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HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of an Application under Section 27A of the Landlord & Tenant Act 1985
(Service Charges)

Case No. CHI/29UN/LSC/2012/0019

Property: Flat 3
96 Grosvenor Place
Margate
Kent
CT9 1UY

Between: Mr. R. Bogan
("the Applicant")

and

Miss A. Cassar
("the Respondent")

Date of Determination: 8th August 2012

Member of the Tribunal: Mr. R. Norman

Date Decision Issued: 9th August 2012

FLAT 3, 96 GROSVENOR PLACE, MARGATE, KENT CT9 1UY

Decision

1. The sum of £800 is payable by Miss A. Cassar ("the Respondent") to Mr. R. Bogan ("the Applicant") in respect of interim service charges for 2010.

Background

2. The Applicant is the freeholder of Flat 3, 96 Grosvenor Place, Margate, Kent CT9 1UY and made an application under Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of liability to pay and reasonableness of service charges. The Respondent is the lessee.

3. On 2nd February 2012 directions were issued and with those directions the Tribunal gave notice to the parties under Regulation 13 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003, as amended by Regulation 5 of the Leasehold Valuation Tribunals (Procedure) (Amendment) (England) Regulations 2004, that the Tribunal intended to proceed to determine the matter on the basis only of written representations and without an oral hearing. Also that if the matter were dealt with in that fashion it might be considered by a Chairman sitting alone, or alternatively with another Member of the Panel, rather than by a full tribunal of three members. The parties were given the opportunity to object to that procedure by writing to the Tribunal no later than 28 days from 2nd February 2012. No written objection has been received and the matter is being deal with on the basis only of written representations and without an oral hearing.

4. Supplemental directions were issued on 21st May 2012 and the parties have provided statements of case and supporting documents which have been considered.

The Law

5. The general jurisdiction of the Tribunal to deal with service charges is given by Section 27A of the 1985 Act.

S27A Liability to pay service charges: jurisdiction

- (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.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.

Service charges are limited by Section 19 of the 1985 Act:

S19 Limitation of service charges: reasonableness.

- (1) 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 or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) 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 or subsequent charges or otherwise.

Reasons

6. The application has been made in respect only of the interim service charges claimed in advance for 2010 and that is all that can be dealt with by the Tribunal.
7. The lease by Clause 3(A)(i) as amended requires the lessee to pay to the lessor such sum per annum as may be notified to the lessee by the lessor from time to time as representing 25% of the reasonable estimated amount required to cover the cost and expenses incurred or to be incurred by the lessor in carrying out the obligations contained in the covenants set out in Clause 5(1) of the lease and the First Part and Paragraph A of the Third Part of the Sixth Schedule to the lease. The estimated sum is to be payable quarterly. These contractual requirements are minimal.
8. The Applicant has supplied copies of four demands, each for £200 for each quarter of 2010. They are dated 8th December 2009, 12th March 2010, 1st June 2010 and 5th September 2010.
9. The Respondent states that she has not been able to find a copy of the letter dated 8th December 2009 from the Applicant and believes it has been created retrospectively. She also states that that letter does not agree with the Applicant's letter dated 16th March 2009. Unfortunately she has not produced a copy of that letter so that it may be compared. There is a reference to it in the Respondent's letter dated 5th May 2011 but only as to the service charge for the period to 31st December 2008. It would appear from the evidence provided that the letter dated 16th March 2009 has no relevance to these proceedings in respect of the estimated service charge for 2010. In any event an estimate of service charges provided in December 2009 for the following year may well be different from an estimate produced nine months earlier.
10. The Respondent states that there have been no "quarterly service charge requests" delivered to her that relate to 2010.
11. She does not state whether or not she received the service charge prediction dated October 2009 which is referred to in the letter of 8th December 2009. She does refer to the Applicant's statement of case as follows: "In his statement of case, a detailed breakdown of costs, **money spent and collected** along with copies of all invoices were

sent to each leaseholder covering the year 2009. This is not true for not only the year of 2009 but also the years of 2007, 2008, 2010 and 2011". Presumably by putting the words "**money spent and collected**" in bold type she is making the point that she has not received details of money spent and collected but did receive a detailed breakdown of costs. The service charge prediction does provide a breakdown of costs as do the invoices for 2008 and 2009. Clearly she received the invoices for 2009 at some time because in her letter of 5th May 2011 she stated "I take no issues with the content of the invoices you have sent me for the 2009 period..."

12. The Respondent states that there has been no response to her requests for accounts and other information. However, the Applicant has supplied with his statement of case documents which show the amounts spent on insurance, lighting of communal areas and repairs in 2007, 2008 and 2009 and projected costs for the years 2010, 2011 and 2012. There is nothing to show that those figures are unreasonable and at no time has the Respondent stated that she finds any of the sums demanded unreasonable. Indeed, on 5th May 2011 she wrote that she did not take issue with the content of the invoices the Applicant had sent her for the 2009 period and it is based on the figures in those invoices and making provision for future works that the service charges for 2010 are based.

13. Having considered all the evidence provided by the parties, I am satisfied that the interim service charges of £800 for the year 2010 are reasonable and payable to the Applicant by the Respondent.

Signed

R. Norman

Chairman