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LEASEHOLD VALUATION TRIBUNAL for the
EASTERN RENT ASSESSMENT PANEL
Landlord and Tenant Act 1985 – Section 27A
CAM/00KG/LSC/2010/0043

Properties	:	**2, 3, 5 & 6 St Mary's Close, Grays RM17 6HY**	
Applicants	:	**Raymond Tidswell**	**Flat 2**
		Neil Moorman	**Flat 3**
		John & Christine Williams	**Flat 5**
		Ian Saunders	**Flat 6 Tenants**
Represented by	:	**Mr Tidswell, Mr Moorman & Mrs Williams**	
		In Person	
Respondent	:	**P.S.G. Investment Group Limited**	**Landlord**
Represented by	:	**Parkfield Marketing Limited – Managing Agents**	

Date of Application:		**24 March 2010**
Date of Hearing	:	**13 July 2010**
Date of Decision and Further Directions		**:15 July 2010**
Date of Reasons and Cash Accounts	:	**19 October 2010**

Tribunal	:	**Mr John Hewitt**	**Chairman**
		Mr Raymond Humphrys	**FRICS**
		Mr David Cox	**JP**

NB Later reference in this document to a number in square brackets ([ ]) is a reference to the page number of the hearing file produced for our use at the hearing on 13 July 2010.

Decision

1. The decision of the Tribunal is that the cash accounts as between each of the Applicants and the Respondent are as follows in respect of the year ending 31 December 2009:

   The account of Mr Raymond Tidswell is in credit in the sum of £3,148.74;

   The account of Mr Neil Moorman is in credit in credit in the sum of £4,079.83; and

   The account of Mr & Mrs John Williams is in credit in the sum of £520.32.

   (Appendix 2 to this document shows how these sums have been arrived at.)

Background

2. Over the years 2005 to 2009 Parkfield Marketing Limited prepared estimates of service charge expenditure as summarised in Appendix 1 attached to this Decision.

3. Parkfield Marketing Limited asserted that each of the 6 lessees in the block were liable for one sixth of the sums claimed and issued to lessees demands for on account payments. Evidently some lessees have paid some sums to Parkfield Marketing Limited pursuant to such demands. No year-end accounts showing actual expenditure incurred in respect of any of the years in issue have been sent to the Applicants.

4. The application to the Tribunal put in issue the amount of the liability of each of the Applicants in respect of each of the service charge years in issue.

5. Directions were dated 26 March 2010. Paragraph 8 required the Respondent to serve a statement of case and to attach to it certain documents which the Respondent wished to rely upon in support of its case. In response Parkfield Marketing Limited served a statement of

case dated 29 March 2010 [55] but no documents were attached to it. The statement of case is wholly inadequate and unsatisfactory.

6. At the hearing on 13 July 2010 three of the Applicants appeared in person and represented themselves. The Respondent was neither present nor represented.

7. The Tribunal heard evidence from Mr Tisdswell, Mr Moorman and Mrs Williams, considered the relevant documents before it and took into account matters it was able to see during the course of a site visit which took place shortly before the hearing commenced. In the light of the matters before it the Tribunal concluded that no service charges were payable in respect of the five years in issue.

8. The evidence before the Tribunal was to the effect that some of the Applicants (perhaps all of the Applicants) had paid to Parkfield Marketing Limited sums on account of service charges pursuant to demands issued by that company on behalf of the Respondent. In these circumstances it was necessary for the Tribunal to settle cash accounts as between each of the Applicants and the Respondent to determine what sums (if any) might be repayable by the Respondent to each of the Applicants. Directions for the taking of the cash accounts were dated 15 July 2010.

9. In response to those directions the Applicants have filed with the Tribunal further statements of case as follows:

Raymond Tidswell	20 July 2010
Neil Moorman	21 July 2010
John & Christine Williams	22 July 2010

Mr Ian Saunders did not file a further statement of case.

10. The Respondent has not filed statements of case in answer to those referred to in paragraph 9 above.

11. In the directions dated 15 July 2010 the Tribunal gave notice that it proposed to settle the respective cash accounts without a hearing pursuant to Regulation 13. It stated that it proposed to do so on the basis of the representations and statements of case filed and served pursuant to the directions given. The parties were reminded that at any time before the cash accounts are settled any of them may make a request to be heard (Regulation 13(1)(b). The Tribunal has not received any requests to be heard.

12. The Tribunal has settled the cash accounts and these are set out below

Reasons for substantive Decision

13. In substantive our Decision dated 15 July 2010 we set out our conclusion that no service charges were payable by any of the Applicants in respect of the years ending 31 December 2005 to 2009 inclusive. Our reasons for arriving at this conclusion are set out below.

14. The service charges claimed are set out in Appendix 1 a further copy of which is appended to this document for ease of reference.

15. The Respondent did not comply with directions. Its statement of case dated 29 March 2010 was wholly inadequate and unsatisfactory. The Respondent has not provided any documents to support any of the expenditure allegedly incurred. The Respondent has not given or provided year-end accounts and supplemental statements as provided for in the leases.

16. At the hearing on 13 July 2010 the Tribunal heard evidence from Mr Tidswell, Mr Moorman and Mrs Williams. The evidence from all three witnesses was compelling. We find that all three witnesses gave honest and genuine evidence without exaggeration or favour. We find that they were all doing their best to assist the Tribunal. We find that they are witnesses upon whom we can rely with confidence. Some of

the evidence, particularly as to Gardening Maintenance, was supported and corroborated from what we were able to see for ourselves during the course of our inspection. It was plain to us that no gardening has been carried out in the rear garden overlooked by Mr & Mrs Williams in flat 5 for some years. This is illustrated in the photographs at [65].

17. In the light of the evidence before us and what we were able to see for ourselves we make the following findings of fact:

17.1 The Respondent has not demonstrated to us that in any of the years 2005 to 2009 inclusive it incurred any expenditure on:

17.1.1 Gardening Maintenance and Materials;

The evidence, which we accept, was that in early 2005 there was a little activity and that the grass was cut about twice that year. The grass was cut again in the autumn of 2008. Otherwise no gardening or grounds maintenance has been undertaken.

There was no evidence before us that the sums claimed have been incurred or expended.

17.1.2 Electricity;

We were told and accept that there are seven light fittings in the internal common parts and two external lamps. None of the Applicants present at the hearing were aware of a landlord's supply or where the meter might be. None had ever seen that meter being read and none had ever seen an invoice issued by supplier in respect of a landlord's supply.

There is no evidence before us that the sums claimed have been incurred or expended. In the absence of a landlord's supply it may be that the communal lighting is run off a supply to one or more of the lessees.

17.1.3 General maintenance and Cleaning;

We were told and accept that no cleaning has been carried out. Mr Tidswell said that he cleaned the stairway and entrance way for flats 2, 3 and 4. Mrs Williams said

that she cleaned the downstairs entrance way to flats 5 and 6. Flat 1 has its own self-contained entrance. It was suggested in the Respondent's statement of case that the lessees at the development had requested that the cleaning be stopped. This was denied by the Applicants at the hearing and we accept that evidence.

Mr Moorman said that the landlord carried out some limited common parts painting and redecoration some 3 or 4 years ago but he has never seen an invoice from a contractor for the work.

There was no evidence before us that the sums claimed have been incurred or expended.

17.1.4 Administration: Accounts and Legals;

The Respondent has claimed £1,800 for each of the years in question. No explanation has been given to support the alleged expenditure or explain it. Other than demands for money the Applicants are not aware of any services provided by the Respondent or its managing agent. No information as to the expenditure on legal expenses has been provided.

There was no evidence before us that the sums claimed have been incurred or expended.

17.1.5 Building Services: Surveying and Legals;

The Respondent has claimed £300 for each of the years in question. No explanation has been given to support the alleged expenditure. Other than demands for money the Applicants are not aware of any services provided by the Respondent or its managing agent. The Applicants at the hearing said that they were not aware of a building surveyor or management surveyor making a visit to the development and they were not aware of the need for any such visit or what useful purpose it might serve.

No information as to the expenditure on legal expenses has been provided.

There was no evidence before us that the sums claimed have been incurred or expended.

17.1.6 Reserve Fund;

The Respondent has claimed £450 for each year of the years in question. We find that the terms of the leases include for: *"The creation of such reserves or sinking funds against future liabilities as may seem prudent and desirable"*

The Respondent has not explained its strategy with regard to the reserve fund, it has not indicated what future expenditure is likely to be incurred, or the amount of such likely expenditure or when it might be incurred. The Respondent has not shown that the sums collected each year to put to the reserve fund are reasonable in amount given the strategy it has in place.

We bear in mind that the subject 1990s development is a small development of six flats over two floors, there is no lift or gated security. The services are quite basic. Whilst we can see that a modest reserve fund might be prudent, over the years in question the landlord has sought a total of £2,250 which in the absence of any explanation we find to be excessive and unreasonable. We find therefore that the sums claimed are not reasonable in amount.

18. We are reinforced that the sums demanded of the Applicants are not lawfully due and payable by them to the Respondent because the demands for them fail to comply with the requirements of s47 of the Landlord and Tenant Act 1987.

19. There are numerous examples of such non-compliant demands in the hearing file including (by way of example) those at [62, 63, 64, 65, 66 and 78-82]. Further examples are attached to the statements of case submitted by three of the Applicants in support of the determination of the cash accounts.

Reimbursement of Fees

20. We required the Respondent to reimburse the Applicants the £250 fees paid by them to the Tribunal because it was fair and just that the Respondent does so. The Applicants succeeded with the application and they were forced to make the application and incur the fees due to the conduct and lack of responsiveness on the part of the Respondent and its agents.

The Cash Accounts

21. Insurance:

The cost of insurance has not been included in the annual service charge demands. We were told that it was the habit of the Respondent's managing agents to invoice separately for a contribution to the cost of insurance. This habit is not in conformity with the provisions of the leases.

The terms of the leases oblige the landlord to keep the building comprehensively insured and if required by a tenant to produce evidence that this covenant has been complied with [31]. We were told that several requests for details of the insurance effected were made by or on behalf of the Applicants, or some of them and that the requests have not been complied with.

Given that the cost of insurance is a service charge for the purposes of s18 of the Act it falls within our jurisdiction to make determinations in respect of it.

22. We have therefore determined that where the cost of insurance has been demanded and paid but the Respondent has failed to produce evidence of its compliance with the covenant to insure this is to be treated as a failure by the Respondent to show that the sum claimed has been expended. The sums so paid by the Applicants are thus repayable to them by the Respondent.

23. Three of the Applicants have submitted statements of case in support of the cash accounts contended for by them. The statements of case are fully supported by evidence of payments, whether by receipts issued by Parkfield Marketing Limited and/or cheques drawn in favour of and banked by that company or by relevant entries in bank statements.

24. We therefore find that in the absence of any sums due to the Respondent for service charges for any of the years in question any sums paid by any of the three Applicants in respect of service charges for those years are repayable by the Respondent to them. The sums so repayable are set out in Appendix 2 to this document. The said sums are repayable forthwith.

25. We should mention that in the statement of case submitted by Mr & Mrs John Williams they included details of a payment of £457.50 made on 15 March 2010 being an on account payment for the year 2010. We find and accept that this sum was paid but we have not brought it into account because it relates to 2010 and are only concerned with the years 2005 to 2009. We have therefore determined that in respect of the period ended 31 December 2009 Mr & Mrs Williams account stands in credit in the sum of £520.32.

The Law

26. Relevant law which we have taken into account in arriving at our decisions is set out in the Schedule to this document.

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.

Section 27A(3) of the Act provides that an application may 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 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.

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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9(1) provides that subject to paragraph (2) a Tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or any part of any fees paid by him in respect of the proceedings.

John Hewitt

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John Hewitt

Chairman

19 October 2010

Appendix 2 **Cash Accounts** **Sums Repayable**

Date	Expense		Repayable to Raymond Tidswell	Repayable to Neil Moorman	Repayable to John and Christine Williams
20.12.04	Insurance			£ 101.44	
	On account service charges 2005		340.83	£ 340.83	
31.07.05	On account service charges 2005		340.83	£ 340.83	
25.11.05	Insurance			£ 108.92	
14.01.06	On account service charges 2006		£ 340.83	£ 340.83	
19.07.06	On account service charges 2006		£ 340.83	£ 340.83	
18.01.07	Insurance			£ 112.63	
	On account service charges 2007		£ 352.50	£ 352.50	
25.07.07	On account service charges 2007		£ 352.50	£ 352.50	
18.12.07	Insurance			£ 118.35	
03.04.08	On account service charges 2008		£ 357.50	£ 357.50	
06.08.08	On account service charges 2008		£ 362.50	£ 362.50	
20.01.09	On account service charges 2009		£ 360.42	£ 360.42	
09.03.09	On account service charges 2009				£ 294.97
	Insurance				£ 96.02
22.03.09	On account service charges 2009			£ 360.42	
06.12.09	Insurance			£ 129.33	£ 129.33
	Totals		**£ 3,148.74**	**£ 4,079.83**	**£ 520.32**

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