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H M COURTS AND TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

**IN THE MATTER OF THE PREMISES AT FLAT 6 WEIHURST COURT CARSHALTON ROAD
SUTTON SURREY SM1 4SWD**

CASE NUMBER LON/OOBF/LSC/2011/0181

Parties:

Applicant : Weihurst Court Limited

Respondent : Mr J Wood

Representations :

**For the Applicant : Ms R Kimber - Leasehold Legal Services
Ms H Harvey - Countrywide Managing Agents**

For the Respondent: No representation

Date of Application : 07 March 2001

Date of Directions : 12 April 2011

Date of Determination: 18 July 2011

**Tribunal Members : Mr A A Dutton Chair
Mr T W Sennett MA FCIEH**

Decision Date : 4 August 2011

DECISION/REASONS

The Tribunal determines that the sums sought in respect of the budget for the year ending 23 March 2011 are reasonable save and except those relating to the Reserve Fund which the Tribunal reduces to £250 per property.

A. BACKGROUND:

1. This application was made by Weihurst Court Limited through its Managing Agents, Countrywide Estate Management who in turn were represented by Leasehold Legal Services a trading name of Countrywide Residential Lettings Limited.
2. The original application included a claim against the Respondent Mr Wood, and also against the lessees of 19 Weihurst Court. However it appears that they had reached agreement with the Applicants and indeed by the time the matter came before us the only issue that was required to be determined upon was the budget calculation for the year end 23 March 2011, relating to Mr Wood alone, for which at the date of the determination no final accounts appear to have been available.
3. In the papers before us for this paper determination we had a Statement of Case from Hayley Harvey of Countrywide Managing Agents. She confirmed her position with the managing agents and that the application now was limited only to the one year. We were told that the arrears of service charges were £1,091.
4. The Statement went on to set out the legal framework and recited clauses from the lease which required the tenant to pay both an interim charge and a service charge in the manner provided for in the lease and that his proportion was 3.25%. Demands were made for the payment on account of the service charges but no response had been received.
5. We were told that the development consisted of four four-storey purpose built blocks comprising some 32 flats. There were apparently no lifts. Miss Harvey told us that the budget had been drawn up by her predecessor but appears to have been based on the previous year's accounts. The Statement went on to confirm the various items of expenditure and how those had been calculated. Insofar as the Reserve Fund was concerned we were told that this was a budgeted sum accumulated each year to provide a fund to meet future costs relating to major expenditure.

B. THE LEASE:

6. The lease is dated 29 September 1999 and was granted to Mr Wood for a term of 125 years from 29 September 1995 at an annual rent of £25. It confirms that his obligation is to contribute 3.25% of the expenditure incurred. The accounting period commences on 25 March running to 24 March in the following year which is not quite as set out on the budget calculation we were provided with. Under the provisions of clause 4(4) it is stated that the tenant has *"the obligation to pay the interim charge and the service charge at all times in the manner provided in the Fifth Schedule hereto and to pay the tenants share of the insurance premium in respect of the insurance effected by the Lessor when demanded all such charges to be recoverable in default as rent in arrear"*.
7. The Lessor covenants to maintain the property and the services and to decorate and insure and other provisions that one would expect to see in a lease of this nature. It also includes provision to set aside a sum for future costs.
8. The Fifth Schedule to the lease deals with the service charge and defines interim charge as meaning *"such sum to be paid on account of the service charge at any time during each or any accounting period as the Lessors or their Managing Agents shall specify at their discretion to be a fair and reasonable provision for the anticipated expenditure in respect of the Lessor complying with any covenant or obligation herein"*. The lease goes on to provide what would happen if the service charge is less than the sum finally determined as being due and owing or indeed more. At paragraph 6 is the obligation on the part of the Landlord to provide a Certificate setting out information relating to the expenditure incurred giving the tenant the right to inspect receipts and vouchers that form the basis of the Certificate.

C. THE LAW:

9. The law relating to the determination of service charges is to be found at s27A of the Landlord and Tenant Act 1985 which we have applied in this case.

D. FINDINGS

10. The figures we are dealing with are for budget purposes only. We are assuming that by now, or if not then in the near future, final accounts will be available. Those accounts will presumably be accompanied with the demand that complies with s21B of the Act. For the

purposes of the budget however it seems to us that the figure are not unreasonable based, as they are, to a large extent on the previous year's service charges for 2010. There are one or two anomalies. For example the electricity appears to be somewhat high at £2000 when the actual cost from the previous year was just under £500. We are however somewhat concerned as to the extent of the Reserve Fund payment that is being claimed which is £10,300. We cannot see that in the previous year a demand was made of this nature. Whilst we accept that it makes good sense for the Reserve Fund to be maintained we think that perhaps an increase from what appears to be nothing in 2010 to the sum now being claimed is excessive. We would have thought that a contribution of no more than £250 per Lessee was appropriate and limit the budget figure to that amount. It would also be of assistance if the Applicants ensured that with the accounts, confirmation as to the sums presently held in the Reserve Account and where those funds are held was produced. Accordingly we find that the budget calculations are reasonable save as mentioned above. It does seem to us however that the final accounts should soon be available and it is those that Mr Wood should in truth settle assuming they be in line with the budget figures. Our findings do not prevent him from challenging the actual figures once final accounts have been produced.



Chairman

Dated 4th August 2011