

10207



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **BIR/00CU/LIS/2012/0064**

Property : **Flats 2 and 9 Saldavian Court,
Walsall, WS2 9AG**

Applicant : **Saldavian Court RTM Limited**

Representation : **Mr Matthew Ball**

Respondent : **Mr Vimal Korpall**

Representation : **None**

Type of Application : **As to the payability and
reasonableness of service charges
under section 27A of the Landlord and
Tenant Act 1985 ('the Act')**

Tribunal Members : **Judge W J Martin
Mr S Berg F.R.I.C.S
Mr P W Hawksworth**

Date and venue of Hearing: **The Tribunal Hearing Room at
Priory Court, Bull Street,
Birmingham, B4 6AF on 20th
November 2013**

Date of Decision : **21st January 2014**

DECISION

DETERMINATION

- A. In respect of Flat 2 Saldavian Court the service charge payable by the Respondent to the Applicant for the year 2012/2013 is the sum of £1,617.44 being general service charges of £1,067.44 and the Respondent's contribution to the roof works of £550.00.**
- B. In respect of Flat 9 Saldavian Court the service charge payable by the Respondent to the Applicant for the year 2012/2013 is the sum of £808.72 being general service charges of £533.72 and the Respondent's contribution to the roof works of £275.00.**

Preliminary

- 1 The Decision recorded in this document was made by the First-tier Tribunal (Property Chamber) rather than the leasehold valuation tribunal, to whom the application had been made, because by virtue of The Transfer of Tribunals Function Order (2013 No 1036) ('the Transfer Order') the functions of leasehold valuation tribunals were, on 1st July 2013, transferred to the First-tier Tribunal (Property Chamber). By virtue of the transitional provisions, applications to leasehold valuation tribunals in respect of which a decision had not been issued before the 1st July 2013, automatically became proceedings before the First-tier Tribunal (Property Chamber). The Transfer Order also amended the relevant legislation under which leasehold valuation tribunals were referred to by substituting the words 'First-tier Tribunal' for 'leasehold valuation tribunal' within the relevant parts of the legislation. The extracts from the legislation applicable to the present applications that appear below incorporate the changes made by the Transfer Order. In this Decision the expression 'the Tribunal' means the First-tier Tribunal (Property Chamber) or the leasehold valuation tribunal, as the context admits.
- 2 On 23rd July 2012 Saldavian RTM Limited ('the Applicant') applied to the Tribunal under section 27A of the Landlord and Tenant Act 1985 ('the Act') for a determination as to whether service charges were payable and if so as to their reasonableness in respect of Flats 2 and 9 Saldavian Court, Slaney Road, Walsall WS2 9AG ('the Flats') by Vimal Korpall the leaseholder of the Flats ('the Respondent') for the service charge years (each beginning on 26th March) 2008 to 2013 inclusive.
- 3 The Respondent challenged his liability to pay the service charges on the basis that the Applicant had commenced proceedings in the County Court on no less than six occasions in respect of the service charges the subject of the Application, and that following orders of the County Court in respect of discontinuance the issue of the service charges had been determined for the purposes of section 27 A (4) of the Act. The Respondent also challenged the right of the Applicant to demand service charges, as he did not recognise the validity of the RTM company.
- 4 Because of these challenges the Tribunal decided to determine whether it had jurisdiction to make the determination sought by the Applicant. By its Determination dated 23rd January 2013 ('the Preliminary Determination'), the Tribunal determined that it had jurisdiction under section 27A of the Act in

respect of all service charges in respect of the Flats 2, which had not been the subject of County Court proceedings. Paragraph 43 of the Preliminary Determination reads as follows:

'It is not clear from the papers before the Tribunal which service charges are included in the Claims made directly to the Court. As regards the Application, therefore the Tribunal directs as follows:

A. The Applicant shall within 14 days of the date of this Determination provide to the Tribunal and the Respondent a schedule clearly showing which sums (being service charges) from which service charge periods are included within each of the claims in the County Court.

B. The Respondent shall within 14 days after the expiry of the 14 day period referred to in A above provide to the Applicant and the Tribunal in writing any challenges he has to the Schedule provided by the Applicant. If no such challenge is received within the period allowed, it will be assumed that the Respondent accepts the Applicant's Schedule.'

- 5 The Applicant confirmed by email dated 26th January 2013 that the periods in respect of which a determination may be made in respect of the Flats are as follows:

Flat 2 Saldavian Court

Service charge contributions demanded in advance on 25th March and 29th September 2012 in respect of the service charge year 25th March 2012 to 24th March 2013 made up as follows:

Half yearly service charge	£307.58 (x2)	£615.16
Half yearly reserve fund contribution	£138.89 (x2)	£277.78
Urgent roofing works (demanded 17 October 2012)		<u>£550.00</u>
		£1,442.94

Flat 9 Saldavian Court

Service charge contributions demanded in advance on 29th September 2011 in respect of the service charge year 25th March 2011 to 24th March 2012 and on 25th March and 29th September 2012 in respect of the service charge year 25th March 2012 to 24th March 2013 made up as follows:

2011/12		
Half yearly service charge		£264.89
Half yearly Reserve Fund		£125.00
2012/2013		
Half yearly service charge	£307.58 (x2)	£615.16
Half yearly reserve fund contribution	£138.89 (x2)	£277.78
Urgent roofing works (demanded 17 October 2012)		<u>£550.00</u>
		£1,832.83

- 6 The Respondent by email dated 4th February 2013 confirmed that he did not challenge the above periods in respect of which a determination is now sought. However, despite the fact that the Respondent has not challenged it, the Tribunal considers that it does not have jurisdiction in respect of the period 29th September 2011 to 25th March 2012 because the service charges for this period fall within a service charge year in respect of part of which the Tribunal does not have jurisdiction. Any determination relating to 2011/2012 would be based upon the actual service charges for that year (rather than in respect of the interim half yearly service charges demanded in advance). There is thus an overlap into a period in respect of which the Tribunal has ruled that it would be an abuse of process for it to make a determination. Paragraph 39 of the Preliminary Determination is as follows:

'Abuse of Process

39 *The Tribunal considers that the cumulative effect of the Notices of Discontinuance, and the effect of the Order of 27th January 2012 do have the effect of making the Application under section 27A of the Act to the Tribunal an abuse of process insofar as the periods for which the claims in respect of service charges overlap the periods in respect of which the Applicant requires a determination.'*

- 7 Accordingly the Tribunal decided that it would only make a determination in respect of the service charge year 25th March 2012 to 24th March 2013 in respect of both Flats.

The Service Charge provisions of the Leases

- 8 The Lease of Flat 2 is dated 3rd August 1978 and that of Flat 9, 1st October 1975. The term in respect of both Leases is 99 years from 25th September 1974. As there are no challenges by the Respondent to any particular item of service charge expenditure, the Tribunal does not intend to set out the provisions of the Leases other than the summary set out below.

(1) "The Lessee's Proportion" is in fact defined differently in the two leases. In the Lease of Flat 2 it is defined as 1/18th of the total of the "Lessor's Expenses". The Lease of Flat 9 defines it as 1/36th (presumably by mistake).

(2) On every 25th March and 29th September the Lessee is to pay one half of the amount estimated by the Lessor or its managing agent to be the Lessee's Proportion for the following period of twelve months.

(3) Within 21 days after the service of an account and certificate must be of the previous service charge year accounts the Lessee shall pay, or be entitled to receive, any shortfall or overpayment between the estimated and actual costs for the relevant service charge year.

(4) The Eighth Schedule contains the detailed provisions relating to the Lessor's Expenses in repairing, maintaining, insuring and providing services to the whole of the development.

The relevant legal provisions

9 LANDLORD AND TENANT ACT 1985

18 Meaning of “service charge” and “relevant costs”

- (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 or insurance or the landlord’s cost of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection for which the service charge is payable.
- (3) For this purpose-
- (a) “costs” includes overheads
 - (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.

19 Limitation of service charges: reasonableness

- (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 provisions 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 of subsequent charges or otherwise.

27A Liability to pay service charges: jurisdiction

- (1) An application may be made to the appropriate 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 the appropriate 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 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*

(4) *No application may be made under subsection (1) or (3) may be made in respect of a matter which -*

- (a) *has been agreed or admitted by the tenant,*
- (b) *has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*
- (c) *has been the subject of a determination by a court, or*
- (d) *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement*

(5) *but the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment*

(6)- (7) *not relevant to this application*

Inspection and the adjourned Hearing

10 The members of the Tribunal inspected the exterior and common parts of Saldavian Court on 19th June 2013 in the presence of Mr Matthew Ball, a director of the RTM Company. The development comprises three separate blocks of flats on three floors containing six two bedroom flats in each block. The Applicant referred to the blocks as 1, 2 and 3. However, the Leases name the block on the left hand side looking from the road as Block 'A', in which are

comprised flats 1 - 6. The middle block ('B') contains Flats 7 - 12 and the right hand block ('C') contains flats 13 - 18. Accordingly, the two flats owned by the respondent are in blocks A and B, or, using the Applicant's numbering, blocks 1 and 2.

- 11 There are two drives giving access to eighteen garages constructed in a row behind the blocks. A further garage serves as the pump room for the foul and storm water. There are planted areas surrounding the buildings and the drive. The Tribunal was informed that, as an exercise in economy, the gardening and internal common parts cleaning contract has been suspended and accordingly these areas were less tidy than would normally be expected.
- 12 The roof of the central block has been recently repaired. This work had been the subject of a decision by the Tribunal dated 8th October 2012 dispensing with the consultation provisions of section 20 of the Act under the powers contained in section 20ZA of the Act.
- 13 The windows of all of the flats have been replaced with uPVC sealed units. Access to each block is via a front door into a communal lobby, where the meter cupboards for each flat in the block are also situated.
- 14 Following the Inspection a Hearing took place at the Tribunal's hearing room at Priory Court, Bull Street, Birmingham B4 6DS. This was attended by Mr Ball, on behalf of the Applicant and Mr Russell and Mr Jones on behalf of RMG, the Applicant's managing agents. The Tribunal decided to adjourn the Hearing because it was informed by Mr Ball that the service charge accounts for the year ending 25th March 2013 were in course of preparation, and the Tribunal considered that it would be preferable to await the final accounts, rather than issue a determination relating solely to the estimated sums demanded on account. These were as follows in respect of each Flat:

Half yearly service charge	£307.58 (x2)	£615.16
Half yearly reserve fund contribution	£138.89 (x2)	£277.78
Urgent roofing works (demanded 17 October 2012)		<u>£550.00</u>
		£1,442.94

- 15 At the Hearing, the Tribunal pointed out that the Lease of Flat 9 is anomalous in that it only permits the collection of one thirty sixth of the lessor's costs. Mr Ball said that one other lease is the same, but that the lessee has always been charged, and has paid the full one eighteenth share which has been demanded. It was left that the Applicant would consider whether to make an application for a variation of the leases under the provisions of the Landlord and Tenant Act 1987, which if made, might conveniently be heard at the same time as the hearing with regard to the service charge, after the accounts for 2013 had been provided.

The Resumed Hearing

- 16 In the event, no application under the 1987 Act was submitted prior to the resumption of the Hearing. Mr Ball said that it was intended that such an application would be made, but that it appears that there had been a

misunderstanding between him and the managing agents. It is likely that an application will be made in the near future.

- 17 The Applicant had submitted the service charge accounts to the Tribunal in November 2013, and the Hearing was reconvened on 7th January 2014. On this occasion, the only person who attended was Mr Ball. The Respondent had also been sent a copy of the accounts. He made the following comments, by email dated 2nd January 2014:

01. The Respondent wanted to know why there was no breakdown of the category 'Service Charges owed by tenants' showing a balance of £12,325. He felt that the tenants concerned and the relevant periods should be listed.

02. The Respondent also asked why, in the accounts, the previous year's figures are not shown alongside those for the current year, as is the norm.

03. There is a suspicion of creative accounting as there is a lack of clarity, particularly with regard to the lack of a schedule of debtors.

04. As previously stated the Respondent says he has no legal relationship with the Applicant and this has not been proved at all levels, especially higher court levels.

- 18 The service charge accounts reveal a total expenditure of £19,214, against a budget figure of £16,073. The Income and Expenditure Account is reproduced below, along with, for comparison purposes, the Account for the previous year ending on 25th March 2012.

Category	Item	2013 Actual	2013 Budget	2012 Actual	2012 Budget
<u>Repairs and Maintenance</u>	Cleaning Contract	Nil	£500	Nil	£500
	Door entry	Nil	£100	Nil	£100
	Drainage and sewerage	£853	£150	£325	£200
	Refuse Collection	Not shown	Not shown	£91	Nil
	Water pump maintenance	£270	£700	Nil	£100
	Roof repairs	£250	Nil	Not shown	Not shown
	Electrical maintenance	Nil	£100	Nil	£100
	General repairs	Nil	£200	£102	£200
	5 year	£80	Nil	£80	Nil

	electrical test				
<u>Grounds Maintenance</u>	Grounds Maintenance	Nil	£400	Nil	£400
<u>Insurance</u>	Buildings	£4,616	£4,700	£2,494	£3,305
	Directors and Officers	£150	£140	£134	£140
	Insurance valuation	£463	Nil	£465	Nil
<u>Professional Fees</u>	Management	£2,277	£2,277	£2,289	£2,277
	Company secretary	£453	Nil	£439	£412
	Accountancy	£808	£726	£786	£726
	Legal	Nil	Nil	Not shown	Not shown
	Sundry Expenses	£253	£500	Not shown	Not shown
	Health and safety	Not shown	Not shown	£89	Nil
<u>Utilities</u>	Electricity	£538	£580	£924	£580
	Prior year adjustment	£3,403	Nil	Not shown	Not shown
<u>Reserve Fund</u>	Reserve fund	£5,000	£5,000	£4,500	£4,500
<u>Totals</u>		£19,214	£16,073	£13,533	£14,040

19 The Tribunal questioned Mr Ball about the following matters from the accounts:

01. The large prior year adjustment for the electricity in the 2013 account. Mr Ball said that Eon and/or nPower (he could not recall which) had discovered an undercharge in previous years, but investigations are continuing and there might yet be a credit.
02. The five year electrical test is shown in both years. Mr Ball said that the test was only done once every five years, but the contract is based on an annual fee.
03. The item for water pump maintenance in 2013 amounting to £700. Mr Ball explained that Saldavian Court is below the drainage system so both foul and storm water has to be pumped. Expensive repairs were required in 2013.
04. Why is there a charge for insurance valuation in both years? Mr Ball explained that, on a similar basis to the electrical test, there is an annual charge, which secures a five yearly revaluation.
05. The management fee has remained the same, even though little is being done, and therefore the management responsibilities might be expected to be less. Mr Ball said that the Applicant is happy with RMG. The management is on a fixed fee basis. There are no extras for advice and appearing at the Tribunal, which they have done on at least two occasions.

- 20 The Tribunal also questioned the Applicant about the roof repair works, in respect of which there are demands in respect of each Flat for £550. Mr Ball explained that the work has been completed, and that the total figure was more than had been estimated, at £11,500. The Applicant used the contributions it had received from the majority of the leaseholders to pay the account, and reserves for the balance. The payment of the final invoice does not appear in the 2013 accounts, as the work was done after the year-end. Accordingly the Applicant requires a determination from the Tribunal as to the reasonableness of the contributions which have been demanded from the Respondent in respect of each Flat.

The Tribunal's Determination

- 21 In respect of the service charges as they appear in the 2013 accounts reproduced above, the Tribunal is satisfied with the explanations given by Mr Ball in respect of the queries raised, and accordingly finds that the service charges for 2012/2013 are reasonable incurred. The amounts due from the Respondent in respect of the two flats are therefore:

Flat 2 - 1/18th of £19,214 £1,067.44

Flat 9 - 1/36th of £19,214 £533.72

- 22 None of the points raised by Mr Korpall in his email dated 2nd January 2014 are of direct relevance to the issue of the reasonableness of the service charges under the jurisdiction conferred on the Tribunal by sections 19 and 27A of the Act. However, the Tribunal comments upon the four matters raised in the email as follows:

01. The Tribunal does not consider it normal or necessary for the service charge debtors to be individually listed in the balance sheet to the accounts.
02. The Tribunal agrees that is normal, and more convenient for the previous years figures to be shown. However, the presentation of the accounts is not a matter in respect of which the Tribunal has any jurisdiction.
03. This is in effect a repetition of point 01.
04. The Tribunal has already made its determination upon this point and will not consider further submissions by the Respondent upon the matter.

- 23 The Tribunal is also satisfied with Mr Ball's explanation regarding the roof works to the central Block. In respect of Flat 2 the Tribunal determines that the interim demand of £550 in respect of the urgent roofing works is reasonable and payable by the Respondent. In respect of Flat 9, because of the lower share payable under the lease in respect of this Flat, the Tribunal determines that the sum of £275 is reasonable and payable by the Respondent.

- 24 Although it is not directly relevant to its determinations, the Tribunal notes that the effect of the anomaly in the lease of Flat 9 is to reduce the amounts of

service charges receivable from Mr Korpál. It may be that the amounts shown as due in the balance sheet have been adjusted to show the lower amount due in respect of Flat 9, but if not the Accountant should be advised of the Tribunal's determination, so that appropriate adjustments can be made in the 2014 accounts.

- 25 In reaching its decisions the Tribunal took account of its inspection of the subject property, the submissions of the parties, the relevant law and its knowledge and experience as an expert tribunal, but not any special or secret knowledge.
- 26 If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (Rule 52 (2)) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge W J Martin