this block and I believe that [the Applicant] pays Ground Rent and any service charges direct to the head lessee or his agents..." Freshwater sent a copy of the current building insurance to Ms Georgiou under cover of a letter dated 4th January 2010.
14. The various leases under which the interests in the Block are held are set out in detail in the Applicant's statement of case, which is included in the Bundle of documents.
15. The reason for this application to the Tribunal was the claim by Mr Wallace-Jarvis in respect of alleged unpaid buildings insurance and legal costs.
16. In a letter dated 16th November 2009 from J W J Wallace-Jarvis to Ms Georgiou, it was stated that "We have requested Messrs. John W Meek to send to you Replies to Enquiries of Managing Agents; and we trust you will have heard from them". The letter also stated "Our Accountants inform us that

there has been a failure of the Lessee(s) of Flat 10, Shirley Court to remit any Ground Rent for a considerable period of time, and in addition there is a sum of approximately £2,500 due in respect of Flat 10 for previously unpaid buildings insurance contributions and the freeholders solicitors costs incurred in the recovery thereof".

17. In a letter dated 23rd December 2009 from J W J Wallace-Jarvis to Ms Georgiou in respect of the Flat, it was stated that "Our Accountants inform us that there is a sum of some £2,000 due from the Lessee direct to our Mr Wallace-Jarvis in respect of Flat 10, in addition to sums due from the Lessee to the managing agent."
18. Ms Georgiou described at the hearing the attempts of her firm to obtain clarification or a breakdown of how the alleged arrears arose and the legal basis for the claim. As an example she referred to her letter dated 24th December 2009 to J W J Wallace-Jarvis in response to the above letter of 23rd December. Ms Georgiou wrote, "Please supply a breakdown of the arrears in the 'sum of some £2,000'..." . On 7th January 2010, Ms Georgiou sent a reminder repeating her request for a breakdown of the alleged arrears. A further letter was sent by Ms Georgiou on 21st January 2010: "We have received service charge accounts from Mr Meek. It appears Mr Meek has been attending to the repair and maintenance of the building and the insurance since 2002. We cannot see that you have incurred any expenses at all during this period or before. Indeed, Mr Meek was appointed manager by the Leasehold Valuation Tribunal on 6th February 2002 because you failed to comply with the terms of the lease..... We cannot see how arrears of some £2,000 have accrued to you....". A further reminder was sent on 29th January. No response to the request for a breakdown or grounds of the claim to the £2,000 or £2,500 has been provided either to Ms Georgiou or in these proceedings.
19. Ms Georgiou referred to the reply by Mr Meek dated 20th November 2009 in respect of the enquiries. He stated that there was £3,368.67 outstanding on the service charge account, which needed to be paid before completion. Ms Georgiou said that this sum had been paid to Mr Meek as Manager in respect of service charge arrears. In a letter dated 8th March 2010 to Ms Georgiou it was acknowledged that he had received a cheque for £3,368.67
20. In his witness statement dated 24th May 2010, the Applicant stated that he had paid the sum that Mr Meek had specified in response to the enquiries, which he said included insurance premiums. He still did not know how that alleged arrears accrued, but had paid all the arrears identified by Mr Meek in full on 5th March 2010.

21. Ms Georgiou submitted that under the terms of the lease of the Flat, there is no contractual obligation for the lessee to pay legal costs. Mr Wallace-Jarvis has not identified a clause in the lease of the Flat under which insurance rent / charges are payable to him by the lessee. He has not provided a breakdown or other explanation of the legal basis for sums alleged due in his letters dated 16th November and 23rd December 2009, despite requests to do so. In so far as there were arrears of service charges identified by Mr Meek in his response to enquiries before sale of the flat, these were paid by the Applicant as acknowledged in Mr Meek's letter dated 24th May 2010.
22. Having considered the evidence, the Tribunal finds that no sum is due and payable by the Applicant to Mr Wallace-Jarvis in respect of his claims to either £2,000 and / or £2,500 as alleged in his letters dated 16th November and 23rd December 2009.

Section 20C application / reimbursement of fees

23. Under section 20C of the Act, a tenant can make an application for an order that all or any of the costs incurred, or to be incurred by the landlord in connection with any proceedings before a leasehold valuation tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or person specified in the application.
24. Having considered the submissions made by Ms Georgiou, and taking into account that the payment of the sum identified by Mr Meek, was shortly after the application was made, the Tribunal considers that in all the circumstances of this case that it is not reasonable or appropriate to make an order under section 20C, neither does the Tribunal consider it reasonable to make an order for reimbursement of fees in this case.

Summary of conclusions

25. The Tribunal determines that:
- (1) No sum is payable by the Applicant to Mr Wallace-Jarvis in respect of the alleged arrears of £2,000 and / or £2,500.
 - (2) No order is made under section 20C of the Act.
 - (3) No order is made for reimbursement of fees.

A Seifert

CHAIRMAN: A Seifert

Date: 15th June 2010

Members of the Leasehold Valuation Tribunal:

Miss A Seifert FCI Arb
Mrs H Bowers FRICS
Mrs J Clark JP