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HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/24UB/LIS/2013/0004

Re : 13 Sylvia Close, Basingstoke, Hampshire RG21 3ND

Applicant Mr Neil Baker

Respondent Sylvia Close RTM Company Limited

Date of Application 8 January 2013

Date of Inspection 29 April 2013

Date of Hearing 29 April 2013

Venue Apollo Hotel, Aldermaston Roundabout, Basingstoke, Hampshire RG24 9NU

Representing the parties The Applicant represented himself in person.

The Respondent was represented by Mr Andrew Sullivan and Ms Charlotte Potts, both of the Respondent RTM company.

Members of the Leasehold Valuation Tribunal:

Mr P J Barber LL.B, J.P.	Lawyer Chairman
Mr D Lintott FRICS	Valuer Member
Mrs J E S Herrington	Lay Member

Date of Tribunal's Decision: 3rd May 2013

Decision

- (1) The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) that no service charges are currently payable for any of the years 2009; 2010 or 2012.
- (2) The Tribunal determines in regard to the application in respect of costs under Section 20C of the 1985 Act that none of the costs incurred by the Respondent shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable.

Reasons

INTRODUCTION

1. The application is for determination of liability to pay and reasonableness of service charges for the Service Charge Years 2009; 2010 & 2012 in respect of 13 Sylvia Close Basingstoke Hampshire RG21 3ND ("the Flat"). The items of service charge works in dispute and being challenged for the 3 respective years ("the Works") are as follows :-

2009

Costs of £59,578.00 arising from the installation of replacement boilers, heat exchanger and other equipment and alleged lack of Section 20 consultation.

2010

Costs of £61,393.00 arising from replacement of communal heating pipework and alleged lack of proper Section 20 consultation.

2012

Costs of £19,200 incurred for replacement of entrance porches and alleged lack of Section 20 consultation AND

Costs of approximately £16,000 for redecoration of communal hallways.

The Applicant also alleged that the Respondent had failed to comply with Section 21B of the 1985 Act and Section 47 & 48 of the Landlord and Tenant Act 1987.

2. A copy of the Lease dated 5th April 1972 ("the Lease") granted in respect of the Flat was provided to the Tribunal. The parties confirmed that the leases for all 48 flats in the development are in substantially the same form although in certain cases lease extensions have been granted by negotiation and certain modern wording introduced.

INSPECTION

3. The Tribunal's inspection took place in the presence of Mr Baker and Mr Sullivan and Ms Potts for the Respondent.
4. The Flat is a two bedroom ground floor flat in purpose built blocks of 48 flats ("the Blocks"), arranged as four separate buildings, each containing 12 flats and with 2 entrances. The Blocks are constructed of yellow face brick under a concrete or composite pitched, tiled roof. At the rear of each of the 4 Blocks there are concrete hard standing areas and garages in blocks. There are small, well tended garden areas to the front of each of the 4 Blocks. The boiler room is a separate building adjoining the north-eastern Block and contains 4 new boilers, pumps and other recently replaced equipment. The communal entrance halls have recently been decorated and there are 8 new porches, 2 of which serve each of the 4 Blocks, all constructed with pitched roofs and low maintenance tiles.

THE LAW

5. Section 19(1) of the 1985 Act provides that :

“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.”

Sub-Sections 27A (1), (2) and (3) of the 1985 Act provide that :

“(1) An application may be made to a leasehold valuation tribunal for a determination whether a 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) Subsection (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 cost, and, if it would, as to –

- (a) the person by whom it would 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 would be payable.*

Sub-Sections 21B (1) to (3) of the 1985 Act provide that :

- (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*
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations*
- (3) A tenant may withhold payment of a service charge which has been demanded from him if sub-section (1) is not complied with in relation to the demand*

The relevant regulations referred to in Section 21B(2) of the 1985 Act are the Service Charges

HEARING & REPRESENTATIONS

6. The application referred not only to alleged failure to consult in relation to major works at the Blocks, but also questioned the Respondent's alleged failure to include summaries of tenant rights and obligations with each of the service charge demands. Accordingly, the Tribunal invited the parties in the first instance to make submissions in regard to the alleged failure by the Respondent to comply with Section 21B(1) of the 1985 Act before considering whether it would be appropriate to consider those aspects of the application relating to consultation on major works.
7. Mr Baker submitted that none of the demands for the service charge years 2009; 2010 or 2012 had included any summaries. Mr Sullivan immediately accepted that the Respondent had indeed erred and that it had not included summaries of rights with any of the demands for the period in question, although the Respondent has now amended its procedure in this respect with regard to demands now being issued.
8. Following consideration of the position the Tribunal indicated that in these circumstances, Mr Baker was entitled to withhold payment in respect of all of the service charges for each of the 3 years in question; consequently the Tribunal is obliged to determine that none of the service charges for 2009; 2010 and 2012 is currently payable by Mr Baker. Accordingly it was not necessary to go on to consider the issues of alleged failure to carry out proper Section 20 consultation in regard to the Works which were the subject of the disputed service charges, or to consider any issues in regard to dispensation which might otherwise have arisen in relation to the carrying out of the Works.
9. In regard to the application in respect of Section 20C costs, Mr Baker said he felt that such costs should not be added to any future service charges for the Blocks and questioned whether the Lease would allow it in any event. Mr Sullivan immediately confirmed that he would be meeting any such costs personally.

CONSIDERATION

18. In regard to the Applicant's claim under Section 20C concerning the costs of these proceedings, the Tribunal noted the confirmation given by Mr Sullivan and accordingly formally determines that none of the Respondent's costs in relation to these proceedings are to be regarded as relevant costs in determining the amount of any service charge payable in respect of the Blocks.
19. We made our decisions accordingly.

[Signed] P J Barber LL.B, J.P.

Chairman

A member of the Tribunal
appointed by the Lord Chancellor