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HM COURTS & TRIBUNALS SERVICE

Midland Leasehold Valuation Tribunal

Property : 120 Okement Drive
Wednesfield
Wolverhampton
WV11 1UZ

Applicant : Mr Mukesh Mahay
120 Okement Drive
Wednesfield
Wolverhampton
WV11 1UZ

Respondent : Wolverhampton City Council
Civic Centre
St Peter's Square
Wolverhampton
WV1 1RG

Case number : BIR/00CW/LSC/2013/0008

Date of Application : 13th March 2013 (dated 10th June 2012)

Type of Application : Applications under Sections 19, 20C and 27(A) of the Landlord & Tenant Act 1985 for a determination of liability to pay and reasonableness of service charges.

The Tribunal : N R Thompson (Chairman)
S J Duffy

Date of decision : 8th May 2013

DECISION

Preliminary

1 On 13 March 2013, the Leasehold Valuation Tribunal ("the Tribunal") received applications ("the applications") under Sections 19, 20C and 27A of the Landlord and Tenant Act 1985 ("the Act") dated 10th June 2012 and made by the Applicant in respect of the Property for the service charge year ended 31st

March 2013. The Applicant submitted that he had not been consulted about, or had agreed to meet, any of the cost of the installation of a digital aerial system at the development (of which the Property forms part), and he therefore challenged his alleged liability to pay £239.00p towards the costs of the installation.

Background:

- 2 The Applicant holds the Property by virtue of a lease dated 6th June 1983 granted by the Respondent (then Wolverhampton Borough Council) for a term of 125 years from that date, subject to the payment of a fixed annual ground rent of £10.00p.
- 3 Under Clause 1 (2) of the lease, the Applicant is also responsible for paying a service charge in accordance with the provisions of the Fourth Schedule, which defines "Service Charge" as being "the proportion of expenditure on services attributable to the demised premise". "Expenditure on Services" is defined as "the expenditure of the Council in complying with their obligations as set out in the Sixth Schedule..." which in turn, then details the Respondent's relevant obligations. In summary, these include, keeping in repair the relevant buildings and services; complying with all orders notices and regulations; making good all damage done to the demised premise or the development; paying appropriate rates and other outgoings in respect of any common parts; keeping accounts and records of all sums expended in connection with the service charge; managing the development; painting the exterior and common parts, and insuring the demised premises.
- 4 In his application the Applicant alleges that, together with an invoice for £239.00p for the Communal Digital Television Installation dated 12th April 2012, he received a covering letter from the Respondent informing him of the previous consultation process under which he had been given three options – (i) to buy into the full installation at a cost of £264.80 2p; (ii) to have the connection brought to the most convenient external location - giving him the opportunity to have the internal work carried out at a later date - at a cost of £239.00p; or (iii) to confirm in writing to the Respondent that he wished to opt out of the installation entirely. Although a copy of the covering letter was not produced to the Tribunal, it is alleged to have also stated that, "Our records indicate that you either chose Option 2 or did not respond to the letter; therefore, your property was included in the programme." The Applicant maintains that he did not receive the original consultation letter and so was

not aware of the process or options available to him. If he had received it, then he maintained that he would have chosen Option 3 and confirmed it in writing to the Respondent.

- 5 The Respondent was informed of the applications to the Tribunal by a letter dated 2nd April 2013, and in a response dated 11th April 2011 to the Tribunal indicated, inter alia, that it had no objection to the matter being dealt with on paper (as originally requested by the Applicant) and did not intend to challenge the application. As such, the Respondent confirmed that it (i) would not be offering any evidence and (ii) was happy for the Tribunal to make a decision in the absence of anything having been provided by it.

The Law:

- 6 In addition to the contractual relationship between the parties set out and defined in the lease, there are also statutory provisions relating to service charges to consider:

Section 19 (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."

Section 27A :

"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*

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

(2) 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 is payable, and*
- e. the manner in which it would be payable.*

(3) (Continues.....)

Section 20C :

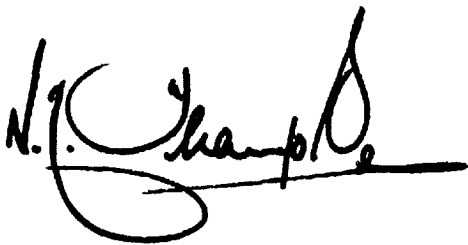
“(1) A tenant may make an application for an order that all or any of the costs incurred or to be incurred by the landlord in connection with proceedings before a court [residential property tribunal] or leasehold valuation tribunal.....are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person specified in the application.”

Decisions:

- 7 In connection with the applications under Sections 19 and 27A, the Tribunal determines that the Applicant is not liable to pay any of the costs in connection with the installation of the Communal Digital Television system.** The scope of the Respondent's responsibilities for which the cost is recoverable as service charge is set out in the Sixth Schedule to the lease (and is summarised at paragraph 3 above). It does not include either specifically or by inference, work connected with television aerial installations, and as such is not recoverable as an item of service charge, regardless of whether or not the Applicant indicated his objection to contributing towards those costs. This is supported by Clause 16 of the lease and Clause 9 of the Fifth Schedule to the lease, which specifically impose conditions on the lessee (in this case, the Applicant) regarding the installation and maintenance of television aerials; the clear inference being that the Applicant is responsible for installing and maintaining any necessary television aerial serving the Property.
- 8 In connection with the application under Section 20C, the Applicant has been entirely successful in his claim and it is therefore considered just and equitable that an order should be granted to prevent the Respondent's costs**

in connection with the proceedings being regarded as relevant costs to be taken into account in determining the amount of any service charge payable. **Accordingly, the Tribunal grants the order requested by the Applicant under Section 20C of the Act.**

- 9 Under Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003, a Tribunal may require any party to 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. In this case, the Tribunal considers that it would be appropriate to order reimbursement of the original Application Fee of £50.00p paid by the Applicant because the issues in dispute were such that proceedings before the Tribunal were probably the only realistic way of resolving the differences between the parties. **Consequently, the Tribunal orders the Respondent to reimburse the Applicant the application fee paid to the Tribunal of £50.00p within the next twenty eight days.**

A handwritten signature in black ink, appearing to read 'N. R. Thompson', with a long horizontal flourish extending to the right.

N R Thompson
Chairman
Midland Leasehold Valuation Tribunal

8th May 2013