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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT
PANEL**

CASE NUMBER: CAM/26UB/LSC/2009/0128

**IN THE MATTER OF THE LANDLORD AND TENANT ACT 1985 SECTION 27A and
20C**

**IN THE MATTER OF: Flat 15, Trinity House, Trinity Lane, Waltham Cross,
Hertfordshire EN8 7EF**

Parties:

PLEDREAM PROPERTIES LIMITED

Applicant

MR M HAZARD

Respondents

Representations:

For the Applicant:

**Miss Shalom – Counsel
Mr Langton - Crabtree Property Management Limited**

For the Respondent:

Mr Hazard appeared in person

**Tribunal Members : Mr A A Dutton (Chairman)
Miss Marina Krisko BSc (EST MAN) FRICS
Mr John Power MSc FRICS FCIArb**

Date of Hearing : 29 April 2010

Decision Date : 20 May 2010

DECISION

The tribunal determines that Mr Hazard must pay to the Applicant the sum of £4,594.71 as set out in the findings section below and the schedule attached.

Such payment shall be made within 28 days

REASONS

A. BACKGROUND

1. This matter started life in the Edmonton County Court when the Claimant, Pledream Limited commenced proceedings against Mr Michael Hazard seeking the recovery of £6,736.68 together with costs and court fees. The claim related to arrears at the end of March 2008 totalling £4,685.90 and thereafter half-yearly service charge payments in advance including a half-yearly reserve fund payment of £34.89 giving a total of £6,636.68 as allegedly being due and owing in respect of service charges. In addition the proceedings included claims for ground rent which are not within the jurisdiction of this Tribunal.
2. Mr Hazard, the Defendant filed a Defence in the Court action in which he indicated a wish to transfer to the Leasehold Tribunal. As a result of this Defence on the 30 October 2009 the court did transfer the matter to the Leasehold Valuation Tribunal. Subsequently Directions were issued by the Tribunal dated 22 December 2009 and the matter came before us for hearing on 29 April 2010.
3. At the hearing we were provided with a bundle prepared by the Applicants which included a Scott Schedule setting out each invoice for the years in question from the year ending March 2006. There was also a Scott Schedule for the earlier year to May 2005 which we will deal with later in these Reasons.
4. The bundle contained a Statement of Mr Richard Morris Jenkins of Pledream Properties and a Statement from Mr Terence Vincent Langton who attended the hearing, from Crabtree Property Management Limited, again on behalf of the Applicant. There were copies of some correspondence passing between the parties and a large bundle of invoices.

5. It is appropriate to record at this point that Mr Hazard has failed to participate in these proceedings although he did attend the hearing. We were told that most sadly his step-son had recently been diagnosed with a serious illness and this had affected his ability to deal with the paperwork. Whilst we were sympathetic with Mr Hazard it seemed to us that his attitude towards the proceedings left something to be desired and indeed he attended the hearing with the bundle sent to him by the Applicant some days before which he had not opened. He told us he had not received the original Directions but that notwithstanding this he wished to challenge each amount in respect of the service charges since the Managing Agents changed apparently in 2007. He also sought to challenge the arrears that were included in the proceedings as at March 2008.

6. We were able to obtain some background from Miss Shalom confirming that Pledream had acquired the freehold in August 2005 and that until September 2005 the property was managed by Buckingham Property Management. A Company called Sable appear then to have taken over and they themselves were taken over by Crabtree in October 2007. There has therefore been a certain continuity of Management from 29 September 2005 to-date.

B. INSPECTION:

7. We inspected the subject premises prior to the hearing. It consists of what were told is a block of converted offices. There appeared to be some 43 flats in a property which stands five storeys high the top storey being of a mansard type construction. There is ample car-parking but limited garden areas. It is however a detached property, in its own grounds and very close to the town centre. At the time of our inspection the front garden was in need of attention and initially the lift to the right-hand side of the property, did not appear to be functioning. However it seemed to have rectified itself by the time we left, having inspected Mr Hazard's flat. We noted that the cleaning had been carried out a day or so before on the 28 April and the property was in reasonable condition although the carpets in the common parts were starting to wear and were heavily stained. In addition some of the windows to the common parts appear to have succumbed to the passage of time and condensation had gathered between the two panes of glass in the double-glazed units.

C. HEARING:

8. Mr Hazard's scattergun complaint concerning each item of expenditure was with his agreement brought under some control. We went through the entries on the Scott Schedules for the years ending 31 May 2005 and then subsequently in March

2006/07/08 and 2009. It was agreed that in fact we did not need to consider the year ending 31 May 2005 as a letter from Sable to Mr Hazard dated 28 October 2005 appeared to indicate that the arrears of £902.04 represented a period from 1 June to 29 September 2005. It was therefore agreed with Miss Shalom that we could confine ourselves to considering the service charge years ending 31 March 2006 and onwards.

9. We should also record at this stage the state of the arrears. It was agreed with the Applicants, after a luncheon adjournment, that the arrears were the sums claimed for the years ending 31 March 2006/07 & 08, which represented actual costs incurred, not estimates. For the year ending 31 March 2006 it appears from the schedule that Mr Hazard owed £820.22. However 1/43rd of the annual expenditure of £32,237 is £749.70. For the following year the sum recorded in the Schedule is £1,700.42 which again appears to be wrong. The share attributable to Mr Hazard for the year should be £1,629.92. For the year ending March 2008 the liability is £1,333.74. This gives a total of £3713.36 as against the arrears pleaded of £4,685.90.
10. Insofar as the other elements of the Particulars of Claim are concerned these related to interim service charge payments and it was agreed that as we now had final accounts to the year ending March 2009 those should be ignored and we should deal with the actual figures incurred.
11. Mr Hazard agreed that he would confine his concerns to only a certain number of issues. He accepted that the items for water rates and electricity were properly incurred and insofar as the cleaning was concerned he again accepted the sums claimed although he thought that the standard could be higher. He did however challenge for each year the Management charges and in respect of the year ending March 2007 he challenged whether the procedures under s20 of the Landlord and Tenant Act 1985 had been followed in respect of the repairs and decoration carried out by Peggram Contracts. He was also concerned notwithstanding the issues under s20, with the standard of work and the costs incurred.
12. After the luncheon adjournment he also raised some carpet cleaning issues and in particular the number of cleaning exercises that had taken place in 2006 compared to the fact that there appeared to be no further cleaning of the carpets since that time.
13. For the year ending March 2008 there were a number of specific matters that he challenged, in particular there was an invoice from D & N Carpentry for £1,022.25 and

invoice from Ward Aerials, additional invoices from Peggram, the cost of lift maintenance and some garden maintenance. He also challenged some invoices in respect of drainage works. The Management fees remained a challenge.

14. In response to these specific matters Miss Shalom, doing the best she could given that they had to an extent been hijacked by Mr Hazard in that he had never stipulated exactly what his specific concerns were, was able to deal with most of the issues he raised.
15. Insofar as management was concerned we were told there was a five-year contract commencing in October 2007. It provided for an annual 5% increase and for the years in dispute we were told that the charges for each flat were, for the year ending March 2006, £236; March 2007 £248; March 2008 £260; March 2009 £273 and March 2010 £286 all subject to VAT.
16. There was some discussion concerning insurance that appeared to be effected for the lift and the fact that some of the invoices from D&C Lifts included basic service and call out charges on an annual basis, which for example for the year to September 2006, was £556.95 inclusive of VAT. Although there was a possibility of some duplication, to be fair to Mr Hazard this is not something he challenged to any degree but we do require the Managing Agents to investigate the insurance that was shown to us relating to engineering matters and to ensure that there is no duplication.
17. Insofar as the major works in 2007 were concerned we were provided with copies of the Notices that had been served. These on the face of them appeared to comply with the Act although Mr Hazard denied having received the Notices. He did confirm that they appeared to be correctly addressed. We were also told that the works were supervised by a surveyor, a Mr Burgess.
18. Insofar as the carpet cleaning was concerned we were told by Mr Langton that this has now stopped and he did not know why there had been quarterly cleaning as this was at a time before he took over the Management. Unfortunately the person who did appear to have been involved at this time although still with Crabtree did not attend the hearing.
19. Turning to the specific invoices Mr Hazard challenged we were told that the D&N Carpentry charge for £1,022.25 related to fire retardation works in the lift room.

Apparently there had been an order placed by the Freeholder requiring these works to be carried out for safety purposes. Insofar as the Ward Aerials invoice was concerned this appeared to relate to the supply and installation of CCTV items at the property. This seemed to be somewhat unusual as Mr Langton had told us that the CCTV cameras were dummies and in fact there was no such cover at the property.

20. The challenged Pegram charges were in addition to the costs paid the year before for the major works. It appears from a review of the papers that the project cost was £20,496 less a retention of £512.40. The payment made under copy of an invoice of 6 July 2007 was the balance due of £3,358.60 plus VAT, some extras and the release of the retention.
21. Whilst we were considering the papers a question was raised concerning an invoice with D&C Lifts in the sum of £4,540 plus VAT which was confirmed as being a refurbishment of the passenger lift to the right-hand side of the building adjacent to the car parking area which was undertaken August 2007.
22. Mr Hazard had questioned two gardening invoices, one from a Company called Frogna Gardens for planting in the boundaries at Trinity House in the sum of £856.58 and the other from Infrastructure Maintenance Services Limited which was apparently some tree works in the sum of £1,404.13. Certainly our inspection indicated that there were a number of boundary hedges and planting areas as well as a number of trees and it appears that these invoices related to works on those.
23. Finally, Mr Hazard had expressed concern at invoices from a Company called Unblock who had attended the property in March 2008 apparently to carry out works to a specific flat but which appeared to in fact be works required to unblock a stack pipe which is, it seems from the lease, not drainage matters particular to an individual flat. That invoice was for £558.13. The other two invoices related to attendances in July 2008 to carry out works of repair to a service cupboard where a leakage appeared to be finding its way to groundfloor level and causing problems. It seems there were three attendances on the 1st, 4th and 10 July and these were evidenced by two invoices one for £1,475.80 and the other for £1,239.63.
24. At the conclusion of these investigations Mr Hazard confirmed that he had nothing further to say. He told us that we "would have much more knowledge about these

things" than him and he left the decision making to us. He did nonetheless think the amounts requested were unreasonable and he thought that we would agree with him.

25. Miss Shalom, on behalf of the Applicants, told us that she believed the Applicant had been disadvantaged by Mr Hazard not participating in the proceedings. The questions we had been required to determine at the hearing could have been put in advance and been dealt with. She told us that in the light of these difficulties the Applicants had done the best they could. She reminded us that Mr Hazard rarely attended the building and therefore his knowledge as to the works carried out would be limited. As to the s20 Notices she told us that there appeared to be no evidence that they had not been served and invited us to accept that the letters had been prepared and sent out. Mr Hazard had previously indicated that there had been some problems with the receipt of post. She asked us to accept that the consultation had been fully complied with and the standard of works were satisfactory, having been supervised. As to Managing Agents fees she thought those competitive and there was no other evidence from other Managing Agents to challenge same. This was notwithstanding that Mr Hazard appeared to own other flats where there were management charges and he could have used those as comparables.

26. She told us she was instructed to recover the costs and relied on paragraph 5A and 14 of the Lease.

27. Mr Hazard told us he had offered to make payments and had tried to do everything to settle. He thought that in fact they should be paying his costs although he had not actually incurred anything in respect of the paperwork. He asked that an Order under s20C be made. As a result Miss Shalom then made an application under the Commonhold and Leasehold Reform Act 2002 Schedule I2 paragraph 10, seeking costs against Mr Hazard as result of his failings in these proceedings. She wanted the full £500 to be ordered against him in the proceedings. At the conclusion of the hearing Mr Hazard confirmed that he had no objections to making the payments in respect of the Reserve Fund monies that had been requested.

D. THE LAW:

28. We considered the provisions of s27A of the Landlord and Tenant Act 1985 in making our determination in this case. We have also considered the provisions of s20C and s20 of the said Act. The provisions of the lease relied upon by Miss Shalom to justify a payment of costs are as follows. Paragraph 5(a) "*in the management of the Block and*

the Estate and the performance of the obligations of the Lessor hereinafter set out the Lessor shall be entitled to employ or retain the services of any employee agent consultant service company contractor engineer managing agent or other advisers of whatever nature as the Lessor may require and the expenses incurred by the Lessor in connection therewith shall be deemed to be a expense incurred by the Lessor in respect of which the Tenant shall be liable to make an appropriate contribution under the provisions set out in the Fifth Schedule hereto". Paragraph 14 of the Fourth Schedule states as follows, this being the Lessor's obligations, " to carry out any other services or incur any other expenditure which the Lessor deems necessary to enable the Lessor to manage the Estate Buildings and carry out its obligation contained hereunder".

29. We should also record that paragraph 13 of the Fourth Schedule provides for a Reserve Fund.

E. DECISION:

30. This case was complicated by Mr Hazard's failure to engage in the proceedings. Whilst we are wholly sympathetic with the unfortunate domestic problems that have arisen, had he bothered to contact the Tribunal and explain these difficulties it was likely that an adjournment could have been agreed to have given him time to comply with the Directions issued in December of last year. He did not do so and indeed made no attempt whatsoever to answer the Scott Schedule prepared by the Applicants, instead appearing to rely upon the Tribunal to conjure some form of answer on his behalf notwithstanding that he had not challenged any items other than generally.

31. After some discussion it was possible to get Mr Hazard to condense the issues and to enable us to review sensibly the expenses in relation to this development.

32. We will therefore consider the various items that he eventually challenged, as follows, starting firstly with the management charges.

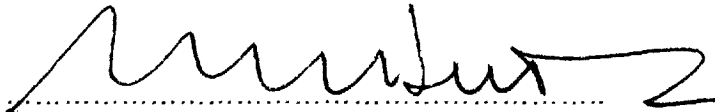
33. The management charges were based on a Contract entered into in 2007. These provided for a 5% uplift. It is not clear whether the Contract was one that should have been the subject of prior consultation under s20 of the Act. However this was not an issue raised by Mr Hazard and there were no papers before us to cause us to challenge the enforceability of the Agreement.

34. We do however think that for the purposes of managing a property in Waltham Cross the charges made by the Managing Agents on an annual basis are on the high side. Having inspected the premises, which are essentially a simple block of flats with two lifts and uncomplicated car-parking and garden areas, we think that the charges in excess of £200 for each year are too high and beyond that which one would expect for this part of Hertfordshire. Our own knowledge and experience of management charges in this area and beyond, including London, leads us to conclude that a reasonable level of management fees for the years in question are as follows.
- £150 for the year ending March 2006;
 - £175 for the year ending March 2007;
 - £200 for the year ending March 2008;
 - £225 for the year ending March 2009;
- all subject to VAT at the appropriate rate.
35. Insofar as the major works in 2007 are concerned we were not convinced by Mr Hazard's assertion that he had not received the papers. This appeared to be something that he utilised as an excuse for dealing with matters on a number of occasions particularly for example in not having dealt with the Directions from the Tribunal. The letters produced to us by the Landlord bore the correct address, as Mr Hazard agreed, and in those circumstances we find that the s20 procedures had been complied with. It was not possible at the time of our inspection to determine the standard of works carried out due to the passage of time. However, insofar as the works were undertaken under the supervision of a professional surveyor, we are satisfied that the cost and the standard of works were reasonable and the sum claimed is therefore payable in full.
36. Insofar as the carpet cleaning is concerned Mr Hazard's complaint was not so much that they had been done but that they had ceased to be cleaned. The costs incurred on a quarterly basis were not low but there were five floors, with stairs, and in the absence of any evidence to show that the costs were excessive those are allowed. Insofar as the invoice for the fire proofing is concerned with D&N Carpentry, that seems to us to be wholly reasonable and necessary and is therefore allowed in full. We do however conclude that the invoice to Ward Aerials in the sum of £510.95 should be disallowed because we were told by Mr Langton there was no CCTV and therefore this invoice seems to be something of a rogue. The Peggram additional fees referred to above are reasonable and merely follow on from the major works contract which we found to be reasonable. The garden maintenance invoices referred to above seem to

be reasonable and no evidence is given that the charges made are excessive and nor did they seem to be following our inspection. As a matter of comment it was noted that the front garden area needed attention. The charges made by Unblock insofar as the call out to the particular flat is concerned seem somewhat on the high side but again they are an expense incurred on an emergency basis as are the other two invoices in July relating to works carried out to leaking water valves on the third floor which were affecting the floors below. It seems to us therefore that these costs were reasonably incurred and the problems have been solved. In those circumstances they are allowed in full.

37. We then turn to the question of the arrears. We find that those stand at £3,713.36. However there will need to be a reduction in respect of the management charges made for those years in question. Mr Hazard confirmed that he agreed the contributions to the Reserve Fund.
38. Finally, the question of costs. Having considered the terms of the lease we are satisfied that this would allow the Landlord to recover their costs in this case. We are therefore persuaded not to make an Order under s20C and to allow the Landlord to recover their costs in respect of these proceedings; however, we limit those costs to the figure of £1500 inclusive of VAT. This seems to us to be a reasonable sum to allow in respect of the tasks undertaken and the representation at the hearing.
39. Although an application for costs was made by Miss Shalom under the Commonhold and Leasehold Reform Act we have decided that would be inappropriate. Although Mr Hazard has not participated his behaviour does not in our view fall within the circumstances set out in that Regulation although it was a close run thing. It does seem to us however that this somewhat punitive discretion should be exercised sparingly and the mere fact that one party, especially a non-professional without representation, does not follow the terms of the Directions would not, in our view, entitle a finding under this Regulation to be made
40. Accordingly the only reductions we make in respect of the service charges for the years in question relate to the management fees and the removal of one invoice in respect of Ward Aerials for which Mr Hazard only had a 1/43rd responsibility which would be £11.88.

41. We have attached a short Schedule setting out the sums claimed and the sums due which we hope will assist the parties. Mr Hazard attended the hearing purportedly carrying cheques to settle the claim. In those circumstances we order that he should make the payments due within the next 28 days. The matter will be referred back to the County Court with a copy of this Decision for the final Orders to be made in respect of the proceedings commenced there.

A handwritten signature in black ink, appearing to read 'Andrew Dutton', written over a horizontal dotted line.

Chairman- Andrew Dutton

Dated 20th May 2010

LVT SCHEDULE
Flat 15, Trinity House, Trinity Lane,
Waltham Cross

Year Ending	Sum Claimed £	Sum Allowed £
31.03.2006 (1)	820.22	660.43
31.03.2007 (2)	1,700.42	1,541.80
31.03.2008 (3)	1,333.74	1,251.41
31.03.2009 (4)	1,166.46	<u>1,106.18</u>
		4,559.82
Add Reserve Fund		<u>34.89</u>
Total Payable:		4,594.71

- (1). Deduction of £89.27 for management as per paragraph 34 (ten months only) and correction of the 1/43rd contribution
- (2). Deduction of £88.12 for management as per paragraph 34 (twelve months) and correction of the 1/43rd contribution.
- (3). Deduction of £70.50 for management (paragraph 34) and £11.83 in respect of Ward Aerials.
- (4). Deduction of £60.28 (including VAT @ 15%) for management as per paragraph 34.