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HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/24UD/LSC/2011/0141

Re 8 Pluto Road Eastleigh Hampshire SO50 5GD

Applicant Freehold Managers (Nominees) Limited c/o
Belgarum Property Management

Respondent Mr Deepak Chaddah

Date of Application 18 July 2011 (in Southampton County Court)

Date of Inspection 8 March 2012

Date of Hearing 8 March 2012

Venue Holiday Inn Leigh Road Eastleigh Hampshire

Representing the parties The Applicant was represented by Mr Robert Williams on
behalf of Belgarum Property Management

The Respondent: Mr Deepak Chaddah in person

Members of the Leasehold Valuation Tribunal:

P J Barber	Lawyer Chairman
M J Greenleaves	Lawyer Member
P D Turner-Powell FRICS	Valuer Member

Date of Tribunal's Decision: 14 March 2012

Decision

1. The Tribunal determines in accordance with the provisions of

- a. Section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) that reasonable sums for estimated service charges payable by the Respondent to the Applicant are :
 - i. for each half year in 2010 are the sum of £439.75
 - ii. for the first half year in 2011 is the sum of £443.08
- b. Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") the reasonable administration charges are, instead of £58.75 and £180.00, the sums of £30.00 and £90.00 respectively.

Reasons

Introduction

2. This was an application made by Freehold Managers (Nominees) Limited (the Applicant), the freeholder of 2-12 (evens) Pluto Road Eastleigh Hampshire in Southampton County Court on 18th July 2011 (Claim No. 1SO01276). It was transferred to the Leasehold Valuation Tribunal on the 4th October 2011 by order of District Judge Codlin-Tate for determination of the reasonable sums of Service Charges and Administration Charges payable by the Respondent. Such sums totalling £1,658.77 were referred to in the Particulars of Claim issued in the court proceedings in relation to the leasehold property of which the Respondent is the lessee – namely 8 Pluto Road, Eastleigh, Hampshire (the Property).
3. The issues for determination by the tribunal are whether certain service charges respectively for the year ending 31 December 2010, and the half year ending 30th June 2011 are reasonable and payable, and whether two Administration Charges issued respectively in September 2010 (£58.75) and March 2011 (£180.00) are reasonable and payable.
4. The Lease of the Property was granted by Barratt Homes Limited to the Respondent on 21st December 2006 (“the Lease”).
5. Belgarum Property Management Limited (“Belgarum”) has been the managing agent since, or since shortly after, the date on which the Lease of the Property was granted. Belgarum has been the managing agent at all material times during the period in which the disputed charges arise.

Inspection

6. The tribunal's inspection took place only in the presence of Mr Williams, for the Applicant; the Respondent was not present.
7. The entire development, of which the block known as 2 – 12 Pluto Road Eastleigh (“the Block”), forms a part, is extensive, and comprises a redevelopment of the former Pirelli cable works Eastleigh premises. The Block comprises 6 flats arranged over 3 floors; the Property is located on the first floor of the Block. The entrance hall and staircase in the Block are separated from the entrance doors to the individual flats by fire doors on each floor. There are electricity meter and cleaners’ cupboards located on the ground floor. Outside there are communal gardens comprising of compact lawned areas, low hedging and railing and a car parking area to the rear. A combined bin store and cycle store are located in the far corner of the car park. There is communal lighting to the internal hall and staircase areas, as well as lighting outside for the bin store.

Hearing & representations

8. The hearing was attended by those referred to above. At the outset, Mr Chaddah drew attention to certain documents which he said he had faxed to the tribunal offices in the previous week; these comprised of a print out of a Lloyds Bank plc payment verification dated 5th April 2011, a print out issued by Dickinson Dees (solicitors appointed by the Applicant to recover outstanding Service and Administration Charges) and Invoice No. 44 already in the bundle. Mr Williams, for the Applicant, inspected these documents which were also shown to the Tribunal.
9. Mr Williams explained that the amount of £1658.77 referred to in the original Particulars of Claim before the County Court related to three half year service charge demands, levied for 2010 and the first half of 2011. There were also two administration charges included in the claim, respectively for £58.75 and £180.00 and these related firstly, to the reminder to pay, and secondly to the preparation and forwarding of papers to Dickinson Dees solicitors, instructed in the matter by Belgarum
10. Mr Williams was however unable to provide any breakdown of the invoices despite the request so to do in the Directions issued prior to hearing. Mr Williams further accepted that the three service

charge demands concerned, had all been issued on an estimated basis and did not directly relate to any actual expenditure incurred during the relevant period. Mr Williams was unable to confirm the basis upon which the 2010 service charge estimates had been calculated as he had only been employed by Belgarum since they had been produced.

11. The bundle included some evidence of actual expenditure for the Block during 2010, in a sum of £2897, compared to a budget for the same period of £6908. Mr Williams was unable clearly to explain how, in the light of actual expenditure of £2897 in 2010, a budget was then set for 2011 in a sum of £6530. Mr Williams referred to a deficit issue in the management accounts having occurred prior to his joining Belgarum in 2010 but was unable to provide any evidence to substantiate the same and the report of the accountants for 2010, included in the bundle, did not provide any definitive confirmation of such a deficit having previously arisen. It also transpired from verbal evidence given to the tribunal that insurance was paid direct by lessees to the freeholder, not to Belgarum.
12. In regard to the two administration fees Mr Williams explained that the invoice for £58.75 related to a standard reminder for late payment of service charges and the £180.00 invoice related to work involved in the referral of the papers by Belgarum to their solicitors, Dickinson Dees.
13. Mr Williams said there had been confusion regarding the correct correspondence address for the Respondent as a result of which letters had had to be sent to 3 separate addresses. Mr Chaddah said he had notified Belgarum of his change of address, before 31st January 2010, but he could not produce evidence of such notification or as to the exact date of same.
14. The Respondent Mr Chaddah said he had been confused as to the amounts being claimed by Belgarum since the figure demanded had changed over the course of time and he had been given to understand by Belgarum that they would not accept payment of the sum claimed in the County Court proceedings, namely £1658.77, unless he also paid solicitors fees. Mr Chaddah also questioned the reasonableness not only of the service charge demands but also the level of the two administration charges.
15. Despite some confusion over correct addresses, Mr Chaddah accepted that he had been aware of the County Court proceedings in mid 2011 and the amount then claimed. However Mr Chaddah felt that not only were Belgarum's charges not clearly founded, but they were also trying to squeeze him unreasonably for additional solicitors fees, not part of the claim before the Tribunal today.
16. Mr Chaddah said that he had communicated with Belgarum in mid 2011 and admitted that he had indicated in an e-mail to Dickinson Dees that he would pay, but that subsequently neither Dickinson Dees nor Belgarum would accept payment of the £1658.77 unless the solicitors fees of Dickinson Dees were also paid at the same time.
17. Mr Williams accepted that there had been some telephone calls made between Mr Chaddah and Belgarum in 2011 on the subject of service charges when Mr Chaddah sought clarification. Mr Chaddah accepted that there may have been miscommunication between the parties owing to confusion over his correct address. He said he had a right to see the figures on which the demands for estimated service charges were based but this had been refused, Belgarum saying that the Data Protection Act prevented their production.

Consideration

18. We, the Tribunal, have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of the parties.
19. The only clear figures we have are in audited accounts relating to actual expenditure in 2010; no information was provided as to actual expenditure in 2008 or 2009 which might have reasonably informed the basis for calculation of estimated demands being issued by Belgarum for 2010.

Conversely, no evidence was presented to indicate that actual expenditure in 2009 would have been significantly different from actual expenditure in 2010. Very little clear evidence was produced; A deficit in the accounts for the period prior to 2010 was mentioned, but no evidence produced to verify; the certified accounts for 2010 showed net assets of £3744 as at 31st December 2010 although it should be noted that such assets comprised at least in part, unpaid service charges.

20. We have to consider whether budgeted figures were reasonable on the basis of information available to Belgarum at the time the budgets were set, which, in the absence of any contrary evidence we assumed to be in the Autumns of 2009 and 2010. At those times, Belgarum ought to have had the benefit of actual expenditure incurred for the year to date which would provide some basis for advance estimates. Further assistance would have been gained from the condition of the block (as we found it) and also appropriate provision for periodic expenditure. However the Applicant did not produce any actual figures for 2009 and when setting the 2011 budget does not seem to have had regard to actual expenditure for 2010.
21. Using our own expert knowledge and experience and taking into account the 2010 actual figures, we found that neither budget could be found to be reasonable. We assessed what would have been a reasonable basis for setting the 2010 service charge budget estimates, by reference to the only clearly available evidence, namely the certified 2010 actual expenditure. We used our professional knowledge to make a reasonable assessment of what the estimates for 2010 might reasonably have been by reference to the subsequent 2010 actuals. Similarly for 2011, we carried out a broadly similar exercise resulting in the reasonable sums set out in paragraph 22 below.

22.

Item	2010 reasonable budget sum	2011 reasonable budget sum
Repairs (including lighting repairs)	350	350
Cleaning	690	690
Electrical/fire safety tests	175	175
Window cleaning	45	45
Bin store cleaning	220	240
Rubbish removal	250	250
Electricity	200	220
Gardening	504	504
Management fees	1058	1058
Accountancy	275	275
Bank charges	10	10
Buildings insurance	1200	1200
Reserve fund	300	300
Totals	5277	5317

23. Under the terms of the Lease, the lessee is responsible by way of Service Charge for one sixth of the Annual Maintenance Provision for the whole of the Block. Consequently and by reference to paragraph 22 above, the two estimated half year service charge demands for 2010 should have been £439.75 each and for the first half of 2011, £443.08.
24. In regard to the 2 administration fees respectively for £58.75 and £180.00, we had no evidence as to the work done but just Mr Williams' submissions. It would seem that the first item would probably entail sending out just one letter with a copy demand. To charge £58.75 for that amount of work is excessive and we consider that £30 would be reasonable. The work done for £180 involved collating paperwork to instruct solicitors. We do not think that would involve more than photocopying perhaps two or three documents and writing the instructing letter. A reasonable charge for that work would, in our view, be not more than £90.
25. We made our decisions accordingly.

[Signed] P J Barber



Chairman

A member of the Tribunal
appointed by the Lord Chancellor