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MAN/00BL/LSC/2011/0108

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL
of the
NORTHERN RENT ASSESSMENT PANEL**

**LANDLORD AND TENANT ACT 1985
SECTIONS 19 and 27A**

PROPERTY 4, The Brook Building, Deakins Mill Way,
Egerton, Bolton BL7 9YU

Applicants: Deakins Park Management Company Ltd

Respondent: Mrs K Slater

The Tribunal: Chairman: John R Rimmer BA, LLM
Valuer Member: W Tudor M Roberts FRICS

Date of Hearing: 14th March and 22nd May 2012

Present Mrs Emma Gorman, managing agent, for the Applicant
Mrs K Slater in person, assisted by Miss S Slater

Order: **The service charges for 4, The Brook Building, Deakins Mill Way, Egerton, Bolton are reasonably incurred at reasonable cost save and except that the management charge for each of the years in question shall be £125.00 a year and the amount attributable to repairs collectively described as "internal repairs and maintenance", "external repairs and maintenance" and "repairs and renewals" shall be £55.05 a year.**

A. Application.

1. The Applicant has commenced proceedings in the Shrewsbury County Court, now transferred to the Bolton County Court for recovery of unpaid service charges relating to the flat at 4, The Brook Building, for the period from 1st January 2010 to 31st December 2011. The precise claim being for two successive years of the service charge account.
2. Under section 19(1) of the Landlord and Tenant Act 1985 such charges are recoverable
 - (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.

3. An Order was subsequently made in the Bolton County Court referring the issue of the reasonableness of the service charges to the Leasehold Valuation Tribunal. The matter then came before the Tribunal on 14th March 2012 at which time the Tribunal inspected the development at Deakins Mill, of which The Brook Building forms a part, opened the hearing and then gave further directions as to the conduct of the matter in view of the issues raised and the lack of certain information which the Tribunal considered necessary to its proper enquiry into the service charges.

B Background

4. The Applicant is a Management Company responsible for the management of the residential development at Deakins Mill, Egerton. It is situated in a semi rural location, the site of a former mill. There are a number of residential apartment blocks totalling 89 in number and an additional 40 houses. There are car parking facilities for residents' use at ground level, together with extensive grounds for communal use. The development is of very recent construction.
5. The Respondent holds a long lease at low rent of her flat. A copy was provided to the Tribunal. Flat 4 is a two-bedroom property situated on the ground floor of the block known as The Brook Building which may be accessed either via staircase or lift (for upper floors). The lease copied to the Tribunal is undated so far as the pages produced to the Tribunal are concerned but is presumably dated on the front cover. It is in any event granted for a period of 999 years from 1st January 2005, clearly at a premium, and a rent is reserved but not stated in the copy.
6. This copy lease provided does contain the terms relevant to the service charge, which, in common with many leases are to be found in various places:
 - Clause 3 is the redendum to the lease and refers to payment of the appropriate proportion of the service charge.
 - Schedule 3 sets out the services to be provided and how they are to be accounted for.
 - Schedule 4, at Paragraph 2, contains the covenant by the leaseholder to pay the service charge as calculated.
7. The services are essentially those that would be expected in the service provision for modern, new-build, residential accommodation and there is nothing of an unusual nature about the obligations or how the payment is calculated. The services do however divide into those services provided peculiarly to the residential blocks only and those provided to the estate in general. The Respondent's proportion of the former is 0.895716% of the former and 0.443196% of the latter, being calculated on the basis of the proportion of the total floor area occupied.

C. Inspection

8. On the morning of 14th March 2012 the Tribunal inspected The Brook Building and its surrounding area comprising Deakins Mill development, together with the common parts appurtenant thereto. It is already described briefly in the preceding paragraphs but by way of additional information may be described as of three modern, multi -storey blocks constructed of brick with cladded

fascias under a flat roof. There are a further 40 houses set in blocks that would lead them to be described as terraced. Extensive parking is provided and there are landscaped grounds in addition. The development is approached by a long roadway which passes that part of the former mill grounds which are commercial in nature, with a number of office or light industrial usages. Individual flats are accessed from common corridors on each floor accessed from lifts or stairwells. Decorations to the common parts consist predominantly of washable emulsions. The entire development appears to be in reasonably good repair, subject to comments below, commensurate with its recent construction.

D. The Evidence and the Hearing

- 9 The Tribunal had the benefit of a bundle of documents supplied by the Applicant which contained the relevant service charge accounts for the years in question, together with the correspondence that had passed between the parties, but unfortunately little by way of supporting information as to individual items within the service charges. This unfortunately happens on occasions when the matter has not started out as an application to the Tribunal but has become an issue in other County Court proceedings.
- 10 The correspondence from Mrs Slater did however set out clearly her reasons for disputing liability to pay the service charges. Principally she was concerned as to dampness within the property, arising she indicated from a defective ventilation system, still the subject of protracted negotiation with the NHBC, and the difficulty in being able to allow air to circulate because windows could not be left open at the ground floor level of her flat. Other less substantial issues relating to cleaning and repairs to the loft hatch and front door were also detailed.
- 11 At the first hearing the Tribunal was able to explore those issues between Mrs Slater and Miss Slater on the one hand and the representative of the Managing Agents, , on the other. This resulted in the Tribunal providing further directions to the parties in order to obtain such further information as the Tribunal considered might be useful in its deliberations and an adjournment to a new date, eventually 22nd May.
- 12 It was of some concern to the Tribunal that the Management Company, being the Claimants in the County Court proceedings, together with their Managing Agents, P R Gibbs & Co of Westhoughton, sought only to send in support of its case without anyone able to answer directly as to the work involved in the provision of the services rather than merely its cost. Mrs Slater and her daughter were able to speak from far greater first hand experience of the situation at The Brook Building and by the time of the resumed hearing had a number of pertinent questions to put to the Agents.
- 13 The Tribunal was given an explanation by Mrs Slater of the difficulties experienced in relation to the problems experienced with damp and air circulation in the flat:
 - Up to the resumed hearing on 22nd May the problem had not been resolved. Investigations by the NHBC were continuing and had identified the internal ventilation system as being improperly connected and as a consequence not operating satisfactorily, or at all.

- There was no adequate ventilation through the window frames for a ground floor flat. Although it is possible to install trickle vents in metal window frames this had not yet been attempted.
 - As a consequence there were continuing problems with mould and damp.
 - There was little assistance forthcoming from the Managing Agents and, given an understanding from all parties that the intricate inter-relationships between the companies owning and developing the site, involving liquidation and administration issues, no effective means of co-ordinating any remedy.
 - There were insurance difficulties for ground floor occupiers and their insurance cover if they left windows open to allow further ventilation.
- 14 Additionally, Mrs Slater made enquiry as to a number of the larger invoices provided by the Managing Agents and queried the amounts paid for some larger items of expenditure and other costs.
- 15 For the Agents, Mrs Gorman attempted to explain some of those items and the Agent's view of the continuing ventilation problem. She was however constrained by her instructions and the terms of the management agreement with the Applicant. The Tribunal appreciates that it is the Applicant that ultimately has responsibility for providing reasonable services at reasonable cost.

E Tribunal's Conclusions and Reasons

- 16 The law relating to jurisdiction in relation to service charges falling within Section 18 is found in Section 19 Landlord and Tenant Act 1985 which provides:
- (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

Further section 27A Landlord and Tenant Act 1985 provides:

- (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

and the application may cover the costs incurred providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services(subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

- 17 It has been established to the satisfaction of the Tribunal that there is a problem with the ventilation system that has not been properly identified and rectified. Equally the Tribunal is satisfied that no adequate answer had been provided as to allowing sufficient further ventilation through ground floor windows/frames without prejudicing security.

18 The Tribunal however takes the view that by themselves these matters do not impinge upon the issue of the service charge, subject to what is set out below. The charges that have been made, and in respect of which the Applicant seeks recovery, relate to other matters within the services provided by the Applicant and in respect of which there is no major complaint on the part of Mrs Slater. The other services appear to be provided to a reasonable standard and at reasonable cost.

19 There are, however, two matters that concern the Tribunal:

- The management fee within the Applicant's agreement with its agent represents over 25% of the total service charge costs relating to the apartment, for the one year (to 31st December 2010) for which actual costs are available in relation to the Estate Costs the proportion is about the same. The Tribunal is of the view that this is too high, given the nature of the modern accommodation being managed and the limited work that should be required in respect of such a development. The more so as the Tribunal believes that the Applicant, not necessarily through its agent, should be taking a more pro-active role in dealing with the ventilation issues that may well indirectly affect common parts as well.
- The management fee in that year is about £168.65 for the year. For each of the years in question to which this application relates it should be reduced to £125.00 for each year per unit
- From the limited invoices available to the Tribunal it was apparent that a number of issues arose as to the amount of some costs (Mrs Slater referred to lighting bollards specifically) and the addition of an administration charge by one contractor for the privilege of sub-contracting his work to others!
- The charge to the Respondent for the one year where actual costs are available for all repair of a general nature is £64.77 (in total for both the apartment and estate charges). This should be reduced by 15% to allow for such problems. The resulting charge for this item becomes £55.05.

20 The Tribunal is conscious that the above determinations reflect such information as the Tribunal had available to it over two separate days upon which the hearing took place. It may well be that greater transparency in relation to the costs being incurred and a closer examination of invoices by the Respondent or its agent might produce greater clarity on a future occasion.

21 The Tribunal also hopes that some further assistance might be given to the Respondent by the Applicant and its agent in order to resolve the issues that the Respondent has in relation to those matters that do not relate directly to the service charges.

J R RIMMER (CHAIRMAN)
5 July 2012