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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985 SECTION 27A

LON/00AL/LSC/2010/0566

Premises 39 Blackheath Road, London SE10 8PE

Applicant: Mr Stuart John Wilson

Respondent: Mr I and Mrs S Berrido

Represented by

Date of Hearing: 20 October 2010

**Tribunal: Ms M Daley LLB (Hons)
 Mr S A Manson FRICS**

Date of decision: 20 October 2010

Background

- (a) The property, which is the subject of this application, is a flat situated in a grade 2 listed Georgian conversion, comprising four storeys. Which has been converted into four separate flats of equal sizes.

- (b) The Applicant Mr Wilson is the occupant of the top floor flat. The Respondents Mr & Mrs Berrido, own the freehold of the premises and a lease of one of the flats within the premises.
- (c) On the 16 August 2010 an Application was made to the Leasehold Valuation Tribunal for a determination of the Reasonableness and payability of service charges for 2008, 2009 and 2010 in the total sum of £759.97. It was accepted that a letter had been sent by Mr & Mrs Berrido, demanding the payment of £3074.40, however Mr Wilson's application was in respect of the sum of £759.97.

Matters in dispute

The matter in dispute was the reasonableness and payability of the sum of £739.97.

The Law

Section 18(1) of the Landlord and Tenant Act 1985 ("the Act") provides that, for the purposes of the relevant parts of the Act, "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs.

Section 19(1) provides that relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

- (a) only to the extent that they are reasonably incurred, and
- (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard:

and the amount payable shall be limited accordingly.

Section 19(2) of the Act provides that, where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A (1) of the Act provides that that an application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to –

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

Section 27A(3) of the Act provides that an application may be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

The Hearing

1. At the hearing Mr Wilson explained that in the past prior to Mr and Mrs Barrido purchasing the freehold, there had been no service charge demands and that every bill had been split 4 ways. The Tribunal noted that the lease provided for payment of a service charge and that the formal provisions were set out in Clause 4 of the lease which stated:- “ *The Lessee Hereby Covenants with the Lessor:- To pay to the Lessor an annual contribution of twenty-five per centum(25%) of the costs expenses outgoings and matters mentioned in the fourth Schedule...* ” The Lease also provided for a quarterly charge which

was payable in advance: “... of £250 or other such sum as the Lessor may reasonably require on account thereof by equal quarterly payments in advance and in addition a sum for the Lessee’s contribution to the insurance premium and such sum (if any) required by the Lessor and to be retained by the Lessor to provide for a sinking fund for the painting of the exterior and common parts of the Building...”

2. The Tribunal informed Mr Wilson that although Service Charges may not have been formally demanded in the past they were payable under the terms of the lease. Mr Wilson accepted this, although he took issue with some of the charges which included charges which had been levied by the Respondents for carrying out work relating to managing the building and the cost of their time in attending to emails, travelling to the premises and liaising with solicitors in relation to queries concerning the management of the building.. The Tribunal noted that even on Mr Wilson’s calculations he had not included all of these additional costs, and given this the Tribunal have considered management as a separate heading, which is dealt with in the decision below.
3. The specific charges that were not accepted as reasonable and payable were Plumbing Cost in the sum of £ 24.97. Mr Wilson had written an email to Mr Miller (one of the leaseholders at the building) effectively suggesting that Mr Miller ought to pay for the plumbing work. Mr Wilson stated that he had discussed this with Mr Miller and he understood that this had happened.
4. Electricity in the sum of £130(his share was £32). Mr Wilson noted that this sum did not accord with his knowledge of the usage of the common parts lighting. He also stated that his own electricity usage for his flat, suggested that this figure was too high. Mrs Barrido stated that her son, who had previously occupied the building had, previously paid the cost of electricity for the common parts. Mrs Barrido accepted that the charges were high, however the difficulty was that the bill that had been produced was an estimate, and in the past there had been difficulties in providing access for meter reading. Mr Barrido had obtained over the telephone confirmation of what had been paid in the past (and was awaiting duplicate bills), and in relation to the bill it was their intention to pay the money into an account, which meant that once the actual bills had been produced any excess would be refunded.

5. Mr Wilson also disputed a demand which included £285 for gardening and rubbish clearance(his share of the expense was (£71.25). The Respondent's explained that although Mr Wilson previously attended to the garden the hedge and the grass had become overgrown, and it had been necessary to have the garden cleared and rubbish removed. Mr Wilson noted that this work had been undertaken, although he queried the reasonableness of the cost, as he considered that this was no more than a few hours work, and he noted that the former tenant, who had occupied the basement flat, had left the rubbish.
6. There were also charges of £45.00 for Hedge trimming £11.25 and Electricity Repairs which were accepted as reasonable, and work for Gulley clearance in the sum of £126.50 (His share £31.60) which was not accepted as reasonable.
7. The Tribunal noted that although Mr Wilson objected to the charges, he did not provide any alternative evidence concerning the cost of this work. The Tribunal noted that save for the plumbing cost all of the other demands for sums incurred on maintenance at the building , were supported by invoices.
8. The Tribunal asked Mr and Mrs Barrido about the management charges and it was apparent that there was considerable history of disagreement between the parties, which stemmed from matters such as disagreement about the major works, and Mr and Mrs Barrido's perception that Mr Wilson raised a great deal of queries relating to the building. Mr and Mrs Barrido had tried to reflect the cost of their time by making charges for answering emails, travel cost in attending at the building and the time spent liaising with their solicitor concerning the major works.

The decision of the Tribunal

9. The Tribunal noted that there was little awareness from either the Applicant or the Respondent about the terms of the lease and the effect of those terms. For example, the Respondent's could make a demand for payment in advance, and were able to charge for their management of the building, or indeed engage a managing agent and pass the fee on to the other leaseholders under Schedule 4 of the lease

It was also the view of the Tribunal that the Respondents were unaware of many of the responsibilities of managing the premises and that Respondents had not considered the obligations as set out in the RICS code of guidance for management of Residential Premises. The Tribunal asked whether the

Respondents were aware of the Service Charge Regulations (Summary of Rights and Obligations 2007). It was apparent that the Respondent's were unaware of these provisions which -: *"provides that a demand for payment of a service charge must be accompanied by a summary of the rights and obligations of the tenant in relation to service charges. Where a demand for payment is made and a summary does not accompany it, a tenant may withhold payment without breaching the terms of the lease.*

4.4 The purpose of the summary is to ensure that the tenant is made aware of the rights available to them where they receive a demand for payment of a service charge, and their obligations in relation to the demand."

10. The Tribunal noted that whilst the service charges may be considered reasonable and payable, the effect of this provision is that they are not payable until the demand has been served with a Summary Of The Rights And Obligations. This in the Tribunal view illustrates some of the difficulties in self-management by the freeholder, in that they are obliged to keep themselves up to date with the rules and regulations concerning the management of premises.
11. The Tribunal in considering the reasonableness of the service charges consider that the management charge should be set out in advance with a menu of duties and details of any additional charges, as suggested by the RICS Code, given this the Tribunal find that in accordance with the code the Respondent should charge a flat fee, and this given their lack of knowledge and experience should be no more than £75-£100. per flat .We therefore find that the sum of £75 is payable for 2008 and 2009 and £100 for 2010.
12. The Tribunal were satisfied on a balance of probabilities that the sums incurred for the plumbing, the electricity and the garden maintenance and rubbish clearing is reasonable and payable. The Tribunal noted that the Applicant had conceded the sums in respect of the Electricity repairs and the hedge trimming. The Tribunal determine that the Respondent shall serve a demand, with the revised charges in relation to the management fees, and the other items, and that this sum shall be payable once the Respondents have complied with the obligation to serve a summary as set out in paragraph 13.

CHAIRMAN.....*M. J. Kelly*.....

DATE...*20th October 2010*.....