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HM COURTS & TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL
OF THE
NORTHERN RENT ASSESSMENT PANEL

REASONED DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985
SECTION 27A

Property: Flats 1 and 10, 496, Bury New Road, Salford, Manchester M7
4WE

Applicant: Ridgemont Limited

First Respondent: Flat 1: Rosenew Limited
Second Respondent: Flat 10: Mr.P.Riley

Tribunal members: Mrs.C.Wood (Chairman)
Mr.D.Bailey

Date of decision: 6 January 2012

DECISION

1. The Tribunal determines as follows:
 - 1.1 in respect of the First Respondent as lessee of Flat 1:
 - (i) it is liable to contribute one-eleventh of the costs and expenses incurred by the Applicant in carrying out its obligations under and giving effect to the provisions of the Eighth Schedule of the lease relating thereto (paragraph 11 of the Seventh Schedule);
 - (ii) all of the costs and expenses incurred by the Applicant in respect of the service charge year April 2010 to March 2011 were reasonably incurred, and the First Respondent is liable to contribute one-eleventh of all such costs and expenses incurred during the period from 17 November 2010 to March 2011;
 - (iii) all of the costs and expenses included as prospective expenditure for the service charge year April 2011 to March 2012 are reasonable save for the charge for gardening of £3000, which is reduced to £1200, and the First Respondent is liable to contribute one-eleventh of such costs and expenses (as reduced by this Decision) ;
 - 1.2 in respect of the Second Respondent as lessee of Flat 10 he is liable to contribute one-eleventh of all costs and expenses incurred or to be incurred by the Applicant in carrying out its obligations under and giving effect to the

- provisions of the Eighth Schedule of the lease relating thereto for the service charge years April 2010 to March 2011, and April 2011 to March 2012.
2. The Tribunal was unable to make any determination in respect of costs and expenses to be incurred as service charge for the service charge year April 2012 to March 2013 as the Applicant has not provided the Tribunal with details of any prospective expenditure for such period.

REASONS FOR DECISION

Background

1. The Applicant, Ridgemont Limited, is the management company for the Property which is a substantial semi-detached Victorian house which has been converted into 11 self-contained flats, ("the Flats"). The directors and shareholders of the Applicant are the lessees of the Flats.
2. By applications to the Leasehold Valuation Tribunal dated 1 September 2011, the Applicant sought a determination under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the liability of the First Respondent and the Second Respondent to contribute to the service charge in respect of the years April 2010 to March 2010, April 2011 to March 2012, and April 2012 to March 2013.
3. Directions dated 9 September 2011 were issued to the parties stating, inter alia, that a paper determination would be made unless any party requested a hearing by no later than 31 October 2011. No such request was made by any of the parties.
4. The Applicant's Statements of Case in respect of Flats 1 and 10 were received by the Tribunal on 14 October 2011. By a letter dated 7 November 2011, the First Respondent responded to the application. No response was received from the Second Respondent.

Inspection

5. The Tribunal made an external inspection of the Property and of the external common parts and internal communal areas on 28 November 2011. Both Ms. Allen, director of the Applicant, and Mr. Rosenberg, director of the First Respondent, attended the inspection at different times.

The Lease

6. The Tribunal was provided by the Applicant with a copy of the lease dated 4 April 2006 made between Tilsam Properties Limited (1), Ridgemont Limited (2) and Z.M. Allen (3) ("the Lease") for Flat 9 at the Property which it was claimed was in a standard form. In the absence of any evidence to the contrary, the Tribunal determined that it was reasonable to assume that this was the case and that, in particular, the leases for Flats 1 and 10 were likely to be in substantially the same form and content.

7. Clause 11 in the Seventh Schedule of the Lease provides that, "The Tenant shall contribute one eleventh of all costs and expenses incurred by the Company in carrying out its obligations under and giving effect to the provisions of the Eighth (sic) Schedule hereto".
8. Part I of the Eighth Schedule contains covenants on the part of the Applicant as the management company of the Property as follows:
 - (i) to pay all rates, taxes, assessments and outgoings in respect of the Property (clause 1);
 - (ii) to insure the Property (clause 2);
 - (iii) to keep the Reserved Property and the Amenity Area (each as defined in the Lease) "...in good and tenable state of repair, decoration and condition..." (clause 3);
 - (iv) to keep the halls stairs landings and passages "...cleaned carpeted and in good order and...adequately lighted..." (clause 4);
 - (v) to paint the internal and external parts of the Reserved Property and the Amenity Area at no more than 3 yearly intervals (clause 5);
 - (vi) "...to maintain tidy and cultivate any grassed areas gardens or floral areas within the Amenity Area" (clause 6);
 - (vii) to maintain in proper working order electrical apparatus for lighting the Amenity Area and any door entry phone system (clause 7).
9. Part III of the Eighth Schedule provides that the service charge for any year may include all expenditure as itemized in clauses 1 – 10 which includes but is not limited to all expenditure incurred by the Applicant in performing its obligations pursuant to the covenants in Part I.

The Law

10. Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:
 - (1) in the following provisions of this Act "service charge" means "an amount payable by a tenant of a dwelling as part of 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.
11. Section 19 provides that –

- (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.

12. Section 27A provides that

- (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 date at or by which it is payable, and
 - (d) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3)
- (4) No application under subsection (1)...may be made in respect of a matter which –
- (a) has been agreed by the tenant.....
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

13. In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

The submissions.

14. In the Applicant's Statements of Case it was said that the Applicant had assumed responsibility for the management of the Property in or about 2007. At a meeting of all lessees, it was agreed that payment of the service charge would be made by monthly standing order; it was agreed that this should be in the sum of £55 per month.
15. The Applicant states that there has been a lack of maintenance of interior and exterior communal areas and the main fabric of the Property, and that a sinking fund of £1000 which had been established has since been spent. The failure of the First and Second Respondents to make payment of their service charges has contributed to the failure to replenish this fund and is putting a financial pressure on the Applicant which it would be unfair to expect the paying leaseholders to absorb.
16. Following the First Respondent's acquisition of Flat 1 on 17 November 2010, the Applicant confirmed that payment of service charge for the period up to March 2011 had been received but no payments had been made since that date.
17. In respect of Flat 10, the Applicant states in the Statement of Case that there had been past arrears by the Second Respondent which had been paid by his

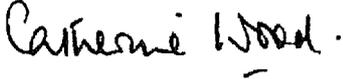
mortgagee. Flat 10 was then occupied for a period by a friend of the Second Respondent who had assumed liability for payment of the service charge but this friend had vacated the Flat in or about August 2010 and no payments had been received since that date.

18. In its letter dated 6 May 2011 enclosing payment for service charges up to March 2011, the First Respondent requested a full breakdown of the costs and the services provided. In its letter to the Tribunal dated 7 November 2011, the First Respondent referred to this request, queried items of expenditure incurred during the period April 2010 to March 2011, and prospective expenditure for the period April 2011 to March 2012, referred to a leak at Flat 1 which had not been remedied, queried whether a meeting of the Applicant had been held in 2011 and, if so, why he had not been invited, queried the submission to the Tribunal of the lease for Flat 9 rather than for Flat 1 and the determination of the apportionment of its liability to contribute to such costs and expenses. Finally, the First Respondent stated its intention to obtain comparative quotes in respect of items of expenditure in which he had raised questions. (The intention to provide these to the Tribunal was again mentioned by Mr. Rosenberg during the inspection but no information was provided to the Tribunal.)
19. The Applicant's Statement of Case in respect of Flat 1 contained copies of letters dated 14 May 2011 (in which some information regarding the services provided was set out) and dated 15 August 2011 in which the date of the next management meeting on 31 August 2011.
20. The Second Respondent has not acknowledged the Application, complied with the Directions, or submitted any evidence to the Tribunal in connection with the Application

The Tribunal's Conclusions

21. The Tribunal must apply a three stage test to the application under section 27A:
 - (1) Are the service charges recoverable under the terms of the Lease? This depends on common principles of construction and interpretation of the lease.
 - (2) Are the service charges reasonably incurred and/or services of a reasonable standard under section 19 of the 1985 Act?
 - (3) Are there other statutory limitations on recoverability, for example consultation requirements of the 1985 Act as amended?
22. The Tribunal's determinations are set out in paragraphs 1 and 2 of the Decision above.
23. Referring to the Tribunal's decision dated 30 November 2010, the Tribunal reiterated its view that, whilst it appeared that the Applicant was endeavouring to manage the Property in a cost-effective manner for the benefit of leaseholders, consideration should be given to how best to ensure full compliance with the

terms of the leases, all relevant legislation and the RICS Residential Manager's Code of Practice.

A handwritten signature in black ink that reads "Catherine Wood." The signature is written in a cursive style with a period at the end.

Catherine Wood
Chairman
Dated 6 January 2012