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Ref: LON/00AL/LSC/2010/0224

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

**DECISION BY THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER ss 27A OF THE LANDLORD AND TENANT ACT
1985 and SCHEDULE 11 OF THE COMMONHOLD AND LEASEHOLD
REFORM ACT 2002**

**Applicants: (1) Gallions Place Management Company Limited
(2) Tilfen Land Limited**

**Represented by: Mr Adam Gadd of Counsel instructed by
Maddersons, Solicitors**

Respondent: Mr Michael Joseph Shillingford

Represented by: No appearance

Premises: 12 Hill View Drive, Thamesmead, London SE28 0LH

Hearing date: 24 June 2010 and 28 July 2010

**Members of the Leasehold Valuation Tribunal: Mrs F R Burton LLB LLM MA
Mr F L Coffey FRICS**

Date of Tribunal's decision: 28 July 2010

4. Mr Gadd submitted that the evidence supporting the amount claimed with which he had been supplied by those instructing him amounted only to the budget estimates for the calendar year 2009. The service charge year coincided with the calendar year. He said that these estimates would have been prepared in the normal way with reference to the previous year's actual expenditure figures but that unfortunately the accounts for 2008 were not yet available. He explained that the Reserve Fund item was charged under the provisions of the Fourth Schedule clause 2.1 and Legal Fees under the Third Schedule clause 1.2. Although the 2008 accounts were not yet available the 2007 accounts provided a good guide to likely expenditure in the year 2009 so that this year's accounts were those to be relied on as a guide to estimated expenditure in 2009. He agreed that the 2008 accounts would be better. He was instructed that major works were anticipated incurring about £11,500 though there were reserves available to help meet this expenditure as the Reserve Fund had stood at £16,000 in 2007.

5. The Tribunal commented that it appeared that if the 2009 estimates were based on 2007 expenditure then there was likely to be a one fifth increase in the 2009 year's budget without any explanation, besides which the electricity charges appeared to be doubling. Mr Gadd told us that he was unable to answer this sort of query on the basis of his instructions but added that he was expecting a witness at 11am who would be able to answer.

6. The witness then duly called, Mr Lee Herod, the Property Manager, said that he was in fact unable to assist as he had not previously been manager of the particular property so that he was not familiar with the 2009 service charge accounts, although he had been managing the property since the beginning of 2010. The Tribunal then adjourned the hearing to 28 July 2010 to enable the Applicants to provide the 2008 and 2009 accounts, both of which should be ready during the month of July 2010.

THE RESUMED HEARING

7. On 28 July 2010 Mr Gadd again attended, together with Mr Herod. A file of additional documents, adding pages 138-308 to the original bundle, had been supplied which included the 2008 and 2009 service charge accounts and a number of invoices

for Electricity, General Repairs, Maintenance, Cleaning Services, Water, Pest Control, Health and Safety and PDC administration costs for the Estate on which the subject property is located. Mr Gadd also submitted further insurance documentation (for the calendar year 2010, not 2009) on the basis of which he hoped that the LVT would be able to approve the 2009 budget estimate figures (on the basis of which the Lessee had been sued in the county court for the unpaid interim service charge for the year 2009). There was also a witness statement from Miss Elayne Browne of his instructing solicitors, Maddersons, confirming that the Lease submitted in the original hearing bundle (which purported to be for 9 Hill View Drive) was in fact for No 12, since all Leases were in identical form and there were in fact only 12 flats in the block. Mr Herod confirmed that there were 30 flats in the various blocks that formed the estate within which the block of 30 flats was managed and charged for services and that this was clear on the insurance documentation.

8. The Tribunal examined the budget estimates for 2009 against the certified accounts for the same year and attempted to align the figures in the former against both the latter and the invoices in the newly submitted file of documents. However it was quickly apparent that the estimates and the actual accounts for 2009 did not match in any respect, neither the totals nor the individual headings in estimates and accounts. Mr Gadd was unable to explain how the insurance or electricity charges or charges under any other head related to the estimates, or to show us the underlying invoices which added up to the figures charged in the final accounts. The accounts for 2008 did not assist as they exhibited the same discrepancies. While the accounts were certified by a firm of chartered accountants and registered auditors, and were stated to comply with the requirements of the Landlord and Tenant Act 1985, they did show only an expenditure of £35,407 with a surplus of £6,344, as against an estimated service charge budget of £47,491.80 of which the Respondent's share was the £1,583.06 claimed in the County Court. The service charge invoice to the Respondent had been made up of £1,199.73 plus £383.33 reserve fund charge.

9. On the basis of the actual expenditure for the year in question the Respondent's service charge liability of 3.33% of the Service Charge Adjustment (actual expenditure) would therefore be £1180.33. We were surprised that in view of the County Court claim the Lessee had apparently not surfaced at all to dispute the

charges. We were assured by Mr Herod that he was living at the subject property but it emerged in questioning Mr Herod that he had not personally been to the subject property to attempt to make contact with the Lessee, nor to satisfy himself that the Lessee was living there or indeed that the flat was occupied although he appeared to believe that it was occupied by someone. There was no alternative address on the management company's records nor on the Land Registry documentation. Mr Herod told us that the Lessee had been paying his service charges and had suddenly stopped which is why, after the usual demands, letters and debt collectors had gone out to the property the claim had been made in the County Court.

DECISION

10. In all the circumstances the Tribunal is unable to certify that the Lessee is liable to pay the sums demanded. With regard to the service charges we can certify, on the basis of the accountants' certificate, that the expenditure for the year 2009 was £35,407 of which the Lessee's proportion is £1,180.33. With regard to the administration charge of £222.28 we have seen an invoice of Property Debt Collection Ltd for £172.50 but no voucher for the remaining part of this sum.

11. We therefore determine the Lessee's liability to pay the sums of £1,180.33 and £172.50 but in the absence of further documentation or direct evidence of the charges demanded are unable to certify that further sums are due in respect of the service charge year 2009.

Chairman.....*France Smith*.....

Date.....*28.7.2010*.....