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Case Nos:

BIR/17UC/LSC/2010/0027

BIR/17UD/LAC/2010/0004

MIDLAND RENT ASSESSMENT PANEL
DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL

SERVICE CHARGES & ADMINISTRATION CHARGES

Landlord & Tenant Act 1985 as amended by
Commonhold and Leasehold Reform Act 2002

On transfer from Chesterfield County Court and Applications under:

- 1) s.27A of the Landlord & Tenant Act 1985 for the Leasehold Valuation Tribunal to determine the reasonableness and payability of service charges for the years ending 31st December 2007, 2008, 2009 and estimated charges for 2010 the year ending 31st December 2010 and
- 2) paragraph 5 Schedule 11 of the Commonhold & Leasehold Reform Act 2002 to determine the reasonableness and payability of administration charges for the same periods in respect of premises at

APARTMENT 27, THE FOUNDRY, CAMLOUGH WALK, CHESTERFIELD, S41 0FS

Applicant	The Foundry (Chesterfield) Management Limited
Respondent	Damien Terence Shakespeare
Date of Applications to LVT	6th August 2010
Date of Hearing	24th March 2011
Heard At	The Assembly Rooms, Market Place, Chesterfield

Appearances

For the Applicant	Mr P. Petts of Counsel Mr M. Patel MIRPM B.Sc(Hons.) Dip.Est.Man., Management Surveyor
For the Respondent	In person

Tribunal

I.D. Humphries B.Sc.(Est.Man.) FRICS
R. Healey, Lawyer
Mrs K. Bentley

DETERMINATION

Introduction

- 1 The case relates to service and administration charges for an apartment in a redevelopment scheme near Chesterfield town centre.
- 2 The Applicant is the Management Company and the Respondent owns a long leasehold interest.
- 3 The Applicant commenced proceedings in Harrogate County Court for unpaid service and administration charges against the Respondent in February 2010 which was transferred to Chesterfield County Court on 15th March 2010 (Claim 0HG00379). It was subsequently transferred to the Leasehold Valuation Tribunal (LVT) by Order dated 29th June 2010 requiring determinations for the years ending 30th June 2008, 30th June 2009 and 30th June 2010.
- 4 On 6th August 2010 the Applicant applied to the LVT under s.27A of the Landlord & Tenant Act 1985 for determination of the service charge and made a separate application under paragraph 5 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002 for determination of outstanding administration charges. The periods for which the determinations were sought were shown on the applications as 2007, 2008, 2009 and estimated charges for 2010 and on this basis the LVT issued Directions to the parties on 18th August 2010.
- 5 The Applicant then obtained an Order from Chesterfield County Court dated 20th September 2010 to vary the Order of 29th June 2010 by requiring the LVT to determine charges for different dates to coincide with the accounting years for the development, i.e. 31st December 2007, 2008, 2009 and 2010. The LVT issued Amended Directions on 26th October 2010 showing the new dates and advising the parties that both applications would be determined together at a single oral hearing.
- 6 As a result of the Respondent's non-compliance with Directions the Applicant applied to the LVT to vary the Directions again and Directions No.3 were issued on 1st February 2011.
- 7 The case was heard at The Assembly Rooms, Chesterfield on 24th March 2011 at which the Applicant was represented by P.Petts Esq. of Counsel who brought Mr M.Patel, the landlord's property manager as Witness of Fact and the Respondent Mr Shakespeare appeared on his own behalf.

The Property

- 8 The LVT inspected the property on 24th March 2011 prior to the Hearing. We were accompanied by Mr Petts and Mr Patel for the Applicant and Mr Shakespeare the Respondent.
- 9 'The Foundry' was originally an industrial complex dating from before 1850 that had been redeveloped for housing in 2002. Part of the Works had been re-built to form a three storey building with brick elevations to provide 43 apartments. The building directly adjoins the River Rother to the east. The northern side of the building adjoins an area of landscaping, there is communal parking area to the west and further parking / amenity area to the south. The entrances to the apartments are from the car park on the western side.
- 10 Flat 27 is a ground floor unit accessed from a shared entrance hall. It has a hall, lounge, kitchen, bedroom and bathroom.

The Lease

- 11 The property is held by lease dated 18th October 2002 granted by Shepherd Homes Limited and The Foundry (Chesterfield) Management Limited to Simon Gilbert and Amanda Gilbert for a term of 999 years from 1st January 2002.
- 12 The lease was assigned to the Respondent on 10th June 2004.

- 13 Clause 4.2 requires the Lessee to pay a service charge in accordance with the Sixth Schedule for a specified amount, 2.36% of the cost of providing the communal services. The full list is in Schedule 5 but it includes among other items the cost of repairing and maintaining the building structure, the cleaning of common parts, window cleaning, ground maintenance, insurance, management charges and provision for a sinking fund. The Lessor is required to provide the services by Clause 5.2.
- 14 The scheme of the Lease is that the Lessee is required to pay an annual provisional sum to the Lessor based on the estimated cost of providing services for the forthcoming year. At the end of each year or 'as soon as practicable', the Lessor is required to provide the Lessee with an Account of the Service Charge summarising the expenses paid and depending on the Accounts the Lessees are either required to pay a balancing charge to cover the shortfall or receive a credit to their Account. The service charge is billed half yearly.

The Relevant Law

- 15 Section 27A(1) of the Landlord & Tenant Act 1985 provides that an application may be made to a Leasehold Valuation Tribunal for determination of whether a service charge is payable and if so, the person by whom it is payable, to whom, the amount, the date payable and manner of payment. The subsection applies whether or not payment has been made.
- 16 Section 18 of the Act defines a 'service charge' as an amount payable by a tenant of a dwelling as part of or in addition to rent which is payable directly or indirectly for services, repairs, maintenance, improvements, insurance or the landlord's cost of management, the whole or part of which varies according to the relevant cost.
- 17 Section 19 of the Act provides that relevant costs shall be taken into account in determining the 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 carrying out of works, only if the works are of a reasonable standard and in either case the amount payable is limited accordingly.
- 18 The Commonhold and Leasehold Reform Act 2002 contains parallel jurisdiction for administration charges.
- 19 Schedule 11.1.(1)(c) defines an administration charge as including an amount payable by a tenant: 'in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, ...'
- 20 Schedule 11.5.(1) provides that an application may be made to a Leasehold Valuation Tribunal for determination of whether an administration charge is payable and if so, the person by whom it is payable, to whom, the amount, the date payable and manner of payment. The subsection applies whether or not payment has been made.

The Items in Dispute

- 21 The dispute relates to service and administration charges for the whole period covered by these applications from 1st January 2007 to 31st December 2010.

Submissions

- 22 The Applicant sent written Submissions and Scott Schedules to the LVT prior to the Hearing that were copied to the Respondent. The Respondent did not comment on the Scott Schedules which is why the Directions were amended in February 2011. The Respondent submitted no other documents in advance.
- 23 At the Hearing, both parties made submissions that are summarised below.

Respondent

- 24 The Respondent explained that he had not paid by the service charge because the property had been severely flooded in June 2007 and he objected to paying for services during this period when he was receiving no benefit. It is common ground that there had been a flash flood on 25th June 2007 when the whole area had been subject to extraordinary levels of rainfall that had caused the River Rother which runs next to the property to burst its banks and flood the ground floor apartments in The Foundry to a depth of 1m. It caused significant

damage, there was an insurance claim and Apartment 27 had to be substantially re-built with new internal partition walls, kitchen and bathroom suites, electrics and furnishings. The Respondent was unable to occupy the property for eight months while repairs were carried out and only re-occupied in February 2008. The problems were widely recognised and the District Council suspended Council Tax payments until March 2008.

- 25 In his view, he should not have had to pay service charges for the period and as the dispute had not been resolved he withheld payments for subsequent years.
- 26 He also objected to the Applicant's request for their costs involved in sending reminder letters and Court fees since they knew there was a dispute and the grounds for his objection. He submitted that he had made several telephone calls, sent emails and letters to the Applicant objecting to the charges throughout the period in dispute. These ancillary costs are the subject of the Applicant's claim for administration charges.
- 27 When questioned by Mr Petts at the Hearing it was found that the disputed items were not as wide as first thought, in fact the Respondent was only disputing the period when he was unable to occupy from June 2007 to February 2008. Furthermore, the Respondent accepted that some of the costs for this period had to be paid and he was not disputing them including the accountancy fees, building insurance premium, some (but not all) of the general maintenance and repair items, annual maintenance charges for the Fire Alarm and Access Control to the building, professional fees, water charges and management fees.
- 28 This left the items in dispute as the cost of cleaning, electricity supply to common parts, gardening, some repair items (which the Respondent submitted should have been covered by the Applicant's insurance policy) and window cleaning for the affected period.

Applicant

- 29 Mr Petts summarised the history of the case and described the obligations of the parties set out in the lease. He submitted that the dispute only related to an eight month period and referring to the Respondent's previous history of late payment submitted that he had only paid previous service charge demands when trying to sell the Flat and needed landlord consent.
- 30 The Management Company had dealt with the flood issue quickly and the majority of clearance had been undertaken in a week. The first and second floor tenants had remained in occupation throughout the works and were entitled to have the costs of the development shared by the lessees of affected Apartments, including No.27.
- 31 The service charge was therefore fully recoverable for the whole period.
- 32 In respect of the claim for administration charges, the lease allowed the Applicant to recover costs, the Respondent had not paid and all the money sought was due and payable.
- 33 Mr Patel was offered as a Witness and in response to questions from the Tribunal it was found that he had only been in office since 20th July 2010. He knew the development and site history but was unable to give first hand evidence of conditions during the flood or the specifics of which costs had been incurred at what dates.

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Determination

- 34 Having inspected the development, read the lease and parties' submissions and taken account of points raised by the parties at the Hearing the Tribunal determine as follows:

Service Charge

- 35 The tribunal agree that some of the costs relating to the period affected by flood damage were not reasonably incurred as the Respondent had been unable to occupy the property. They are itemised at pages 175-177 of the Applicant's Bundle under various headings. The LVT disallow these costs which are apportioned to the service charge years ending 31st December as follows:

Item	Disallowed	Disallowed
	2007	2008
Cleaning Common Parts	1,615.00	385.00
Common Parts Electricity	2,046.16	
Gardening & Groundkeeping	755.00	200.55
General Repairs:		
Supply of Boots: re flooding	10.99	
Call out to fire alarm system	58.75	
Call out 13/07/07 to check fire alarm & door entry system after flood	58.75	
Attend to leaking pipe through the valve in communal area	88.13	
Window cleaning	178.50	25.50
	4,811.28	611.05
Lessee's Proportion	0.0236	0.0236
Disallowed Sum £	113.54	14.42

- 36 The parties made no Submissions in respect of items for the other years and in the absence of evidence to the contrary the LVT find the amounts reasonable and payable.
- 37 Based on the Applicant's submitted service charge accounts the LVT determine the service charge as follows:

Service Charge Year	Applicant's Claim £	LVT Determination
1.1.07 - 31.12.07	599.60	486.06
1.1.08 - 31.12.08	701.39	686.97
1.1.09 - 31.12.09	1,067.84	1,067.84
1.1.10 - 31.12.10 (estimated)	902.98	902.98

Administration Charges

38 Having considered the facts the LVT find that part of the Administration Charges relate to collections of payment for periods prior to the flood. Furthermore, s.27A(2) of the 1985 Act and Sch.11 para.5.(2) of the 2002 Act allow the LVT to determine costs even if sums have been paid, in other words, there was nothing to stop the Respondent paying the amounts due and still retaining the right to present evidence objecting to the figures at a later date. Had the costs been paid, it would not have been necessary to incur some of the Administration Charges that inevitably ensued. Accordingly the Tribunal find the costs reasonably incurred and payable. The amounts are detailed in the Applicant's Scott Schedules:

Year	Applicant's Claim £	LVT Determination
1.1.07 - 31.12.07	41.13	41.13
1.1.08 - 31.12.08	41.13	41.13
1.1.09 - 31.12.09	310.50	310.50
1.1.10 - 31.12.10 (estimated)	440.75	440.75

39 **Conclusion**

Finally, the LVT would like to thank the parties for presenting their evidence and their courtesy throughout.

I.D. Humphries B.Sc.(Est.Man.) FRICS

Chairman

Date **07 JUN 2011**