HM Courts & Tribunals Service

Property Chamber
London Residential Property
First-tier Tribunal

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Residents' Association of Canary Riverside
Berkeley Tower Canary Riverside
48 Westferry Circus
London
E14 8RP

Your ref:
Our ref: LON/00BG/LVM/2018/0005

Date: 13 February 2019

Dear Sirs

RE: Landlord & Tenant Act 1987 - Section 24(9)

PREMISES: Canary Riverside, Westferry Circus, London, E14

Judge Vance has considered the letter from the s.24 leaseholders dated 6 February 2019 and agrees that the wording of paragraph 64 of the decision dated 4 December 2019 is open to misinterpretation.

He has therefore corrected the decision, a copy of which is enclosed.

Yours faithfully

Ms Jacqueline Benjamin
Case Officer

residential leases, which includes within the definition of Building Expenditure recoverable from the leaseholders:

> "such sums as the Landlord shall consider desirable to set aside from time to time in accordance with the principles of good estate management (which setting aside shall be deemed to be an item of expenditure actually incurred) for the purpose of providing for periodically recurring items of expenditure....."

60. He submitted that clause 23.1.3.2 should be included in the Management Order as a duty binding on Mr Coates. He also confirmed that CREM agreed that the leaseholders were entitled to challenge the insurance costs demanded from Mr Coates.

61. Ms Cattermole stated that Mr Coates was content to use a float but would only do so once the service charge arrears owed by CREM were paid.

62. Ms Jezard's position was that CREM should bill leaseholders directly for the insurance costs and that there was no excuse for CREM not providing full disclosure to the Manager of documents underlying the insurance costs demanded. She also agreed that Mr Coates should be entitled to set off insurance costs against service charge arrears owed by CREM.

63. In our determination it is not just and convenient to vary the order to include clause 23.1.3.2 as a duty. Paragraph 5 of the MO states that Mr Coates is to manage the Estate in accordance with the landlord's obligations set out in the residential leases. He therefore has the power to set up a reserve fund or float. Whilst we consider it eminently sensible that he does so, thereby enabling advance payments to be demanded from leaseholders, we do not consider it appropriate to impose a duty on him to do so. To do so, would, in our view, be a disproportionate interference by the tribunal with his discretionary powers as Manager and would constitute an undesirable involvement by this tribunal in the day to day management of the Estate.

64. However, the current impasse is thoroughly undesirable and is, once again, indicative of the poor relationship between the parties. In our view, there is no justification, and nor is it helpful, for either party to apply an equitable set-off in respect of these insurance costs. It is critical that the Building is insured, and we consider that Mr Coates should pay the sums demanded, collecting in advance service charge payments from leaseholders in order to do so. If he, or a leaseholder disputes the payability of the costs, or how they have been apportioned, this can be challenged, if necessary, through an application to this tribunal under s.27A of the 1985 Act. If a leaseholder, including CREM, is in arrears, then Mr Coates can seek to recover the sums payable through proceedings. Similarly, to facilitate good estate management, CREM should ~~either~~ pay the service charges demanded from

it ~~or~~and, if ~~it disputes~~ payability is disputed, it may ~~should~~ seek a determination from this tribunal as to its liability.

65. We see no reason why CREM/Octagon should refuse to provide Mr Coates with an explanation and underlying documentation as to how the insurance costs have been apportioned. If it has not already provided this information, then it should do so. Although ultimately, it will be the residential leaseholders that pay these costs, it is clearly sensible for Mr Coates, as manager of the Estate, to be provided with such information so that he can explain how service charges have been calculated when demanding payment from leaseholders.

66. We disagree with Ms Jezard that CREM should bill leaseholders individually. Collection of service charges from the leaseholders is Mr Coates' responsibility and it is on that basis that the MO was made.

Amran Vance **25 January 2019**

Corrected on 12 February 2019