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Ref: LON/00AZ/2010/0251

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER s 27 OF THE LANDLORD AND TENANT ACT 1985

Applicant: Eastgate SE14 (Blocks A,B,C and D) Management Company Limited

Represented by: Mr James Mark and Ms Linda Roser of Urang Property Management Limited

Respondent: Mr Aidan Anthony Lynch

Represented by: In person

Premises: Flat 8, Bannister House, John Williams Close, London SE14 5XG

Hearing date: 11 and 12 August 2010

Members of the Leasehold Valuation Tribunal: Mrs F R Burton LLB LLM MA
Mr P M J Casey MRICS
Mr O N Miller BSc

Date of Tribunal's decision: 25 August 2010

LON/00AZ/LSC/2010/0251

8 BANNISTER HOUSE , JOHN WILLIAMS CLOSE, LONDON SE14 5XG

BACKGROUND

1. This was an application transferred from the Lambeth County Court by Order of Judge Zimmels dated 9 April 2010 for determination under s 27 of the Landlord and Tenant Act 1985 of liability to pay service charges claimed of £2,962.08. The LVT held a Pre Trial Review on 11 May 2010 attended by the Respondent Lessee and Mr James Mark and Ms Linda Roser of Urang Property Management Limited on behalf of the Eastgate SE14 (Blocks A, B C and D) Management Company Limited. Following the PTR the usual Directions were given and the case was set down for hearing on 11 August 2010 with an inspection on the same morning. The subject property is a second floor flat in a building comprising an estate of 4 such blocks containing a total of 101 flats.

2. The property is held on a Lease dated 13 February 1995 of which the Lessee is an assignee, and which provides for the Management Company to instruct a professional managing agent, in which capacity they have appointed Urang Property Management Limited. The Lessee is a member of the management company although it appears that share certificates have not necessarily been issued and the Lessee was therefore unsure of his status. However it appears that all Lessees are invited to the company's AGM and have status to stand for election to office and to participate in decisions. The Lease provides in Clause 3(5) for the Lessee to contribute and pay on demand the proportionate part, set out in paragraph (i) of Part V of the Schedule, of all costs charges and expenses from time to time incurred or to be incurred by the management company in performing and carrying out the obligations and each of them under Part IV, ie one one hundred and one part of such costs dealt with on an estate wide basis (there being 101 flats on the estate) except that for insurance premiums and water charges which are adjusted according to the number of flats in each block there are 26 flats in Bannister House which equates to a proportion of 3.85% for each flat .

INSPECTION

3. The Tribunal inspected the subject property during the morning of 11 August 2010, before the hearing, in the presence of Mr Lynch, the Lessee. The Managing Agents did not attend. The property is in a brick and tile 3 to 4 storey building apparently constructed in the 1990s as a private non-council development, within an estate of 4 blocks surrounded by similar estates, so would be 20-25 years old. There are dedicated parking areas adjacent to the block, together with grassed and planted landscaping. The estate appeared to be in tidy and well maintained condition, with no obvious signs of vandalism and the internal common parts (which were accessed through an entryphone system) were clean although the carpets in the hall way in the block where the subject flat was located were rather worn in places.

THE HEARING

4. At the hearing both the Lessee, Mr Lynch, and Mr Mark and Miss Roser attended.

THE CASE FOR THE APPLICANT

5. Mr Mark explained that a demand for the service charges outstanding at that time had been sent to the Lessee by the previous managing agent, Crabtree Property, and that the Lessee, Mr Lynch, had apparently written a cheque for £1042.75, but that there had been no trace of such a payment having been received, so that this was still recorded in the up to date statement of service charges owed which had been sent on 10 June 2010. Mr Lynch was unable to state whether this cheque had ever been cashed. It appeared that the request for payment of 10 June 2010 had been duly served with the required notice of tenants' rights and obligations and that the demand was in order.

6. He said that when Urang had taken over management there had been much work to do to bring the estate into good management, in that repairs and maintenance were required but that outstanding arrears had prevented this work being done. However since then most Lessees were paying their service charges and 60% paid by

standing order. They had however undertaken some works of repair to roofs and soffits, external redecoration and window replacement in the common parts, upgrading of the electrical installations and replacement of bulbs but had yet to do internal decoration and to replace the front doors of each of 11 entrances to the blocks, in respect of which costly steel doors designed for maximum security (which would have been around £20,000 each) had been rejected in favour of hardwood to replace the existing softwood ones, together with new security locks, at approximately half the price. The bin store doors had been replaced and the bin store roofs repaired. Recarpeting of the internal common parts would follow the internal redecoration and the car park would be upgraded. Renovation had not gone as fast as he would have liked but cash flow had made it impossible to go faster: for example, if the Respondent had paid his shared of the service charges that would upgrade 5 of the 11 hallways in the blocks, but as he had not got that money in he had been obliged to phase the work over a rolling period. He added that there were still some snagging works to do, such as repairs to holes in the soffits for which they had to hire a cherry picker for access, but had had to cancel due to the weather. However this would be done as soon as possible.

7. Mr Mark continued that it had not been necessary to undertake any consultation under the provisions of s 20 of the Landlord and Tenant Act 1985, as the works had all been, and were being, undertaken under separate contracts resulting in no Lessee being required to pay more than £250 in respect of any item. It had also been possible to offer an inducement of £50 per window to Lessees to encourage them to change the windows within their own demise, which would have the result of reducing the external painting liability in future years.

8. Mr Mark said that his company was employed under a rolling contract and that his management fees were competitive. They had been £205.51 + VAT, and had then gone up to £233.75 but had come down in 2010 to £198.62 inclusive of VAT. The cleaning and gardening had been undertaken by the same company, although there was no contract, and that this had been satisfactory but that he had also attempted to reduce costs to Lessees by changing contractors periodically including in seeking competitive utility contractors. He personally visited the estate around twice each 3 weeks and had found the cleaning had been done satisfactorily. The

being charged for in advance over the previous 3 years if they had not begun until the PTR in the present case. Mr Mark responded that everyone else had already paid, which had enabled the work to be started. He added that in some cases other Lessees' mortgagees had paid their service charges, although a small minority (about 20) had been referred to solicitors in order to collect arrears. Mr Lynch insisted that he had paid his service charges in the past, and had done so for some years since he had acquired his flat in 1996, but he had not paid in the past 3 years as he was dissatisfied with the costs that were being recharged (although he was aware that some other Lessees were also dissatisfied with the standard of the services provided). He was concerned that there had, for example, been no claim on insurance for the damage that had had to be repaired to some flats due to the defective roofs. Mr Mark responded to this concern that the Directors of the management company had not wanted to claim on the insurance for fear of the adverse impact of the premiums then being raised: it had been more cost effective to repair the damage without claiming. Mr Lynch complained that there was no breakdown of the works, but was directed to the items charged as repairs and maintenance. He also objected to each flat paying the same towards the works regardless of the size of the flat, but was referred by Mr Mark to the terms of the Leases which provided that this should be so. Mr Mark added that this sort of point was discussed at the AGM and that if Mr Lynch attended he would receive all the explanations he needed. He undertook to put Mr Lynch in touch with the Secretary of the management company.

12. In answer to Mr Lynch's queries about balancing charges where there was an under spend as against the annual budget estimates, Mr Mark said that he had preferred to use any such excess on the necessary major works rather than to return it in cash to the Lessees. He said that the claim for the unpaid interim service charge sought in the county court was not inaccurate as in the current year there would be an overspend and the surplus would be used up in meeting the costs for which the Lessees would otherwise have to find the money. He reiterated that had the managing agents actually received all the service charges due those sums would have been spent as there were always works requiring funding in the long process of bringing the estate up to standard after years of neglect and accumulation of arrears. He added that the Lease permitted interest to be charged on arrears at 4% above Midland Bank base rate.

FINAL SUBMISSIONS

13. Mr Lynch said in summary that he had brought a witness who had said that He had seen none of the works claimed to have been done. He said that he had been satisfied with "most of" Mr Mark's explanations but wondered why Mr Mark chose to use a private company at a fee rather than to obtain a fire risk assessment free, and he was concerned that expensive doors at £20,000 each had even been considered. He considered that the Tribunal had not listened to his concerns and had decided to take the Landlord's side despite the evidence of his sub-tenant who was independent. The Tribunal made clear that its members had repeatedly asked Mr Lynch if he had any further statements to make or evidence to provide, and had most certainly not made any decision, nor would they do so until the hearing was concluded and they had the opportunity to assess and discuss the evidence.

14. Mr Mark reiterated that he had attempted to work with the Lessees, to get in arrears of service charges and to bring the estate back into a state of repair and good management. He said no money had been wasted, no charges were excessive, indeed they were very competitive, although he had taken longer to complete the necessary works for the reasons that he had explained. However 70% of the necessary work had now been completed. He hoped to complete the front doors and the carpets by the end of the year. He was happy to work out payment plans with any Lessees, he did not want to be seen as "the enemy": for example the expensive steel security doors to which Mr Lynch referred had been abandoned in favour of hardwood to save the Lessees' money. He added that Mr Lynch still owed the current year's interim charge, which had been due on 31 March 2010, so that he would be most obliged if Mr Lynch would now pay that service charge without more ado.

DECISION

15. The Tribunal considers that, following the investigation of the individual Items during the hearing, all the sums charged in the service charge accounts for the years 2008 to 2010 are reasonable in themselves and reasonably incurred. The sums charged for cleaning, gardening, repairs and maintenance are not excessive and

appear to have provided value for money in that the estate has now experienced significant upgrading in both physical condition and effective management. The management fees, which have reduced over the past 3 years, are within the range of acceptable fees found in the market of which the Tribunal has regular experience. The electricity and water charges have been recharged at the rates charged by those utility companies and the insurance premiums as charged by the brokers. The Tribunal accepts Mr Mark's account of his management of the estate over the period under review. While Mr Lynch and Mr Bryce have conceded that much of what Mr Mark has claimed to have been done at the subject property has in fact been effected, in those instances where the Tribunal has relied on Mr Mark's account or on their own inspection or both they are satisfied that the work has been appropriately done, and the estate appropriately managed, on behalf of the management company.

16. In that the Managing Agent has been obliged to bring their application to the county court and thus to the Tribunal in order to obtain a determination that the service charges demanded have been reasonably incurred, and that the Respondent Lessee is obliged to pay them, the Tribunal considers that pursuant to their power under paragraph 6(1) of the Leasehold Valuation Tribunal (England) (Regulations) 2006, Mr Lynch should be required to reimburse to the Applicant Managing Agents the Tribunal's hearing fee of £150 which the latter were obliged to pay when the case was referred from the county court. This fee should be reimbursed by Mr Lynch to the Managing Agents within 28 days of this Decision.

17. The Tribunal determines accordingly.

Chairman.....

Date.....25.8.2010.....