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BIR/41UH/LIS/2012/0017



H.M. COURTS & TRIBUNALS SERVICE

MIDLAND LEASEHOLD VALUATION TRIBUNAL

DECISION

on an application under sections 27A and 19 of the Landlord and Tenant Act 1985 for a determination of liability to pay and reasonableness of service charges and further an application under section 20C of the Act that the landlord's costs incurred in connection with the application are not to be treated as relevant costs to be taken into account in determining any service charge payable by the tenant.

Applicant: Mr Antony Weir

Joined Applicants: Ms Margaret Brown, Mr Graham Barnes & Mr Robert Barnes

Respondent: Mr James Lockett & Mrs Gail Lockett

Subject property: Flat 5 (and Flat 3 in respect of the Joined Applicants) 66 St. Edward Street, Leek Staffordshire, ST13 5DL

Relevant Lease: Relating to Flat 5 dated 30 November 1990 made between (1) Richard William Bailye and (2) Stephen Paul Horrocks and Denise Herica Donaldson.

Members of the Tribunal: Mr R. Healey (Chairman)
Mr J E Ravenhill FRICS

Hearing: HM Courts & Tribunal Service, Hanley, Stoke-on-Trent, Staffordshire ST1 2QB on 26 July 2012

Release date: **- 9 AUG 2012**

Introduction

1. This is a decision on an application made by the Applicant (and Joined Applicants) who seek a determination of the service charges payable in respect of the service charge years ending 2006, 2007, 2008, 2009, 2010, 2011 and 2012.

2. The issues for determination are firstly whether the Landlord has complied with the requirements of the Relevant Lease and secondly whether the Landlord has demanded the service charge in accordance with the requirements of section 21B Landlord and Tenant Act 1985.

Inspection

3. The Tribunal attended at Spout Hall, 66/68 St Edward Street, Leek Staffordshire on 26 July 2012 by prior appointment and were met by the Applicant and Ms Margaret Brown (one of the Joined Applicants). The Respondent was not present. Spout Hall fronts St Edward Street. It comprises 5 flats. The Tribunal gained access to number 66 St Edward Street which contains the stairway providing access to flat numbers 3, 4 & 5. The Tribunal observed an accumulation of bird droppings on the stairway and outside flat number 4 an accumulation of rubbish. Number 68 contains flat numbers 1 & 2. Inspection of the communal areas of number 68 was not possible. To the rear of Spout Hall the Tribunal observed an overgrown garden area.

Hearing

4. The Applicant and Joined Applicants request clarification of the amount of service charges payable.

5. The Applicant gave evidence that he had received letters from the Respondents' Solicitors demanding payment of service charges but had never received any notice accompanying those demands setting out a summary of the rights and obligations of tenants of dwellings in relation to service charges. Ms Brown for the Joined Applicants confirmed that she too had received service charge demands but no summary of the rights and obligations of tenants. Further the Applicants and the Joined Applicants were unclear how the sums demanded had been calculated.

6. Mr Lockett for the Respondents gave evidence that he was sure that his solicitors had served the proper documentation. The Tribunal allowed him time to telephone his solicitors to enable them to produce the relevant documentation and to prove service. No such documentation was forthcoming.

7. Mr Lockett was referred to the Relevant Lease by the Tribunal and in particular the Fifth Schedule paragraph 3 which requires the service charge "to be audited by a qualified accountant as defined in section 28 of the Landlord and Tenant Act 1985, who shall certify the total amount of the expenses for the period to which the account relates and the Lessee's contribution". Mr Lockett accepted that such certification had not occurred.

The Law

8. Landlord and Tenant Act 1985 section 21B provides

21B Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

Findings of Fact

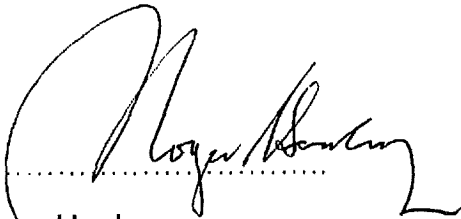
9. The Tribunal finds that no summary of rights and obligations as required by Landlord and Tenant Act section 21B has been served on either the Applicant or the Joined Applicants.

10. The Landlord has failed to produce an accountant's certificate as required by the Fifth Schedule paragraph 3 of the Relevant Lease. The Landlord confirms that the lease in favour of the Joined Applicants is in similar form to the Relevant Lease and this is accepted by the Tribunal.

DETERMINATION

11 The Tribunal therefore determines that any service charges for the service charge years ending 2006, 2007, 2008, 2009, 2012, 2011 and 2012 are not due and payable and the Applicants and the Joined Applicants are entitled to withhold payment.

12. The Tribunal also determines that any costs incurred by the Landlord in connection with the proceedings before the Tribunal shall not be treated as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant or the Joined Applicants.


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Roger Healey

Chairman