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Residential
Property
TRIBUNAL SERVICE

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A OF THE LANDLORD & TENANT ACT 1985**

**Ref: LON/00BJ/LSC/2010/0100**

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| **Property:** | Flat 1, Downs Court<br>6 Cambalt Road<br>London SW15 6EW |
| **Applicant:** | 6 Cambalt Road Management Co. Ltd. |
| **Respondent:** | Mr Kevin Robinson |
| **Date of County Court Transfer:** | 27th January 2010 |
| **Date of Hearing:** | 9 June 2010 |
| **Appearances for the Applicant:** | Mr John McAuley, Chairman |
| **Appearances for the Respondent:** | Mr Kevin Robinson |
| **Leasehold Valuation Tribunal:** | Ms F Dickie, Barrister<br>Mr T Sennett<br>Mrs J Dalal |
| **Date of Decision:** | 12th July 2010 |

Summary of Determination

1) There is no dispute as to the amount of service charges claimed or the recoverability of the relevant items of expenditure under the terms of the lease. The Tribunal has jurisdiction to consider the payability of the sums

claimed as they fall within the definition of service charges in s.18 of the Act. The Tribunal finds:

a) No service charges are due until a statement of rights is issued to the tenant to accompany the demands.

b) Service charges have been demanded in a form that complies with s.47 of the 1987 Act.

c) No service charges in respect of the proposed major works are due until statutory consultation has been carried out.

d) Since the half yearly payment date for the service charges claimed (for the years 2007 and 2008) had already passed it is irrelevant that they were demanded quarterly.

Preliminary

2) The Applicant seeks a determination under Section 27A of the Landlord and Tenant Act 1985 as amended of the Respondent's liability to pay service charges. The subject premises are a purpose built block comprising 10 flats. The freeholder 6 Cambalt Road Management Company Ltd. is wholly owned by the leaseholders of Downs Court. A claim was issued on 2nd November 2009 in the Wandsworth County Court by the freeholder against Mr Kevin Robinson, the holder of the leasehold interest in 1 Downs Court. Mr Robinson purchased the lease on 12th January 2007. The County Court Claim was for service charges unpaid since 1st October 2007 in the sum of £1700. Mr Robinson filed a Defence in the County Court in which he alleged that he is not liable to pay the sum claimed because:

a) The landlord's demand was not accompanied by a statement of the tenant's rights and obligations;

b) The charges were not clearly demanded and the name and address of the landlord were not clearly provided;

c) The landlord failed to consult him in respect of external decoration in breach of section 20 of the Landlord and Tenant Act 1985; and

d) The charges were demanded quarterly which is not in accordance with the lease.

3) By Order of DJ Grosse of Wandsworth County Court dated 27th January 2010 the matter was transferred to the Leasehold Valuation Tribunal. A pre trial review was held on 3rd March 2010, and the Tribunal issued Directions for the matter to be listed for determination at a hearing on 9 May 2010. In addition to the issues raised by the Mr Robinson, the parties were directed to address in their statements of case whether the sums claimed are service charges within the meaning of sections 18-30 of the Landlord and Tenant Act 1985.

**The Lease**

4) There are 2 parties to the lease dated 28th February 1966 ("the original lease"): David Mortleman as Landlord, 6 Cambolt Road Management Company Limited as the Management Company and Mr/s Weightman as the Lessee. The preliminaries of the lease refer to the Lessee being or becoming a member of the Management Company in respect of eight ordinary shares. The lease provides:

1. The Lessee.... YIELDING AND PAYING by way of Service Charge during each year of the term hereby granted a sum equal to the subscription payable to the Management Company under the provision of Clause 4(b) hereof such Charge to be payable in advance by two half yearly instalments on the Twenty fourth day of June and the Twenty fifth day of December in every year without any deduction whatsoever PROVIDED THAT if the Lessee shall have paid to the Management Company the half yearly subscription payable under the provisions of Clause 4(b) hereof then the amount of the Service Charge payable by virtue of this Clause shall be a peppercorn if demanded

5) In 1996 the tenants, by the wholly tenant owned Management Company, purchased the freehold of Downs Court. Upon purchasing his lease Mr

Robinson was granted an extension of the term. The lease made on 12th January 2007 ("the new lease") between 6 Cambalt Road Management Company Limited as the Landlord and Kevin Robinson as the Tenant observes in the Recitals that the reversion immediately expectant upon the Tenant is now vested in the Landlord. A number of variations were made to the original lease, including:

5.3 Clause 4(b)(i) shall be amended as follows:-

"The Lessee hereby covenants with the Management Company that during the subsistence of the said term the Lessee will pay to the Landlord a sum equal to one tenth of all costs expenses and outgoings properly incurred by the Management Company in fulfilling its obligations in accordance with Clause 4 such costs to include the payment (including VAT) of any managing agents fee appointed in accordance with Clause 4.7 of this deed

Evidence and the Tribunal's Determination

6) Whilst the original lease suggests that the sums claimed are due as a subscription to the Management Company and not as service charges, the new lease was not before the Tribunal at the Pre Trial Review. There was no dispute that the items claimed fell within the obligations in Clause 4 of the lease and the Tribunal is satisfied that those items were payable, as provided in s.18(1)(a) of the Act, for "services, repairs, maintenance or insurance or the landlord's costs of management". Having had sight of the new lease and the amendment it makes to the original lease, the Tribunal is satisfied that the sums claimed are indeed service charges within the meaning of section 18 of the Act and that it has jurisdiction under s.27A to consider their payability and reasonableness.

7) Mr McAuley, who appeared on behalf of the Applicant at the hearing on 9th June, is himself a leaseholder of one of the flats at Downs Court and Chairman of the board of Directors of the freehold company. Mr Robinson is also its shareholder and director. Mr McAuley explained that service charges had been charged at £800 per annum until increased to £1000

per year for the years 2009 and 2010 owing to the cost of proposed major works.

8) Mr Robinson did not dispute the reasonableness of the service charges claimed or that the amounts were incurred pursuant to the landlord's obligations under the new lease. By email to Mr McAuley, Mr Robinson had expressed an intention to pay that fell short of an agreement as to the service charges owing. Mr Robinson said he had not paid the service charges as a result of financial difficulties arising out of a flood to his flat and prolonged and stressful dealings with the insurance company before his claim was finally paid.

9) At the hearing the Tribunal heard evidence and argument about each of the 4 issues raised in Mr Robinson's Defence to the County Court claim:

   a) The landlord's demand was not accompanied by a statement of the tenant's rights and obligations;

      i) By virtue of The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007, any service charge demand made after 1st October 2007 must be accompanied by a summary of the tenant's rights and obligations. The requirement is mandatory and payment is not due unless and until this summary is provided. There was no dispute between the parties that no such statement had accompanied the service charge demands. Mr McAuley said he had been unaware of this requirement.

      ii) The Tribunal finds that until such statement is served on the tenant no service charges are due from him. Upon service on the tenant of a demand accompanied by a statement of rights, the service charges for the years 2007 and 2008 (in respect of which the amount is not in dispute), will be payable forthwith. Mr McAuley explained that, in any event, the Landlord intended now to appoint a managing agent to handle the service charge accounts, demands and major works consultation

b) The charges were not clearly demanded and the name and address of the landlord were not clearly provided;

i) Section 47 Landlord and Tenant Act 1987 requires that any demand given to a tenant must contain the name and address of the landlord, and the sum in question is not due until such a time as this requirement has been met. Mr Robinson argued that the landlord's name and address were not clearly specified and identified on the letters requesting payment of the service charges, which had accompanied a copy of the minutes of the Annual General Meeting at which the annual service charge was set.

ii) The Tribunal, having considered the form of these documents, is satisfied that in the context of these particular parties (a tenant owned freehold company demanding service charges from a tenant director of that company), the form of the demands was sufficient to constitute an effective demand for service charge. Furthermore, the demands did comply with section 47 of the 1987 Act: the name of the freeholder company was recorded on every service charge demand letter, at the top of the page, and the registered address appeared at the bottom.

c) The landlord failed to consult him in respect of external decoration and repair of the driveway in breach of section 20 of the Landlord and Tenant Act 1985;

i) The major works charges disputed by Mr Robinson are in respect of external redecorations and repair of the driveway, as referred to in a letter to him from the landlord dated 1st December 2008. No challenge was raised regarding charges for previous major works to roof and intercom carried out in 2007. Mr McAuley relied on informal consultation carried out with the tenants at the Annual General Meeting in July 2008 where the proposed works including external decorations and repair of the driveway were discussed, though Mr Robinson had not attended. However, Mr McAuley clarified that no such major works had in fact been carried out owing to financial

limitations on the landlord. The letter of 1st December 2008 refers to quotations having been received, though Mr McAuley explained that these were guideline costs only.

ii) It would appear that the likely cost of the proposed works will engage the statutory consultation requirements (since the contribution of the tenants will exceed £250 each), which are strict and must be complied with unless dispensation is granted on application to the Tribunal. Unless and until formal statutory consultation is carried out (or dispensed with) as required by the Act no service charges in respect of these major works are due. Mr McAuley had not produced a copy of the service charges accounts for the years in question, which he said had been used to inform the following year's service charge estimates. The precise sum so charged for major works could not be ascertained by the Tribunal on the financial information provided by the parties.

d) The charges were demanded quarterly which is not in accordance with the lease.

i) Mr McAuley explained that quarterly service charges payments had been arranged for the convenience of the tenants. Service charges are payable half yearly under the terms of the lease. The Tribunal observes that any tenant is entitled to insist on making payment according to those terms and if demanded quarterly may decline to may payment until the next half year payment date. However, all of the sums that are the subject of this case are actual items of expenditure in previous service charge years. All half yearly sums have therefore already fallen due. It is now irrelevant that they were demanded quarterly.

Signed..... (Chairman)

Dated 12th July 2010