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**Residential
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SOUTHERN LEASEHOLD VALUATION TRIBUNAL

Case Reference: CHI/29UG/LIS/2012/0059

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
APPLICATIONS UNDER SECTION 27 AND 20C OF THE LANDLORD &
TENANT ACT 1985**

Applicant: Mr G Bright

Respondent: Oakland Property & Development Ltd

Premises: Flat 2, 7 Manor Road, Gravesend, Kent, DA12 1AA

Date of applications: 31 May 2012

Date of hearing: 5 September 2012

Appearances for Applicant: In person

Appearances for Respondent: Mr N Harding and Mr A J Harding

Leasehold Valuation Tribunal: Mr I Mohabir LLB (Hons)
Mr R Athow FRICS MIRPM

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for a determination of the reasonableness of various actual and estimated service charges claimed by the Respondent for the years 2010/11 and 2011/12 respectively.
2. The heads of service charge expenditure challenged by the Applicant are an insurance excess of £100 and management fees of £325 claimed in respect of 2010/11 and a management fee of £950.04 claimed in respect of 2011/12.
3. The Applicant is the lessee of Flat 2, 7 Manor Road, Gravesend, Kent, DA12 1AA pursuant to a lease dated 12 June 1986 and made between Frank Howard Hunter and Anne-Marie Maura Tracey (“the lease”). The Applicant did not challenge his contractual liability to pay the service charges in issue. He simply contended that the charges were not reasonable. As such, it is not necessary to set out the terms of the leases, which give rise to their contractual liability. It is sufficient to note that they are obliged to pay a service charge contribution in relation to the heads of expenditure at the contractual rates set out in clause 2(e) of the lease.

The Law

4. The substantive law in relation to the determination regarding the service charges can be set out as follows:

Section 27A of the Act provides, *inter alia*, that:

"(1) 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.
(2) Subsection (1) applies whether or not any payment has been made."

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges. Where the

reasonableness of service charge costs falls to be considered, the statutory test is set out in section 19 of the Act.

Hearing and Decision

5. The hearing in this matter took place on 5 September 2012 following an inspection of the property earlier that morning. The Applicant appeared in person. The Respondent was represented by Mr N Harding and Mr A J Harding.

2010/11

6. The relevant demand for this year ending 24 June 2011 is dated 22 July 2010. The total service charge contribution claimed was £581.02. Although initially challenged in the application made by the Applicant, he confirmed that the management fee of £275 was now agreed and payable together with the other heads of expenditure.

2011/12

Insurance Excess

7. The Tribunal then heard argument from both parties regarding the insurance excess of £100. The Applicant had contended that there had been a double charge by the Respondent. However, Messrs Harding explained that there had in fact been no overcharging because separate insurance claims, of which the Applicant had been unaware, had been made by the other lessee in the building. Consequently, these claims had attracted a separate excess under the buildings insurance policy, which had been put on the service charge account. Having had this explanation, the Applicant agreed the insurance excess of £100 was payable.

Management Fee

8. It seems that an estimated management fee of £325 had been claimed by the Respondent for this year. Subsequently, by a demand dated 22 March 2012, an increased fee of £750 was claimed.

9. On behalf of the Respondent, it was explained that the increased charge reflected the additional management time involved in dealing with the insurance claim made by the Applicant for the leak in his bathroom. In addition, fire and emergency lighting had to be installed in the common parts, which had also been redecorated and re-carpeted. Furthermore, both flats in the property are sub-let and the sub-tenants had dumped household items at the bottom of the stairs in the hallway. These had to be cleared and the respective lessee chased about these matters. It was estimated that an additional 14 hours had been incurred, for which each of the lessees had been equally charged.
10. The Applicant submitted that the management fee was excessive, especially as the Respondent had not initially dealt with the insurance claim he had reported for the water leak in his flat. It took 6 months for the claim to be met by the insurance company. The Applicant also complained that the Respondent cannot be allowed to increase the management fee each time any additional work was done. This did not provide him with any certainty as to costs. He contended that a fee of £300 was reasonable.
11. The Tribunal found that the management fees were recoverable under clause 3(f)(ii) of the lease and that the Applicant's liability under this clause was one third of the overall fees claimed by the Respondent. The Tribunal also found that the additional costs had been reasonably incurred. It was satisfied that all of the matters in respect of which the additional fees had been incurred were in relation to *"the benefit and upkeep of the building"*.
12. The Tribunal also found the amount of the management fees was reasonable. The Tribunal accepted the evidence given on behalf of the Respondent for the extra cost being incurred (including the additional work involved on major repairs and claims handling). It was clear that additional time had been required for these additional activities. However, in the Tribunal's view and as a matter of good practice, the additional management fees should have been separately billed and details given to the lessees. Had this been done the

expenditure would have been obvious and, possibly, this application would not have been necessary.

Section 20C & Fees

12. The Applicant made an oral application at the hearing under section 20C of the Act. Such an application gives the Tribunal a discretion to make an order preventing a landlord from recovering all or part of any costs it may have incurred in these proceedings. It was indicated on behalf of the Respondent that it proposed to charge an additional management fee for having to respond to this application.

13. The Tribunal accepted the Applicant's submission that the necessity for this application may have been avoided if the Respondent had properly dealt with the various queries he had raised in relation to the disputed service charges set out in the application. The Tribunal was satisfied, in particular, the various service charge "budgets" had not been set out in a clear and understandable manner for a lay person. On the Respondent's own case, they contained a mixture of both actual and estimated expenditure in any given year. Furthermore, no final annual accounts had been prepared.

14. It was also clear to the Tribunal that the Respondent had not engaged with the Applicant to provide a constructive reply to his service charge queries. There had been little or no clarity and/or transparency on its part. These matters had only been addressed by the Respondent at the hearing. When the Applicant had been provided with the explanation he had sought, he properly conceded and agreed most of the disputed items. Had the Respondent done so beforehand, the application and/or the hearing could have been avoided. Accordingly, for these reasons, the Tribunal did make an order preventing the Respondent from recovering any of the costs it had incurred in these proceedings through the service charge account on the basis that it was just and equitable to do so.

15. For the same reasons, it also orders the Respondent to reimburse the Applicant the sum of £250, being the fees paid by him to have this application issued and heard.

Dated the 12 day of October 2012

Signed

Mr I Mohabir LLB (Hons)

Chairman