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**HM Courts
& Tribunals
Service**

Leasehold Valuation Tribunal

Case numbers **BIR/00CR/LIS/2012/0065**

Property **21 Stockton Court, Mason Street, Bilston, WV14 9SY**

Applicant **Ms P Screen (Lessee Flat 21)**

Respondent **Stockton Court RTM Co Ltd**

Date of Application: **8th August 2012**

Type of Application **to determine reasonableness and payability of service charges to be incurred under section 27A and an order under section 20C of the Landlord and Tenant Act 1985 (The Act).**

Tribunal: **Mr R T Brown FRICS
Mrs M Gandham LLB Hons**

DECISION

1. The Tribunal determines the reasonable cost of services is as follows:
 - Year end 31st March 2011: £13,012.00 (£542.17 per flat)
 - Year end 31st March 2012: £7,822.00 (£325.92 per flat)
 - Year end 31st March 2013: £23,040.00 (£960.00 per flat) (Budget)
2. By consent an order is made under section 20C of the Act preventing the recovery of the costs of these proceedings by way of the service charge.

REASONS FOR DECISION

The Application and Introduction

3. The Applicant seeks a determination of certain items of service charge expenditure incurred in the service charge years ending 31st March 2011 and 31st March 2012 and the estimated cost to be incurred in respect certain items of expenditure in the service charge year ending 31st March 2013.

The Property and the Tribunal's inspection

4. The members of the Tribunal inspected the property on 2nd May 2013 in the presence of the Applicant and her son. No one was present on behalf of the Respondent.

5. The property comprises a 4 storey block of purpose built flats constructed in the mid 1970s in traditional materials, with part flat and part pitched roof. On the ground floor there is an open garage area (locked) with service towers at either end providing stairways to the upper floors. In the eastern tower there is a lift which the Tribunal were told is in need of repair. The original 'Crittall' type windows to the western service tower have been boarded over with plywood. Access to the flats on the upper floors is via open walkways. The block is approached via an un-adopted roadway leading to an open parking area. The surface of the roadway is poor and the surrounding borders are overgrown. The members of the Tribunal were unable to access an open area of the development to the north of the building. Generally the block and site are run down with evidence of poor maintenance over a considerable period of time.

The Law

6. The relevant law is set out in **Appendix 1** attached.

The Lease

7. The Tribunal was provided with a copy of the lease to the subject property dated 30th April 1979.
8. The parties are not in dispute that service charge is payable by the Applicant under Clause 3 of the Lessee's covenants to the lease.

The Hearing

9. A public hearing was held after the inspection at the Tribunal's Hearing Rooms, Priory Court, Bull Street, Birmingham.
10. The Applicant, Ms P Screen, attended in person with her son, Mr P Screen. The Respondent was represented by Miss H Oakley, a director of the Respondent Company, Mr C Anderson, of Countrywide Property Management, and Mr D Clarke, a former director of the Respondent company.

The Applicant's Case

Year end 31st March 2011

11. Ms Screen explained that during the year services that should have been provided, for example cleaning and decorating, were not carried out. The fire alarm system was not working and she objected to the cost of heat and light.
12. She was concerned that there were only 2 leaseholders in occupation and that the other flats were all sublet to tenants who caused much of the trouble and vandalism, with the subsequent expenses of repairing the same being charged to all leaseholders, not those sub tenants responsible.
13. Further, she had never received an individual account or balancing statement although she had always paid the service charge monthly.

Year end 31st March 2012

14. In particular, she objected to the cost of boarding up the stairwell windows at a cost of £4,000.00 which she said was work that should not have been

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Year end 31st March 2012

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undertaken but that instead the glass should have been replaced in the windows.

Year end 31st march 2013

15. After hearing Mr Anderson's explanation of the budget proposals Ms Screen withdrew her objection to all items of the budget for the year ending 31st March 2013.

The Respondent's Reply

16. In their submissions, the representatives for the Respondent explained that there had been a long history of mis-management by the Freeholder, who was still in possession of a number of the flats which were boarded up. This was the reason for the establishment of the Right to Manage Company which had taken over in September 2010.
17. In response to questions, Miss Oakley explained that the company held regular meetings with residents to keep them informed and that some work had commenced.
18. Mr Anderson explained that work had commenced including lifting floor tiles on the balconies and resealing in order to stop leaking and the instruction of C F Bunn electricians to carry out fixed wiring tests. An 'out of hours' call service was now also being provided at a cost of £345.60 per annum, not £1872.00 as indicated in the budget.
19. Mr Clarke explained that he had instructed the boarding up of the windows as an alternative to replacing the glass, which was being regularly broken, in order to save expense. The cost was not £4,000.00 as Ms Screen suggested. The work had been carried out by Mr Tomes at a cost of £400.00.

The Tribunal's Deliberations

20. The Tribunal considered all the written and oral evidence presented.
21. It was evident to the members of the Tribunal that the historic management of the property had been less than satisfactory and this had started to be addressed by Stockton Court RTM Co Ltd since September 2010. The company had taken the wise decision to appoint professional managers and company secretarial services early in 2013.

Years ending 31st March 2011 and 2012

22. The Tribunal appreciates both the frustration of Ms Screen at the deterioration of the property over the years and the difficulty the Respondent Right to Manage Company now has in raising finance to restore the property to a good state of repair. In this case, however, the jurisdiction of the Tribunal is to determine for 2011 and 2012 - that where cost has been incurred the amount has been reasonable and the standard of the work carried out has also been reasonable. Whilst at first sight the building is in poor repair the evidence of the Tribunal's inspection is that some work has been carried out and that that work has been carried out to a reasonable standard and at reasonable cost.

23. No evidence was put before the Tribunal that any of the costs actually incurred were unreasonable. On reading the records of meetings with residents, the presentation of schedules of work planned and cash flow, these indicated that considerable planning has been undertaken but that much of the work needed has not been undertaken, possibly due to lack of funds.

Year ending 31st March 2013

24. The jurisdiction of the Tribunal under this part of the application is to determine the budget amount *to be incurred* for services *to be provided*.
25. Mr Anderson presented to the Tribunal a realistic budget which included essential Health and Safety works. This is accepted by Ms Screen and accordingly endorsed by the Tribunal.
26. In the event that the standard of service provided is not considered to be reasonable or the cost actually incurred is considered to be excessive, an application may be made to this Tribunal for the actual expenditure incurred to be determined under section 27A(1)(c) of the Act.

Section 20C

27. The Tribunal finds that, although not successful, the Applicant had acted reasonably in seeking an explanation of the services provided and the management of the building generally.
28. The Tribunal using its discretion under section 20C concluded that an order by consent of the parties should be made in these circumstances.


Robert Brown Chairman

Dated.....**10 JUN..2013**

Appendix 1 – The relevant law

Landlord and Tenant Act 1985

Section 18 Meaning of “service charge” and “relevant costs”

- (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, improvement 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 period

Section 19 Limitation of service charges: reasonableness

- (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 repayment, reduction or subsequent charges or otherwise.

Section 20C Limitation of service charges: costs of proceedings

- (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 or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, 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 or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Lands Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make

such order on the application as it considers just and equitable in the circumstances.

Section 27A Liability to pay service charges: jurisdiction

- (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.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) 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 would be payable, and
 - (e) the manner in which it would be payable.