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LEASEHOLD VALUATION TRIBUNAL
OF THE MIDLAND RENT ASSESSMENT PANEL

Case numbers: BIR/00FN/LIS/2011/0045 AND
BIR/00FN/LAC/2011/0014

Property: Flat 3,
28 Stretton Road
Leicester
LE3 6BN

Applicant: J H Watson Property Investment Limited

Applicant's Agent: Watson Property Management

Respondent: Mr M J Taylor

Type of Application: An Application under Section 27A(and 19) of the
Landlord & Tenant Act 1985 for determination of the
liability to pay and reasonableness of service
charges and an application under Schedule 11 of the
Commonhold and Leasehold Reform Act 2002 for a
determination as to liability to pay and
reasonableness of a variable administration charge.

Date of Applications: 7th November 2011

Tribunal: Mr G S Freckelton FRICS (Chairman)
Mr R Healey (Lawyer)

Date of Decision: 19 APR 2012

Decision

1. The Tribunal determine that the service charge payable by the Respondent to the Applicant for the year ending 24th March 2007 is the sum of £1,562.33.
2. The Tribunal determine that the service charge payable by the Respondent to the Applicant for the year ending 24th March 2008 is the sum of £1,010.57.
3. The Tribunal determine that the service charge payable by the Respondent to the Applicant for the year ending 24th March 2009 is the sum of £543.13.
4. The Tribunal determine that the service charge payable by the Respondent to the Applicant for the year ending 24th March 2010 is the sum of £493.54.
5. The Tribunal determine that the service charge payable by the Respondent to the Applicant for the year ending 24th March 2011 is the sum of £673.23.
6. The Tribunal determine that the interim service charge by the Respondent to the Applicant for the year ending 24th March 2012 is the sum of £798.34 subject to the end of year balance.
7. The Tribunal determine that the sum of £3,479.25 is payable by the Respondent to the Applicant in respect of Administration Charges.

Application and The Dispute

8. The Applicant is the freeholder of a property at 28 Stretton Road, Leicester, LE3 6BN. The property was originally built as a single dwelling house but was subsequently converted to provide a total of three flats.
9. On 7th November 2011, J H Watson Property Investment Limited (Applicant) submitted an application to the Midland Leasehold Valuation Tribunal, which was received on 9th November 2011.
10. The Application was for determination of the service charges for the years ending 24th March 2007, 2008, 2009, 2010, 2011 and 2012. An application was also submitted for determination of the variable administration charge in relation to the various legal proceedings. An application had been submitted to Harrogate County Court by the Applicant seeking to claim arrears of service charges and ground rent due under the terms of the lease and associated administration charges from the Respondent. The matter was subsequently transferred to Leicester County Court and on 18th June 2010, District Judge Whitehurst made an order that the claim be stayed pending a referral to the Leasehold Valuation Tribunal.
11. The Tribunal issued Directions on 8th December 2011 following which submissions were made by the Applicant. No submissions have been received from Mr M J Taylor (Respondent). It is accepted by the Tribunal that the Applicant has complied with the Directions. The conduct of the Applicant's case in these proceedings has been carried out by Watson Property Management, the appointed agent of the Applicant company. They were represented at the Hearing by Counsel, Mr S Allison.

The Lease

12. The property is held under a lease dated 17th January 1992 for a term of 125 years from that date. The Applicant is the current freehold owner of the development and the Respondent is the current tenant of the property.
13. Clause 5.2 of the lease provides for the lessee to pay a contribution to the maintenance charges. Clause 6 details the lessor's maintenance responsibilities and the Fifth Schedule of the lease details the expenses, which the lessee is to contribute towards. The Tenant is responsible for paying one third of the total service charges.

The Legal Framework

14. Under Section 27A of the Landlord & Tenant Act 1985 (1985 Act), the Tribunal has jurisdiction to decide whether a service charge is payable and if it is, the Tribunal may also decide:-
 - (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
15. Section 19 the 1985 Act provides that service charges must be reasonable for them to be payable.

“Relevant costs shall be taken into account in determining the amount of the 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 and the carrying out of works, only if the services or works are of a reasonable standard:

and the amount payable shall be limited accordingly.”
16. A charge is only payable by the Lessee if the terms of the lease permit the Lessor to charge for the specific service. The general rule is that service charge clauses in a lease are to be construed restrictively, and only those items clearly included in the Lease can be recovered as a charge (*Gilje v Charlgrove Securities* [2002] 1EGLR41).
17. If the lease authorises the charges, they are only payable to the extent that they are reasonably incurred; and where they are incurred, only where the services for which they are incurred are of a reasonable standard.
18. The construction of the lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. Essentially the Tribunal will decide reasonableness on the evidence presented to it (*Yorkbrook Investments Ltd v Batten* [1985] 2EGLR100).

The Parties' Evidence & Submissions and The Tribunal's Determination

19. The Applicant submitted detailed information in respect of the service charges for the years ending 24th March 2007, 2008, 2009, 2010 and 2011 together with estimates for the service charges for the year ending 24th June 2012 under cover of their letter dated 12th January 2012, with further submissions on 16th January 2012 to include details of the Administration Charge and estimated costs of Counsel attending the Hearing on behalf of the Applicant. No submissions were received from the Respondent.
20. The Tribunal inspected the property in the presence of Mr M Patel (Agent for the Applicant) and Mr S Allison (Counsel for the Applicant). The Respondent did not attend the inspection.
21. The Tribunal found the property to be a two storey villa-style terraced house of brick construction surmounted by a pitched slate roof. It had been converted to provide three self-contained flats with flats 1 and 2 being on the ground floor and flat 3 being on the first floor.
22. The Tribunal inspected the entrance hall and staircase together with the understairs store cupboard and electric meter cupboard. Mr Patel explained that gas was not connected to the property. The Tribunal also inspected the front forecourt and private rear yard area, which is approached by an entryway shared with the adjoining property, number 30 Stretton Road, Leicester. The entryway was noted to be partly blocked with stored items, which the Tribunal was informed were the property of the occupants of 30 Stretton Road. Within the rear garden were two small stores, which were padlocked and not demised to any of the flats.
23. During the Tribunal's inspection, Mr Patel confirmed that external and internal redecoration was last undertaken in 2006 at which time the carpets were also replaced. A Section 20 consultation in respect of external redecoration and repairs to some windows was currently being undertaken.
24. In its submission, the Applicant has provided details of the service charge accounts for all the years. Supporting documentation has been provided in respect of each of the items of expenditure. Scott Schedules were provided for each year to confirm the original estimate, actual amount spent and the Tenant's contribution.
25. The Applicant also provided details of the administration charges they had incurred. The Tribunal determined that it would first deal with the items of service charge for each year and then the administration charge as a separate item.

Service Charges

26. For the year ending 24th March 2007, the Applicant submitted a Scott Schedule together with a detailed breakdown for the year and copies of invoices.

Item	Estimates (Tenant's Contribution)	Actual Amount Spent	Tenant's Contribution	Lease Ref: Clause 5.2 plus:	Tenant's Complaint	Landlord's Response	Tribunal
Common parts electricity	£40.00 (£13.33)	£37.60	£12.53	Paragraphs 4 & 5 of the Fifth Schedule			
General maintenance and repair	£750.00 (£250.00)	£441.18	£147.06	Clause 7.1 & Paragraph 1 of the Fifth Schedule			
External decorations	£2000.00 (£666.67)	£1151.80	£383.83	Clause 7.2 & Paragraph 1 of the Fifth Schedule			
Buildings insurance	£363.43 (£121.14)	£410.81	£136.94	Clause 6.2 & Paragraph 1 of the Fifth Schedule			
Interest charges	£0.00	£37.44	£12.48	Clause 1 & Paragraph 1 of the Fifth Schedule			
Professional fees	£352.50 (£117.50)	£1083.36	£361.12	Clause 7.3 & Paragraphs 1, 5 & 6 of the Fifth Schedule			
Maintenance contracts	£150.00 (£50.00)	£149.22	£49.74	Clause 7.1 & 7.3 & Paragraph 1 of the Fifth Schedule			
Internal decorations	£0.00	£740.00	£246.67	Clause 7.1 & Paragraph 1 of the Fifth Schedule			
Management fee	£635.91 (£211.97)	£635.88	£211.96	Clause 7.3 & Paragraphs 1, 5, 6 & 7 of the Fifth Schedule			
Total	£4291.84 (£1430.61)	£4686.99	£1562.33				

27. The Tribunal considered the expenses incurred by the Applicant to be reasonable and determined that the amount of £1,562.33 should be payable by the Respondent to the Applicant in respect of same.

28. For the year ending 24th March 2008, the Applicant submitted a Scott Schedule together with detailed breakdown for the year and copies of invoices.

Item	Estimates (Tenant's Contribution)	Actual Amount Spent	Tenant's Contribution	Lease Ref:	Tenant's Complaint	Landlord's Response	Tribunal
Common parts electricity	£45.00 (£15.00)	£40.23	£13.41	Paragraph 4 & 5 of the Fifth Schedule			
General maintenance and repair	£750.00 (£250.00)	£481.90	£160.63	Clause 7.1 & Paragraph 1 of the Fifth Schedule			
Buildings insurance	£431.35 (£143.78)	£435.71	£145.24	Clause 6.2 & Paragraph 1 of the Fifth Schedule			
Interest charges	£0.00	£128.97	£42.99	Clause 1 & Paragraph 1 of the Fifth Schedule			
Major Works	£940.00 (313.33)	£914.00	£304.67	Clause 7.1 & Paragraph 1 & 5 of the Fifth Schedule			
Professional fees	£141.00 (£47.00)	£137.10	£45.70	Clause 7.3 & Paragraphs 1, 5 & 6 of the Fifth Schedule			
Maintenance contracts	£150.00 (£50.00)	£252.27	£84.09	Clause 7.1 & 7.3 & Paragraph 1 of the Fifth Schedule			
Management fee	£641.55 (£213.85)	£641.53	£213.84	Clause 7.3 & Paragraphs 1, 5, 6 & 7 of the Fifth Schedule			
Total	£3098.90 (£1032.96)	£3031.71	£1010.57				

29. The Tribunal considered the expenses incurred by the Applicant to be reasonable and determined that the amount of £1,010.57 should be payable by the Respondent to the Applicant in respect of same.

30. For the year ending 24th March 2009, the Applicant submitted a Scott Schedule together with detailed breakdown for the year and copies of invoices.

Item	Estimates (Tenant's Contribution)	Actual Amount Spent	Tenant's Contribution	Lease Ref:	Tenant's Complaint	Landlord's Response	Tribunal
Common parts electricity	£45.00 (£15.00)	£55.91	£18.64	Paragraphs 4 & 5 of the Fifth Schedule			
General maintenance and repair	£750.00 (£250.00)	£326.25	£108.75	Clause 7.1 & Paragraph 1 of the Fifth Schedule			
Buildings insurance	£457.50 (£152.50)	£445.82	£148.61	Clause 6.2 & Paragraph 1 of the Fifth Schedule			
Maintenance contracts	£175.00 (£58.33)	£164.14	£54.71	Clause 7.1 & 7.3 & Paragraph 1 of the Fifth Schedule			
Management fee	£641.55 (£213.85)	£637.27	£212.42	Clause 7.3 & Paragraphs 1, 5, 6 & 7 of the Fifth Schedule			
Total	£2069.05 (£689.68)	£1629.39	£543.13				

31. The Tribunal considered the expenses incurred by the Applicant to be reasonable and determined that the amount of £543.13 should be payable by the Respondent to the Applicant in respect of same.

32. For the year ending 24th March 2010, the Applicant submitted a Scott Schedule together with detailed breakdown for the year and copies of invoices.

Item	Estimates (Tenant's Contribution)	Actual Amount Spent	Tenant's Contribution	Lease Ref:	Tenant's Complaint	Landlord's Response	Tribunal
Common parts electricity	£77.00 (£25.67)	£53.76	£17.92	Paragraphs 4 & 5 of the Fifth Schedule			
General maintenance and repair	£750.00 (£250.00)	£0.00	£0.00	Clause 7.1 & Paragraph 1 of the Fifth Schedule			
Buildings insurance	£489.00 (£163.00)	£485.82	£161.91	Clause 6.2 & Paragraph 1 of the Fifth Schedule			
Contingency	£150.00 (£50.00)	£0.00	£0.00	Clause 5.2.2 & Paragraphs 1 & 3 of the Fifth Schedule			
Accountancy Fees	£115.00 (38.33)	£115.00	£38.33	Paragraphs 1, 6, 7 & 9 of the Fifth Schedule			
Maintenance contracts	£175.00 (£58.33)	£167.55	£55.85	Clause 7.1 & 7.3 & Paragraph 1 of the Fifth Schedule			
Management fee	£669.60 (£223.20)	£658.60	£219.53	Clause 7.3 & Paragraphs 1, 5, 6 & 7 of the Fifth Schedule			
Total	£2425.60 (£808.53)	£1480.73	£493.54				

33. The Tribunal considered the expenses incurred by the Applicant to be reasonable and determined that the amount of £493.54 should be payable by the Respondent to the Applicant in respect of same.

34. For the year ending 24th March 2011, the Applicant submitted a Scott Schedule together with detailed breakdown for the year and copies of invoices.

Item	Estimates (Tenant's Contribution)	Actual Amount Spent	Tenant's Contribution	Lease Ref:	Tenant's Complaint	Landlord's Response	Tribunal
Common parts electricity	£77.00 (£25.67)	£79.95	£26.65	Paragraphs 4 & 5 of the Fifth Schedule			
General maintenance and repair	£750.00 (£250.00)	£770.00	£256.67	Clause 7.1 & Paragraph 1 of the Fifth Schedule			
Buildings insurance	£534.00 (£178.00)	£309.23	£103.08	Clause 6.2 & Paragraph 1 of the Fifth Schedule			
Contingency	£150.00 (£50.00)	£0.00	£0.00	Clause 5.2.2 & Paragraphs 1 & 3 of the Fifth Schedule			
Accountancy Fees	£117.00 (39.00)	£0.00	£0.00	Paragraphs 1, 6, 7 & 9 of the Fifth Schedule			
Maintenance contracts	£175.00 (£58.33)	£187.64	£62.55	Clause 7.1 & 7.3 & Paragraph 1 of the Fifth Schedule			
Management fee	£687.00 (£229.00)	£672.84	£224.28	Clause 7.3 & Paragraphs 1, 5, 6 & 7 of the Fifth Schedule			
Total	£2490.00 (£830.00)	£2019.66	£673.23				

35. The Tribunal considered the expenses incurred by the Applicant to be reasonable and determined that the amount of £673.23 should be payable by the Respondent to the Applicant in respect of same.

36. The Applicant submitted the following Scott Schedule of the interim estimated service charge for the year ending 24th March 2012

Item	Estimates (Tenant's Contribution)	Actual Amount Spent	Tenant's Contribution	Lease Ref:	Tenant's Complaint	Landlord's Response	Tribunal
Common parts electricity	£77.00 (£25.67)			Paragraphs 4 & 5 of the Fifth Schedule			
General maintenance and repair	£770.00 (£256.67)			Clause 7.1 & Paragraph 1 of the Fifth Schedule			
Buildings insurance	£350.00 (£116.67)			Clause 6.2 & Paragraph 1 of the Fifth Schedule			
Contingency	£150.00 (£50.00)			Clause 5.2.2 & Paragraphs 1 & 3 of the Fifth Schedule			
Accountancy Fees	£120.00 (40.00)			Paragraphs 1, 6, 7 & 9 of the Fifth Schedule			
Maintenance contracts	£190.00 (£63.33)			Clause 7.1 & 7.3 & Paragraph 1 of the Fifth Schedule			
Management fee	£738.00 (£246.00)			Clause 7.3 & Paragraphs 1, 5, 6 & 7 of the Fifth Schedule			
Total	£2395.00 (£798.34)						

37. The Tribunal considered the estimate of charges provided by the Applicant to be reasonable and determined that the interim amount of £798.34 should be payable by the Respondent to the Applicant in respect of same. This will be subject to a final end of year balance.

Administration Charge

38. Mr Allison confirmed to the Tribunal that under the lease, legal costs, management costs and the costs of dealing with non-payment were recoverable as a service charge item and as an administration charge. He drew the Tribunal's attention to Clause 4.1.2 of the lease which he was of the opinion covered all aspects of legal costs payable by the Respondents.
39. Mr Allison also informed the Tribunal that the lease permitted the Applicant to apportion administration charges as it sees fit. In this case, the Landlord was of the opinion that 100% of the administration charges should be the responsibility of the Respondent as all the costs had occurred due to the non-payment by the Respondent of the service charge. The Applicant did not consider that it was fair and equitable to penalise the other two flat owners by apportioning any part of the costs to them.
40. Clause 4.1.4 of the lease provides for the lessee *"to pay all costs, charges and expenses (including solicitors' costs and surveyors' fees) incurred by the lessor for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court"*. Mr Allison contended that in order for the Landlords to obtain payment, they had been required to go through various procedures with both the County Court and Leasehold Valuation Tribunal. It was Mr Allison's opinion that all these costs were therefore the responsibility of the Respondent.
41. Mr Allison drew the Tribunal's attention to the Appeal Court Decision between Freeholders of 69 Marina, St Leonards-on-Sea – Robinson, Simpson & Palmer – and – John Oram & Mohammed Ghoorun. In that case, the District Judge held that Clause 3(12) of that lease, which was noted to have a similar provision as Clause 4.1.4 of the lease in respect of flat 3, 28 Stretton Road was a freestanding obligation and not limited by other provisions of the lease. This was subsequently upheld by the Court of Appeal and, following the Court of Appeal decision, Mr Allison contended that all the administration charges including the costs of appearing before the Leasehold Valuation Tribunal were proper charges to be paid by the Respondent.

42. The Applicant submitted a Scott Schedule detailing the various administration charges claimed as follows:-

Item	Amount	Date	Lease Ref.	Bundle Page No.	Tenant's Complaint	Landlord's Response	Tribunal
Land Registry Office Copy Charge	£6.00	10/03/08	4.1.4 Clause 5 & 6 of the Fifth Schedule	28		Freehold Office Copy ordered to find title number for Flat 3, Stretton Road.	
Land Registry Office Copy Charge	£4.00	30/07/09	4.1.4 Clause 5 & 6 of the Fifth Schedule	28		Office Copy check on current proprietorship register and charge register	
Lender correspondence administration charge	£69.00	26/08/09	4.1.4 Clause 5 & 6 of the Fifth Schedule	48		Letter to lender requesting they contact their borrower re non-payment.	
Managing Agents variable administration charge	£58.75	26/02/10	4.1.4 Clause 5 & 6 of the Fifth Schedule	52		Breach of lease final reminder charge.	
Managing Agents variable administration charge	£146.88	15/03/10	4.1.4 Clause 5 & 6 of the Fifth Schedule	57		Charge for processing of County Court Claim for breach of lease.	
Court fee	£108.00	16/03/10	4.1.4 Clause 5 & 6 of the Fifth Schedule	57A		County Court Application Fee	
Service Charge and administration bundles	£778.62	12/01/12	4.1.4 Clause 5 & 6 of the Fifth Schedule	57B		Administration charge for the preparation of the Applicant's case and preparation of the service charge and administration LVT bundles.	

Counsel Advice	£525.00	12/01/12	4.1.4 Clause 5 & 6 of the Fifth Schedule	57C		Cost for Counsel's advice in preparation of the LVT bundles.	
Counsel Representation	£1650.00 + Travel Expenses: £133.00		4.1.4 Clause 5 & 6 of the Fifth Schedule			Counsel costs for representing the Applicant at the LVT Hearing.	
Total variable administration charges claimed	£3479.25						

43. The Tribunal considered the various charges applied by the Applicant's agent and found them to be reasonable. Indeed, details of how administration charges were calculated had been provided to the Respondent who was therefore aware of how they were determined. The Tribunal also determined that numerous letters had been sent to the Respondent for which the Applicant was entitled to make a charge and for which they had declined to so do.
44. The Tribunal questioned Mr Allison as to the basis of his charges and he confirmed that he charged at a rate of £125 plus VAT per hour. The Tribunal considered that this was a reasonable fee rate for a counsel of Mr Allison's experience and expertise.
45. With regard to the cost of Counsel's representation at the Hearing, Mr Allison had costed this at £1,650 (to include VAT) plus travelling by train and taxi of £133. This was on the basis that with time spent travelling, attending the inspection and the Hearing, Mr Allison would be away from his chambers for approximately 11 hours. This was determined by the Tribunal as being reasonable.
46. The Tribunal determined that the sum of £3,479.25 is payable in respect of administration charges by the Respondent to the Applicant.

Signed: 

Graham Freckelton FRICS
Chairman
Midland Leasehold Valuation Tribunal

Date: 19 APR 2012