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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

**IN THE MATTER OF FLAT 6, 52 SCHOOL ROAD TILEHURST READING
BERKSHIRE RG31 5AN**

**IN THE MATTER OF THE LANDLORD & TENANT ACT 1985 (AS AMENDED)
SECTION 27A & 20C**

CASE NUMBER CAM/00MC/LSC/2010/0008

Parties : Mr D Young Applicant
Mr R G Sharp Respondent

Representations : Applicant in person
Respondent in person together with
Mr W Fursman of Messrs Collins Dryland &
Thorowgood LLP

Date of Application : 21 January 2010

Date of Hearing : 15 April 2010

Tribunal Members : Mr A A Dutton Chairman
Mrs H C Bowers BSc (Econ) MSc MRICS
Mr A D Kapur

Decision Date : 30 April 2010

DECISION

The attached schedule sets out the sums allowed and the reasons for the decision are contained below.

REASONS

A BACKGROUND

1. This application was made by Mr Darren Young the owner of Flat 6, 52 School Road on the 21st January 2010.
2. In his application he sought to challenge the demand made for service charges in the year 2009 of £1,118.97 and two administration charges of £55.56 each, plus VAT, one for the year 2009 and one for the earlier year, 2008.
3. Prior to the hearing we were provided with a bundle of documents which contained the following:-
 - The Application and Directions
 - Correspondence passing between Mr Young and Messrs Collins Dryland & Thorowgood, solicitors for Mr Sharp
 - A Witness Statement of Mr Sharp dated 24th February 2010
 - A letter from Mr Young of the 9th March 2010
 - A copy of Mr Young's Lease
 - Correspondence passing between Mr Young and Copperfields, the agents for Mr Sharp, together with various invoices and documentation, the subject of these proceedings to which we will refer in more detail in due course.

B. INSPECTION

4. Prior to the hearing we inspected the subject premises in the company of the parties. The property comprises a small development consisting of a main building which is semi-detached property of two storey height containing five flats. To the rear of that and adjoining this main building are two bedsits. In a separate block known as the stable block in which Mr Young's flat is to be found, there were two flats, one on the ground floor and one on the first floor. There was a car parking area to the rear and a small builder's yard and shed. To the front was again a small parking area with a brick wall which had been the subject of some improvement works. The exterior of the properties was in good decorative order and the car parking areas reasonably free of rubbish, although some builder's material did seem to be encroaching.
5. We were able to inspect the common parts to the main building which consisted of stairs to the flats, a non-functioning door entry phone and a smoke detector which appeared not to be working at the time, perhaps from the simple expedient of not having a battery fitted. The common parts were in reasonable decorative order.

C. THE HEARING

6. At the hearing Mr Young told us that there had been poor communication between himself and Mr Sharp and that he disputed, in particular, the charges made by Mr Sharp for his own time, which according to the invoices in the bundle before us came to some £1,200. He told us that he did not dispute a service charge representing garden maintenance of £126.50 and insurance of £1,076.36 which had been paid. He told us that work that had been carried out by LSM Decorators, for which there were two invoices, dated the 14th October 2009 in the sum of £5,232.50, and the 30th October 2009 in the sum of £2,596.70, provided reasonable value for money in that the standard of works were acceptable. However, Mr Young's concern was that by a letter dated the 4th September 2009 from Copperfields he was told that the estimate for the whole site refurbishment was approximately £450 per unit and not as evidenced by these two invoices. He told us that he had not been a party to any quotations and that no estimates had been provided. His concern therefore was the quantum of the costs of the works, not the quality. As to the invoice rendered by Mr Sharp for his own time, totalling £1,200, he thought that £50 per hour was far too much and, in addition also, some of the specific charges, for example photocopying and discussing matters with his solicitor, were not recoverable.
7. Insofar as the administration charges were concerned, which was set out on two invoices from Copperfields, he said that they were not recoverable. On an invoice of the 17th December 2009 an entry of £25 as the administration for late payment is shown (plus VAT) and for an invoice dated the 18th December 2009 there is a simple entry stating administration charges for the periods 01/01/08 to the 31/12/08 and the 01/01/09 to the 31/12/09 at £55.56 each, plus VAT, giving a total sum of £127.79. Mr Young told us he had no idea what these charges were for and did not think that they were recoverable.
8. The only other invoice that was in dispute was that from Hamblin Watermains Limited in the sum of £483, apparently relating to the repair of a burst main. He told us that similar repair work had been done some four or five times previously and disputed the workmanship.
9. He also told us that he had to spend some £300 on his property. It appears that part of the front wall by the door to his flat had been constructed in plywood or some such similar fabric. This had rotted and he had to replace that section of wall with block work which had been rendered and decorated at a price of £300 to him. He sought recovery of this from Mr Sharp. He was then questioned by Mr Fursman on behalf of Mr Sharp concerning the burst watermain. In response, Mr Young indicated that he thought it might have been covered by insurance, or put to a particular unit. He confirmed that he understood there would be service charges, but that he challenged the reasonableness of them.
10. We then heard from Mr Sharp who had produced a Witness Statement which was in the bundle and seen by all parties. There is no need therefore to recount that in detail. In oral evidence he told us that he had purchased the freehold and rented out the five flats in the main building. He believed he had an obligation under the Lease to refurbish the property. He had been advised that he would need to refurbish/ redecorate every four years and thought that he would "just get on with it and do it". He had spoken to tenants and obtained estimates and instructed the contractors to carry out the work as quickly as possible to take advantage of the 15% VAT rate. He told us that he had paid all the bills and that he was merely

seeking to recover a contribution. As to the time that he charged, he agreed that it was £50 per hour, but that worked out at only about £5 per hour for each flat which he thought was reasonable. As to the £300 that Mr Young was claiming in respect of the wall to his property, he confirmed that that would be paid when he was paid. He was then asked some questions by Mr Young and confirmed that he thought the communications with the tenants had been acceptable. He told us that Copperfields, who had been the managing agents, had now sold out to Romans and that there were now no managing agents on the site. He was, however, considering appointing a managing agent to act in the future.

11. He told us that he had obtained two estimates from LSM to carry out works at the property. One estimate was obtained in July 2009, which Mr Young says he had never seen, and the other one on the 24th August 2009, which it appears may have given rise to the estimate from Copperfields in their letter of £450 per flat.
12. He had apparently considered a number of decorators in the area but thought that LSM would be the most appropriate. We were told that he had formerly been a printer running his own business and that he owned three other properties containing ten flats which appeared, however, to be let on assured shorthold lettings and not on long leases.
13. He confirmed in questioning from the Tribunal that he knew little or nothing about the Landlord & Tenant Act 1985, or the Commonhold & Leasehold Reform Act 2002 and relied upon his solicitor for advice. In particular he told us that he knew nothing of the terms of Section 20 of the Landlord & Tenant Act 1985 and that he had not served any notices to comply with that Section. He explained the history behind the work carried out by LSM Decorators. He said that he had obtained the first estimate and they had then started work on site. Whilst he was there, he had spoken with the contractors and asked if they would provide a second estimate for the works to be carried out in addition to the first set of works. He therefore confirmed that in his view there had been two contracts for two separate items of work.
14. Apparently there were no certified accounts prepared since he had taken over the management, nor indeed before then, and that he had apportioned the distribution of service charge liabilities on a straight 1/9th basis. He did accept, when questioned, that the landlord could not make a profit out of his management of the building. Insofar as the Copperfields' invoices were concerned of £25 plus VAT and £55.56 plus VAT, he was not really sure to what they related and that so far as we were concerned he felt that those costs could be disregarded. He summed up by saying that he had done what he thought was the right thing to do, and that the charges were not unreasonable. He confirmed that he was not a lawyer and that he just wanted to recover the monies that he had expended.
15. Mr Sharp also confirmed that he was not proposing to seek to recover the costs of these proceedings via the service charge regime.
16. Mr Young said that he had himself incurred costs but that he would not be seeking to recover those under the Commonhold & Leasehold Reform Act. He did, however, ask for reimbursement of the fees that he had paid for the application and the hearing, as well as reimbursement to him of the £300 that he had paid in respect of the wall, accepting however that he would have a liability to contribute towards that.

C. THE LAW

17. In considering this case, we have borne in mind the provisions of Sections 18 & 19 of the Landlord & Tenant Act 1985 and in particular Section 27A of that Act. It requires us to determine whether or not a service charge is payable and, if it is, by whom, to whom, the amount and how it will be paid and when. The payment of administration charges is covered by Schedule 11 of the Commonhold & Leasehold Reform Act 2002. We have also borne in mind the provisions of Section 20 of the Landlord & Tenant Act 1985 and Sections 21B of that Act. It has also been necessary to consider Section 47 of the Landlord & Tenant Act 1987 and indeed Section 48 thereof.

D. FINDINGS


18. We start by saying that we have no doubt as to Mr Sharp's honesty and integrity. Unfortunately, however, he has failed to consider the legislation affecting the relationship between a landlord and tenant, and indeed has failed in certain circumstances to take into account the terms of the Lease.
19. The two invoices from LSM, one for £5,232.50 and the other for £2,596.70, clearly exceed £250 per unit. It is quite clear and admitted by Mr Sharp that none of the consultation procedures as provided for in Section 20 of the Landlord & Tenant Act have been complied with.
20. In addition, the Lease provides that the accounts for the property should be properly kept (see clause 12 of the Sixth Schedule) and as contained in the Fourth Schedule of the Lease the service charge statement should be accompanied by "a certificate that in the opinion of the accountant preparing it the statement is a fair summary of the expenditure on services set out in a way which shows how it is or will be reflected in the service charge and is sufficiently supported by accounts, receipts and other documents that have been produced to him". The service charge statement it would appear would reflect the service charge year commencing on the 25th June, although the Lease is somewhat equivocal on that point. Suffice to say, no certificate to any accounts has been provided.
21. The "demands" that have been included in the papers include a service charge document that merely contains the address of Copperfields and two further invoices again containing Copperfields' address. There is no evidence that any of the notices setting out the rights and obligations of the tenant pursuant to the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 have been complied with. None of the statutory wording was attached and Mr Sharp was not aware of the provisions of the Act or the statutory instrument.
22. Further, the provisions of Section 47 of the Landlord & Tenant Act 1987 have not been complied with. The written demand does not contain the name and address of the landlord, nor an address for service of notice as provided for under Section 48.
23. Unfortunately, it is all a bit of mess. Our findings in respect of the demand dated the 17th December 2009 in the sum of £1,118.97 is as follows; the maximum sum that can be recovered in respect of the two LSM invoices is £250 per invoice pursuant to section 20 of the Act as the procedures provided for have clearly not been complied with. We accept that these are two separate contracts and are

therefore prepared in these circumstances to allow Mr Sharp to recover £250 from Mr Young against each invoice. On the basis of Mr Sharp's evidence it seems to us that it is appropriate to deal with them as separate matters and not as one contract.

24. Insofar as Mr Sharp's invoice of £1,200 is concerned, we take the view that that is not recoverable at all. There is nothing in the Lease that allows Mr Sharp to charge for his time and in effect to make a profit. He is an ex-printer and we cannot see what his expertise would have been in connection with the project management of the works carried out by LSM. Even if any sum were allowed, we find that should be included within the quotations and the Section 20 procedures and, accordingly, is in any event included within the £250 that we have allowed for each invoice.
25. We should perhaps make a finding on the LSM invoices as such. Our inspection of the property indicated that the works had been carried out to a reasonable standard and were it not for the Section 20 difficulties we would have concluded that the invoices were recoverable in the sums claimed. We did advise Mr Sharp at the time of the hearing of the possibility of seeking dispensation under Section 20ZA of the Act, and that would be a matter for him to consider, although we think it is right to draw to his attention that the financial implications to him should not weigh in the minds of any Tribunal determining whether dispensation should be given.
26. It seems to us that there is no basis in the Lease, or indeed under the Commonhold & Leasehold Reform Act for the administration charges. The administration charge for late payment cannot be appropriate as the landlord has failed to comply with Section 21B. The administration charge for the two periods is, we think, supposed to be a management charge, but it does not seem to us that Copperfields have carried out any management duties and accordingly are not allowable. If it is in truth an administration charge, there is no indication as to what it relates and accordingly will be disallowed for that reason.
27. The other issue we need to address is the apportionment of service charges. The Lease provides at the Fourth Schedule that the "*Service charge means the proportion of expenditure on services in the same proportion that the rateable value of the Flat bears to the rateable value of all the flats in the house and the stable block*". Mr Sharp has ignored this and dealt with the distribution on the basis of a straight division between the nine units. This is inappropriate. Not only is it in breach of the Lease, but as we discovered from correspondence, six flats are presently in Council Tax Band A and three in Council Tax Band B. Although this has no relevance to the rateable value, it does show that in all likelihood some flats will have different rateable values to others and, accordingly, it is likely that Mr Sharp would be paying less than 1/9th share.
28. To put this matter right and to enable Mr Sharp to recover such monies as may be due from Mr Young (which we will refer to later in this Findings section), he needs to carry out the following works:-
 1. Certified accounts for the years in question need to be prepared.
 2. He needs to obtain the rateable value for the various units, which believe can be sought from the water authority or from the local authority. Once he knows what the rateable values for the whole building and Mr Young's flat are, he can work out the due proportion that Mr Young would be required to

pay. He then needs to serve demands which comply with Section 21B of the Landlord & Tenant Act 1985 and Section 47 of the Landlord & Tenant Act 1987.

3. Any sum that is found to be due and owing to Mr Young from this exercise should however be subject to the reimbursement to Mr Young of the £300 which he has paid for his front wall, subject to a contribution by Mr Young of whatever rateable value percentage is due to that sum of £300.
29. In so far as the costs of the application and the hearing fee are concerned, we order that those should be reimbursed to Mr Young within 14 days of the date of this Decision. The sum involved is £250. We make no order for costs under the Commonhold & Leasehold Reform Act in favour of Mr Young as he has not sought those, but we do make an order under Section 20C of the Landlord & Tenant Act preventing Mr Sharp from recovering costs against Mr Young in the service charges, save however in the knowledge that Mr Sharp has confirmed that he would not make such a request in any event.
31. If we may just say to Mr Sharp that it would be sensible for him to retain the services of experienced managing agents so that these problems do not arise in the future.



.....
Chairman

30 April 2010

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Date

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

**SCHEDULE OF SERVICE CHARGES
IN RESPECT OF THE PROPERTY AT FLAT 6 52 SCHOOL ROAD TILEHURST
READING BERKSHIRE RG31 5AN**

INVOICE DETAILS	AMOUNT CLAIMED £	AMOUNT ALLOWED £	AMOUNT PAYABLE BY MR YOUNG £
Hamblin Water Mains Limited 17.09.2009	483.00	483.00	Sum equating to his rateable value liability under the Lease
LSM Decorators Limited 14.10.2009	5232.05	5232.05	250.00
LSM Decorators Limited 30.10.2009	2596.07	2596.07	250.00
Mr Sharp (undated)	1200.00	Nil	Nil
Copperfields 17.12.2009	28.75	Nil	Nil
Copperfields 18.12.2009	127.79	Nil	Nil