19 Sea View Apartments Southsea

THE SOUTHERN AREA RENT ASSESSMENT COMMITTEE

and LEASEHOLD VALUATION TRIBUNAL

Case no: CHI/00MR/MSI/2003/0045 and CHI/00MR/NSP/2003/0013

DECISION

APPLICANT TENANT: Lady Julia Pilkington (1)

Ian Low (2)

Peter Miller (3)

REPRESENTED BY: Mr Keay, Accountant

RESPONDENT LANDLORD: Willowbrook Property Services Ltd

REPRESENTED BY: Julian Cole, Solicitor

THE PROPERTY: 19 Sea View Apartments 14-15 South Parade Southsea Hampshire

THE PANEL: Mrs F J SILVERMAN LLM(Chairman)

Mr M Horton FRICS (Valuer)

Mr D Myers FRICS (Valuer)

HEARING DATE: The hearing took place at Portsmouth Central Library on 14 May 2004

INSPECTION DATE 14 May 2004

PRESENT AT INSPECTION: Mrs F J Silverman, Mr Horton, Mr Myers, Lady Pilkington, Sean O'Connell (Applicant's friend) , Jason Parker (representative of managing agents)

REASONS

1 THE ISSUES

The first Applicant made two applications under s 19(2A) and (2B)Landlord and Tenant Act 1985 seeking a declaration as to the reasonableness of service charges incurred and to be incurred for the periods October-December 2002 and January-December 2003.

2 At a pre-trial review held on 5 November 2003 the second and third Applicants were joined in to the applications. Both the second and third Applicant subsequently withdrew their applications and were not present or represented at either the inspection or hearing. Both applications are therefore dismissed on withdrawal by both the second and third Applicants.

3 The first Applicant also lodged an application to appoint a manager to the property but has withdrawn that application and does not wish to pursue it.

4 The only matters before the Tribunal at the hearing were the issues of the reasonableness of service charges for the two periods specified in paragraph 1 above.

5 THE PROPERTY

The property comprises two victorian houses facing an area of green space abutting the sea front at Southsea. The houses have been completely renovated and now comprise eighteen flats. The main entrance to all the flats is through a single front door on South Parade. Entrances to individual flats are via staircases and a lift. The property (Flat 19) is the penthouse suite on the fifth floor and lift access to this flat is controlled by a key held exclusively by the first Applicant. There is no garden at the rear, but a tarmaced area is marked out with parking spaces which belong to individual flat owners. Not all flats have an allocated parking space. A brick built locked bicycle shed and rubbish store is also in the parking area.

We inspected the exterior and common parts of the building and found them to be in good condition.

The property comprises a large open plan kitchen and living area with windows at front and rear and a small balcony at the front giving sea views. The lift opens directly into the living area but access to this floor is restricted to the first Applicant. The kitchen was well fitted and the living area light and spacious with wood floors. A reasonable size main bedroom also has a small balcony with sea views. A modern bathroom and small rear facing second bedroom complete the flat.

. The property has sea views from the front is within easy reach of a main line railway station and local amenities.

6 INSPECTION

We inspected the exterior and common parts of the property as detailed above.

7 THE HEARING

The hearing took place at Portsmouth Central Library on 14 May 2004.

The first Applicant was represented by Mr Keay , also present was Mr O'Connell. Mr Cole represented the Respondents accompanied by Mr Parker , a representative of the managing agents.

The Chairman explained the purpose of the hearing and procedure.

It was explained that the Tribunal was only concerned with the reasonableness of service charges as set out in the Order and Directions promulgated following the Pre-trial review and could not deal with other issues raised by the first Applicant in correspondence with the Respondent and the Tribunal. Specifically the Tribunal would not be dealing with the issue of the appointment of a manager (the first Applicant confirmed she was no longer pursuing this matter); alleged nuisance caused by the first Applicant's dog; the alleged improper parking of motor bikes in the parking area; the lift door; matters which were the responsibility of the developer (eg seals missing from sliding patio doors) ; alleged harassment by the landlord; payment of ground rent; the first Applicant's licence to use the roof space; the alleged business use of other flats within the building; the interim service charges for 2004; or the variation of the proportion of the service charge set by the lease.

The Tribunal had received an indexed and paginated bundle of documents from the Respondent and a small unindexed and unpaginated bundle from the first Applicant. All of the first Applicant's documents were duplicated in the Respondent's bundle and the first Applicant agreed that the Respondent's bundle could be used in place of her own at the hearing.

Mr Keay asked whether the Tribunal would consider the matter of the proportion of service charge payable by the first Applicant (8% of the total , see clause 8 of the particulars of the lease) which was higher than that of other tenants and he sought to reduce it. The Tribunal explained that this was not a matter over which it had jurisdiction.

The Applicant was asked to demonstrate to the Tribunal which of the service charges under consideration she thought were excessive. In response Mr Keay said that all the charges were unreasonable. He was asked to specify particular items but failed to do so.

Despite clear directions having been issued following the Pre-trial review, the first Applicant had not prepared a witness statement for the hearing neither had she obtained any estimates from third parties to demonstrate the excessive nature of the Respondent's charges. She had been specifically advised at the Pre-trial review to obtain legal advice but appeared not to have done so. The first Applicant said she had not had time to prepare for the hearing. The Tribunal pointed out that she had had six months in which to prepare and that the original hearing date fixed for April 2004 had been postponed by the Tribunal on its own motion specifically to allow the first Applicant sufficient time to prepare , owing to the first Applicant's unavailability during the earlier part of 2004. No application to vary the Directions nor to adjourn the hearing had been made by the first Applicant.

The first Applicant had been told prior to her signing the lease that the annual service charges were likely to amount to approximately £1200 and this is what she had been asked to pay. Interim service charges, based on estimates had exceeded this sum, but the excess had been re-paid to the tenants at the year end. The lease contained provisions for retention of a sinking fund but money had in fact been returned to the tenants and not placed in that fund.

Mr Keay maintained that the interim charges had been excessive and had overestimated the amounts due by some 50%. The Respondent explained that it had anticipated a large increase in insurance premiums following the Department of the Environment's publication of flood plain plans and had estimated the premiums based on those charged for nearby properties which they also managed but they had in fact been able to obtain insurance at a reasonable cost substantially lower than the estimate. They had also managed to contain repairs well under the budgeted amount. These two items accounted for a large part of the over-estimate of which Mr Keay complained.

Mr Keay said that the accounts were illegal because they had not been audited. The accounts for year end 2002 (representing only 2 months) had been certified by the Respondent's accountants and the accounts for year end 2003 were to be certified within the next six weeks and were not yet overdue. Papers relating to 2003 had not been sent to the Respondent's accountant so that originals could be made available for the first Applicant's inspection and the hearing but would be sent for certification directly after the hearing.

Mr Keay said that it was unlawful to require the first Applicant to pay sums on unaudited accounts. This patently ignores the fact that one of the first Applicant's applications to the Tribunal was based on the interim service charge for 2003 which was based on estimates and which sums had not then been expended by the Respondent. His reasoning also lies contrary to the Landlord and Tenant Act 1985 which itself makes provision for the Tribunal to determine the reasonableness of sums paid or payable (ie based on estimates).

The Tribunal explained that it would be able to determine the reasonableness of service charges (provided the evidence was forthcoming) , the enforcement of those service charges was a matter for the County Court who would expect the accounts to have been properly certified in accordance with statute.

The first Applicant said that she had not seen any of the original invoices. The first Applicant had been offered the opportunity to inspect the invoices at the offices of the managing agents but had failed to avail herself of this opportunity. The Respondents had brought to the Tribunal all the original documentation invoices and receipts and the Tribunal adjourned at 12.15pm to allow the first Applicant to inspect these documents over the lunch break.

Following the lunch break but prior to the scheduled resumption time, the first Applicant handed to the Tribunal a letter saying that she was not proceeding with the hearing on the grounds of bias shown by the Tribunal. The Respondents were not present when this letter was handed in. The Tribunal explained the situation to the Respondent when the Tribunal reconvened at 1.45pm.

The first Applicant had not brought a witness statement to the Tribunal neither had she obtained any comparable estimates. Despite repeated requests from the Tribunal

to do so she failed to point to any item within the service charge estimates or accounts which she found unreasonable. The service charges had been estimated at £1200 per annum and this sum was what had been payable at year end. The first Applicant had not in fact paid any part of the service charge.

The Applicant failed to produce to the Tribunal any evidence in support of her allegation of the unreasonableness of the service charges , neither is there anything on the face of the matter that would lead the tribunal to conclude that the service charges were unreasonable and the Tribunal must therefore dismiss the case against the Respondent as unproved.

The Tribunal strenuously denies any allegation of bias on its part. It sought to explain to the first Applicant (both at the Pre-trial review and the hearing) what was required of her and to assist her with her case. The Applicant had not come to the Tribunal with any evidence in support of her case and dismissal of the application was the only course open to the Tribunal in these circumstances.

8 DECISION

The applications brought by the second and third Applicants are dismissed on withdrawal.

The applications brought by the first Applicant are dismissed against the Respondent on the first Applicant's withdrawal from the hearing without having produced any evidence in support of her claim.

Frances Silverman

Chairman