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## RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL

Decision of the Eastern Leasehold Valuation Tribunal on an application under section 27A of the Landlord and Tenant Act 1985 in respect of Flat 23, Eaglegate, 21-25 Eaglegate, Old Brewery Estate, East Hill, Colchester, Essex CO1 2PR

**Applicant** :Desmond Boyden Partnership

**Respondent** :Mr and Mrs P Jepp

**Appearances** Miss K Fordham of Fisher Jones Greenwood  
for the Applicant  
Mr Jepp for the Respondent

**Case number** :CAM/22UN/LSC/2010/0029

**Date of Hearing** :13 July 2010

**Tribunal Members** Mrs Judith H. Lancaster BA Barrister-at-Law  
Chairman  
Mr Roland Thomas MRICS  
Mrs Jane Clark JP

**Decision:** once the requirements of section 21 (B) of the Landlord and Tenant Act 1985 have been complied with by the Applicant the Respondent is liable to pay to the Applicant amounts in relation to outstanding service charges as follows

|                        |          |
|------------------------|----------|
| Period ending 31.12.08 | £ 829.95 |
| Period ending 31.12.09 | £1051.40 |
| Period ending 30.06.10 | £ 415.77 |

**Total** £2296.82

### INTRODUCTION

1. Under a lease dated 27 August 2004 (the 'Lease') Eagle Estates Essex Limited (the 'Landlord') demised Flat 23 Eaglegate (the 'Property') to the Respondent for a period of 99 years. The Applicant is the Managing Agent for the Property appointed by the Landlord under clause 9.1 of the Lease.

2. The Applicant made an application under section 27A of the Landlord and Tenant Act 1985 (the 'Act') for the Tribunal to make a determination regarding items which were included in the service charge claimed under the Lease for the years 2008 and 2009, following an order by the Colchester County Court that this matter be transferred to the Leasehold Valuation Tribunal. The Applicant requested that the Tribunal also make

a determination regarding the period from 1 January to 30 June 2010, and the Respondent agreed with this request.

#### **THE PROPERTY**

3. The Property is located on the first-floor in a block of 5 flats (the 'Building'), constructed in 2004, located in a residential development close to the centre of Colchester. There is a communal access road leading to the Building and other buildings in the development, and a parking area in front of the Building, with allocated parking spaces, and a bin store. There are some small areas of communal garden in front of the Building, and along the access road, and a small rear garden, but this is not accessible except from the flats on the ground floor of the Building. There is an intercom door entry system and a communal hallway on each floor with stairs between the floors.

#### **THE INSPECTION**

4. At the inspection, the Tribunal noted that the Building and surrounding areas appeared to be in good order and well maintained.

#### **THE HEARING**

5. As a preliminary point, and at the request of the Applicant, the Tribunal considered whether it was necessary to adjourn the hearing, given that the Respondent's statement of case, which should have been submitted to the Applicant and the Tribunal by 14 June 2010, had not been submitted until 6 July 2010. The Respondent apologised, explaining that the illness of his wife had caused him to get behind with administration. The Tribunal decided that there were no issues contained in the Respondent's statement of case of sufficient complexity to justify adjourning the hearing and that the Applicant would have had time to consider them and respond to them appropriately at the hearing.

6. The Applicant then submitted a supplementary bundle of documents. After a short adjournment to consider these documents the Respondent decided that he had had sufficient time to consider them and stated that he was happy to proceed.

7. The Tribunal then informed the parties that this was a hearing to determine the service charges for the years in question, and that this did not include determination of the Applicant's claim for outstanding rent under the Lease. This part of the Applicant's claim would be referred back to the Colchester County Court together with any other outstanding issues.

#### **THE APPLICANT'S CASE**

8. The main points of the Applicant's case may be summarised as follows;

- a) the Respondent had paid the service charges for the Property up until 30 June 2008, but no subsequent payment had been received;
- b) clause 11 of the fourth schedule to the Lease requires the Respondent on 1 January and 1 July each year, to pay a sum estimated by the Landlord to be half the amount prospectively payable by the Respondent in service charges for that year;
- c) clause 6 of the sixth schedule to the Lease requires certification setting out the total amount of the costs charges and expenses making up the service charge and the proportionate amount due from the Respondent, and clause 12 of the fourth schedule to the Lease states that within 21 days of receipt of a copy of the certification the Respondent shall pay to the Landlord the net amount (if any) due to the Landlord
- d) as required by clause 6 of the sixth schedule of the Lease, the Respondent had been sent certification for the year 2008 by a Statement of Service Charges and a Statement of Account dated 4.09.09, and certification for the year 2009 had been sent by a Statement of Account dated 13.05.10 and by a Statement of Service Charges dated 22.06.10;
- e) on 13 May 2010 a Statement of Account including the payment required in advance for the period 1 January 2010 to 30 June 2010 had been sent to the Respondent. By clause 11 of the fourth schedule of the Lease the Respondent agrees, on 1 January and 1 July each year, to pay such sum as is estimated by the Landlord to be half of the amount prospectively payable for the service charge for that year. Any surplus at the end of the year goes into the General Reserve;
- f) as at 31 December 2008 there was an overall under payment of the service charge £1519.75, as shown in the statement of account for that year, and the Respondent's percentage of this is £303.95, as shown as excess service charge in the statement of account dated 13 May 2010;
- g) the amounts outstanding for service charges are as follows;
 

|                          |                      |          |
|--------------------------|----------------------|----------|
| year ending 31.12.08     | excess plus £525.70  | £ 829.65 |
|                          | (advance payment )   |          |
| year ending 31.12.09     | 2 x advance payments |          |
|                          | of £525.70           | £1051.40 |
| 6 months ending 30.06.10 | advance payment      | £ 525.70 |
|                          | Total                | £2406.75 |
- h) the Applicant agreed that there was a miscalculation in the Statement of Service Charges for the period ended 31.12.09. The amount held in the General Reserve should be the total of £2103.03, as per the Statement of Service Charges for the period ended 31.12.08, plus the net surplus transfer as at 31.12.09, £549.65, ie £2652.68, and not £2549.76;
- i) making adequate provision for future expenditure in reserves is reasonable, and to the benefit of all the tenants of the Building;
- j) the estimated cost of internal decorations is a reasonable sum.

## **THE RESPONDENT'S CASE**

**9. The main points of the Respondent's case may be summarised as follows;**

- a) the Respondent did receive the Statement of Service Charges for the period ended 31.12.08 dated 3.09.09, and the Statement of Service Charges for the period ended 31.12.09, dated 22.06.10 but does not recall receiving any other documents;**
- b) the Lease allows for the charge of reasonable service charges, but the service charges for the period ending 31.12.09 are too large and therefore not reasonable. In particular the estimated cost for redecoration £2000.00 is excessive and therefore excessive amounts have been applied to the Internal Redecoration Reserve;**
- c) the Applicant's have never credited any overpayments, but retained them as General Reserves. The excess referred to in 8 (f) above should have been credited to the Respondent against the next half years payment, as per clause 12 of the fourth schedule to the Lease. In response to this the Applicant stated that funds held in the general reserve have been used to pay costs and charges incurred as part of the service charge as shown by a credit of £115.12 in the calculation of the items in the Statement of Service Charges for the period ending 31.12.08;**
- d) no interest payments have ever been shown as credited from funds held by the Landlord as current reserves;**
- e) the figures shown on the County Court claim form filed by the Landlord are wrong in that;**
  - i) the sums shown in the Particulars of Claim total £2131.05. Adding the interest claimed of £656.08 this totals £2787.13, not £2711.50**
  - ii) interest has been added twice;**
- f) the Respondent believes that the information supplied to him by the Applicant is not as transparent or comprehensive as that supplied by the previous managing agents.**

**10. The Respondent stated that he wished to make an application under section 20C of the Act requesting that the Applicant be prevented from recovering costs incurred in connection with the proceedings before the Tribunal as part of a future service charge.**

## **THE DECISION**

**11. Under section 19 of the Act, relevant costs shall only be taken into account in determining the amount of a service charge payable for a period to the extent that they are reasonably incurred, and if the works or services carried out are of a reasonable standard.**

**12. The Tribunal noted all the representations made by the parties and determined as follows:**

- (a) there is no adequate evidence to show that the Respondent did not receive certification in relation to the amounts referred to in 8(g) above as required under the terms of the Lease;**
- (b) the Tribunal consider that the amounts demanded for service charges as set out in 8(g) above are reasonable, including the sums placed in the Internal Redecoration Reserve, except in that, under clause 12 of the fourth schedule to the Lease, the Respondent's percentage, of the excess for the year ending 31.12.09, £109.93, should have been credited against the Respondent's half year payment for the period 1.1.10 to 30.06.10;**
- (c) the figures shown on the County Court claim form do appear to have been miscalculated, and interest does appear to have been claimed twice;**
- (d) the Applicants have, subsequent to the hearing, informed the Tribunal that they have one bank account for the purpose of holding client funds, including the monies received in respect of the service charges for the Property, and that this account is interest bearing, and the interest allocated to sinking funds which are held in this account. The Tribunal have seen no other evidence showing that such interest has been credited to the Respondent or the other tenants in the Building. Under clause 42 of the Landlord and Tenant Act 1987, service charges paid to the Applicant should be held either in a single fund or one or more separate funds. This does not appear to have been complied with;**
- (e) under clause 21 (B) of the Act a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants in dwellings in relation to service charges, as specified in the Service Charges (Summary of Rights and Obligations and Transitional Provision) (England) Regulations 2007. No evidence was presented to the Tribunal that these regulations had been complied with in relation to any of the service charge payments demanded by the Applicant for the period ended 31.12.08, 31.12.09, or 30.06.10, and in that case the Respondent is entitled under section 21 (B) to withhold payment of these service charges until such a summary is received by him. Any provisions of the Lease relating to non-payment or late payment, including payment of interest, do not have effect in relation to the period for which the service charge payments are withheld.**

### **13 Summary**

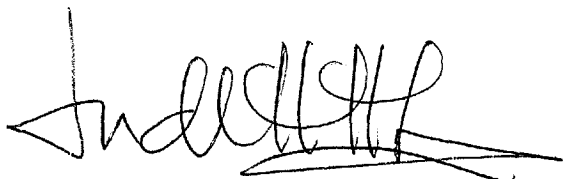
**On the basis of the Tribunal's determination as set out in paragraph 12 above the sums which will be due to the Applicant by the Respondent, once the Applicant's obligations under paragraph 12 (e) have been complied with, are as follows;**

|   |                 |
|---|-----------------|
| Period ending 31.12.08                      | £ 829.65        |
| Period ending 31.12.09                      | £1051.40        |
| Period ending 31.06.10 £525.70 less £109.93 | £ 415.77        |
| <b>Total</b>                                | <b>£2296.82</b> |

**14. Section 20c Application.**

The Tribunal is required under section 20C to make such order as it considers just and equitable in the circumstances. Given the failure of the Applicant to comply with section 21 (B) of the Act, the Tribunal consider that it is just and equitable to make an order under section 20C of the Act, to the effect that the Applicant is prevented from recovering costs incurred in connection with the proceedings before this Tribunal as part of a future service charge, and hereby do so.

**15. This case is hereby referred back to the Colchester County Court for determination of any outstanding issues.**



**Judith H Lancaster  
Chairman  
2 August 2010.**

**Caution: For the purpose of reaching a decision the Committee inspected the subject property. Such inspection is not a structural survey and takes only a few minutes. Any comments about the condition of the property in this Statement of Reasons are made as a result of casual observation rather than detailed inspection. Please do not rely upon such comments as a guide to the structural condition of the property.**