

8922

**HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL**

**LANDLORD AND TENANT ACT 1985, Section 27A as amended by the
COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

Property: 522 Lower Hall Street, St Helens, WA10 1GF

Applicant: Fairhold Mercury Limited

Respondent: Ms Kate Elizabeth Eustace

Case number: MAN/00BZ/LSC/2012/0179

Dates of Reference: 20 December 2012

Type of Application: Application for a determination of liability to pay and reasonableness of service charges

The Tribunal: Mr P J Mulvenna LLB DMA (chairman)
Mrs A E Franks FRICS
Miss C Roberts

Date of decision: 28 May 2013

ORDER

That the service charges generally levied by the Applicant for the years ended 31 August 2011 and 2012 and the year ending 31 August 2013 are reasonable and payable by the Respondent, the outstanding sum at the date of the hearing being £3,570.45 in total.

DETERMINATION AND REASONS

INTRODUCTION

1. Fairhold Mercury Limited ('the Applicant') lodged a claim in the County Court seeking the payment from Ms Kate Elizabeth Eustace ('the Respondent') of specified charges for services for the years ended 31 August 2011 and 2012 and for the year ending 31 August 2013 in respect of 522 Lower Hall Street, St Helens, WA10 1GF ('the Property'). On 20 December 2012, at St Helens County Court, an Order was made by District Judge Fitzgerald for the matters to be referred to the Leasehold Valuation Tribunal.
2. The Property is a self-contained apartment on the fifth floor of one of two purpose-built blocks ('Block A' and 'Block B', together 'the Development') constructed in or around 2007 and in total containing 200 apartments. The Development is accessed at the front by secure doors in each block and to the rear by a private, gated road leading to a landscaped car park and to secure entrances in each block. Block A is a seven storey

SSP8

building and Block B, in which the Property is situated, is a five storey building. Both blocks have basements with car-parking, bin-store and boiler-room. The basement of Block A also has a caretaker's office and toilet facilities. The service charges for the two blocks (but not those common to the whole Development) are calculated separately to reflect the greater costs which might be expected to be incurred in respect of Block A as it has two extra floors,. The internal common areas include secure entrance halls, together with lifts, stairs and landings in each Block giving access to all floors; basement car parking areas, including a car parking space allocated to the Respondent; modest ornamental landscaped areas; and bin stores. The Development is situated in a mixed residential/commercial/industrial area on the edge St Helens town centre and backs onto the Liverpool - St Helens – Wigan railway line.

3. The Respondent has a leasehold interest in the Property held under a Lease made between (1) Countryside Properties Land (One) Limited Countryside and Properties Land (Two) Limited and (2) the Respondent on 23 January 2009 for a term of 250 years from 1 April 2007 ('the Lease').
4. The Applicant has a freehold interest in the Development and has engaged Mainstay Residential Limited ('Mainstay') as the managing agents for the Development. Mainstay succeeded a firm called Remus Management Limited ('Remus') in that capacity on 1 July 2011.

THE INSPECTION

5. The Tribunal inspected the common parts of the Development externally and internally on the morning of 20 May 2013. The Applicant was represented by Mr S Armstrong of counsel instructed by J B Leitch, solicitors, together with Ms K Magill, property manager, Ms P Pampila and Mr J Hughes, caretaker, who are all employed by the managing agents. The Respondent was represented by Mr G Fletcher, together with Mr P Outten of Cosey Homes, letting agents. The Tribunal found the Development to be maintained to a reasonable standard.

THE HEARING

6. Directions were issued by a procedural chairman on 11 January 2013 and subsequently amended at the request of the Respondent. The parties have substantially complied with the Directions.
7. The substantive hearing of the application was held on 20 May 2013 at the Civil & Family Court, 35 Vernon Street, Liverpool. The Applicant was represented by Mr S Armstrong, together with Ms K Magill. The Respondent was present and represented by Mr M Monaghan of counsel.

THE LAW

8. The material statutory provisions in this case are as follows.
 - (i) The Landlord and Tenant Act 1985

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... (c) the amount which is payable'.

Section 27A (3) provides that an application may also be made 'if costs were incurred.'

Section 19(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.

(ii) The Commonhold and Leasehold Reform Act, Schedule 11, Paragraph 5 provides for applications to be made to a leasehold valuation tribunal for a determination whether an administration 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.

THE LEASES

9. The Tribunal had before it a copy of the Lease which has been read and interpreted as a whole. In reaching its conclusions and findings, the Tribunal has had particular regard to the following matters or provisions contained in the Lease, none of which were the subject of dispute or argument by or on behalf of the parties:
- (a) The definition of 'Service Charge', 'Services' and related expressions in Clause 1.
 - (b) The Tenant's covenants in Clause 4 and the Fourth Schedule.
 - (c) The Landlord's maintenance covenants in Clause 5.
 - (d) The computation of the Service Charge in the Fifth Schedule.
 - (e) The purposes for which the Service Charge is to be applied in the Sixth Schedule.
 - (f) The costs referred to in the Seventh Schedule.

THE EVIDENCE, SUBMISSIONS & THE TRIBUNAL'S CONCLUSIONS & REASONS

10. The Respondent had challenged the reasonableness of the service charges on a number of bases. However, after the Tribunal's inspection but before the commencement of the hearing of the substantive issues, the parties met and, with the benefit of counsels' advice, agreed the disputed issues and requested a consent order that the service charges for the years in question were reasonable and payable by the Respondent.

11. In the light of the submissions made on behalf of the parties, the Tribunal determined that the Respondent in this case had effectively withdrawn the challenges to the reasonableness of the service charges to be considered by the Tribunal and that, as between the parties, there was no dispute to adjudicate upon. The Tribunal also took account of the decision in *Birmingham City Council -v- Keddle & Hill [2012] UKUT 323 (LC)* in which it was held that a leasehold valuation tribunal had no jurisdiction to determine issues not raised by the application. By analogy, the Tribunal determined that it had no jurisdiction to consider issues in the present case on their own motion. The Tribunal did not, therefore, consider the reasonableness of the service charges in question by a detailed examination and assessment of the service charge accounts and the supporting documentation, but accepted the parties' position.
12. The Tribunal finds, therefore, that, by consent of the parties, the service charges generally levied by the Applicant for the years ended 31 August 2011 and 2012 and the year ending 31 August 2013 are reasonable and payable by the Respondent, the outstanding sum at the date of the hearing being £3,570.45 in total.

COSTS

13. The Tribunal has power to award costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which provides:

'(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

 - (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

 - (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.'
14. Mr Armstrong, on behalf of the Applicant, submitted an application for costs in the sum of £500 on the basis that the Respondent had acted unreasonably by not accepting the reasonableness of the service charges at an earlier stage, thus giving rise unnecessarily to the substantive hearing. He said that the material supplied by the Applicant was sufficient to enable an assessment of reasonableness to be made at an

earlier stage. The application was resisted by Mr Monaghan on the basis that the material supplied was not sufficient for that purpose.

15. The Tribunal considered that the general words 'otherwise unreasonably' in paragraph (2)(b) of the provisions must be construed as having a meaning of the same nature as the preceding specific words 'frivolously', 'vexatiously', 'abusively' and 'disruptively' and that there must be behaviour of that nature to engage the provisions. The Respondent's behaviour in respect of the proceedings did not cross that threshold and could not be said to be unreasonable within the scope of the statutory provision. In any event, having reviewed the whole of the documentation, the Tribunal is satisfied that there was sufficient scope to cause confusion in the minds of the lessees receiving the service charge demands. The correspondence referred to the wrong number of apartments at the development, referred to a third block and failed adequately to deal with problems arising from the handover to Mainstay by Remus, including the apparent failure of Remus to make some payments or properly to account for expenditure. None of these shortcomings arose from deliberate obfuscation by the Applicant but they did create a lack of clarity which inevitably gave rise to uncertainty by the lessees of the basis upon which they might assess reasonableness. In these circumstances, the Tribunal has determined that it would not be appropriate to award costs in this case.
16. The Respondent requested that an order be made under section 20C of the Landlord and Tenant Act 1985 that the costs incurred, or to be incurred, by the Applicant in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants. The Tribunal has no evidence that the Applicant has acted unreasonably in any respect and the Applicant has, in any event, succeeded before the Tribunal, albeit by consent. It would not be reasonable or proportionate to make an order.

**P J Mulvenna,
Chairman of the Leasehold Valuation Tribunal**

28 May 2013