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LEASEHOLD VALUATION TRIBUNAL

COMMONHOLD AND LEASEHOLD REFORM ACT 2002, SCHEDULE 11

Ref: LON/00BD/LAC/2006/0002

Property:	4 George House, Victoria Place, Richmond, Surrey, TW9 1RU
Applicant:	Mr Leo Coulter
Respondent:	David J Parry through his Managing Agents, Messrs Shelleys
Date of Determination:	23 May 2006

DECISION

Background

1. This case involves an application made by Mr Leo Coulter ("the Applicant") dated 23 March 2006 for a determination as to his liability to pay certain administration charges, pursuant to the provisions of the Commonhold and Leasehold Reform Act 2002, Schedule 11. The Applicant is the long leasehold owner of 4 George House, Victoria Place, Richmond, Surrey, TW9 1RU ("the Property") which is a one-bedroom flat in a 1980s purpose-built block. The Landlord is named in the application as David J Parry but effectively the Property is managed through his Agents, namely Messrs Shelleys, who are property managers based in Sunbury on Thames. In this Decision those Agents will be referred to as "the Respondents".

2. The case involves a dispute over two small sums. On 3 December 2004, the Respondents demanded a sum of £117.50 from the Applicant, claimed by way of administration charges in respect of investigation of an alleged breach of covenant. On 5 September 2005, the Respondents demanded a further sum of £146.88 by way of administration charges in respect of an alleged further breach of covenant. The Applicant disputes his liability to pay either of these sums and apparently the dispute has obstructed or delayed his sale of the Property.

3. The Applicant, in his application, has indicated that he would be happy for this matter to be dealt with on paper and without the parties attending for a hearing. On 6 April 2006, the Tribunal issued directions, one of which directions was that the application would indeed be dealt with on the basis of written representations only, unless either party made a written request for an oral hearing within 30 days of those directions. No such request was received by either party. It was further directed that the application form and supporting documentation supplied to the Tribunal by the Applicant would stand as the Applicant's case and that on or before 26 April 2006 the Respondent should send to the Tribunal and the Applicant a written statement in response setting out in full the grounds for opposing the Application together with

copies of any documents relied upon. In the event, neither such a statement nor documents of any kind have been served either upon the Tribunal or the Applicant by the Respondent.

THE EVIDENCE

4. The Applicant has submitted various correspondence to the Tribunal together with the application. The first is a note, stated to come "with compliments" from the Respondents to the Applicant dated 19 November 2003. The note states that objections have been received from other (unnamed) residents at the block, of disturbance caused by noise from musical instruments within the Applicant's flat. There is no suggestion that the complaint has been investigated in any way and the note merely "urges" the Applicant to provide a remedy as soon as possible, and that if it becomes necessary formally to write again on the subject, an administration charge will be made. The complaint apparently baffled the Applicant because within a week he wrote to the other residents in his block indicating that he had been unaware that music noise had been disturbing anyone (no complaint had been made to him) but conceding that he was a professional musician who occasionally needed to practice and that he would make efforts to ensure that no further disturbance was caused. He urged his fellow residents to approach him directly if any such disturbance took place because he was eager to remedy complaints with a minimum of fuss, and he gave his phone number.

5. The Applicant apparently heard nothing further about the matter for over a year, but then on 3 December 2004 the Respondents wrote to him saying that *"it has once again been brought to our notice that excessive noise is emanating from your flat, the cause being the playing of musical recordings and/or musical instruments."* Additional comments were received about *"late night vacuum cleaning."* Again, the identity of the complainant is not given, the Applicant is not asked his side of the story, and the Respondents unilaterally inform him that *"we have therefore debited your account with the sum of £117.50 to reflect the administrative cost incurred on this occasion."*

6. The Applicant responded to this letter by letter dated 2 January 2005, disputing any reasonable complaint about music noises; he drew the attention of the Respondents to

his letter to his fellow residents, and informed the Respondents that not only had nobody complained to him but he had received expressions of sympathy from his fellow residents. The only incident of *"late night vacuum cleaning"* that he could recall had been some three months previously, when he had used his vacuum cleaner for approximately five minutes to remove a spillage in the kitchen cupboard. In short he contested the administration charge as unreasonable and declined to pay it.

7. So far as this charge is concerned, it is correct that the lease pursuant to which the Applicant holds this property provides at subparagraph (c) that the landlord is entitled to recover by way of service charges from the Applicant the cost

> *"of all other expenses incurred by the lessor in performance of its obligations hereunder not specifically hereinbefore classified, including the costs of management of the property ... and all other necessary and proper expenditure"*

in the proportion of 12.5%. That contractual provision is of course subject to the statutory provisions contained within Schedule 11 to the Commonhold and Leasehold Reform Act 2002, which provides (at paragraph 2) that such a charge is payable only to the extent that the amount of the charge is "reasonable".

8. In this case, an unidentified complaint had been made of noise disturbance which the Respondents appear to have accepted, without further investigation, as being justified. After a period of more than a year from the original allegation, it was apparently repeated and this, without further explanation or opportunity being given to the Applicant to state his case, simply resulted in the Respondents unilaterally levying a charge in their letter of 3 December 2004 of £117.50 *"to reflect the administration cost incurred on this occasion."* An opportunity has been afforded to the Respondent to give some explanation as to how this charge has been calculated, why it has been allocated exclusively to the Applicant, and why no credence has been given to, or account taken of, his explanation of the matter, given fully by him in correspondence. The letter of 3 December 2004 merely states that it would be *"unfair to burden the fund created by abiding lessees with costs created (by) one party in breach."* This of course pre-supposes that the Applicant has indeed been in breach, and whilst this application deals with liability to pay administration charges rather than establishment

of the breach, the two are on this occasion closely related; in any event, as indicated, the Respondents, though given the opportunity to do so, have not condescended to put before the Tribunal any evidence or explanation of any kind as to why this charge should be borne unilaterally by the Applicant. It seems to the Tribunal on the basis of the evidence before it, that, at most, no more than the Applicant's contractual proportion of this sum would be payable by him, that is to say 12½% of £117.50 which computes to £14.69. However, the Applicant has put a perfectly tenable case before the Tribunal as to why he should not be required to pay this sum, which case has gone unanswered by the Respondents. The Tribunal in all the circumstances determines that this charge has not been established as being reasonable, and that no part of it is payable by the Applicant.

9. So far as the other charge is concerned, similar considerations apply. On 5 September 2005, the Respondents wrote to the Applicant stating that:

> *"It has been brought to our notice that both the flat below you and their neighbour to the right at Flat 7 are suffering an ingress of water through their ceilings. The causant [sic] factor is an escape of water from within your flat ..."*

10. Once again, although a site visit for inspection is referred to in the letter, no indication is given in the letter as to what steps have been taken or what evidence is relied upon to support the contention that the ingress of water has indeed emanated from within the Applicant's flat and, using similar phraseology to that adopted in the earlier correspondence, the Respondents simply unilaterally state that:

> *"We have therefore debited your account with the sum of £146.88 to reflect the administrative cost incurred on this occasion."*

11. Perhaps not surprisingly, the Applicant took issue with this charge within five days, in a letter to the Respondent dated 10 September 2005, pointing out that it was he who had brought to the Respondents' attention a build-up of water emanating from a pipe in the concrete between the floors or a porous section of the structure of the building. He asserts in that letter that he had explained that there was no escape of water coming from within his flat, but that there was a possibility that there was a leaking pipe inside the concrete between two floors. He had been assured by the Respondents

that they would investigate the matter. He challenged the "unreasonable supposition" that there was any escape of water from within his flat itself and indeed put forward a further possible explanation, that being *"a suspicious area of the external wall identified as a possible source of damp by a professional plumber whose help I enlisted in the face of Shelleys' inability or reluctance to do anything whatsoever to resolve the issue at hand."* He also drew attention to the fact that having obtained a copy of the insurance policy covering the building, it appeared from that policy (the premium for which the residents of the building have to pay through service charges) that investigation of a matter of this kind would be covered by the insurance. He therefore challenged the administration charge both because it had not been established that there had been an escape of water from within his flat, and also because, in any event the investigation of this matter was something which should have been referred to the insurers.

12. In the face of this reasoned objection, so far as the documentation before the Tribunal is concerned, there is complete silence from the Respondents. There are clauses in the lease indicating that *"pipes ... ducts and conduits used solely for the purpose of the said flat"* come within the terms of the demise to the Applicant (see the Third Schedule to the Lease).

13. Clearly an incident has occurred, but again the Respondents appear to have decided the case against the Applicant immediately and have levied an automatic charge for their services against him and to be paid exclusively by him. Although the matter is inconclusive, there is evidence before the Tribunal to the effect that it may have been possible to recover some or all of the costs incurred through an insurance policy covering the block. Whether or not this is indeed the case is uncertain, but no evidence has been put before the Tribunal on behalf of the Respondents to remove this uncertainty.

14. In a letter dated 5 May 2006 to the Applicant and in which the Applicant is addressed as *"Dear Madam/Sir"*, the Respondent states that:

> *"In order for us to deal with your LVT application we will require you to lodge with us the appropriate funds to cover our administrative costs for so*

doing. These are estimated at £500 plus VAT for the "letter exercise" provided no attendance at either the Tribunal or elsewhere will be necessary."

15. Effectively, therefore, the Respondents are saying that they propose unilaterally raising the two charges referred to above exclusively against the Applicant and that if he wishes to challenge these charges, he must pay them further costs for the privilege of so doing. The Tribunal does not consider this to be a reasonable approach and is not satisfied on the evidence before it that this charge is reasonable.

CONCLUSION

16. For the reasons indicated above, and on the evidence before the Tribunal, it is determined that neither of these charges are reasonable and that the Applicant is not liable to pay these sums. It is perhaps worth pointing out that there is provision in the lease at Clause 4(2) to the effect that if a lessee makes a complaint to the lessor (or the lessor's agents) requiring covenants in the lease to be enforced against other lessees of the other flats, such enforcement can be made subject to the complaining lessee indemnifying the lessor against all reasonable costs and expenses in respect of such enforcement and providing such security in respect of such costs and expenses as the lessor may reasonably require. The Respondents have put no evidence before the Tribunal as to any efforts which may have been made to obtain such security before incurring costs in investigating two complaints referred to by the unidentified other lessee or lessees against the Applicant.

Chairman: S.SHAW 

Date: 23 May 2006