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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

Landlord and Tenant Act 1985 (as amended) sections 20 and 27A

Case Number CAM/00ME/LSC/2006/0028

**In the matter of 10 Bearsden Court, Charters Road, Sunningdale,
Berkshire. SL5 9SJ**

Parties

Mr C P King-Farlow Applicant

And

**Elmbirch Properties Limited Respondent
Represented by Remus Management Limited**

Application date

2nd June 2006

Determination date

11th August 2006

Tribunal members

Mr A A Dutton Chair

Miss M Krisko BSc (Est Man) FRICS

Decision date

11th August 2006

Reasons

A. BACKGROUND

1. This application was made by Mr King-Farlow under section 27A of the Landlord and Tenant Act 1985 ("the Act") seeking a determination as to the reasonableness of a payment made by the managing agents of the Respondent Elmbirch Properties Limited, Remus Management Limited ("Remus"), to ALS Group for the provision of garden services at Bearsden Court.
2. The brief history of this matter is as follows. During 2004 ALS were the gardeners at the development known as Bearsden Court in Sunningdale. There was dissatisfaction with the services they provided and it appears that in October 2004 the then managing agents, Hawksworth Management Limited terminated the contract with ALS. At the time of termination it was alleged that ALS were owed £1,267.38 in respect of outstanding invoice(s).
3. In October 2004, prior to the termination of the contract with ALS, Hawksworth wrote to the Applicant concerning the problems with ALS relating to overcharging and poor performance and indicated that it was aware that the residents wished to retain £1,300 to be offset against outstanding invoices of ALS.
4. We were told by the Applicant in his statement of case that Remus took over the management of Bearsden Court on 1st July 2005. Apparently prior to the hand over to Remus a meeting took place between three flat owners and representatives of Remus when they, that is Remus, were informed of the residents' wishes with regard to the payment of monies to ALS. Following the hand over it was established that the exact amount owing to ALS was £1,267.38.

5. Despite the wishes of the residents it appears that some time prior to 9th November 2005 Remus paid the outstanding amount to ALS without the knowledge of the Applicant and his fellow residents.
6. When the question of the payment was raised the residents were informed by e.mail that the decision to settle the amount due was made because Remus felt that ALS had an unanswerable case and that the costs of defending the matter would have exceeded the amount due. There does not appear to have been any consultation with the Applicant or other residents of Bearsden Court before the payment was made.

B. EVIDENCE

7. We have been provided with a bundle of correspondence by the Applicant which we have read. The Respondent has chosen to ignore the directions issued by the tribunal on 19th June 2006 and was warned of the consequences by a letter dated 21st July 2006. There has been no response from the Respondent and we must therefore determine the matter on the information supplied to us by the Applicant.
8. The letters and communications in the bundle support the background set out above. We noted that a letter from Remus dated 4th May 2006 contained an offer by them to pay half the sum due to ALS, namely £633.69. This offer does not appear to have been accepted. An earlier letter from Remus, dated 20th April 2006 sought to explain away the payment as being carried out on the instruction of the Respondent Landlord, apparently in ignorance of the concerns of the residents.

C. THE LAW

9. The two sections of the Act that we must take into account in reaching our decision are section 27A, as to the liability for payment and section 20 as to the

recoverability by the Respondent via the service charge regime of any costs associated with the application to the tribunal.

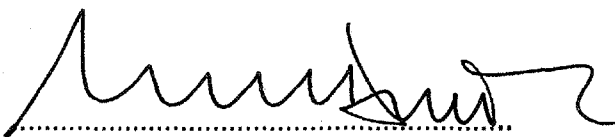
10. Section 27A sets out the matters to be determined in connection with, inter alia, the person liable to pay, to whom it should be paid and time scales. Section 20 requires us to make a just and equitable determination as to the Respondents ability to recover the costs of this application against the residents.

D. THE DECISION

11. The simple matter we need to consider is whether it was reasonable or not for the Respondent, though its managing agents Remus, to pay the invoice(s) of ALS in the sum of £1,267.38 despite the concerns expressed by the Applicant and others.
12. The evidence before us is that, contrary to the assertions made by Remus in letters dated 20th April 2006 and 30th May 2006, they did know that the amount was in dispute. This much is clear from the e.mail sent by Mary Berezin of Remus to the Applicant and Mr Claydon on or about 11th November 2005, in which she states " *I have now had the chance to speak to Mr Robson with regard to the payment of invoices to ASL Group. He tells me that while he was aware that these invoices should not be paid, they were threatening legal action*"
13. In those circumstances we find that it was unreasonable to proceed to pay the invoice in question without first consulting with the Applicant and others, setting out the ramifications of not paying and advising them of the likely costs of disputing the sum due. The residents could then have made an informed decision as to whether or not the sum should be paid. In making the payment the Respondent has in effect, denied the Applicant the chance to query the invoice(s) of ASL. The Applicant is therefore entitled to a credit of the amount

that he was required to contribute towards the gardening invoices totalling £1,267.38

14. Unfortunately this somewhat highhanded approach has been mirrored in the Respondents disregard of these proceedings. We have not had any input from Remus and the consequences of failing to comply with the directions are clearly noted thereon.
15. Accordingly we have no hesitation in directing pursuant to section 20 of the Act that the Respondent is not entitled to recover any costs associated with these proceedings through the service charge regime. In any event, given the lack of involvement it is difficult to see that any costs could have been incurred.
16. The Applicant has also requested reimbursement of the costs of issuing the application which amount to £70. Pursuant to the Leasehold Valuation Tribunal (Fees)(England) Regulations 2003, at regulation 9, we are empowered to order that a party to the proceedings may be required to reimburse the other party the whole or part of any fees. Given the lack of response from the Respondent or its agents and the facts of the case, we find that it is appropriate to order that the Respondent shall reimburse the Applicant with the issue fee of £70 within 14 days of the date of this decision.



Chair

Date

14th August 2006