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MAN/30UH/LSC/2010/0059

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

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**

**LANDLORD AND TENANT ACT 1985  
SECTION 27A (1)  
COMMONHOLD AND LEASEHOLD REFORM ACT 2002  
SECTION 174 AND SCHEDULE 12**

**Property:** 18 – 21 Regency Court, Queen Street, Lancaster LA1 1RF

**Applicant:** Regency Court (Lancaster) Limited

**First Respondent:** Ian Thomas Beardsworth

**Second Respondent:** Susan M. Beardsworth

**Chairman:** Mr G C Freeman

**Surveyor Member:** Mr J Shaw JP. FRICS

**Date of Meeting:** 12 October 2010

**Preliminary**

- 1 The Applicant has issued proceedings in the Lancaster County Court against the Respondents for unpaid service charge in respect of the Property. The claim number is 9LA00613. The amount claimed is £1660.00 plus court fees of £85.00 and fixed costs of £80.00. The amount claimed represents service charge due from 1<sup>st</sup> October 2007 to 1<sup>st</sup> April 2009.
2. The Respondents entered a Defence dated 30<sup>th</sup> August 2009. On 10<sup>th</sup> March 2010 District Judge Forrester sitting at the Lancaster County Court ordered that the case be transferred to the Leasehold Valuation Tribunal pursuant to section 174 and Schedule 12 of the Commonhold and Leasehold Reform Act 2002 and CPR PD 56 Para 15).

**The Lease**

- 3 An Office Copy of the Lease relating to 18 Regency Court dated 25<sup>th</sup> May 1999 accompanied the court file. The Lease is made between Dalesmoor Homes Limited of the first part the Applicant of the second part and the First Defendant of the third part. No copies of the leases of the other properties

which are the subject of these proceedings were produced and the Tribunal has assumed for the purposes of the proceedings that they are in identical form. The Tribunal has also assumed, as is admitted by the Respondents in their defence dated 30<sup>th</sup> August 2010, that although the lease produced was granted solely to the First Respondent, at all material times the Property was vested in the Respondents jointly.

4. The Sixth Schedule contains covenants by the Lessee (Tenant) with the Lessor (Landlord). Clause 33 of the Sixth Schedule provides that the Lessee

*“ . . . shall keep the Lessor indemnified from and against 5 per centum per annum of all costs charges and expenses incurred by the Lessor in carrying out its obligations under . . . the Seventh Schedule. . . ”*

5. The Seventh Schedule imposes an obligation on the Lessor:-
- 5.1 To insure the reserved property, and to re-build if necessary.
  - 5.2 To keep the reserved property and any fixtures and fittings in good repair
  - 5.3 To keep the communal TV system in repair
  - 5.4 To keep the communal parts cleaned decorated and lit
  - 5.5 To keep the windows cleaned
  - 5.6 To keep accounts
6. The reserved property is defined in the Second Schedule as first the roadway, paths, gardens, bin stores and the passageways, stairs, entrance halls, landings, and communal entry phone system used in common by occupiers of two or more of the flats/houses; second the main structural parts of the buildings and third, the walls and fences bounding the property.

### **Inspection and Hearing**

7. The Tribunal inspected the common parts of the development of which the Property forms part on the morning of 12<sup>th</sup> October 2010. It consists of a development of 16 flats, on four floors, and four terraced houses (“the Property”) close to the centre of Lancaster. The entrance to the development leads to a central courtyard which contains 14 car parking spaces. On one side of the courtyard are the flats. On the other are the four houses. From the lease it appears each house has an allocated parking space. Six flats do not therefore have a parking space due to insufficient room.
8. The flats are divided into two blocks of eight, each block having their own entrance and stairs which are carpeted. There is a smoke alarm system and a door entry system, as well as communal lighting on a timed circuit. Externally, the gardens areas are landscaped and there are three external lights.
9. Both parties attended a pre trial review on 29<sup>th</sup> July 2010. At that hearing it was agreed between the parties that the application for determination of the reasonableness of service charges would be extended to include the period to the 31<sup>st</sup> March 2010. At the pre-trial review the Respondents did not dispute

the overall amount of the service charge in any one year, but disputed whether they were liable for that part of the service charge wholly attributable to the sixteen flats in the development. Neither party requested a further hearing.

### The Law

10. Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") 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.

11. 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.

12. 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.

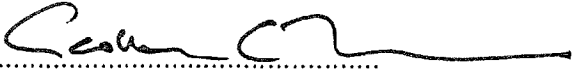
- (3) ....
- (4) No application under subsection (1)...may be made in respect of a matter which –
  - (a) has been agreed by the tenant.....
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

- 13. 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.
- 14. In *Veena v SA 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].

**The Tribunal’s Findings**

- 15. The Tribunal considered the statements produced by the Applicant for the years in question and the heads of expenditure set out in those statements. The Tribunal also noted that the Respondents did not dispute the amounts of the service charge at the pre-trial review.
- 16. The lease clearly sets out a requirement for the Respondents to contribute 5% of the expenses set out in the lease. The Tribunal has no jurisdiction to vary the terms of the lease, by altering this proportion, even were there an application before them to consider such a variation. Section 35 of the Landlord and Tenant Act 1987 applies only to variations of leases of flats and does not apply to leases of houses.
- 17. The consideration of such a variation was not referred to the Tribunal by the Court and there is now authority from the Lands Tribunal that the Tribunal may only consider those matters referred to it by the Court in cases such as this. [*Michael Stanley Staunton v Norma Kaye and Alfred Taylor* - LRX/87/2009]
- 18. The Tribunal noted section 27A (4)(a) above and that the Respondents had admitted they did not dispute the amount of the service charge. Accordingly the Tribunal did not need to consider the matter further, because the Respondents have admitted the overall amounts of service charge.
- 19. The case is remitted to the County Court for further determination.

Dated 12<sup>th</sup> October 2010

  
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Geoffrey Freeman  
Chairman