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Residential
Property
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**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

Landlord and Tenant Act 1985 – Section 27A

Commonhold and Leasehold Reform Act 2002 – Schedule 11

LON/00AF/LSC/2011/0582

Property : **Cork House, 77 Leasons Hill
St Pauls Cray, Orpington BR5 2LF**

Applicant : **Cork House (77 Leasons Hill) Management
Limited**

Represented by : **Ms Linda Reynolds
Property Services Plus – Managing Agents**

Respondents : **(1) Paul Payton (Flat 1)
(2) Alistair Allan Coutts-Lovie (Flat 4)**

Represented by : **None**

Date of Hearing : **28 November 2011**

Date of Decision : **28 November 2011**

Tribunal : **Mr John Hewitt Chairman
Mr Michael Mathews FRICS**

Decision

1. The decision of the Tribunal is that:

1.1 Service charges are payable by each of the Respondents as follows:

29.09.10	On account 2010/11	£540.00
25.03.11	On account 2010/11	£540.00
29.09.11	On account 2011/12	£570.00

1.2 The above sums will be payable by each of the Respondents to the Applicant or to the Applicant's managing agents as it may direct immediately upon a demand for the same being given by the Applicant to the Respondent compliant with section 21B Landlord and Tenant Act 1985 and section 47 Landlord and Tenant Act 1987.

1.3 On 25.03.12 a further sum of £570 on account 2011/12 will fall due for payment upon a compliant demand being given by the Applicant to the Respondent.

1.4 Each of the Respondents shall be liable to pay to the Applicant an administration charge in the sum of £120.00 upon a compliant demand therefor being given by the Applicant to the Respondent.

1.5 It requires that each of the Respondents shall by 4pm Friday 16 December 2011 reimburse the Applicant with the sum of £125.00, being one-half each of the fees of £250.00 paid by the Applicant to the Tribunal in connection with these proceedings.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Background

2. The application relates to a development of 12 flats known as Cork House. The Applicant is a management company controlled by the lessees and is obliged to insure the development and to carry out repairs and to provide services as set out in the leases. The Respondents are the lessees respectively of flats 1 and 4. The Respondents are each obliged to contribute 8% of the costs and expenses incurred by the Applicant in complying with its obligations under the leases

3. The Applicant made applications:
 - 3.1 pursuant to section 27A Landlord and Tenant Act 1985 in respect of the service charges payable for the year 2010/11 and the sums payable on account for the year 2011/12; and
 - 3.2 pursuant to Schedule 11 Commonhold and Leasehold Reform Act 2002 in respect of claims to interest on late payment and the fees associated with the recovery of the sums claimed.

4. Directions were given on 4 October 2011. In compliance with those directions the Applicant has served a detailed statement of case [C1]. Neither of the Respondents has served a statement of case in answer and neither has taken any part in these proceedings whatsoever.

5. The application came on for hearing before us. The Applicant was represented by Ms Linda Reynolds of Property Services Plus Limited, its managing agents. Neither of the Respondents were present at or represented at the hearing. We therefore heard the application in the absence of the Respondents.

The lease

6. A copy of the lease of Flat 4 is at [1.1]. Ms Reynolds told us and we accept that in all material respects the lease of Flat 1 is in common form.

7. The parties to the lease of Flat 4 which is dated 29 August 1988 are:

- (1) Eldonmanor Limited as 'the Landlord';
- (2) Cork House (77 Leasons Hill) Management Limited as 'the Management Company'; and
- (3) Raymond Sidney Bull as 'the Lessee'.

The lease granted a term of 125 years from 29 September 1987 at a ground rent commencing at £40 per year increasing to £120 per year and on other terms and conditions therein set out.

8. So far as material to our determination the lease provides:
 - 8.1 An accounting period of 1 October to 30 September following;
 - 8.2 The payment of a service charge of 8% of total expenditure, as defined;
 - 8.3 Two equal interim payments on account of the service charge payable on 29 September and 25 March;
 - 8.4 The provision of a certificate of total expenditure for each accounting period and for the payment of any balancing debit with 14 days of demand;
 - 8.5 By clauses 3 and 4 [1.10] covenants by the Lessee with the Landlord and with the Management Company to pay:
 1. all costs incurred for the collection from the Lessee of any arrears of service charge or any interim charge [1.16]
 2. the service charge and the interim charge [1.18]
 3. interest on sums due and payable but not paid within 14 days of the date for payment, such interest to be at the rate of 3% above the base rate of National Westminster Bank from time to time.
 - 8.6 By clause 6 [1.19] covenants on the part of the Management Company;
 - 8.7 By clause 7 [1.25] a detailed service charge regime which includes in sub-paragraph (F) [1.27] a provision that as soon as practicable after the end of each accounting period there is to be served on the Lessee by the Management Company or its managing agents a certificate setting out:
 - (a) the amount of the total expenditure;

- (b) the amount of the interim charge; and
- (c) the amount of the service charge and any excess of deficiency of the service charge over the interim charge.

The evidence

9. Ms Reynolds explained that the Applicant was controlled by the lessees and as a concession once the budget for the forthcoming year was set it was sent out to lessees with several options as to payment including by monthly standing order, or quarterly hence the demands tended to show the annual sum due rather than the two six-monthly instalments due. In the event neither of the two Respondents took advantage of the alternative payment plans. Ms Reynolds accepted that, in accordance with the strict terms of the lease demands had not been made for the two six-monthly instalments due. It was also pointed out to Ms Reynolds that the copy demands provided to us [6 & 7] were not compliant with section 47 Landlord and Tenant Act 1987 in that they did not specify the name and address of the landlord.
10. Ms Reynolds produced the year 2010/11 year end accounts [8] and the supporting invoices. Ms Reynolds took us through the accounts and gave satisfactory answers to questions put to her by members of the Tribunal.
11. Ms Reynolds also took us through the budget for 2011/12 [18] and gave to us a satisfactory explanation of the strategy for the reserve fund going forward [23].

The service charges

2010/11 Interim charges

12. In the light of the evidence before us we were satisfied that the budget for 2010/11 in the sum of £13,500 was reasonable in amount and that the 8% share of each Respondent amounted to £1,080 and was payable by them in two equal instalments of £540 each on 29 September 2011 and 25 March 2011 subject only to compliant

demands for the same having been given. Compliant demands have not yet been given but such sums will be payable upon compliant demands being given.

2010/11 Final accounts

13. We were satisfied that that the sums incurred have been expended, were reasonably incurred and are reasonable in amount. With interest earned the actual expenditure was £1,193 less than the sums payable on account. The directors decided that this surplus should be credited to the Reserve Fund and we were satisfied this was reasonable and that this has been done [23].
14. Thus, in the event there is neither a balancing debit not a balancing credit arising for the year 2010/11,

2011/12 Budget

15. In the light of the evidence before us we were satisfied that the budget for 2011/12 in the sum of £14,260 is reasonable in amount. At 8% each Respondent is liable to contribute £1,140 payable by way of two interim charges on account of £570 each on 29 September 2011 and 25 March 2012.
16. As before a compliant demand for the interim charge due on 29 September 2011 has not yet been made, but upon a compliant demand being given each Respondent will immediately be liable to pay the sum £570.

Administration charges

17. Ms Reynolds claimed interest on late paid sums. We accept that the lease imposes an obligation to pay interest on late paid sums. Such interest is a variable administration charge within the meaning of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. However such a charge is only payable upon a compliant demand having been given. No such demand has been given. Further in view of

our findings that compliant demands have not yet been given for the interim charges claimed those sums did not fall to be legally due and payable.

18. In these circumstances we find that the Applicant is not entitled to interest as claimed. An entitlement to interest may arise if compliant demands are now given and if they are not paid within 14 days but and such future claim as may be made must first be the subject of a compliant demand for interest.
19. Ms Reynolds also made a claim to an administration charge of £120 each in respect of costs incurred in collecting arrears. We were satisfied that the lease provides for the payment of such an administration charge. We were also satisfied that the charge of £120 was reasonable in amount. We thus decided that each Respondent was liable to the charge of £120 each.

Reimbursement of Fees

20. Ms Reynolds told that the Applicant had paid fees of £250 to the Tribunal in connections with these proceedings. Ms Reynolds submitted that it would be unfair on other lessees to bear this costs and she sought an order that the Tribunal require the Respondents to reimburse these fees.
21. The Tribunal accepted the submissions made by Ms Reynolds and we find that it is just and equitable to require each of the Respondents to bear one half of the fees incurred. We have thus made such a requirement.

The law

22. Relevant law we have taken into account in arriving at our decision is set out in the Schedule below.

The Schedule

The Relevant Law
Landlord and Tenant Act 1985

Section 18(1) of the Act provides that, for the purposes of relevant parts of the Act 'service charges' 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.

Section 19(1) of the Act provides that 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 provision of services or the carrying out of works, only if the services are of a reasonable standard;

and the amount payable shall be limited accordingly.

Section 19(2) of the Act provides that 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.

Section 27A of the Act provides that 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.

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- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

No application 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.

A tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9(1) provides that subject to paragraph (2) a Tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or any part of any fees paid by him in respect of the proceedings.

Regulation 9(2) provides that a Tribunal shall not require a party to make such reimbursement if, at the time when the Tribunal is considering whether or not to do so, it is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Regulation 8(1) makes reference to a number of benefits/allowances including, but not limited to, income support, housing benefit, jobseekers allowance, tax credits, state pension credits and disability related allowances.



John Hewitt

Chairman

28 November 2011