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**H M COURTS & TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION
TRIBUNAL
CASE NO. CHI/23UE/LSC/2012/0077**

**RE: DENMARK COURT, DENMARK ROAD, GLOUCESTER, GL1 3HP "THE
PREMISES"**

BETWEEN:

**DENMARK COURT MANAGEMENT CO LIMITED (Represented by the Flat
Managers Limited)**

"THE APPLICANTS"

&

THE LESSEES OF DENMARK COURT

"THE RESPONDENTS"

**IN THE MATTER OF AN APPLICATION UNDER SECTION 27(A) OF THE
LANDLORD AND TENANT ACT 1985 ("The 1985 Act") (LIABILITY TO PAY
SERVICE CHARGES)**

DECISION

TRIBUNAL MEMBERS;

MR A D McC GREGG (LAWYER/CHAIRMAN)

MR M J AYRES FRICS (VALUER/MEMBER)

MRS J PLAYFAIR (LAY MEMBER)

DATE OF APPLICATION: 18 MAY 2012

DATE OF DIRECTIONS: 28 MAY 2012

**DATE OF INSPECTION
AND HEARING:**

22 OCTOBER 2012

DATE OF DETERMINATION:

6 NOVEMBER 2012

PERSONS PRESENT AT THE HEARING:

MS JANE FORSYTH

MR DAVID SCHERMER

MR TIMOTHY SHEEHY (FLAT 17)

FOR THE APPLICANTS

MRS D SILVA (FLAT 1) AND MRS WITHERS (DAUGHTER)

MRS COLBORN (FLAT 2) (REPRESENTED BY MRS JAN HAMILTON)

MR AND MRS FRY (FLAT 10)

MRS READE (FLAT 13) (SUPPORTED BY MRS COX, HER DAUGHTER)

MRS TURNER (FLAT 16)

MS BOSWELL (OBSERVER)

FOR THE RESPONDENTS

1 The Issues

1.1 In this matter, the Applicants (on behalf of The Flat Managers Limited who are the managing agents for an on behalf of Denmark Court Management Company Limited) sought a determination from the Tribunal with regard to proposed service charges for the years 2012 and 2013.

1.2 For the year 2012:

- The cost of a fire detection and alarm system estimated at £5,500;
- The cost of an emergency lighting system at an estimated cost of £3,500;
- The cost of replacement of non fire related front doors with fire compliant doors at an estimated cost of £6,000;
- Fees to be incurred by The Flat Managers Limited in respect of this Application (£40 plus VAT per hour); and
- The charges of The Flat Managers Limited as managing agents in respect of the proposed works (£40 plus VAT per hour).

For the year 2013

- The cost of a fire detection and alarm system estimated at £5,500;
- The cost of an emergency lighting system at an estimated cost of £3,500;
- The cost of replacement of non fire related front doors with fire compliant doors at an estimated cost of £6,000;
- Fees to be incurred by The Flat Managers Limited in respect of this Application (£40 plus VAT per hour); and
- The charges of The Flat Managers Limited as managing agents in respect of the proposed works (£40 plus VAT per hour).

2 Inspection of Premises

- 2.1 The Tribunal inspected the premises prior to the hearing on Monday 22 October 2012.
- 2.2 The premises comprise three blocks of flats that were built in or about the 1970s. There are six flats in each block.
- 2.3 The first two blocks are adjoining each other and the third block is free standing. All three blocks stand in their own well kept grounds.
- 2.4 There are two flats on each floor of each block (there are therefore three floors in all).
- 2.5 The Tribunal were told that when the flats were originally built, each flat had a front door which was a fire door.
- 2.6 However, in the first block of flats, two of the six front doors had been replaced with UPVC doors.
- 2.7 In the second block of flats four of the six doors had been replaced with UPVC front doors.
- 2.8 In the third block, none of the front doors had been replaced.
- 2.9 The Tribunal noted that there were meter cupboards on each floor outside each flat which were also used for storage purposes.
- 2.10 There were fire extinguishers on each floor.
- 2.11 There was however no emergency lighting in the common parts and the Tribunal were told that there were no smoke detectors or emergency lighting within each of the flats.

3 Preliminaries

- 3.1 Prior to the hearing the Tribunal had received a copy of what they were told was the standard Lease for all the flats.

3.2 They had also received written representations from the Applicants.

4 Relevant Liabilities under the Lease

- 4.1 The Leases are for a period of 999 years from, in the case of Flat 12, 2 April 1982.
- 4.2 The liability to pay service charges is found at paragraphs 3(4)(ii) and 3(4)(iv) of the Lease. Furthermore paragraph (v)(b) of the First Schedule states that the flat door (front door) and door frame remained the property of the Management Company.
- 4.3 Paragraph 3 of the Fifth Schedule imposes a liability on the Management Company to maintain repair and replace and renew external lighting in the grounds or parts thereof.
- 4.4 Paragraph 8 of the same Schedule requires the Management Company to discharge all costs of and incidental to compliance with every notice, regulation or order of any competent local or other authority in respect of the grounds.
- 4.5 Paragraph 1 of part ii of the Fifth Schedule imposes a liability to clean, maintain, repair, resurface, light and renew as appropriate.
- 4.6 Paragraph 5 of part ii of the Fifth Schedule requires the Management Company to discharge all costs of and incidental to compliance with every notice, regulation or order of any competent local or other authority in respect of the building as a whole.

5 The Law

The Statutory provisions primarily relevant to applications of this nature are to be found in sections 18, 19 and 27a of the Act.

5.2 Section 18 provides:

- 1) *In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part or in addition to the rent:-*
 - a. *Which is payable, directly or indirectly, for services, repairs, maintenance, improvements, or insurance or the landlord's costs of management and*
 - b. *The whole or part of which varies or may vary according to the relevant costs.*
- 2) *The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*
- 3) *For this purpose:-*
 - a. *"Costs" includes overheads and*

- b. *Costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.*

5.3 Section 19 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 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 payment, reduction or subsequent charges or otherwise.*

5.4 Section 27A 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.*

Subsections 2 to 7 of the section 27A are not relevant in this application.

6 The Hearing

6.1 The hearing of this application took place at the Mercure, Gloucester, Bowden Hall Hotel, Bondend Lane, Upton St Leonards, Gloucester, GL4 8ED.

7 The Applicants' Case

- 7.1 Ms Forsyth on behalf of the managing agents opened the Applicants' case by stating that they were the responsible party under the Regulatory Reform (Fire Safety) Order of 2005.
- 7.2 The Applicants were concerned that they could not get the degree of compartmentation that was required under the Regulations unless all the front doors of the flats had fire doors.
- 7.3 The reason for this is because each flat front door leads onto a landing which is also a fire escape for the other flats in the block.
- 7.4 Those flats that had replaced their front doors with UPVC doors were not compliant with the Fire Regulations.

- 7.5 An assessment had been carried out for the Applicants by A&E Fire Equipment Limited and that assessment was found on pages 6 to 53 of the Applicants' bundle.
- 7.6 Furthermore, the companies original insurers, AVIA, had provided a document headed "Risk Improvements" which were found on pages 54 and 55 of the bundle.
- 7.7 The Applicants accepted that if the non compliant front doors were replaced with fire doors then there would be no necessity for a fire alarm system though it was desirable, but there would still be a necessity for emergency lighting in the communal stairwells.
- 7.8 They had written to all the residents of Denmark Court highlighting the problem on 23 February 2011 and a copy of that letter was found on page 56 of the bundle.
- 7.9 Furthermore, a memorandum had been sent to all Leaseholders pursuant to Section 20 of the Act and that memorandum was found on page 57 of the bundle.
- 7.10 No responses had been received to the original notice of intention and estimates with regard to the proposed works that had been provided and were found on pages 64 and 65 of the bundle.
- 7.11 The Applicants originally went to three contractors inviting estimates in respect of the necessary works. One however did not conform to the requirements of the regulations and they therefore selected two to provide estimates.
- 7.12 Mainpoint Fire Protection Limited provided a quote which was dated 20 May 2011 (pages 66 to 69 of the bundle) and A&E Fire Equipment Limited provided a quote on 10 June 2011 (pages 70 to 73 of the bundle).
- 7.13 Page 85 of the bundle recorded objections from Mrs Bradwell (Flat 6), Mr Smith (Flat 3) and Mr Whitfield (Flat 4).
- 7.14 Page 86 of the bundle recorded objections from Mr D Silva (Flat 1), Mr and Mrs Colborn (Flat 2), Mrs Hussey (Flat 7) and Mr and Mrs Fry (Flat 10).
- 7.15 Page 87 of the bundle recorded objections from Mrs Preen (Flat 14), Mrs Reade (Flat 13), Mrs Turner (Flat 16) and Mr Lawrence (Flat 18).
- 7.16 There had therefore been a total of a 11 objectors.
- 7.17 A meeting had been called for 27 September 2011 and there was an extract of the minutes of that meeting on page 88 of the bundle. Following that meeting, the insurers were changed to the Ecclesiastical Insurance. The Applicants were adamant that it was necessary for all front doors to be fire safety compliant and had obtained a quotation for the replacement of those doors that had been changed from a firm called Smith and Choyce Limited. The estimate for that was found on page 61 of the bundle.

- 7.18 The Applicants pointed out that the front doors and the door frames of each flat were the property of the Management Company (see paragraph (v)(b) of the First Schedule of the Lease).
- 7.19 The Government had last year issued recommendations and guidelines with regard to fire safety in purpose built flats following incidents of fire in blocks of flats over recent years.
- 7.20 The Applicants stated that ideally they would like the lobby of each flat to be connected to a communal fire alarm system. They did however confirm that if the fire doors were replaced there would be no necessity for such a fire alarm system but they would still need emergency lighting in the communal areas in order to comply with the guidelines and regulations.
- 7.21 The Applicants accordingly sought the Tribunal's approval to recover the cost of replacement of those fire doors that were non compliant from the service charge together with the emergency lighting system in the communal areas.
- 7.22 The cost of providing the emergency lighting was found on page 68 of the bundle and amounted to £770 per block plus VAT.
- 7.23 The Applicants again referred to the local Government Group Fire Safety in Purpose Built Blocks of Flats Guidance that was issued in July 2011 carrying reference L.11-335-guidance together with the Regulatory Reform (Fire Safety) Order 2005 and reiterated the need to carry out the proposed works.
- 7.24 The Applicants stated that their charges for management of the block were based on a figure of £40 per hour. There would however be additional charges incurred which would be in accordance with the RICS Code Guidance. They felt that their charges needed to reflect the responsibilities that they take with regard to such matters as fire safety, lighting and training.

8 The Respondents' Case

- 8.1 Mrs Reade (Flat 13) stated that 3 months ago the fire brigade had been called as a result of a pan fire in Mr Sheehy's flat (FLAT17). The fire brigade had taken 45 minutes to get to the premises and she said that smoke had been coming from under the front door. She felt that if there had been a communal fire alarm linked to the flat the brigade would have arrived sooner.
- 8.2 Mrs Fry (10 Denmark Court) stated that they had had their front door removed because there was such a large gap beneath the original fire door that the draft was literally lifting the carpet in their flat. She and her husband had spent in excess of £800 on a new UPVC front door. However, in the light of the application, they have now ordered a new fire door to be made which is going to cost £2,000 and which is due to be installed next week.
- 8.3 Mrs Colborn (Flat 2) stated that they became residents 3 years ago and their new front door had a 3 point locking system which was more secure than the last one.

- 8.4 Mrs Hamilton, representing Mrs Colborn and Mrs Fry then questioned Ms Forsyth and Mr Schermer with regard to the application generally.
- 8.5 Mrs Cox, representing Mrs Reade (Flat 13) felt that there was plenty of natural light in the common parts coming in, during the day time, from the large windows at each end of the communal landings and, during the night, by the street lighting outside.
- 8.6 Furthermore, she felt that the UPVC fire doors could hold back a fire for at least 20 minutes and that would be adequate.
- 8.7 Mrs Cox also felt on behalf of Mrs Reade that if any of front doors were to be changed, the flat owners should be consulted and given the opportunity of choosing the design of the doors since some of them let in no light at all to the flat in question and the cost varied between £270 and £342 plus VAT.
- 8.8 With regard to a smoke alarm system, she felt that all the residents should have such a system.
- 8.9 With regard to emergency lighting, she felt that this should be installed in the communal areas.
- 8.10 Mrs Hamilton, on behalf of Mrs Colborn (Flat 2) felt that it was unnecessary to carry out all the works that had been suggested and recommended to the Applicants. She also asked whether the Lessees could appeal the decision if necessary.
- 8.11 Mrs Fry was given an assurance by the Applicants that all they were looking for was emergency lighting in communal areas and not at individual flats.
- 8.12 Mrs Cox said that she felt that the March annual general meeting which had been followed by a residents meeting had been pursued with undue haste and rushed through without proper discussion.
- 8.13 Mrs Hamilton felt that the costs involved did not add up and wanted the Applicants to look again at the actual costs in the light of quotes received.
- 8.14 Mrs D Silva has a PVC front door and objected to having it changed.

9 The Tribunal's Determination

- 9.1 The Tribunal considered the applications most carefully and particularly in the light of all the supporting documents including the Regulations and Government Guidelines.
- 9.2 The Tribunal was mindful of the serious consequences of an outbreak of fire, particularly in a building of multiple occupation such a block of flats.
- 9.3 Fire Doors
- a. The Tribunal was in no doubt that it was essential for all the front doors of each of the flats to be fire resistant and of the appropriate standard and quality.

- b. The Tribunal accordingly approved the expenditure for the replacement of those doors that were not compliant fire doors by the Applicants.

9.4 Fire Alarms

- a. Since all the flats are to have appropriate fire doors leading to the communal landings, there is no necessity for the instillation of fire alarms or heat/smoke detectors in each individual flat.
- b. Accordingly, whilst the tribunal felt that this precaution was desirable, it was not essential and the approval for this expenditure, without the consent of all the flat holders, was not approved.

9.5 Emergency Lighting

- a. Notwithstanding the argument that there was sufficient natural and borrowed light to the common parts of each block of flats, the Tribunal found that it was a requirement for there to be emergency lighting in all the common parts of each block of flats.
- b. Accordingly, the expenditure on emergency lighting in the communal areas was approved.



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Andrew Duncan McCallum Gregg

(Chairman)

Dated 16 November 2012