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**H M COURTS AND TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Section 27A Landlord & Tenant Act 1985 (as amended)

DECISION

Case Number: CHI/00HN/LSC/2011/0161

**Property: Flat 2
5 Campbell Road
Bournemouth
Dorset BH1 4EP**

Applicant: 5 Campbell Road Boscombe Management Limited

Respondent: Mr. Richard Hunter

Application: 11th November 2011

Directions: 21st November 2011

Hearing: 6th February 2012

**Appearances: For the Applicant:
Mr. Malcolm Davis (Director of Asset Property Management)
And Miss. Shelley Ross (Office Manager with Asset Property
Management.
For the Respondent:
Mr. Richard Hunter on behalf of himself
Observer:
Mr. David Hayes**

Decision: 13th February 2012

Members of the Leasehold Valuation Tribunal

**Mr. S. B. Griffin. LLB (Lawyer Chairman)
Mr. K. M. Lyons. FRICS (Valuer Member)**

Case No CH1/00HN/LSC/2011/0161

Flat 2 5 Campbell Road Bournemouth Dorset BH1 4EP

Application

1. This is an Application which has been transferred to the Tribunal from the Bournemouth and Poole County Court (Claim Number 1QT64952). The Applicant asked the Tribunal to make certain decisions regarding service charges alleged to be payable by the Respondent. In the Court proceedings the Applicant claimed rent, service charges, and building insurance. The Tribunal does not have jurisdiction to determine the issues concerning rent. In his Court Defence the Respondent indicated that he had not received an invoice for nor a breakdown of the amount claimed.

2. Directions were accordingly issued on the 21st November 2011 and provided for the Applicant to produce:-
 - (a) A full Statement of Case with all relevant documents and for the Respondent to produce a Statement in Reply. All parties complied with the Direction.

The Law

3. The Statutory provision primarily relevant to the Application are to be found in Sections 18, 19, 20 and 27A of the Landlord and Tenant Act 1985. The Tribunal has of course had regard when making its decision to the whole of the relevant sections as they are set out in the Act but here sets out what it intends shall be a sufficient extract from each Section to assist the parties in reading the Decision.

4. Section 18 of the Landlord and Tenant Act 1985 provides:
 - (i) 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 Landlords costs of management and
 - (b) The whole or part of which varies or may vary according to the relevant costs.
 - (ii) 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.
 - (iii) For this purpose,
 - (a) "Costs" include overheads, and
 - (b) Costs or 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.

5. Section 19 of the Landlord and Tenant Act 1985 provides:-
- (i) 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 in the carrying out of works only if the services or works are of a reasonable standard and the amount payable shall be limited accordingly.
 - (ii) 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 of subsequent charges or otherwise.
6. Section 20 of the Landlord and Tenant Act 1985 provides that where there are "qualifying works" the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a Leasehold Valuation Tribunal.
7. The Definitions of the various terms used within Section 20 for example, Consultation Reports, Qualifying Works etc are set out in that Section.
8. In order for the specified consultation requirements to be required the relevant costs of the qualifying work have to exceed an appropriate amount which is set by

Regulation and at the date of the Application is £250 per Lessee (inclusive of VAT).

9. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003, S12003/19874. These requirements including amongst other things a formal notice procedure, obtaining estimates and provisions whereby a Lessee may make comments about the work and nominate a Contractor.
10. Section 27A of the Landlord and Tenant Act 1985 provides for an Application to be made to the Tribunal for a determination as to whether the 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 amount which is payable.
 - (d) The date at or by which it is payable, and
 - (e) The manner in which it is payable.
- (2) Sub Section (1) applies whether or not any payment has been made.
- (3) An Application may also be made 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

- (a) The person by whom it will be payable.
- (b) The person to whom it would be payable.
- (c) The amount which would be payable.
- (d) The date at or by which it would be payable and
- (e) The manner in which it will be payable.

There are other provisions which are not relevant to this case.

Lease

11. The Tribunal had a copy of the Lease of the ground floor flat known as Flat 2 5 Campbell Road Bournemouth. It is dated 12th April 1995. It is for a term of 99 years from 1st January 1995 with a ground rent of £100 per annum (subject to review).

12. Clause 4.3 in so far as is material provides as follows:-

.....to provide the services listed in the Fourth Schedule for all the occupiers of the building and in doing so,

- (i) The Landlords may engage the services of whatever employees, Agents, contractors, consultants and advisors the Landlords consider necessary.....
13. Clause 3.2 of the Lease provides for the tenant to pay the service charge calculated in accordance with the Third Schedule on the dates stated therein.
14. By the Third Schedule of the Lease the tenant is liable for 20% of the service costs.
15. Clauses 4.2 (a) and (b) provide for the Lessor to insure the property against loss or damage by fire and the usual comprehensive risks.

Inspection

16. The members of the Tribunal inspected the subject property prior to the hearing on the 6TH February 2012. It comprises of a two storey semi-detached dwellinghouse constructed circa 1910 and subsequently sub-divided into five flats. The subject flat is located on the ground floor of the building. There are communal corridors providing access to each of the flats and communal gardens to the front and rear of the building. The Tribunal did not inspect the interior of the subject flat as this was not relevant to the present application.

Hearing and Representations

17. Following the Inspection a Hearing took place in Court Room 8 Bournemouth and Poole County Court Deansleigh Road Bournemouth Dorset BH7 7DS. It was attended by Mr. Malcolm Davis and Miss. Shelley Ross on behalf of the Applicant and by Mr Richard Hunter on behalf of himself.

The Applicant's Case

The Applicant's case was as follows:-

- (a) Ground Rent in the sum of £300 was still outstanding in respect of the three financial periods, 1st January 2009 to 31st December 2009, 1st January 2010 to the 31st December 2010 and 1st January 2011 to 31st December 2011.
- (b) A Service Charge in the sum of £360.00 was still outstanding for the financial period 1st January 2011 to 31st December 2011.
- (c) The Buildings Insurance contribution in the sum of £192.76 was still outstanding for the financial period 29th November 2010 to 28th November 2011.
- (d) The sum of £150.00 was still outstanding in respect of Fire Risk Compliance Works.
- (e) The extra levy in the sum of £2,643.75 (for roofing works) was similarly still outstanding.

18. As previously stated, the Tribunal apprehended that it does not have jurisdiction to determine issues concerning rent. Accordingly no determination was made in respect of paragraph (a) referred to in the above paragraph.

The Respondent's Case

19. The Respondent, upon enquiry by the Chairman, confirmed his agreement to pay the service charge (£360.00) for the financial period 1st January 2011 to 31st December 2011(para.(b)) above. He also expressed his agreement to pay the insurance contribution in the sum of £192.76 for the financial period 29th November 2010 to 28th November 2011(para.(c)) above and the Fire Risk Compliance Works in the sum of £150.00.(para.d)) above. He was not however prepared to accept the cost of the extra levy for proposed roofing works in the sum of £2,643.75. The Respondent also took issue with four further items of service charge for the financial year ended 31st December 2010. Namely:

- (1) The removal of damaged bin store walls in the sum of £110.00
- (2) Intercom repairs in the sum of £55.17.
- (3) The replacement of a fence panel in the sum of £75.00 and
- (4) The removal of rubbish and furniture (5 times) in the sum of £350.00.

Consideration and Determination

20. The Tribunal took into account all the case papers and the evidence and submissions made during the Hearing.

21. Under Section 27A of the Landlord and Tenant Act 1985 the Tribunal has power to determine whether a service charge is payable including the amount which is payable. Section 19 of the Act provides that costs should be taken into account when determining the amount of service charge to the extent that they are reasonably incurred and if the services and works are of a reasonable standard. The amount payable is limited accordingly.

22. The Tribunal apprehended that the Lease dated the 12th April 1995 was badly drafted. There is no provision for any service charge payment to be made in advance or for the pre - charging of the incurring of expenditure. The function of the Tribunal is to determine this application according to Law. In doing so the Tribunal has to take into account the terms of the Lease as being the terms agreed between the Lessor and Lessee. The Landlords power to levy a service charge and the Leaseholders obligations to pay it are governed by the provisions of the Lease. The Lease is a contract between the Leaseholder and the Landlord. It must specify whether a charge is recoverable in advance or in arrears of the provision of works or services. A Lease will ordinarily say whether advance payments are to be made and if so whether they are based on the previous year's costs or an estimate of the costs in the year to come. There will always be

provision for a final charge at the year end when the actual costs are known. If interim payments have been made and they exceed expenditure the final charge will be a credit. If the Lease in a block does not provide for interim payments that can present a considerable difficulty for all concerned. The Landlord has to buy all the services before he is reimbursed. The Tribunal was not persuaded that the Third Schedule of the Lease did allow for such a pre-payment by way of a levy. Clause 1 thereof speaks in terms of the amount the Landlords' "spend" in providing the services and the Tribunal was of the opinion that clauses 2 and 3 thereof should be conjunctively interpreted rather than disjunctively. Hence an overall requirement that moneys should first be spent before they could be recharged back to the service charge.

The Tribunal also felt unable to decide the reasonableness (or otherwise) of the proposed levy for roofing repairs for the following reasons. It had emerged during the course of the Hearing that there had been no survey by an independent Surveyor in the first instance as to the remedial work required to be undertaken to the roof after the occupant of Flat 5 complained of a leak. Instead, two building/roofing contractors had been approached directly for estimates, albeit only one of those estimates had been submitted to the Tribunal by way of evidence of compliance with the consultation requirements of Section 20 of the 1985 Act.

23. The problem of deciding reasonableness was compounded by the fact that during the Hearing it also became apparent that the one estimate in question dated the 15th March 2010 from Lynx Property Maintenance and Builders Limited was not

in fact for the total replacement of the roof but for only two thirds of its area. (Notwithstanding that the Notice of Intention of the 5th March 2010 provided that the works to be carried out under the Agreement were "...to carry out the replacement of the roof etc etc"). It is for these reasons the Tribunal felt itself compelled to disallow the extra levy roofing work cost in the sum of £2,643.75.

24. Similarly, the Tribunal noted that in the Statement of Estimates in relation to the proposed qualifying works of repairs to the roof, the sum of £500 plus VAT was shown as project administration fee. The Valuer Member of the Tribunal commented that this appeared to contradict the statement contained in the letter to Mr. Hunter of the 6th April 2010 from the Management Company, (Asset Property Management Limited) which stated "...we do not charge any fees whatsoever for administering these works as this service is included in our standard annual management fee".... Mr. Davis responded that whilst they make no charge for smaller qualifying works they do charge for more extensive works at a rate of £50 per hour and that he estimated that 10 hours would be spent on the roofing issue.
25. The Valuer Member thereupon invited Mr. Davis to direct the Tribunals' attention to that provision in the Lease which allowed for payment of such an administration charge. Mr. Davis concurred with the Tribunals' view that there was no such provision. Accordingly, the Tribunal felt similarly constrained to disallowing any claim for such.

26. As regards the removal of the bin store owing to its collapsed condition, the Tribunal was satisfied that the charge for its removal (£110.00) was a reasonable one.
27. Similarly the Tribunal accepts that the charge for the intercom repairs (£55.17) was also a reasonable sum in light of the fact that the charge for same was due to the Company fitting the new front door needing a contractual site visit to ensure that the intercom was refitted to that new front door.
28. Furthermore the Tribunal noted on its inspection that the fence panel had been replaced and considered that the charge (£75.00) for its replacement was a reasonable one.
29. As regards the service charge of £350.00 for the removal of rubbish and furniture from the site, the Tribunal noted that this represented 5 visits by a Licensed Waste Remover and again considered in the circumstances such charge to be a reasonable one which could be recharged back to the maintenance fund. The Respondent was unable to adduce any satisfactory evidence that such deposit was by any specific person.
30. In the course of the Hearing, the Respondent also expressed concern that:

(a) Whilst the sum of £1,061.28 had been debited to his mortgage account with Chelsea Building Society, that full amount had not been credited to the benefit of his account with Asset Management Limited. The Tribunal apprehended that the Respondent had failed to appreciate that Solicitors acting for his Landlord had debited their own costs for preparation of a Section 146 Notice when transmitting the same to the Managing Agents. Clause 3.26 of the Lease provides (inter alia) for the tenant

..."To pay all reasonable expenses (including Solicitors' and Surveyors' fees) which the Landlord properly incurs in preparing and serving:-

- (i) A Notice under Section 146 or 147 of the Law of Property Act 1925 even if forfeiture is avoided without a Court Order...."

(b) His prior approval had not been sought nor obtained before the service charges in dispute had been incurred. It was pointed out to him by the Tribunal that the Landlord has a repairing obligation under the Lease and is not obliged to seek such approval by way of precursor to effecting repairs at a cost of less than £250 (inclusive of VAT) to each individual Lessee. Furthermore that a tenant does have a statutory right to seek a Summary of the service charge account from the Landlord under Section 21 of the 1985 Act and as well as receiving the Summary has the right under Section 22 of that Act to inspect documents relating to the service charge as a follow up to provide more detail on the Summary. That within a period of six months from receipt of such Summary, the service charge payer may write to the Landlord

requiring him to allow access to and inspection of the accounts receipts and any other documents that are relevant to the service charge information in the Summary.

- (c) That the front door to the building was not of a reasonable standard in that it was not secure. The Tribunal on its inspection noted that the triple- locking mechanism had been decommissioned in order to make the door compliant with current Fire Regulations. The Tribunal did not consider however that this rendered the door insecure. The falling away of the bottom sill did not affect security.

Determination

31. For the reasons given above the Tribunal determines that the following service charges are payable/not payable by the Respondent.

- (1). The sum of £360.00 for the financial period 1.01.2011 - 31.12.2011 - allowed as agreed to by the Respondent.
- (2).The sum of £192.76 (insurance contribution) for the financial period 29.11.2010 - 28.11.2011 - allowed as agreed to by the Respondent.
- (3).The sum of £150.00 (for fire compliance works) - allowed as agreed to by the Respondent.
- (4).The additional levy in the sum of £2,643.75(for roofing repairs) - disallowed for the reasons stated in paragraphs 22 and 23(ante).

(5).The sum of £500.00 plus VAT(for project management) - disallowed for the reason stated in paragraph 25(ante).

(6).The sum of £110.00(for removal of damaged bin store wall) - allowed.

(7).The sum of £55.17(for intercom repairs) - allowed.

(8).The sum of £75.00(for replacement fence panel) - allowed.

(9).The sum of £350.00(for removal of rubbish/furniture) - allowed.

32.It follows that the amounts payable by the Respondent shall be adjusted accordingly.

Dated 13th February 2012

Signed

Stephen B. Griffin LLB

Chairman