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HM COURTS AND TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL

BIR/00FY/LSC/2012/0002

*DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION
UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985*

<u>Applicant:</u>	City Heights RTM Company Limited
<u>Respondents:</u>	Mr G Anderson and Mr G J Cassidy
<u>Subject property:</u>	33 Nightingale House Ockbrook Drive City Heights Mapperley Nottingham NG3 6AU
<u>Date of application to Leasehold Valuation Tribunal:</u>	30 January 2012
<u>Member of the Tribunal:</u>	Professor N P Gravells MA
<u>Date of decision:</u>	30 March 2012

Introduction

- 1 This is a decision on an application made to the Leasehold Valuation Tribunal by City Heights RTM Company Limited, the RTM company responsible for the management of 33 Nightingale House, Ockbrook Drive, City Heights, Mapperley, Nottingham NG3 6AU ("the subject property") since January 2011. The application, dated 28 January 2012 and received by the Tribunal on 30 January 2012, is under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of the Respondent leaseholders' liability to pay service charges in respect of the subject property.
- 2 The Respondents are Mr G Anderson and Mr G J Cassidy, leaseholders of the subject property. They hold the property under a lease dated 29 May 2003 for a term of 999 years from 1 October 2002.
- 3 The subject property is one of 169 properties in six blocks, which constitute the City Heights development in the Mapperley area of Nottingham.
- 4 By clause 3.2 of the lease the Respondents covenant to pay a stated proportion of the service charge for each service charge year (1 April to 31 March) by two equal instalments on 1 April and 1 October. The service charge comprises two elements - charges for services in respect of the block containing the subject property and charges for services in respect of the Estate, as set out in Parts I and II respectively of the Fifth Schedule to the lease.
- 5 A Statement of Anticipated Service Charge Expenditure for the service charge year 2011/2012 and demands for the advance payments totaling £898.61 were sent to the Respondents. Although that sum was payable in two instalments on 1 April 2011 and 1 October 2011, at the date of the application to the Tribunal the Respondents had failed to make any payment.
- 6 The Applicant therefore made the present application seeking a determination that the sums demanded are payable by the Respondents.
- 7 The Tribunal issued Directions, requiring the Respondents to provide a written statement, indicating any service charge item in respect of which they allege (a) that the costs incurred by the Applicant were not reasonably incurred and/or (b) that the relevant services or works were not of a reasonable standard and/or (c) that the Respondents were not liable to pay the service charge demanded by the Applicant.
- 8 The Respondents failed to provide any statement by the specified date of 24 February 2012. However, on 7 March 2012 Mr Anderson telephoned the Tribunal and explained that he had been overseas and had only recently seen the Directions. Later that morning he sent an email to the Tribunal, explaining that he was experiencing some financial difficulties; that he was aware that the service charges had to be paid; that he wished to make arrangements with the Appellant for the payment of the outstanding charges; and that he had already made two part-payments totaling £330.00 in early February. There was no intimation that he wished to challenge the reasonableness of the service charges or his liability to pay them.
- 9 In response to Mr Anderson's email, the Applicant indicated that, in the absence of an express written statement from the Respondents acknowledging their liability to pay the service charge demanded, the Applicant wished to pursue its application to the Tribunal. Mr Anderson has not responded to that statement of position.

- 10 It should be noted that the Tribunal has received no communication from Mr Cassidy, although Mr Anderson did state during his telephone call to the Tribunal on 7 March 2012 that he was responding on behalf of himself and Mr Cassidy.
- 11 In accordance with regulation 13 of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003 (as amended) ("the 2003 Regulations") the Tribunal gave notice in the Directions that it intended to proceed to determine the application without an oral hearing; and, in the absence of a request from either party for a hearing, the Tribunal has made its determination on the basis of the written representations submitted by the parties.

Determination of the Tribunal

- 12 In the view of the Tribunal, the position is straightforward and that the principles to be applied by the Tribunal are those discussed in the decision of the Court of Appeal in *Yorkbrook Investments Ltd v Batten* [1985] 2 EGLR 100 and in the decision of the Lands Tribunal in *Schilling v Canary Riverside Development Ltd* (2005).
- 13 It is not disputed that the Applicant has incurred costs which it is entitled to recover under the service charge provisions of the lease.
- 14 The Respondents have not raised any issue as to the reasonableness of those costs or as to their liability to pay the service charges demanded.
- 15 The Tribunal therefore determines that, subject to paragraph 16 below, the sum of £898.61, representing the service charges payable in advance in respect of the subject property for the service charge year 2011/2012, is payable by the Respondents to the Applicant.
- 16 The above sum is to be reduced by the amount of any payments which have been made by the Respondents to the Applicant since the date of the application and which the Applicant has appropriated to the service charge account of the Respondents in respect of the subject property.

Professor Nigel P Gravells

Dated 30 March 2012