

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

CASE NUMBER CAM/26UE/LSC/2006/048

IN THE MATTER OF:

43 HOGARTH COURT, STEEPLANDS, BUSHEY WD23 1BT

and

IN THE MATTER OF THE LANDLORD AND TENANT ACT 1985 SECTION 27A & 20C

Parties:

Mr H A Webb

Applicant

Hogarth Court Limited

Respondent

Representation at Hearing:

Applicant in Person

**Directors of the Company Dr S Pitfield
And Mr R King**

Respondent

Date of Applications: 4 & 17 August 2006

Date of Hearing : 14 February 2007

**Committee : Mr A A Dutton Chair
 Miss M Krisko BSc (EST MAN) FRICS
 Mr A K Kapur**

Decision Date : 19 February 2007

REASONS

A. BACKGROUND:

1. These two applications were made by Mr H A Webb under s27A of and s20C of the Landlord and Tenant Act 1985 in respect of service charge years ending March 2004 and 2005.
2. This is the fourth time the matter has come before the Tribunal on essentially the same issues. On this occasion, as previously, Mr Webb provided copious documentation but there was no paperwork provided by the Respondent.
3. Dr Pitfield and Mr King who are Directors of the Management Company and also live at the development attended the Tribunal hearing.

B. EVIDENCE:

4. There was a bundle of some 77 pages provided by Mr Webb but it became clear during the course of his presentation that the issues relating to the two years in question could be succinctly stated.
5. In relation to the 2004 accounts his complaint was simply that they had not been properly apportioned. He directed us to documentation in his bundle which included a copy of the profit and loss account for the year ending March 2004 from which he had extrapolated figures relevant to his block, which was number 10, and then set those out on his own prepared schedule. This showed a figure due from him for that year of £513.46. He told us that in fact a demand had been made for a sum of more than £900. On closer examination of his schedule it appeared that he had not included the estate expenses which this Tribunal had determined in a Decision made following a meeting in April 2005. That Tribunal had found that the sum of £2,302.75 was to be allocated as estate costs which gave rise to a liability for Mr Webb of £41.13. This meant that on his calculations the sum of £554.59 was due for the year ending March 2004.
6. Insofar as the year ending March 2005 was concerned it appears there had been some misunderstanding on the part of Mr Webb as to the provision of estimated maintenance costs. It appeared that he was concerned that some blocks were not paying their proper proportion towards the service charges. He was concerned that there had been no final balancing of the accounts for the year 2005. In fact amongst the papers was a copy of a demand that had been made for that very year showing that he was liable for a further £58.19 having already paid £917.76. There was a figure for legal fees which should not have been included in the service charge certificate for this period but Mr Webb told us that that element had been resolved in the following year and that accordingly the service charge certificate for the year ending 31 March 2005 would be accepted.
7. On behalf of the Respondents, Dr Pitfield expressed regret that there had been these problems and he hoped they could be resolved. He pointed out, which was accepted by

the Tribunal, that they had employed professional Managing Agents to deal with the accounts and that they were lay people and were not really in a position to deal with the detailed assertions made by Mr Webb. Apparently Mr Webb frequently sent to the Directors detailed and lengthy letters which they were just not able to deal with. He hoped however that with the introduction of the new Managing Agents the problems that had arisen in the past with previous managing agents could be resolved.

C. THE LAW:

8. The law applicable to this application is to be found a s27A and s20C of the Landlord and Tenant Act 1985. We do not propose to set out the terms of same but confirm that those provisions have been applied by us in making our determination.

D. DECISION:

9. Dealing firstly with the 2004 accounts and based on the profit and loss account which was presented by the Management Company and approved by the Auditors, Mr Webb's figures appear to be correct. As the quantum of the figures is not challenged by Mr Webb, we conclude therefore that the amount he would be required to pay for the service charge year ending 31 March 2004, should be £554.79. Any overpayments that may have been made will need to be credited to him for future years.
10. Insofar as the 2005 accounts are concerned it seemed to us that the demand that had been raised was accurate. The correct percentages appear to have been applied in relation to block and estate expenditure and the figures shown thereon have already been the subject of a determination by this Tribunal which has not been appealed and which we will not disturb. We therefore conclude that the sum required from Mr Webb to settle the accounts to 31 March 2005 is indeed £58.19., subject to reimbursement to him of the sum claimed for legal fees, which we understand has been allowed for in the following year.
11. Mr Webb then asked that there be some consideration given to reimbursement of his fees and an order that the Respondents are prevented from adding any costs of these proceedings by way of service charge.
12. Dealing with the service charge provision first. This is to be found at s20C of the 1985 Act. It enables the Tribunal to exercise its discretion, in a just and equitable manner, to prevent a Landlord from recovering costs before a Tribunal through the service charge regime. As Dr Pitfield and Mr King accepted, they had not themselves incurred any costs in respect of these proceedings and the Managing Agents had not taken part. Accordingly there were no costs to be recovered. However, to ensure that there is no misunderstanding, we make an Order under s20C preventing any costs incurred by the Managing Agents or the Respondent Landlord from being recovered as a relevant cost through the service charge regime in respect of these proceedings.

13. In respect of the fees there is provision under the Leasehold Valuation Tribunal (Fees)(England) Regulation 2003, at regulation 9, to order that a party to the proceedings should reimburse another party with a whole or part of the fees paid. Such an Order cannot be made if that party is in receipt of benefits allowance or certificate but that does not apply in this case. Mr Webb told us that he had paid £100 in respect of the applications and another £150 for the hearing fee. He wanted those to be repaid. Mr Pitfield felt there had been something of a 50/50 split on the success of the applications and whilst not agreeing to pay half the costs, did not argue strongly against some form of liability albeit on a moderated basis.
14. The only other costs that would be of consideration fall under the Commonhold and Leasehold Reform Act 2002 Schedule 12 paragraph 10 but Mr Webb did not seek to pursue that matter.
15. On the question of fees therefore we conclude that a fair and reasonable way of resolving this is to indeed divide the fee obligation in half and order that the Respondent should reimburse to Mr Webb the sum of £125.00 which is effect one application fee and half the hearing fee.
16. We do sincerely hope that the introduction of the new Managing Agents and Mr Webb's comments indicating that he believed that he could work with the person involved will result in there being a rapprochement between the parties which will not require them to visit the Tribunal again. It appears that the Managing Agents had come to understand the terms of the Lease and the only area that appeared to still be of concern was the need to ensure that the accounting process records specific block costs to the block in question and differentiates clearly from what would otherwise be estate expenses. We are sure that is not beyond the wit of mankind and that the new Managing Agents can hopefully prevent a recurrence of the difficulties that have arisen in the past.


Chairman

Dated 19 February 2007