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Residential Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL (Eastern Region)

LANDLORD AND TENANT ACT 1985 Sections 27A and 20C ("the Act")

CAM/26UG/LSC/2012/0003

Property:	**17 Millers Rise, St Albans, Hertfordshire AL1 1QW**
Applicant:	**Miss E Marques**
Respondent:	**Millers Rise Management Company (MRM)**
Attendances:	**Applicant attended in person:** **For Respondent - Miss J Berry and Miss L Reuben, Rumble Sedgwick** **Mr A Larkin and Mr Flack, Miller Rise Management Company** **Mr M Doyle, Rumble Sedgwick - observer**
Date of Application:	**22nd December 2011**
Date of Directions:	**17th January 2012**
Date of Hearing:	**19th April 2012**
Tribunal Members:	**Mr Andrew Dutton – chair** **Mr Dallas Banfield FRICS** **Mr Adarsh Kapur**
Date of Decision:	**3rd May 2012**

DECISION

1. The Tribunal makes the determination set out under the various headings in this decision. It appears that the sum outstanding was £1,585.58 but should be amended to reflect the correction in respect of the major works and electricity allocation. Payment of the outstanding amount should be made by Ms Marques within 28 days of receiving the demand showing the correct amount payable.

2. The Tribunal makes an order under Section 20C of the Landlord and Tenant Act 985 (the Act) so that none of the Landlord's costs of the Tribunal proceedings may be passed to the Lessees through any service charge.

REASONS

Application

3. The Applicant seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 as to the amount payable in respect of service charges for the years 2006/2007 through to 2010/2011. In each year the Applicant challenged the premium payable for building insurance, the maintenance of the landscaped areas, general repairs and the manager's fees. In the year 2007/2008 there was also a challenge to the electricity which continued in the following year. In the year 2008/2009 there was an additional challenge to the communal area lighting and cleaning although not to the general repairs. In the year 2009/2010 the charges remained as previously including general repairs and maintenance. Directions were issued and as a result of the Applicant having received the Respondent's statement of case, there was a reduction in the issues that she wished us to deal with. In her statement of case after raising concerns that not all documentation had been produced she confirmed that the following items remained of concern and were to be considered by us:

- The insurance.
- Rumble Sedgwick's charges for overseeing major works.
- The charges for electricity, in particular that she was being asked to contribute towards electricity for properties outside the estate.
- The need for works to be undertaken at the property including internal decoration and other matters.
- The costs of the major works which related to the exterior decorations.
- The costs paid to the gardeners on a monthly basis and in addition a £1,000 invoice for C W Grounds Maintenance.
- The management charges and the production of the accounts.

4. In a document headed 'other items under discussion' she repeated her concerns with regard to the major works and state of the common parts and also asked about the reserve fund.

5. In response to the directions the Respondents had filed a reply, the contents of which are noted. They explained that they could not deal with the service charge year 2006/2007 and in fact Miss Marques indicated at the Hearing that she would not be challenging those years' service charges in any event. They set out in their statement an explanation as to the service charges for the years commencing April 2007 onwards on an annual basis and we noted all that was said. It is to this document that Miss Marques had responded narrowing the issues.

Background

6. In addition to these various statements, we were provided with a copy of the lease, some of the correspondence passing between the parties and some of the invoices that caused Miss Marques concern. At the Hearing we were also provided with a copy of the letter to Miss Marques dated 22nd March 2012 which had been received by the Tribunal on 27th March 2012. We had not in fact seen the contents of this correspondence before the hearing although Miss Marques confirmed that she had received it. She had not added it to the bundle. The correspondence explained the insurance arrangements and other matters which we will deal with as appropriate.

Inspection

7. We inspected the subject premises on the morning of the hearing under somewhat damp conditions. The leasehold properties are to be found in three blocks marked A through to F. Block A and B which contained Miss Marques' flat consisted of 12 properties. Blocks C to D, ten flats and Blocks E to F, 14. This totalled the 36 flats which were the subject of the service charge provisions as set out in the lease.

8. We were able to inspect the common parts to each block. In the main they were in reasonable order although they were in some cases quite heavily scuffed and dented, caused it would seem by the residents' usage which appeared to be the storage of bicycles at different floor levels in some blocks. The windows to the common parts were UPVC doubled glazed units and the common parts were carpeted and were in reasonable order. They were certainly clean and we noted the cleaning schedule in each block indicating that the cleaners attended approximately two times each month. The garden areas were well maintained and pleasant. There was it seemed ample car parking which was also in good order and generally the estate had the air of being cared for and well maintained. We did note that some flats still had wooden framed windows whilst others had been replaced with UPVC doubled glazed units.

Hearing

9. At the Hearing Miss Marques confirmed that unless it was referred to in her statement of case or "other issues" there were no other issues for us to determine.

10. We dealt with the issues on an item by item basis and started firstly with the insurance. Miss Berry who acted as Advocate on behalf of the Respondents referred us to the letter that had been written on 22nd March which confirmed that Rumble Sedgwick received a commission based on the broker's commission and which last year had produced 3% of the total policy cost. The building which represents the three blocks is insured on a larger group policy which includes employer's liability. However, no certificate for employer's liability has been issued in respect of Millers Rise and no cost has been passed to the leaseholders. The management company, MRM, are responsible for insuring the blocks and it was concluded better to insure as one building rather than three separate blocks. We were told that the managing agents use external brokers who deal with the whole of Rumble Sedgwick's property portfolio. Indeed Miss Berry told us she was due to meet with the brokers in the following week and would endeavour to negotiate as low an insurance premium as possible. She told us that the commission that Rumble Sedgwick received went towards the cost of organising the policy and liaising with the brokers and dealing with claims in respect of communal parts. Claims relating to individual flats were apparently dealt with by the brokers. No element of the commission it seems was passed to MRM

11. Miss Marques said that she had attempted to obtain a like for like quote but did not think she had been given the right documentation to enable her to do so. In fact in the letter of 22nd March there were details of the claims history and other matters but these papers had arrived very late in the day and certainly not in accordance with the terms of the directions. However, she said she had obtained two quotes from insurance companies which were considerably lower than the sum claimed by the Respondents, although she did not baulk at the idea that a premium for her flat, which is two bedroomed, for the present year of £140 was unreasonable. She was not able to tell us what the insurance premium might have been for the earlier years.

12. We then turned to the question of management and had produced to us a partial copy of the agreement made in 2007 which we were told was a rolling contract determinable upon three months' notice. This has in fact now been replaced by an annual contract which was included within the papers. Mr Larkin, one of the directors of the MRM said that they met with the managing agents on a regular basis and discussed the management fees. In fact they have given formal notice to Rumble Sedgwick at the end of 2011 to terminate the agreement and had entered into a new contract which was the one in the papers before us.

13. Miss Marques said she had not sought any alternative quotes but that she had been managing her own mother's property which was a freehold house and that in her view she thought £140 plus VAT which is the present management fee was quite expensive when compared to the amount of work she had to undertake in respect of her mother's property. She did however say that she would go along with our views as to what we considered was a reasonable management charge and we had indicated at the hearing that we did not think £140 per flat, plus VAT was unreasonable.

14. We then moved on to the major works which were challenged by Miss Marques. She thought the costs were expensive but there was no specification available and there was no suggestion that the Section 20 procedures had not been followed. Miss Berry told us, however, that they had been a mathematical error in transferring the figures from the invoices charged by the decorators to the service charge accounts. There had been an overcharge made of some £979.29 which was to be re-credited and we were told would be done within 28 days. Mr Larkin indicated that he would wish this money to be returned to the reserve fund to a wish to which Ms Marques did not object.

15. Insofar as the major works were concerned we were told that the contract provided for the painting of the fascia, soffits, the rendered areas, the entrance doors and frames and those windows which were still wooden. There had also been repairs carried out to the windows. Strictly speaking it would seem that the repairs to the windows should have been the responsibility of the individual leaseholders but the management company concluded that the sums involved were so minor that it would not be worthwhile endeavouring to extrapolate the costs for these minor items of work. The best that the Respondent could say was that £1,420 had been spent on some works to the casement windows as set out in MJG Property Maintenance Limited invoice of 22nd July 2008 and that an element of the labour for rot repair in the earlier invoice in December 2007 probably related to some window work.

16. Insofar as the electricity was concerned, Miss Berry confirmed that properties at 45 – 56 Millers Rise had been included for a period of time in the electricity that was charged to Miss Marques and other leaseholders. This was an error. Apparently just over £1,000 was charged on this basis and had been re-credited to the management company. Mr Larkin accepted that this was correct. This was an error that Miss Berry accepted Rumble Sedgwick had caused and as we would subsequently hear was reflected by them on the question of costs.

17. The next issue related to internal decorations which though not strictly speaking a service charge item because costs had not been incurred, Mr Larkin nonetheless sought to explain the basis upon which the management company concluded the works that were required. There is a reserve fund in excess of £50,000 but initially it seems there may

be plans to undertake external works. We will return to this point in our findings section.

18. We then turned to the landscaped gardening costs. Again Miss Marques had no comparable quotes and she confirmed she was happy with the standard of work. She just thought the costs were too high. Miss Berry told us that the work had been put out to tender when they took over from the previous managing agent. The gardening contract that is provided by Rumble Sedgwick gives the frequency of attendance and the need to maintain in its present condition. The management company had reviewed the quotations received and were reasonably happy with the standard. The costs included the supply of fertilizer etc as well as the sweeping of the car park and the keeping of moss from the car park communal areas. The provision of shrubs etc was additional. We were told that the £1,000 invoice for CW Grounds Maintenance was to get the garden into good order following the less than satisfactory services provided by the previous gardeners.

19. In final submissions Miss Marques says that she had general concerns that the costs of maintaining the estate were increasing but the services provided and the state of the property was not as she expected and was not worth the money. It seems that she had met with Mr Larkin and Mr Oakley at the beginning of the year and there had been an attempt to try and reach a rapprochement although when Miss Maques received a threatening letter from the managing agents indicating that legal proceedings might start she decided that she would not withdraw but instead let the matter come before the Tribunal.

20. Finally on the question of the reserve fund and other matters under discussion we were told by Mr Larkin that they wanted to try and keep the annual service charge costs at a reasonable figure which included the topping up of the reserve funds. He had been told by contractors that the refitting of the fascia and the soffits with some form of UPVC arrangement could be in excess of £30,000 although would obviously have benefit to the residents in respect of future decorating costs. He was fully aware of the obligations with regard to the service charge monies which were held in a separate account by Rumble Sedgwick. There had been an issue about the lack of an AGM. Apparently Mr Larkin had been given advice by the managing agents that an AGM was not required. We could not comment upon that as no direct reference to the Companies Act or the Memorandum and Articles of Association were provided. Mr Larkin did say, however, that they had held an AGM in 2009/2010, and had intended to hold subsequent ones, but at the meeting held only one leaseholder had attended. It was decided that a newsletter would be sent out to the leaseholders on an annual basis which has been done since 2007 and he was satisfied that the leaseholders were aware of what was going on and could contact him or his other directors if they wished.

21. At the conclusion of this Miss Marques said she was happy that we had dealt with all points and Miss Berry confirmed that because of the

errors made in respect of the major works and electricity no application for costs was being made by the managing agents and that she would not object to a Section 20C order being made. Miss Marques for her part thought that the Hearing fee that she had had to pay had been worth it and was not seeking a refund.

The Law

22. The law is as set out on the attached.

Decision

23. We think that we can probably take this quite shortly without any disrespect to Miss Marques and the arguments she has raised. She perhaps summed up her position when she recounted the meeting that she had with Mr Larkin and Mr Oakley and her intention to withdraw which she would have done it seems had she not received a threatening letter from the managing agents in respect of the outstanding service charges. At the Hearing we received full explanations for the various charges and expenses which we have outlined above.

24. It is to be regretted that Rumble Sedgwick did not provide Miss Marques with some documentation until fairly late in the day. However, insofar as the insurance is concerned, we would not have thought that Miss Marques' contribution which was somewhere around £140 for annual insurance cover of this nature is unreasonable and although she said that she could get this more cheaply elsewhere it seems to us that the insuring of the three blocks as one is perfectly reasonable and the overall premiums charged for the years in question do not seem unreasonable. Indeed it was noted in the first year that Rumble Sedgwick took on the management they actually achieved a reduction of the sum from the previous year. The insurance is placed through brokers whose appear to test the market on a regular basis and indeed a meeting with the brokers was due to take place in the very near future. In the circumstances it seems to us that they insurance premiums charged for the years in question are reasonable and are payable.

25. The management charge is also it seems to us reasonable. This has varied during the years but for the year ending March 2011 it would seem that the charge to Miss Marques based on the percentage contribution that she pays under her lease (3.02%) the figure inclusive of VAT would be just under £180. This does not seem unreasonable. The sum set out in the latest management contract indicates a charge of £140.77 per unit per annum, plus VAT subject to annual review. That does not seem to us to be an unreasonable sum to charge for management of a development of this nature, the upkeep which seems to be good.

26. Insofar as the major works are concerned there is in reality no particular challenge to those, other than they seemed excessive. Having had the works explained to us by Mr Larkin and having inspected the properties, we are satisfied that these costs are reasonable, subject to the correction of the arithmetical errors.

27. The Respondent is to be applauded for maintaining a reserve fund at a reasonable level and we can find no criticism for that. We do wonder whether the expenditure on further external works when the common parts are, it would seem, more in need of attention, is appropriate but that is a matter for MRM and the leaseholders to decide. We believe that the £1,000 extra paid to CW Maintenance for them to bring the landscaped areas into good order is a reasonable expense. The electricity charges are based on the invoices produced and, now that the correct properties are shown, it seems that there can in reality be no challenge. This is of course subject to the £1,000 having been repaid for the incorrect inclusion of other properties in the electricity cost.

28. Whilst on the face of it Miss Marques may not seem to have had great success in her complaints, it should be remembered that as a result some £2,000 has been repaid by the managing agents to the Respondent company and the managing agents quite properly in our view have agreed not to claim costs for these proceedings.

29. We were impressed with Mr Larkin and his fellow directors who appear to have the interests of the Leaseholders at heart and have a good working relationship with Rumble Sedgwick which we hope will continue.

30. We make an order under Section 20 C of the Act considering it just and equitable so to do and on the basis in any event no claim for costs was sought. We also record that Miss Marques did not seek an order for reimbursement of any of the fees that she had paid.

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A A Dutton – chair

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" 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.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(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
   (b) where they are incurred on the provisions of services or the carrying out of works, 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 or subsequent charges or otherwise.

Section 27A

(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 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.

(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 to have agreed or admitted any matter by reason only of having made any payment.