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**LEASEHOLD VALUATION TRIBUNAL
OF THE
NORTHERN RENT ASSESSMENT PANEL**

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

**LANDLORD AND TENANT ACT 1985
SECTION 27A (1) and SECTION 20C**

Property: Flats 1,2 4, 5 and 7, 1 Livingston Drive South, Aigburth,
Liverpool L17 4JJ

Applicants: Ms J Dowler and others (See Schedule 1)

Respondents: Ground Rent Trading (Liverpool) Limited (1)
Moreland Estate Management Ltd (2)

Tribunal: Mr G C Freeman
Mr J Faulkner MRICS
Mrs H Clayton

Date of Hearing: 12 April 2010

ORDER

1. The reasonable service charge payable by each Applicant for the respective periods covered by the Application is one equal seventh part of the total amounts respectively set out in the columns headed "Allowed" in Schedule 2 annexed.

2. No part of the Respondents' costs incurred in connection with the Application are to be included in the service charge payable by the Applicants for the periods which are the subject of the application.

A Application

1. By their application dated 25th June 2009 the Applicants seek a determination of the liability to pay and reasonableness of service charges for the above Property for the service charge periods ended 31st May 2005 to 31st December 2009.
2. The person owning the reversion to the Lease (in this decision called "the Landlord") is Ground Rent Trading (Liverpool) Limited. They employ Moreland Estate Management Limited ("Moreland") as managing agents. Both companies share the same registered office. Prior to the acquisition of their interest by the Landlord, the Property was managed by Watson Property Management. (in this decision called "Watson").

B The Property

3. The Property is a number of self contained flats in a former detached house which has been converted into flats. The basement flat, numbered 7, occupies the whole of the basement of the house. The remaining flats occupy the ground, first and second floors. It is situated in a residential part of Liverpool close to the city centre and Sefton Park. Although the area itself is quiet, shops and bus services are close by. The house was originally constructed in the 19th century as a substantial family house with servants' quarters. The front garden is of tarmac and each flat has its own designated car parking space. These are marked out on the tarmac together with two visitor spaces. At the rear is a communal garden which is mainly of lawn with flower beds in the borders.

C The Lease

4. The Applicants produced a copy of the Lease for Flat 5. It is dated the 28th February 2003 and it is made between E B Property Developers Limited of the one part and Dr Anna Louise Chamberlain of the other part. The term granted is 125 years from 18th November 2002 (less ten days) and a ground rent of £100.00 per annum is payable.
5. The service charge provisions are contained in the Sixth Seventh and Eighth Schedules of the Lease. The Tenant is responsible for paying a service charge in two equal half yearly instalments, on 1st June and 1st December which are to represent 14.285 % of the total costs incurred by the Landlord in discharging the Landlord's obligations under the Sixth and Seventh Schedules. These include keeping the common parts in good repair, insuring the Property, redecorating the common parts when necessary, keeping the common parts clean and lit, the cost of employing managing agents, legal or professional firms for collecting the service charges and maintaining the gardens and boundaries of the development of which the Property forms part.
6. Clause 1.4 of the Sixth Schedule provides that

“As soon as possible following the end of each financial year the Lessor shall provide the Lessee with a fair summary (the same to be certified by its accountants or managing agents) of all such expenses as aforesaid”

D Inspection and Hearing

7. The Tribunal inspected the common parts of the development of which the Property forms part on the morning of the hearing. The front door which is painted in a grey undercoat finish, gives access to a large hall which is carpeted. There is a door entry system and mains wired smoke alarm and emergency lighting system. The internal decorations are showing scuff marks. The wooden window frames to the communal parts are probably original. New wooden double glazed sash windows appear to have been installed on

refurbishment of the Property. Paintwork to the external woodwork is peeling and flaking. This needs to be repainted soon in order to avoid serious decay.

8. The Tribunal issued directions to the parties on 11th December 2009. A hearing was arranged for 11.30am on Monday 12th April 2010, at the Employment Tribunal Service, Cunard Building Liverpool, L3 1TS. Ms Dowler, Ms Bartram, Ms A. Waddington and Ms G. Evans of the Applicants attended in person. Ms Waddington filed a summary detailing the items in dispute dated 30th December 2009. Moreland Estate Management filed a response dated 11th January 2010. Neither party filed a bundle of documents as required by the Directions. The Respondents did not attend the hearing nor were they represented.
9. Following representations from Watsons, who wrote to the Tribunal saying they had not managed the Property for some two years, the Chairman agreed to their being removed as a party to the case.

E The Applicants' Case

10. The Applicants produced a number of documents in connection with the service charge. These were statements for the service charge for the years in question, prepared by Watson for the years ended 31 May 2005, 31st May 2006 and 31st May 2007 and Moreland for the 19 month period from 1 June 2007 to 31st December 2008. They also produced a budget service charge statement prepared by Moreland for the year ended 31st December 2009, correspondence with Watson. The Applicants were unable to produce copies of the actual accounts for expenditure for service charge for the periods in question and stated that they had not received them from the Respondents despite several reminders. The Tribunal noted that no invoices or statements were produced by the Respondents in support of their response, or as required by the Directions.
11. The Applicants object to the costs shown on the service charge statements on the grounds that no proper accounts appear to have been drawn up by either managing agent showing what has been expended for what service and when. The Applicants are also concerned that cyclical repairs works, such as repainting, are not being provided for.

F The Law

12. Section 18 of the Landlord and Tenant Act 1985 provides:
 - (1) In the following provisions of this 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.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose-

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

13. Section 19 provides that

(1) 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.

14. Section 27A provides that

(1) 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 date at or by which it is payable, and

(d) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3)

(4) No application under subsection (1)...may be made in respect of a matter which –

(a) has been agreed by the tenant.....

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

15. No guidance is given in the 1985 Act as to the meaning of the words "reasonably incurred". Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.

16. In *Veena S v. Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

(6) The Landlord is obliged to consider the observations but is otherwise free to enter into a contract for the carrying out of the

works if he contracts either with a person nominated by the Tenants or with the person who supplied the lowest estimate.

- (7) Otherwise the Landlord must within 21 days of entering into the contract serve notice on the Tenants stating his reasons for awarding the contract, setting out observations received and his response to those observations.

H The Tribunal's Findings

17. The Tribunal concluded that the amount payable by the Applicants for the provisions of services within the Property was a variable service charge within the meaning of the Act and that they had jurisdiction to consider the reasonableness of the amount payable.
18. Having decided this, the Tribunal must then apply a three stage test to the application under section 27A:-
- 18.1 Are the service charges recoverable under the terms of the Lease? This depends on common principles of construction, and interpretation of the Lease.
- 18.2 Are the service charges reasonably incurred and/or services of a reasonable standard under section 19 of the 1985 Act?
- 18.3 Are there other statutory limitations on recoverability, for example consultation requirements of the Landlord and Tenant Act 1985 as amended
19. Applying the above tests the Tribunal determined that the Lease permits the Respondents to recover service charges. The Tribunal noted however, that the Respondents seem to have ignored parts of the Residential Management Code (2nd Edition) issued by the Royal Institute of Chartered Surveyors in managing this Property. For example, Part 6 states:-

6.1 Subject to the terms of the lease, once a year you should make available on request to tenants a statement of service charge payments that they have individually made. (See also Part 10.)

6.2 Demands for money should be clear and be easily understandable by tenants. They must contain the landlord's name and address and any other information required by statute, and you should avoid the use of codes and abbreviations if possible. Where they are used, they should be explained.

Part 10 states:-

10.2 Your accounts should be transparent and reflect all the expenditure in respect of the accounting period whether paid or accrued. This will enable the arrears and cash flow to be seen more easily.

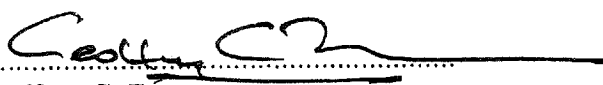
10.3 You should present accounts so that they indicate clearly all the income in respect of the accounting period whether received or receivable.

10.4 You should arrange for service charge accounts to be audited annually and for copies to be made available to all those contributing to them where the lease requires this. Otherwise, you should consider the benefits and costs of an audit with regard to the tenants and the property concerned

20. The Tribunal found that the statements produced to the Applicants do not comply with the above code in the above respects, because insufficient information was given to the Applicants to enable them to consider all income. (10.3). They were not transparent and did not show whether expenditure had been paid or had accrued. (10.2)
21. The Tribunal then considered the items of expenditure for the periods in question. In deciding on a reasonable service charge, the Tribunal were hampered by the lack of actual accounts for the service charge expenditure. They noted that it is a requirement of the lease that these accounts be produced.
22. Based on the historical service charge accounts produced by the Applicants, the Tribunal decided that a reasonable service charge for the Property for the relevant periods was as set out in Schedule 2 annexed
23. Some leases allow a landlord to recover costs incurred in connection with proceedings before the LVT as part of the service charge. The Applicant has made an application under s20C of the Act to disallow the costs incurred by the Respondents of the application in calculating service charge payable for the Property, subject, of course, to such costs being properly recoverable under the provisions of the Lease.
24. The Tribunal determines that, as it has found in favour of the Applicants it would be reasonable to make such an order, and it therefore has done so.

No part of the Respondents' costs incurred in connection with the Application are to be included in the service charge payable by the Applicants for the periods which are the subject of the application.

Dated this 12th April 2010


.....
Geoffrey C. Freeman
Chairman

Schedule 1

List of Applicants

<u>Name</u>	<u>Flat No.</u>
Ms J Dowler	Flat 1, 1 Livingston Drive South Liverpool L17 4JJ
Mrs S Bartlam	Flat 2, 1 Livingston Drive South Liverpool L17 4JJ
Miss A Waddington	Flat 4, 1 Livingston Drive South Liverpool L17 4JJ
Ms G Evans	Flat 5, 1 Livingston Drive South Liverpool L17 4JJ
Ms S Richardson	Flat 7, 1 Livingston Drive South Liverpool L17 4JJ

Schedule 2

Service Charge

(annexed)

