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BIR/00CU/LIS/2011/0041

HM COURTS & TRIBUNALS SERVICE
MIDLAND LEASEHOLD VALUATION TRIBUNAL

DECISION

LANDLORD AND TENANT ACT 1985
SECTION 27A (AND 19)

Applicant	Scott Freeholders Ltd
Represented by	Galbraith Property Services Ltd
Respondent	Richard Shinn
Property	Flat 6 78 Persehouse Street Walsall WS1 2AR
Date of application	12 October 2011
Members of the Committee	V Ward BSc Hons FRICS W Hatcher MA Lawyer
Date of determination	22 March 2012

Application

- 1 By order dated 20 September 2011 District Judge Crowley (sitting at Walsall County Court) transferred to this Tribunal a claim (number 1UDO1439) by the Applicant from the Respondent for determination of issues relating to outstanding service charge.
- 2 In the County Court the Applicant had claimed for unpaid invoices for estate/service charges totalling £1,085.12 in respect of the Property.
- 3 On 11 November 2011 the Applicant, through its managing Agents, Galbraith Property Services Ltd, applied to the Leasehold Valuation Tribunal ("the Tribunal") under Section 27A (and 19) of the Landlord and Tenant Act 1985 ("the Act") for a determination of liability to pay and for reasonableness of a service charge levied in respect for 2010 - 2011 and not for the current or any future years.
4. The charges for 2010 – 2011 as advised by the Applicant were:

Utilities	£350.00
Cleaning	£550.00
Repairs	£2000.00
Landscaping	£650.00
Health and Safety Audit	£352.50
Preparation of Annual S/C Accounts	£440.00
Management Fees	£1410.00
Total	£5752.50
Total Service Charge p.a.	£5752.50.
Divided by 6 Apartments	£958.75
Lease provides for 2 half yearly payments of	£479.42

Amounts outstanding for Apartment 6:

Payment due 20 September 2010	£479.42
Payment due 29 March 2011	£479.42
Administrative fees and Solicitors Charges	£62.40

- 5 By directions issued by a Procedural Chairman on 28 November 2011 the Tribunal directed that the application be dealt with on the basis of written representations without an oral hearing unless either or both parties requested the same. No such request was made. Written representations had been received from both parties and these were copied to either side. These comprised the following:

- 1) A copy of a Land Registry Official copy of the Lease dated 30 November 2005
- 2) The Applicant's Statement dated 8 January 2012 with Appendices A to J
- 3) Respondent's Statement dated 8 February 2012 with Appendices 1 to 9 and submissions in the form of a Commentary

Inspection

- 6 The Tribunal inspected the property on 27 January 2012 and found it comprised a second floor flat in a converted Victorian villa. There were six flats in the development with five (including the subject) off a communal hallway. The property offered the following accommodation:

Living area incorporating Kitchen, Bedroom, Bathroom (access across landing)

- 7 Present at the inspection was the Respondent. The Applicant was not represented.

Background

- 8 The Applicant is the freeholder of the Property. The Respondent holds the residue of a lease in respect of the property which runs from 25 March 2005 to 24 March 2014 originally made between Sander Moor Properties Limited as the Landlord and the Respondent as Tenant.

- 9 The Applicant's representative Galbraith Property Services Ltd have recently taken over as managing agents in respect of the development.

THE LAW

- 10 The Act provides:

19 Limitation of service charges: reasonableness

(1) 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 where they are incurred on the provisions of services or the carrying out of works,
- (b) only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) 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.

11 27A Liability to pay service charges: Jurisdiction

(1) 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.

(2) Subsection (1) applies whether or not any payment has been made

(3) An application may also 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 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.

(4) No application under subsection (1) or (3) 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.

(5) But the tenant is not to be taken as having agreed or admitted any matter by reason only of having made a payment.

Subsections (6) and (7) are not relevant to this Application.

DETERMINATION

- 12 The general scheme of the Lease, so far as is material to this application, is that the Landlord covenants to insure and repair and decorate the building and to maintain and repair the common parts and common services and that the tenant reimburses one sixth of the Landlord's costs. The service charge year is 30 September in one year to 29 September in the following year. The mechanics for payment by the tenant are that he covenants to pay on 25 March and 29 September in each year one half of the estimated service charge for the current service charge year and that once the certified accounts for that year are finalised, he pays or receives credit for any balance.
- 13 This Tribunal is effectively required by section 19 and 27A of the Act to consider the reasonableness of either service charge costs which have been incurred for a service charge period or proposed service charge expenditure which has not been incurred.
- 14 Section 21B of the Act (and regulations under it) require that any demand for payment of a service charge must be accompanied by a summary (in the required form) of the Rights and Obligations of the tenant – failing which the tenant is entitled to withhold payment.
- 15 The evidence before this Tribunal nowhere discloses any such summary or even any reasonable inference that it existed. Accordingly the Tribunal finds that any service charge cost – even any which might be reasonable – is not payable. This is so whether the demand relates to costs incurred in respect of a past service charge year or to a demand based on an estimate for a future service charge year.
- 16 There are provisions in Section 20 of the Act requiring the landlord to obtain estimates for certain service charge works to notify tenants and to consult with them. The Tribunal has no evidence beyond the Applicant's passing reference to a "S.20 process" that appropriate estimates have been obtained or referred to the tenant for consideration in respect of any proposed expenditure which would be subject to the S.20 requirements.
- 17 The Respondent's bundle includes an "agreement" with a previous landlord Mr Singh which shows that he paid to Mr Singh in about October 2008 £2577.34 which included one year's "advance service charge".
- 18 The Applicant's Managing Agents received £172 on account of services generally when the Applicant purchased the landlord's interest in the building. There are in the papers, no service charge accounts certified or otherwise, for any service charge years. The application of monies received by the landlord is unknown. The

Respondent claims that no services were supplied by the landlord after 29 September 2008 or in the period 16 May 2007 to 29 September 2008.

- 19 For this Tribunal to be able to consider whether a service charge cost or potential expenditure is both reasonable and payable the starting point is the certified service charge accounts for the previous year in accordance with the provisions of the lease and we note from the Applicant's statement that accounts for the last service charge year are "in the process of being completed."
- 20 As to the "reasonableness" of the items in the "Budget", the Applicant, in general terms has proposed estimated figures at a level which provides funding to the landlord in excess of what is likely to be required on the basis that, once works are done, the figures may be reduced and on the basis that the landlord will not comply with his covenants in the lease pending payment. On the information before us this Tribunal is unable to make any proper decision that any item in the "Budget" is reasonable.

SUMMARY OF DECISION

- 21 The Tribunal accordingly finds that for the reasons stated, no service charge is payable.
- 22 There is not before us an application by the Respondent under section 20(c) of the Act (Limitation of Service Charges: Costs of Proceedings) but the Respondent has the right to make such an application subsequently to a Leasehold Valuation Tribunal.

V WARD BSc Hons FRICS

DATE **13 APR 2012**