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## H M COURTS AND TRIBUNALS SERVICE LEASEHOLD VALUATION TRIBUNAL

**Case Reference** : CAM/22UN/LSC/2012/0008

**Property** : 2A Maria Street, Harwich, Essex CO12 3HT

**Application** : To determine reasonableness and payability of service charges

**Applicant(s)** : Patricia Janet Davis

**Respondent** : Residential Freeholds Limited

**Date of Application** : 16<sup>th</sup> January 2012

**Date of Hearing** : 12<sup>th</sup> April 2012

**Tribunal** : Mr Graham Wilson (Chairman)  
Mr Roland Thomas MRICS  
Mr J E Francis

**Appearances** : Applicant: the Applicant appeared in person  
Respondent: the Respondent did not attend the Hearing, nor was it represented

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### DECISION

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- 1) The Tribunal's decision was that the budgeted service charge expenditure for the year end 31<sup>st</sup> December 2012 was reasonable and was payable by the Applicant (and Richard Humphrey David) with the following exception.
- (2) There was no authority in the Lease for the Landlord to charge a "Management Fee" and that item was not payable by the Applicant.

#### Reasons

1. The Applicant was the present lessee of a lease dated 11<sup>th</sup> March 2005 for a term of 125 years from 1<sup>st</sup> January 2005 and which contained provision for payment by the lessee of a contribution to repair and maintenance (a so-called "service charge").

## *The Law*

- 2(1) By section 27(2) Landlord and Tenant Act 1985 a lessee may apply to a Leasehold Valuation Tribunal for

a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to the amount which would be payable....

- 2(2) By section 19 of the same Act

(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.

*(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise. [italics provided]*

## *Inspection*

3. The property the subject of the Application was a first floor flat. The building of which the flat formed part was modern and of brick and tile construction. The building contained two flats, the second being on the ground floor. The Tribunal inspected the property and found the building to be of “speculative” construction and not fully finished. The documents before the Tribunal showed, for example, that the ridge tiles had to be replaced within a relatively short time of the building’s construction.

## *Hearing*

4. The Applicant appeared at the Hearing in person. The Landlord did not appear. Neither the Applicant nor the Respondent had filed and served Statements of Case in accordance with the Tribunal’s Directions dated 23<sup>rd</sup> January 2012.
5. At the beginning of the Hearing the Tribunal asked the Applicant to clarify her case. She confirmed that she wished only to challenge the “Statement of Budgeted Service Charge Expenditure for 2012”, a copy of which was contained in one of the two hearing bundles. She did not challenge the sum claimed for property insurance, she said, but she did challenge the figures for “General Maintenance” and the “Management Fee”.
6. In respect of this last item the Tribunal gave an indication that it could see no basis in the Lease for such a fee being levied. The Applicant

did not address the Tribunal further in that respect, but went on to challenge of the "General Maintenance" item.

7. She argued that this item should be disallowed on the basis of the Landlord's previous performance. She referred to the correspondence which was contained in the hearing bundle. In essence the Applicant said, the Landlord had done very little in the way of maintenance and should not be entitled to charge for it.
8. In the view of the Tribunal, the figure for "General Maintenance" was not unreasonable *in principle*. It would be allowed in the sum of £350 for the two flats.

If the Tenant's past experience as she had described it was repeated in 2012, then she would be entitled to make another application to the Tribunal for the maintenance item to be assessed as to reasonableness and payability, as the Act (see above) provided.

Dated: 12<sup>th</sup> April 2012

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M G WILSON  
Chairman