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HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/45UH/LSC/2012/0003

Re 54 Stoke Abbott Court, Stoke Abbott Road, Worthing West Sussex BN11 1HJ

Applicant	Swanlane Estates Limited
Respondent	Ms Elaine Gleen (nee Ramsay)
Date of Application	3 August 2011 (in Northampton County Court)
Date of Inspection	10 May 2012
Date of Hearing	10 May 2012
Venue	LVT Southern Panel Office, 1st Floor, 1 Market Avenue, Chichester. West Sussex PO19 1JU
Representing the parties	The Applicant was represented by Mr David Mattey a director of the Applicant, Mr Anton Bree and Mr Scott Lynch on behalf of Ross & Co Property Management, the managing agents. The Respondent: Mrs Elaine Gleen in person and Mr Gleen

Members of the Leasehold Valuation Tribunal:

P J Barber LL.B	Lawyer Chairman
B H R Simms FRICS MCIArb	Surveyor Member

Date of Tribunal's Decision: 25. May 2012

Decision

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) that the service charges of £7,992.57 for the period March 2007 to July 2011 have been reasonably incurred and are payable.
2. The Tribunal made an order under Section 20C of the Act that no costs of this hearing be added to the service charges and noted the confirmation given in any event by the Applicant in this regard at numbered paragraph 17 of this decision.

Reasons

Introduction

3. This was an application made by Swanlane Estates Limited (the Applicant), the leaseholder of Flats 2-96 (evens) Stoke Abbott Court, Chapel Road, Worthing West Sussex in Northampton County Court on 3 August 2011 (Claim No. 1QT81905). It was transferred to the Leasehold Valuation Tribunal on the 1 November 2011 by order of District Judge Hallett, sitting in Ipswich County Court, for determination of service charges payable by the Respondent. Sums comprising ground rent and other moneys under the terms of the lease totalling £8,091.87, were referred to in the Particulars of Claim issued in the court proceedings in relation to the leasehold property of which the Respondent is the lessee – namely 54 Stoke Abbott Court, Stoke Abbott Road, Worthing, West Sussex (the Property).

4. The issue for determination by the tribunal is whether service charges and ground rent of £8,056.87 for the years March 2007 to July 2011 are payable. The Particulars of Claim issued in connection with the claim also referred to ground rent of £25.00 due for 2011-12 and a Land Registry fee of £10.00 but these were not matters which we considered.

5. The Lease of the Property was granted by Quotebright Limited to Kilbale Limited on 26 October 1984 ("the Lease").

6. Ross & Co ("Ross & Co") has been the managing agent since 2007 and has been the managing agent at all material times during the period in which the disputed charges arise.

Inspection

7. The tribunal's inspection took place only in the presence of Mr Mattey, Mr Lynch and Mr Bree, for the Applicant; the Respondent was not present or represented.

8. The entire development ("the Block"), of which the residential flats known as 2–96 Stoke Abbott Court, Worthing form a part, is extensive, and comprises a building in a mock art deco style constructed in or about the 1920s or 1930s situated on an elongated site, west of Chapel Road and located between Stoke Abbott Road and Winton Road. The Block comprises three floors; the ground floor is entirely non-residential; a Blockbuster video retail store is located on the ground floor at the eastern end fronting Chapel Road, with play group premises and a non-residential covered parking area located to the rear thereof. The residential flats are located entirely on the first and second floors of the Block; access is via keypad operated door entry systems located approximately half way along each of the north and south sides of the Block. Each set of entry doors on either side of the Block provides access to semi enclosed stairwells leading to the first and second floors; there were cupboards located on the ground floor of the stairwell areas in which communal electricity meter cupboards were housed. The 48 residential flats are arranged in rows of 12 flats over 2 floors along each of the north and south sides of the Block – with an open access area located in between. Access to the 24 flats at second floor level is obtained via open elevated walkways. The Property is located on the second floor, and on the south side of the Block. In the absence of the Respondent, no access was attempted to the Property. The second floor flats have flat roof construction.

Hearing & representations

9. The hearing was attended by those referred to above. The Tribunal sought verification that all parties were in possession of all documents, including the respective Bundles; it transpired that the Applicant had not received a copy of the attachment to Mrs Gleen's e-mail sent to the tribunal offices on 9 May 2012 and a copy was then provided of a letter to Mrs Gleen from

Brethertons LLP solicitors dated 1 April 2010 and a short period was allowed for review of same. The Applicant then referred the tribunal to Pages 159-164 of the Applicant`s Bundle for an explanation regarding the apportionment of the total service charge claim of £8,056.87, to each of the service charge years 2007/8, 2008/9, 2009/10, 2010/11 and 2011/12(part year only). The service charge demands for 2007/8 and 2008/9 comprised in each case, of interim quarterly demands, together with an "excess service charge" demand, being the shortfall arising on certification of actual expenditure at each year end. However it was made clear that the service charge demands for 2009/10 and 2010/11, were those which included the charges arising from major works.

10. The Applicant explained that the major works element gave rise to excess service charges in 2009/10 of £1,448.81 and in 2010/11 of £3,848.26. The Applicant further referred to the consultation which had occurred pursuant to Section 20 of the 1985 Act and Pages 149-158 and 165-172 of the Applicant`s Bundle. The tribunal heard that Section 20 notices had been hand delivered to the Respondent at her Ipswich address on each of 27 July 2009 (Notice of intention to carry out works) and 17 February 2010 (Statement of estimates obtained). The Applicant submitted that extensive discussions had taken place with residents on site during 2009/10, including during certain meetings with the tenants association, SACORA. The Applicant further pointed out that prior to 2007 there had been a history of extreme neglect in relation to management of the Block, giving rise to graffiti, decorative dilapidation, drug dealing activity reputedly taking place in or about the premises and a reluctance generally by residential leaseholders to pay service charges. Mr Bree submitted that when the Applicant and Ross & Co became involved with the Block, it had taken time to rekindle trust amongst the leaseholders generally and the object had been to take time and trouble to develop an improved relationship. Mr Bree admitted that prior to 2007 leaseholders may have had just cause not to pay service charges given the then state of the Block.

11. In response to a question from the tribunal, the Applicant clarified the situation in regard to evidence concerning issue of service charge demands for the periods in question, by reference to the documents at Pages 81-86 of the Applicant`s Bundle. In regard to the reasonableness of the major works and the standard of the same, the Applicant submitted that there had been very regular meetings with residents on site; work had started in May/June 2010, including preliminary works and erection of scaffolding in or about March 2010. The Applicant referred to certificates of progress payments and invoices as contained at Pages 127-144 of the Applicant`s Bundle. The works contract was administered throughout by a chartered building surveyor. Physical completion of the major works had occurred in about November 2010.

12. Mrs Gleen submitted that she had not paid service charges from 2007 to 2011, save for a single payment of £750.00, as a result of various reasons – including the Block having then been in such a bad state of repair, with drug abuse occurring on the premises and many residents not paying their service charges as a result of their dissatisfaction over the position. Mrs Gleen referred to the sum of £961.65 worth of arrears which she submitted evidence to show she had paid via Brethertons LLP solicitors on 1 April 2010. Mrs Gleen was concerned that although such sum had been paid in respect of a claim for service charges relating to external decorations dating back to 2004, no such decoration had ever in fact taken place. Mrs Gleen said that she has been out of work since about 2009 and suffering with mental health difficulties since that time and as a consequence had been unable to deal with her affairs. Mrs Gleen accepted that she had received the Section 20 Notices but said that at the time she was suffering from depression and unable to respond to them; she has not been living at the Property since 2007 and had not become a member of the tenants association SACORA, until about a couple of months ago.

13. Mrs Gleen submitted that the last major works to the Block carried out in or about 1999, were reputedly to a shoddy standard; Mrs Gleen had purchased in 2002 and between then and when

she vacated the Property in 2007, the Block was in a poor and dilapidated state throughout, a bad reputation and only deteriorating further, rather than improving.

14. The Respondent agreed that the Block is in a much improved state and condition but her strong submission was in regard to past neglect; she said that the landlord had previously failed to comply with its repairing obligations under the Lease and submitted that in her view the costs of the major works carried out in 2009/10 were in consequence higher than they otherwise should have been, but she offered no formal evidence in this respect. In regard to the point that there had been a saving of service charge liability during the years when the Block had been neglected, Mrs Gleen nevertheless asserted that the state of the Block at that time and its reputation, had cost her money, adding that she would prefer to have had the enjoyment of the Property throughout, with the benefit of the levels of repair consistently carried out by the landlord as required under the Lease, rather than enduring a sustained period of neglect. Mrs Gleen said she has been trying to sell the Property over the course of the last six months without success owing, in her view, to the past reputation and state of the Block.

15. The Respondent said she was not in fact disputing liability for the service charge payments demanded but was of the view that the amount of charges incurred for major works in 2009/10 was of an unfairly high amount owing to past neglect.

16. The Applicant submitted that the major works had been put to tender and that proper Section 20 consultation had occurred. Mr Bree submitted that given the long previous history of neglect of the Block, the costs incurred in relation to the major works had not at all been of an unreasonable or excessive amount. Mr Bree further submitted that individual flat values in the Block in 2007 were in the region of £70,000 and that as a result largely of the major works, the flats are now each worth in the region of £100,000; which he submitted represented a good deal for leaseholders overall, in the context of the service charges incurred to bring about the improvement. Mr Bree said that initially leaseholders and SACORA had not been very receptive to the proposal to carry out major works but as a result of presentations given and meetings with SACORA, the residents gradually came round to the proposals. Mr Bree submitted that it had been necessary initially to win the trust and confidence of residents at the Block in regard to the proposals for carrying out major works; the circumstances were difficult involving residential floors located above non-residential areas. Mr Bree said that some good suggestions had been made by leaseholders generally during the course of meetings and consultation discussions which led to the work being carried out more effectively – including the installation of new galvanised railings on the second floor elevated walkways.

17. The Respondent had intended to submit a written application in respect of costs under Section 20C of the Act but had not brought it with her. Mrs Gleen nevertheless submitted an oral application on the basis that she had felt obliged to attend the hearing today even though her health care advice had been that she should not do so. Mr Mattey for the Applicant expressly confirmed to the Tribunal that the Applicant did not in any event intend to include any costs within the service charge to leaseholders, in respect of the hearing today in any event and the Tribunal duly noted that fact.

Consideration

18. The tribunal, have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of the parties.

19. The Respondent was not disputing liability and we heard evidence to the effect that the major works were necessary to address a lengthy previous period of maintenance neglect. The Respondent accepted that the Block was much improved as a consequence. The Applicant had provided evidence to the effect that consultation pursuant to Section 20 of the Act, and otherwise had been carried out and it seemed that wider discussions had generally ensued with all resident

leaseholders prior to the carrying out of the major works, at a time when Mrs Gleen was not herself in residence. Mrs Gleen did not challenge service charges, other than those relating to major works but admitted her main reason for non payment at the time was her poor state of health and the perceived neglect of the Block prior to the major repairs being carried out. Mrs Gleen had also been without income from employment for some considerable period, largely as a result of her health difficulties. Consequently the tribunal is unable in the circumstances and on the basis of the evidence placed before us, to form a view other than that the service charges relating to non major works items, were reasonable.

20. With regard to the major works element of the service charges in dispute, Mrs Gleen asserted that such works carried out in 2009/10 gave rise to a higher cost than they should have, owing to historical neglect. However, no evidence was offered in this regard and whilst certain previous decisions by the Lands Tribunal (including that in *Commercial Property Ventures Inc –v- White [2006] 1 EGLR; [2007 L&TR 4*), have involved consideration of monetary equitable set-off as a means of compensating tenants for previous landlord breaches of repairing covenants, no suggestion has been made in this case to the tribunal, as to the proper and applicable methodology and/or any formula for calculation which should be adopted, given all the particular facts pertaining to this case, for assessing any such compensation or allowance. In the circumstances the tribunal was therefore of the opinion that whilst the principle of set-off is noted and accepted, we were unable to quantify any appropriate sum or allowance, on the facts and evidence placed before us, and in any event it still remains open to the Respondent to pursue separately, any claim for breach of covenant against the applicant should she so desire. Accordingly the tribunal is similarly of the view, on the evidence before us, that the service charges relating to major works were reasonable

21. During the course of the hearing we noted the confirmation given by the Applicant that it would write off a late payment fee of £29.38 levied on 15 February 2010. We so noted the position in that regard.

22. In regard to the claim for Section 20C costs, we considered that this was a case where an order should be made that no costs of the Applicant in respect of the hearing are to be regarded as relevant costs in determining the amount of any service charge, although we noted the specific confirmation given in any event by Mr Mattey of the Applicant as referred to in paragraph 17 of the decision.

23. We made our decisions accordingly.

[Signed] P J Barber LL.B

Chairman

A member of the Tribunal
appointed by the Lord Chancellor