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**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CAM/OOKF/LSC/2013/0055**

Property : **71A Lovelace Gardens, Southend, Essex,
SS2 4NT**

Applicant : **Mr M Wilson
(who appeared in person)**

Respondent : **Westleigh Properties Limited
(represented by Mr Day-Marr)**

Date of Application : **5th April 2013**

Type of Application : **Reasonableness and Payability of
Service Charges**

Tribunal : **Mr Graham Wilson
Mr Stephen E Moll FRICS
Mr David W Cox**

**Date and venue
of Hearing** : **8 July 2013
Southend Magistrate Court, The Court
House, 80 Victoria Avenue, Southend, Essex,
SS2 6EU**

DETERMINATION

- (1) It is recorded that the parties were agreed that the services charges for the service charge years 2006 and 2007 should be reduced by a total of £447.86.
- (2) The cost of the application fee of £50 and the hearing fee of £150 are to be paid by the Respondent to the Applicant and are payable by 6th August 2013.

Reasons

1. This was an application made to challenge service charges for the years 2006 and 2007.
2. In the event, the Respondent did not seek to defend the criticism levelled at the service charges (on the basis that it would be now disproportionately expensive to make the necessary enquiries, there having been during those years a different managing agent) and the Tribunal made the Determination that appears above.
3. The issue remaining to be resolved, and which the parties could not agree, were the costs of the application. The Applicant claimed the application fee of £50 and the hearing fee of £150.
4. In a residential property case, the Tribunal may make an order for costs if “a person has acted unreasonably in bringing, defending or conducting proceedings”. In the view of the Tribunal, the correspondence produced demonstrated that the dispute between the parties was long-running and that the Applicant’s decision to make an application to the Tribunal, which it did on 8th April, was justified. While it may be objected that the Tribunal’s power did not extend to making a costs order where the *Applicant* had behaved “reasonably” – in the view of the Tribunal “defending proceedings” would extend in the modern litigation environment to correspondence immediately pre-action.
5. By 9th May the Tribunal Office had arranged a hearing and had asked the Applicant to pay the hearing fee. The Applicant paid the fee because the Respondent had not at that stage come to terms. In the view of the Tribunal, the Applicant had no choice, in order to resolve the dispute, but to pay the fee. This was no more than to say that the Respondent had behaved “unreasonably” in not settling this long-standing dispute more quickly and, in any event, promptly on receiving the application. That step could and should have been taken during April before the application developed, so to speak, a momentum of its own.
6. The Tribunal determined accordingly.

Graham Wilson

Chair

Date:

6 August 2013