CASE NUMBER CHI/24UC/LSC/2009/0046

LEASEHOLD VALUATION TRIBUNAL
In the Matter of the Landlord and Tenant Act 1985 Section 27A

And in the Matter of 8 Saxon Close, Waterlooville, Hants PO8 OJT

Between:-

Drum Housing Association Limited

Applicants

And

Mr M A Westbrook

Respondent

Hearing: 23rd June 2009

Date of Inspection: 23rd June 2009

Tribunal: T A Clark (Chairman)
Mr D Lintott FRICS
M r M Dumont

Application:

This is an application brought under section 27 A of the Landlord and Tenant Act 1985 for the Tribunal to determine the liability by the Respondent to pay service charges in respect of the property, 8 Saxon Close, Waterlooville, Hampshire PO8 OJT.

The Law:

Section 27A of the Landlord and Tenant Act 1985 provides for applications to the Tribunal for a determination by that Tribunal as to whether a service charge is payable and, if so,

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 by which it is payable
e) The manner in which it is payable.

In addition the section provides that the Tribunal has the power to decide about the costs incurred for services, repairs, maintenance, improvements, insurance or management of any specified description and likewise as to

a) By whom it is payable
b) To whom it is payable
c) The amount which would be payable
d) The date at which it would be payable
e) The manner in which it would be payable.

Section 18 of the same Act defines service charges and "relevant costs" and section 19 provides as follows;

"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

(2) Where a service charge is payable before the relevant costs are incurred no greater amount than is reasonable is so payable ...

The Facts/Evidence

Inspection:

1. The Tribunal conducted an inspection of the property on the day of the hearing. No internal inspection was carried out or deemed necessary. No-one attended for the inspection for or on behalf of the Respondent. A Georgina Smart who identified herself as Portfolio Manager for the Applicant was present at the inspection but no evidence was heard at that stage.

2. During the inspection the Tribunal was shown the block of flats including 8 Saxon Close. There are 3 leaseholders residing there and 3 tenants of Drum Housing. This block consists of 6 flats in all.

3. The hearing commenced at about 11.50am. The delay in the hearing starting and which was scheduled to commence at 11.30am was to give the Respondent an opportunity to attend.

4. The file was considered carefully to ensure that the notice of the hearing had been properly sent out and the file confirmed that notice had been sent to the Respondent confirming that hearing and that he was required to attend. This notification was sent out on 19th May 2009 to the Respondents residential address at 27 Beaufort Way, Epsom Surrey and to all other interested parties.

The hearing:

5. On examination of the papers submitted by the Applicants the Respondent came into possession of the property by way of purchase of a lease, transfer being dated 19th July 2005. Thus the Respondent holds the property on a long lease.

6. The lease which contains the clauses relevant to this property is dated 24th February 1992. The lease was assigned to fresh purchasers on 26th July 2002 which was in turn assigned to the Respondent.

7. The lease provides at Clause 2 paragraph (q) to pay the cost of insuring the building and providing the services and things specified in the Fifth Schedule and further under sub paragraph (ii) to pay if so demanded an initial service charge of such sum as the Lessor shall in any year certify to be appropriate ....

8. The Fourth and fifth Schedule sets out the method of calculating costs of insurance and service charges and in summary this is calculated by reference to

the actual cost of works of maintenance or repair and of insurance which are to be divided equally between the 6 flats.

9. The application is dated 18th March 2009 and is for payment of charges covering the period 3rd April 2006 to 31st March 2007, 1st April 2007 to 31st March 2008 and 1st April 2008 to 31st March 2009 in relation to 8 Saxon Close.

10. The application asserts that for the 2006 to 2007 years the service charge was for the following;

Insurance premium	£147.59
Ground rent	£10
Management charge	£10.50
Repairs	£212.91
TOTAL	£381

For 2007 to 2008 the charges were for the following;

External painting	£50
Roofing works	£128.27
Insurance	£134.78
Ground rent	£10
Management charge	£10.50
TOTAL	£333.55

For 2008 to 2009 the charges were for the following;

Insurance premium	£147.50
Ground Rent	£10
Management charge	10.50
TOTAL	£168.30

11. The Tribunal heard from Georgina Smart who gave evidence on behalf of the Applicants.

12. No statement has been received from the Respondent despite directions made by the Tribunal on 26th March 2009 requiring a statement from him although there is a letter from the Respondent on file dated 18th April 2009 which asserts that the tenants (the property was in turn tenanted out, presumably on an assured shorthold tenancy or such like) should have paid the Applicants and that as the tenants have left
"thus leaving me with the bill, presumably I would seek to pay this off gradually "

13. Ms Smart confirmed the contents of the statement which she provided dated 22nd June 2009.

14. Georgina Smart gave evidence about the following issues;
    i. that the Applicants had come into legal possession of the property by way of a stock transfer in February 1996 to East Hampshire Housing Association. East Hampshire Housing association in turn changed its name and became known as Drum Housing Association.

    ii. that the Respondent came into possession of the property by way of purchase of a lease, transfer being dated 19th July 2005.

    iii. Ms Smart identified two different types of work done on the property i) responsive (to repairs required) and ii) planned maintenance (as part of an ongoing upkeep and maintenance programme).

    iv. Responsive work had been carried out to Flat 6 following a leak from the roof and then there was a 2nd roof repair to carry out works to the "secret gully" effecting both Flats 6 and 8.

v. We were told that the Respondent was charged the appropriate proportion for the planned maintenance

vi. In addition there had been planned decorative works carried out to all six flats in the block and this was also charged equally between all the flats.

vii. Ms Smart confirmed that the charges claimed were for actual costs incurred in carrying out works, appropriately apportioned and were not estimates. Supporting documentation was provided in the bundle of documents.

viii. The statement confirmed that notices had been sent to the Respondent including notices of arrears sent by recorded delivery.

15. The total sum claimed as set out in Ms Smarts statement are as follows;

Charges for 2006 to 2007	£381 (as set out in the application)
Charges for 2007 to 2008	£155.28 (as set out in the application)
External painting charge included in the 2007 to 2008 figures at page 7 of the application)	£50 (as set out in the application and
Roof repairs included in the 2007 to 2008 figures at page 7 of the application)	£128.27 (as set out in the application and
Charges for 2008 to 2009	£168.30 (as set out in the application)
Charges for 2009 to 2010	(not claimed in the application)

Findings of the Tribunal/Conclusion:-

The Tribunal found no evidence that such works as were carried out were not reasonable in amount nor that work had not been reasonably carried out. The issue of apportionment was correct and within the terms of the lease.

In relation to the letter dated 26th March 2009 from the Respondent the Tribunal noted that there was no evidence produced of any tenancy agreement between the Respondent and his tenants but in any event had there been and had there been a clause as part of that lease for the tenants to pay all insurances and service charges, in the absence of agreement from the Applicants this would not absolve the Respondent of his primary responsibility to the Applicant for service charges and insurance and thus is not relevant to this application.

In summary the Tribunal could find no reason why the sums listed above should not be payable immediately, save the charges for 2009 to 2010 as these were not sums claimed in the original application. The Tribunal therefore finds that the total sum of £883.35 is payable by the Respondent forthwith to the Applicants.

No application was made by the Respondent pursuant to Section 20C of the Landlord and Tenant Act 1985 that the Applicants costs of these proceedings should not be regarded as relevant costs to be included as service charges. Nevertheless had such an application been made the Tribunal would not have granted it, considering that the Applicants have acted properly throughout and are entitled to recover their costs of this application through the service charge mechanism.

(signed)
T A CLARK (Chairman)
23 July 2009