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Case No. BIR/00GG/LIS/2010/0011

MIDLAND RENT ASSESSMENT PANEL
DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL
SERVICE CHARGE

Landlord & Tenant Act 1985 as amended by
Commonhold and Leasehold Reform Act 2002

An Application under s.27A of the Landlord & Tenant Act 1985 for the Leasehold Valuation Tribunal to determine the reasonableness of part of a service charge relating to Snow and Ice Clearance levied by the Landlord for years 2002-2009 and estimated charges for 2010.

50 SHREWSBURY ROAD, MARKET DRAYTON, SHROPSHIRE, TF9 3DL

Applicant	Christopher Paul Bailey (Tenant)
Respondent	South Cheshire Housing Society Limited (Landlord)
Date of s27A Application to LVT	8th April 2010
Date of Receipt of Applicant's Submission	14th September 2010
Date of Receipt of Respondent's Submission	28th September 2010
Date of Inspection	5th October 2010
<u>Tribunal</u>	I.D. Humphries B.Sc.(Est.Man.) FRICS
<u>Determination</u>	Mr Bailey's service charge element for ice and snow clearance for year ended 2008 is determined at £33.50, for year ended 2009 £42.00 and the budget for 2010 £50.00.

DETERMINATION

Introduction

- 1 This is a case where the Applicant tenant holds a long lease of a Flat in a modern block of Flats and objects to an element of service charge relating to clearance of ice and snow from the grounds and surrounding site. The Applicant claims the service has not been provided where his Flat is located whereas the Respondent landlord claims it has not only been provided but at reasonable cost. This is the only item in dispute.

The Property

- 2 The Tribunal inspected the property on 5th October 2010 in the presence of the landlord's agent, Mr D. Riley FRICS. The tenant was not present or represented. No further evidence was taken at the inspection which was purely to identify the site's features.

- 3 The property is part of a development which for the purposes of the dispute can be described in three parts:

1 Block of Flats

The development was built on an infill plot fronting Shrewsbury Road in a residential area about a quarter mile west of Market Drayton town centre. It was built in phases from 1987 onwards. The front part of the scheme comprises a block of four Flats, two ground floor and two first, of two storey brick and tile construction that from the road appear to be a pair of modern semi-detached houses. There is a tarmac driveway to the right hand side leading to a tarmac car park at the rear for residents' and guests' cars.

2 Central Path

A concrete slab path leads from the car park connecting to the rear part of the site, described as (3) below. The path is on land owned by other parties over which the residents of the development have rights of way.

3 Bungalows

The rear part of the scheme comprises 26 detached and semi-detached retirement bungalows. There is a central private tarmac roadway into the development known as Goosefield Close which connects to another road known as Elizabeth Court which in turn leads back to Shrewsbury Road. The bungalows can therefore be accessed from the public highway without having to use the footpath described in (2) above so that the Flats at the front and bungalows at the back, while forming part of the overall development, can effectively be regarded as separate parts of the site.

The Lease

- 4 The Applicant Mr Bailey holds a long leasehold interest in one of the ground floor Flats in the front block known as 50 Shrewsbury Road. The lease was granted for 125 years from 25th December 1987 at a current ground rent of £35 p.a. plus an annual service charge.
- 5 The service charge items are set out in Schedule 7 Part A headed '*costs and expenses outgoings and matters in respect of which the Lessee is to contribute by way of the Lessee's Proportion*' which include at para 2 '*Keeping the Accessways in good repair and clean and tidy ...*'
- 6 Accessways are defined at para 1.(f) as '*"the Accessways" means the footpaths common car parking (if any) and access areas and private roads forming part of the development ...*'
- 7 Para. 13 contains a further sweeper clause to cover the costs of '*Providing and paying such persons as may be necessary in connection with the upkeep of the Maintained Property*'
- 8 Maintained Property is defined in Schedule 2 as '*First the Accessways Secondly the Parking Spaces ...*'
- 9 Furthermore, Schedule 7 para 23 requires the tenant to contribute to '*The provision maintenance and renewal of any other equipment and provision of any other service or facility which in the opinion of the Management Company it is reasonable to provide*'.

- 10 Schedule 8 requires the tenant to pay 1/4 of the cost of the maintenance expenses listed in Schedule 7 but allows the management to alter the proportion fairly and at present the cost is apportioned equally among all 30 units on site, i.e. at 1/30th of the cost (South Cheshire Housing Society letter dated 25th August from D. Riley managing agent to Mr Bailey 2010 refers). The only exception is the cost of employing Mrs J. Rochelle as a 'good neighbour' which is borne entirely by the residents of the bungalows.

The Relevant Law

- 11 Section 27A(1) of the Landlord & Tenant Act 1985 provides that an application may be made to a Leasehold Valuation Tribunal for determination of whether a service charge is payable and if so, the person by whom it is payable, to whom, the amount, the date payable and manner of payment. The subsection applies whether or not payment has been made.
- 12 Section 18 of the Act defines a 'service charge' as an amount payable by a tenant of a dwelling as part of or in addition to rent which is payable directly or indirectly for services, repairs, maintenance, improvements, insurance or the landlord's cost of management, the whole or part of which varies according to the relevant cost.
- 13 Section 19 of the Act provides that relevant costs shall be taken into account in determining the 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 carrying out of works, only if the works are of a reasonable standard and in either case the amount payable is limited accordingly.

The Item in Dispute

- 14 The only disputed item is the cost of clearing ice and snow from around the development.

The Applicant's Submission

- 15 Mr Bailey submits:
- 1) the cost of clearing ice and snow is not covered by the Lease;
 - 2) the work had been undertaken since 2002 without the landlord's instruction;
 - 3) the leaseholders of the Flats had never benefitted;
 - 4) it had been requested by Mrs Rochelle acting exclusively for the residents of the bungalows;
 - 5) the clearance only extended to land at Goosefield Close, i.e. for the bungalows;
 - 6) he had objected to the cost to the management over several years
- 16 The submission contained letters from (1) the resident of No.56, K.Watkins, that since buying his Flat in 2007 he had never seen any gritting or snow clearance being carried out; (2) from Miss Rawding who was apparently a regular visitor to No.56 Shrewsbury Road who had also not seen any snow or ice being cleared; (3) from co-resident Anne Sedgwick that she had seen no evidence of the car park or front path being cleared although had seen the central path (described as (2) in para. 3 above) being gritted and (4) from Amanda Webb of 54 Shrewsbury Road that since buying her Flat in July 2007 she had seen no ice or snow being cleared.

The Respondent's Submission

- 17 In response, the landlord's Managing Agent Mr Riley commented on the points listed at para. 15 above that:
- 1) although snow and ice clearance was not expressly reserved it was covered by the terms of the lease;
 - 2) it had been undertaken on his instruction on behalf of the landlord since 2002;
 - 3) the drive to the side of the Flats had been gritted. He produced in evidence a letter he had written to Mr Bailey on 8th April 2010 advising 'I have spoken with Mark Hughes (grounds contractor) who informs me that over the last 9 years gritting to varying degrees has been undertaken within the car park to the rear of the flats' and a letter from Mrs Rochelle dated 27th September 2010 advising 'I have observed that Mr Mark Hughes had cleared and gritted a single footpath through the site area'.
 - 4) it was for the benefit of all residents;
 - 5) all the paths had been treated;
 - 6) he acknowledged that the Applicant had contested the service

18 He produced a schedule showing the amount charged for ice and snow clearance since 2002:

Year End 31/12	Amount £
2002	750.00
2003	853.00
2004	1619.00
2005	2119.00
2006	1386.77
2007	648.00
2008	2065.00
2009	2777.81

19 In his view the service was not only reasonable but provided at a reasonable cost.

LVT Determination

20 Having read the lease, the parties' Submissions and inspected the site I find as follows:

21 There is no doubt that ice and snow clearance is a service covered by the terms of the lease. It was not expressly referred to in the lease but the terms of Schedule 7 are sufficiently wide for the cost to be covered and it is only right for the proper management of the development that the lease should allow services to be added or deleted over time as requirements change.

22 I am therefore satisfied that it falls within the scope of a 'service charge' in section 18 of the Act.

23 In relation to section 19(a), I find the overall principle of paying for ice and snow clearance reasonably incurred as it reduces the chance of accidents and consequential claims against the landlord and its managing agent.

24 In respect of section 19(b), there are clear differences in the evidence brought by the parties. Mr Bailey and his witnesses assert that they have never seen work being carried out to either the car park or front paths whereas Mr Riley's witnesses Mr Hughes and Mrs Rochelle claim the paths have been treated. Mr Riley's letter of 8th April 2010 says Mr Hughes had advised him that he had gritted the car park to varying degrees over nine years and yet in a letter to Mr Bailey of 11th September 2010 he said 'You would not be awash with grit as most likely pure dried vacuum salt would have been used' and 'The car park would in any event not be cleared of snow nor are the other two car parks in Goosefield Close.'

25 Whether or not grit or salt was in fact applied to the car park or paths cannot be determined. However, the fact that some parts of the site may have been treated more or less than other parts or indeed whether some parts were treated at all is irrelevant for present purposes. The lease requires the tenant to contribute to the cost of items in the service charge which include footpaths at the back of the site well away from the block of flats and the only way of reducing this liability would be to vary the terms of the lease which is not part of this application. Both parties acknowledge that the central path (2) and road serving the bungalows were treated.

26 According to Mr Hughes' evidence he made 49 separate visits for ice and snow clearance during the winter of 2008/9 and similar visits in 2009/10. The visits were often on subsequent days and sometimes twice daily. I find the costs for 2008 and 2009 excessive and assess the reasonable cost for 2008 at £1,000 and for 2009 £1,250. January 2010 was particularly poor weather and I assess the 2010 budget at £1,500. I find the demands for earlier years reasonable.

27 Mr Bailey's share is 1/30th. I therefore determine his service charge element for ice and snow clearance for year ended 2008 rounded to £33.50, for year ended 2009 rounded to £42.00 and budget for 2010 £50.00



I.D. Humphries B.Sc.(Est.Man.) FRICS

Chairman

Date 11 OCT 2010