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**LEASEHOLD VALUATION TRIBUNAL for the
EASTERN RENT ASSESSMENT PANEL
Landlord and Tenant Act 1985 – Section 27A
CAM/00KF/LSC/2010/0024 and 0025**

Properties : **669b and 671b London Road, Westcliff-on-Sea
SS0 9PD**

Applicant : **Westleigh Properties Limited** Landlord
Represented by : **Mr B Meagher, Gateway Property Management**

Respondent : **Grovehigh Limited** Tenant
Represented by : **Mr M Rotheart and Mr I Goldenberg - Directors**

Date of Referrals : **22 February 2010**
Date of Hearing : **1 July 2010**
Date of Decision : **28 July 2010**

Tribunal : **Mr John Hewitt** Chairman
Mr Richard Marshall FRICS FAAV
Mr David Cox JP

Decision

1. The decision of the Tribunal is that:
 - 1.1 The Respondent is not liable to pay any of the service charges or variable administration charges claimed in court proceedings issued against it by the Applicant in respect of flats 669b and 671b London Road and which are summarised in the 'Claimed' column of Appendix 1 to this Decision; and
 - 1.2 In respect of each flat the Respondent will be liable to pay service charges as follows:

2007	£497.05
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2008 £309.08

These sums will be payable by the Respondent to the Applicant upon the giving of a compliant demand for the same. Appendix 2 to this Decision sets out how these sums have been arrived at.

- 1.3 The claims be referred back to the Southend County Court for determination of the Applicant's claims to ground rent, statutory interest and court fees because the Tribunal does not have jurisdiction to determine these matters.

Background

2. The Applicant is the headlessee of a development known as 667-673 London Road, Westcliff-on-Sea. Evidently the building is a former furniture warehouse or depository which has been adapted to comprise commercial retail space on the ground floor with 8 residential flats above. The Applicant has the headlease of the 8 residential flats.

3. Each of the flats is let on a long lease. We were told that the leases were in common form. They oblige the landlord to provide services and they oblige the tenants to each contribute one eighth of the costs incurred.

Clause 2(10) obliges the tenant to pay by way of additional rent sums on account of his liability on 1 January and 1 July in each year. The service charge regime is set out in detail in the Fifth Schedule. Paragraph 11 provides that at the end of each year the service charge account is to be audited by a competent firm of chartered accountants who shall issue a certificate of the said costs and expenses incurred and the amount due from the tenant. By paragraph 12 the landlord is to serve a copy of the certificate on the tenant within 4 months of the year end. By clause 2(11) of the lease the tenant is pay any balancing debit to the landlord within 21 days after the service by the landlord of the said certificate.

The lease terms were not in issue.

It was agreed that the sums payable by the tenant were service charges within the meaning of s18 of the Act.

4. Both of the flats held by the Respondent are held as investments and they are sub-let.
5. In or about March 2010 the Applicant commenced proceedings in the Southend County Court against the Respondent in respect of flat 669b (Claim No 0SSOO184). It claimed:

Arrears of ground rent and services charges	£2,760.12
Interest pursuant to s69 County Courts Act 1984	
Court fee	£ 80.00

Details of the arrears claimed are set out in Appendix 1.
6. A defence was filed.
7. By Order made 11 February and dated 15 February 2010 District Judge Ashworth ordered that the "*Claim be transferred to the leasehold Valuation Tribunal for determination.*"
8. On 12 January 2010 the Applicant commenced proceedings in the Southend County Court against the Respondent in respect of flat 671b (Claim No 0SSOO77). It claimed:

Arrears of ground rent and services charges	£4,300.66
Interest pursuant to s69 County Courts Act 1984	
Court fee	£ 108.00

Details of the arrears claimed are set out in Appendix 1.
9. A defence was filed.
10. By Order made and dated 15 February 2010 District Judge Ashworth ordered that the "*Claim be transferred to the leasehold Valuation Tribunal for determination.*"

11. Directions were duly given and broadly the parties have complied with them.

Inspection

12. We carried out a brief inspection of the development on the morning 1 July 2010 in the presence of Mr Meagher. The Respondent's representatives were not present due to a misunderstanding over timing. At the hearing they raised no objection to this and at the conclusion of the hearing they did not wish to go to the development and to draw any physical features to our attention.

Matters in Dispute

13. The matters in dispute were the sums claimed by the Applicant in the two sets of proceedings. The sums claimed were a mix of alleged historical arrears, half yearly on account payments of service charges, year-end balancing charges for the years 2007 and 2008, ground rents and several variable administration charges within the meaning of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
14. We have already stated that we do not have jurisdiction to determine alleged arrears of ground rent. As to the remaining sums claimed it was necessary for us to look at each one. We also had to determine the service charges payable for the years 2007 and 2008 because claims were made for year-end balancing payments - hence Appendix 2 to this Decision.

Evidence

15. Mr Meagher gave evidence and made submissions on behalf of the Applicant. Mr Meagher explained that the Applicant has a very substantial portfolio of property investments and that until May 2009 its managing agents were Basicland Registrars Limited (BLR). Mr Meagher said that in May 2009 BLR was dismissed without notice and his company, Gateway Property Management was instructed to take over. Evidently the Applicant had no documentation or service charge

accounts and Mr Meagher was reliant upon such documents as BLR saw fit to hand over. BLR claimed that due to the volume of paperwork the handover would take some time. BLR assert that it has now handed over to Gateway all relevant files and accounts. Mr Meagher is not so sure and he told us that he has sought to recover further files and information, but to no avail. Mr Meagher acknowledged that he was in some difficulty in providing supporting documentation and information on some of the sums in challenge.

The claims

16. It may be helpful and expedient to take these in groups.

'Historic Claims'

17. It will be seen from Appendix 1 that there are a number of 'historic' claims. Mr Meagher has no further information about them. Mr Meagher was unable to explain why separate demands were made for External Decoration and Insurance. He accepted that both items of expenditure should be included in the annual accounts and be properly certified in accordance with the leases.
18. Some of the sums claimed may well be half-yearly on account demands which may be reflected in the balancing claims for 2007 and 2008. We find that none of these were payable at the time of the issue of the court proceedings. We have seen samples of demands issued by BLR and we find that they do not comply with s47 Landlord and Tenant Act 1987 because they do not give the name and address of the landlord. Thus the sums so demanded are deemed not to be payable unless and until a compliant demand is made.

Further Demands

19. We find that the demands for half-yearly on account payments on 24.06.09 and 24.12.09 issued by Gateway are not payable because they also are not compliant with s47. They also assert that the Applicant is the 'residual site freeholder' which is incorrect because the

Applicant is the head lessee only. For similar reasons we find that the demand for Emergency Foul Drain Works £193.34 is not payable. Mr Meagher explained that he was not in funds and emergency drain works were required so he raised the demands. Mr Meagher was unable to explain why the Applicant, a substantial property investment company, was unable to put him in funds to carry out such work. Mr Meagher accepted that the lease terms do not provide for a supplementary levy such as this and that the cost of the drain works should feature in the 2009 accounts and be subject to certification as provided for in the lease.

Administration Charges

20. It will be seen from Appendix 1 that there are a number of claims which are variable administration charges within the meaning of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. Included are charges for late payments and arrears recovery. Mr Meagher was unable to point to any provision in the lease which imposes an obligation on the tenant to pay such charges. On the contrary the service charge regime points strongly to the proposition that such charges would not be payable by individual defaulting tenants but would be shared equally between the tenants because paragraph 8 of the Fifth Schedule to the lease (which sets out the expenditure which is recoverable as service charges) expressly includes: *the proper professional fees of the Landlord's Managing Agents (if any) for the collection of the rents and service charges...*

21. Also included in the court proceedings were claims to interest. The lease provides for the payment of interest on sums due and not paid within 21 days at the rate of 5% above the base rate from time to time of Barclays Bank. Such a claim to interest will be a variable administration charge. It was not clear to us if any compliant demand for interest had been made. If it had not then such sum is not payable at the moment. Equally it seems that the claim might be referable to statutory interest claimed in the court proceedings in which case the

award of such interest is in the discretion of the judge and we cannot determine that it is payable. Accordingly we are unable to determine that the claims to interest are payable.

Service Charges 2007 and 2008

22. Although we have found that the Respondent was not obliged to pay sums half yearly on account of the service charges for these years, the Respondent does, of course, have to pay the service charges properly due and payable for each of these years upon receipt of a compliant demand for the sum due.
23. We therefore went through the accounts for each year carefully. Not all of the sums claimed were in issue. We shall deal only with those that were challenged:

Accountancy Fees £180 and £184.97

24. These were challenged in amount given that the accounts are really quite simple. The lease obliges the landlord to have accounts certified by 'a firm of competent chartered accountants'. The members of the Tribunal, drawing on their accumulated experience and expertise in these matters concluded that in the region of £180 for 2007 and 2008 was not so unreasonable so that it should be adjusted. We find it well within the range of what is to be regarded as reasonable. We therefore allow it in full.

Management Fees £1410 and £1645

25. These were challenged as to amount in view of the alleged appalling and incompetent and at times non-existent management of BLR. Mr Goldenberg suggested that a unit fee of no more than £50 should be allowed. Mr Goldenberg had not spoken to local managing agents to ascertain what the going rate might be and he was unable to tell us if any managing agent would take on this development at such a low fee. Mr Meagher did his best to try and justify the fees claimed about we think that he recognised he was struggling.

26. Whilst BLR did not provide a good quality of management over the period in question it did provide some management. The members of the Tribunal, drawing on their accumulated experience and expertise in these matters concluded that a reasonable unit fee for both 2007 and 2008 was £130 + VAT. We have thus allowed the sum of £1,222 for each year.

Professional Fees £1,375

27. Mr Meagher was able to provide some information about these fees. He produced an internal BLR invoice dated 12.06.07 which showed that the expense related preparation of a witness statement, assisting with court proceedings and attending court. The invoice was in the sum of £1,000 + VAT, a total of £1,175. The balance of £200 was in respect of a fee paid to counsel. The proceedings related to flat 673a London Road the tenant of which was Mr Clive Roberts.
28. Mr Goldenberg challenged the expenditure and said that there was insufficient information to justify the amount of the claim. He did however say that he was aware that Mr Roberts had been in litigation with the Applicant and that he had lost his case. Mr Goldenberg was unsure whether Mr Roberts had been ordered to pay costs and he was concerned that there might be double counting.
29. We have considered the competing claims carefully. We have decided to allow the claim in full. It seems clear to us that there was litigation with Mr Roberts and that he lost the case. As noted above the service charge regime certainly includes the landlord's reasonable costs of collecting the rents and service charges. Members of the Tribunal are aware from other cases concerning BLR that it had an arrangement with the Applicant for a standard fee of £1,000 for representation in Court and Tribunal proceedings. Whilst we can understand that it might be fairer that defaulting tenants should bear the costs of litigation the terms of this lease make clear provision for such expenditure to be

shared. We are satisfied that the sum claimed is reasonable and that it is payable by the lessees.

The Law

30. Relevant law which we have taken into account in making our decision is set out in the Schedule to this Decision

The Schedule

The Relevant Law

Landlord and Tenant Act 1985

Section 18(1) of the Act provides that, for the purposes of relevant parts of the Act 'service charges' 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 costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs.

Section 19(1) of the 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 are of a reasonable standard;

and the amount payable shall be limited accordingly.

Section 19(2) of the Act provides that 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.

Section 27A of the Act provides that 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.

Landlord and Tenant Act 1987

Section 47 provides that every demand for rent, service charges or administration charges must contain the following information:

- (a) the name and address of the landlord, and
- (b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

Where a demand does not contain the required information the sum demanded shall be treated for all purposes as not being due from the tenant to the landlord, until such time as the required information is furnished by the landlord by notice to the tenant.

Commonhold and Leasehold Reform Act 2002

Schedule 11

Paragraph 1 sets out a definition of a 'variable administration charge'.

Paragraph 2 provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Paragraph 5 provides that any party to a lease of a dwelling may apply to a Leasehold Valuation Tribunal for a determination whether an administration charge is payable and, if it is, as to :

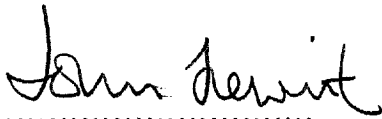
- (a) the person by whom it is payable,
- (b) the person to whom it is payable,

- (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.

No application 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 determination by a court. Or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

A tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.



.....
John Hewitt

Chairman

28 July 2010

Appendix 2

667 - 673 London Road

Service Charges

Expenditure	2007		2008	
	Sum Claimed	Sum payable	Sum Claimed	Sum payable
Accountancy Fees	£ 180.00	£ 180.00	£ 184.97	£ 184.97
Electricity	£ 298.76	£ 298.76	£ 90.04	£ 90.04
Insurance	£ 905.24	£ 905.24	£ 886.85	£ 886.85
Management Fees	£ 1,410.00	£ 1,222.00	£ 1,645.00	£ 1,222.00
Professional Fees	£ 1,375.00	£ 1,375.00	£ -	£ -
Repairs and Maintenance	£ 47.92	£ 47.92	£ 99.17	£ 99.17
Interest received	-£ 50.48	-£ 50.48	-£ 8.95	-£ 8.95
Totals	£ 4,166.44	£ 3,978.44	£ 2,897.08	£ 2,474.08
One eighth		£ 497.05		£ 309.08