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HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/24UB/LSC/2012/0167

Re : Flat 8, Lampole House, Station Road, Overton, Hampshire RG25 3TL

Applicant Overton Flats Residents Ltd

Respondent Mr Steven J Smith

Date of Application 8th October 2012

Date of Inspection 20th February 2013

Date of Hearing 20th February 2013

Venue Courtroom 4, Basingstoke Law Courts, London Road,
Basingstoke, Hampshire RG21 4AB

Representing the parties The Applicant was represented by Mr Roberts and Mr
O'Sullivan, both of the Applicant's managing agents, GH
Property Management Limited.

 The Respondent represented himself, assisted by his letting
agent, Mr Martin Fielder.

Members of the Leasehold Valuation Tribunal:

Mr P J Barber LL.B	Lawyer Chairman
Mr P D Turner-Powell FRICS	Valuer Member
Ms T Wong	Lay Member

Date of Tribunal's Decision: 27th February 2013

Decision

1. (a) The Tribunal determines that the reasonable service charges payable by the Respondent in respect of the Flat for each of the following service charge years is as follows :-

1st May 2010 – 30th April 2011

£554.75 (being 1/45th part of £24,963.55)

1st May 2011 – 30th April 2012

£313.67 (being 1/45th part of £14,115.02)

1st May 2012 – 30th April 2013

No determination (see paragraph 13 below)

1. (b) The Tribunal determines that neither of the £90.00 solicitors fee, nor the £25.00 administration fee, each being part of the sums claimed in the County Court, is payable by the Respondent.

Reasons

INTRODUCTION

2. This application was made in Northampton County Court (Case No. 2YL17217) by the Applicant on 8th October 2012 and was transferred to the Tribunal by order of District Judge Cooper on 23rd October 2012 for determination of the reasonableness of service charges. The amount claimed was £1555.00 and comprised the following :-

2010/11 Service Charge	540.00
2011/12 Service Charge	540.00
2012/13 Service Charge	540.00
Solicitors Fees	90.00
Administration Fees	<u>25.00</u>
SUB-TOTAL	1735.00
Less payments received	<u>180.00</u>
TOTAL	1555.00

The Respondent Mr Steven Smith is the leaseholder of Flat 8 Lampole House ("the Flat"), being part of a development collectively comprising several residential blocks, communal parking and grounds at Station Road, Overton, Hampshire RG25 3TL ("the Blocks"). The Tribunal is required to determine reasonableness of the service charges for the three service charge years referred to above and similarly whether the solicitors fee and administration fee as claimed, are payable. The Respondent confirmed that certain elements of the services charges for each of the three years, namely Insurance; Electricity and Gardening were in any event agreed. G H Property Management Limited has been the managing agent for the Blocks since 1st July 2010; prior to that the Blocks were managed directly by the Applicant.

3. The Respondent had declined to pay service charges on the basis that he had not received supporting information in relation to the service charge accounts for the Blocks from the Applicant over the relevant period and also he alleged that work which had been carried out, was of a poor standard; other work which he said should have been done, was not carried out.

THE LEASE

4. The Lease of the Flat is dated 23 November 1990 and is for a term of 99 years from 25 March 1990. The obligations to pay service charges are at Clause 4 and the Fourth Schedule of the Lease; Clause 4 provides as follows :-

"4. The Lessee hereby covenants with the Lessors and the Company to contribute and pay one Forty Fifth of the costs expenses outgoings and matters mentioned in the Fourth schedule hereto such payment (hereinafter called "the Service Charge") being subject to the following terms and provisions :-....."

THE LAW

5. Section 19(1) of the Landlord and Tenant Act 1985 ("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."

6. 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.*

7. "Service Charges" are defined in Section 18 of the 1985 Act as follows

(1) 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, insurance, or the landlord's costs of management, and*
- (b) the whole or part of which varies or may vary according to the relevant costs*

18(2) 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.

(3) For this purpose-

- (a) "costs" includes overheads, and*
- (b) costs are 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.*

INSPECTION

8. The Tribunal's inspection took place in the presence only of Mr Roberts for the Applicant; the Respondent was neither present nor represented.

9. The Blocks are constructed on the corner of London Road and Station Road, near the centre of Overton; there are four principal buildings comprised within the Blocks, known respectively as Lampole House, Overton House, Streatwells Lodge, Butler Lodge and Norris House. The Flat is situated within Lampole House, being on the first floor and accessed from a communal front door at ground floor level, which serves Nos. 7, 8, 9 & 10 Lampole House. There are communal parking areas located to the rear of Lampole House. No interior inspection was possible in respect of the Flat although the Tribunal members viewed the communal entrance hall and landings both in Lampole House and Norris House; the communal areas were carpeted and with painted metal handrails to the staircases; the walls were painted in plain emulsion.

HEARING & REPRESENTATIONS

10. The hearing was attended by Mr Roberts and Mr O'Sullivan of G H Property Management Limited and Mr Wilkinson and Mr Birch; the Respondent Mr Smith attended with his letting agent Mr Fielder. The Tribunal pointed out to Mr Roberts that the only relevant annual accounts produced were those at Page 147 of the Applicant's bundle for the year 2010/2011 and that even those appeared to be company accounts, rather than certified annual service charges to be supplied annually to lessees, pursuant to Clause 4 of the Lease. The Applicant was however unable to produce formally certified service charge accounts for any of the three years in question; nor could it provide evidence regarding supply to the Respondent of the balancing account required annually pursuant to Clause 4(g) of the Lease, containing details of any deficit or surplus in relation to service charges paid on account. Similarly Mr Roberts was unable to produce any clear evidence as to the manner in which the reserve or sinking fund account was maintained. Mr Roberts further submitted that he had in the bundle, only included a "selection" of the invoices relating to the relevant service charges as he had not thought, despite the Directions issued in this matter on the 3rd December 2012, that all documents on which the Applicant relied, would be required.

11. The Applicant proceeded to address the Tribunal in regard to the "selection" of submitted invoices only, which partly formed the various elements of the service charges for each of the relevant three years, based upon the limited documents and information as were available, as follows :-

2010/2011

Management Fees : £5529.00 – there were no invoices in the Applicant's bundle; however a copy of the Management Contract had been produced referring to an annual fee of £4612.50. Mr Roberts said that G H Property Management Limited had only been appointed since 1st July 2010 and accordingly the £5529.00 also comprised certain previous management costs.

Insurance : £2022.00 – This was agreed by the Respondent.

Electricity : £143.00 – This was agreed by the Respondent.

Cleaning : £580.00 – No invoices were produced; Mr Smith submitted that in his view the standard of general cleaning had been poor in any event.

Other Maintenance : £17,270.00 – Mr Roberts submitted that Complete Building Services 2002 Limited (“CBS”) had carried out much of the work concerned; he could not produce all the relevant invoices for the period although said he could do so, but at a later date, given further time. Mr Smith generally disputed the quality of the work and, referring to the CBS invoice on Page 60 of the Applicant’s bundle, questioned why removal of rubbish should fall within the service charge; he added that the cost of removing his satellite dish (Page 36 of the bundle) should not have been included and in any event Mr Smith considered that the Applicant’s position in regard to allowing some satellite dishes at the rear to remain was inconsistent with its view that they were prohibited altogether under the Lease.

Printing & Postage : £205.00 – no invoices were produced.

Legal & Professional : £1,600.00 – no invoices were produced.

Accountancy : £450.00 – no invoices were produced.

Gardening : £3780.00 – this was agreed by the Respondent

2011/2012

Directors Fees : £1620.00 – Mr Roberts was unable to verify which specific provision in the Lease would allow such sum to be included in service charges.

Management Fees : £4613.00 – Mr Roberts submitted that the position was broadly as for 2010/2011 save that G H Property Management Limited had been the managing agent for the whole period during 2011/2012.

Insurance : £2,236.00 – this was agreed by the Respondent

Electricity : £482.00 – this was agreed by the Respondent

Cleaning : £1,440.00 – no invoices were produced.

Other Maintenance : £2,742.00 – Mr Roberts was again only able to produce a selection of all the invoices for this period.

Legal & Professional : £4.00 – no invoice was produced.

Accountancy : £450.00 – no invoice was produced.

Gardening £4,496.00 – this was agreed by the Respondent

2012/2013

Mr Roberts was unable to produce any evidence of any budget having been produced and issued to lessees; he said that the service charge of £540.00pa had effectively remained static for many years; the Blocks were originally intended for occupation by persons over the age of 55 and the intention had been to keep service charges as level as possible. Mr Roberts submitted that in his view, these charges were in any event reasonable and towards the lowest end of the charging spectrum by comparison with other sites managed by his firm.

12. In regard to the £90.00 solicitors fees and £25.00 administration fee which had also formed part of the County Court claim, Mr Roberts was unable to provide any verification as to the provision in the Lease which might allow the same to be charged, although he tentatively suggested that it might be allowable under Clause 7 Fourth Schedule of the Lease

CONSIDERATION

13. We, the Tribunal, have taken into account all the oral evidence and the case papers, including those particularly brought to our attention, and the submissions of the parties.

2010/2011

The Tribunal noted that the Management Contract had been produced and accordingly is of the view that the £4612.50 may be allowed but not any further fees for which no invoices or other clear evidence had been submitted. The insurance charge of £2022.00 and electricity charge of £143.00 were both items which were agreed by the Respondent. In regard to cleaning, the standard may have been poor but there was no direct evidence that cleaning at all had occurred; accordingly £500.00 is reasonable for this item. In regard to Other Maintenance, the invoices at Pages 57-101 of the Applicant's bundle amount to £13,889.05 and that sum will accordingly be allowed. Neither Printing & Postage, nor Legal & Professional, nor Accountancy will be allowed since no invoices had been produced for these items. Bank charges of £17.00 are reasonable and Gardening at £3,780.00 was in any event agreed. Hence a total of £24,963.55 is the reasonable charge for 2010/2011 and the 1/45th share payable by the Respondent is £554.75.

2011/2012

The Tribunal received no evidence to the effect that Directors Fees may be included within the service charge and accordingly these are not reasonable. As in the previous year, the Management Fee of £4612.50 is allowed. The insurance charge of £2236.00 and electricity charge of £482 were again both items which were agreed by the Respondent. In regard to cleaning and again in the absence of other evidence and as in the previous year, £500.00 is reasonable for this item. In relation to Other Maintenance, the invoices at Pages 102-120 of the bundle (but excluding £102.00 for the satellite dish which the Tribunal considers should not fall within the general service charges for the Block) amount to £1788.52 and that sum will accordingly be allowed. Neither Legal nor Accountancy will be allowed, since no invoice has been produced for either. Gardening at £4496.00 is in any event agreed by the Respondent. Accordingly a total of £14,115.02 is the reasonable charge for 2011/2012 and the 1/45th share payable by the Respondent is £313.67.

2012/2013

This service charge year does not end until 30th April 2013; there are insufficient invoices and evidence available to enable the Tribunal to form any proper view and accordingly the Tribunal is not in a position to make a determination on the reasonable service charges for this year.

14. In regard to the £90.00 solicitors fee and the £25.00 administration fee, the Tribunal takes the view in the absence of any definitive evidence as to inclusion of any provisions in the Lease authorising same, that these sums are not payable within the service charge.

15. The Tribunal has not been assisted by the many shortcomings in this case in relation to the failure by the Applicant to produce proper and full details of documents and invoices. The Tribunal has done its best despite the limitations of the evidence produced, but draws attention to the badly prepared case presented for the Applicant with inadequate information being presented, highlighting poor management systems, budgetary and financial controls.

16. We made our decisions accordingly.

.....

[Signed] P J Barber LL.B

Chairman

A member of the Tribunal
appointed by the Lord Chancellor