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MAN/00FF/LSC/2009/0111

RESIDENTIAL PROPERTY TRIBUNAL SERVICE.

LANDLORD & TENANT ACT 1985 – Section 27A

Property : 20 Cobham Way, YORK, YO30 5NF

Applicant: Rawcliffe Grange Management Company

Respondent: Mr. & Mrs. M D Smith.

Tribunal Members:

Mrs C Hackett JP. Mr A Robertson JP. FRICS. Mr. M Simpson LL.B

26th February 2010.

DECISION.

- 1. The Service Charges payable, in respect of 20 Cobham Way, by Mr and Mrs Smith for the year ended 31 December 2007 are £473.60.**
- 2. Mr & Mrs Smith are required to reimburse Rawcliffe Grange Management Company Limited the application Fee of £100.**

Application.

On 20th October 2009 the Applicant, ("Rawcliffe"), lodged an application for the Tribunal to determine the Service Charge payable in respect of 20 Cobham Way for the year ended 31 December 2007. The amount claimed being £473.60. The

background to the application to the Tribunal is enforcement proceedings which the Applicants have taken against the Respondents in the County Court.

Directions were given on 30th October 2009 to prepare the case for determination without a hearing. No objection was made to those Directions, with which the parties have complied.

The Lease.

We have been provided only with a specimen lease. We have not had a copy of the actual lease for No. 20. All leases on the development are said to be in common form. Each is for 155 years from 1st January 2003. There are three parties to the Lease, with Rawcliffe being a party as the Manager and having the obligations set out in the Tenth schedule to the Lease. Upon completion of the development the reversion was leased to Rawcliffe, and each tenant became a shareholding member of Rawcliffe.

To take account of the mixed nature of the Development, the Lease provides for service charges, describe as 'Maintenance Expenses', to be categorised as Estate costs, Apartment costs and Milford Costs (a reference to the six Milford blocks, each of a flat over garages, of which No. 20 is one such). No. 20 is obliged to contribute 1.2821% to the Estate Costs and 16.6667% to the Milford Costs. Parts A and C respectively of the Sixth Schedule set out, in extensive and modern lease format, the Estate and Milford Costs and Part D sets out the costs of general application.

Schedule Seven sets out the proportions and mechanics of collection. The Tenth Schedule specifies Rawcliffe's obligations to implement the Sixth Schedule. The Eighth Schedule obliges the tenant to pay the 'Lessee's Proportion' – defined in the Lease as the proportion of the moneys expended or reserved by Rawcliffe in carrying out the Sixth Schedule obligations.

The Parties representations.

Mr and Mrs Smith enclosed with their letter of 21 January 2010 their objections to the Maintenance Expenses. They have 6 principal issues.

Trinity, on behalf of Rawcliffe, set out their responses on each issue in the statement of case dated 3rd February 2010

Car parking. Rawcliffe, through their agents, has failed to properly manage these arrangements, so as to defeat or inhibit the tenants' use of their exclusive parking spaces and ease of access. Rawcliffe have not restricted the parking by third parties to the extent envisaged by the Fourth Schedule.

Trinity's response is that the issue was addressed. A parking enforcement company UK POA was employed to issue parking tickets to offending vehicles and a parking permit scheme was considered.

Estate Costs. The obligations set out in the Sixth Schedule have not been met and should not be paid for until they are met.

Trinity's response is that all 78 units contribute equally to the Estate Charge. The services have been carried out in accordance with the Lease and inspected at intervals of not less than 8 weeks. The landscape maintenance company was also employed to remove rubbish and abandoned materials from the site. The absence of any detail about the Respondents' complaints does not facilitate any more detailed response.

Milford Costs.- cleaning. The Sixth Schedule unnecessarily provides for cleaning of the Milford apartments, for which no cleaning is carried out as they are self contained flats, devoid of common areas.

Trinity's response is that no charges have been raised for cleaning, window cleaning and internal decorations. The separate 'Milford Costs' take account of the differences in service requirements between the Milford properties and the rest of the development.

Milford Costs. – decorating. The Sixth Schedule unnecessarily provides for redecorating the external common parts of the Milford building. There are no common parts and the window frames are PVC and garage doors metal so as not to require renewal or redecoration.

Trinity's response is that the £19 that has been charged for the year ended 2007 is a reasonable contribution to the redecoration fund for those external areas which may, from time to time, require redecoration.

Milford Costs. – insurance. This is accepted in principle, but the amount is challenged on the basis that there is no evidence of competitive tendering.

Trinity's response is by reference to the correspondence with Mr Smith, and in particular their letters of 22 August, 4 September and 1 October 2007 and 14 November 2008. These letters also advert to most of the other issues.

Managing Agents charges. A number of residents were unhappy with the service provided by Rawcliffe's agents, Trinity. The current agents are charging considerably less.

Trinity's response is also by reference to the above correspondence. The Milford management fee for 2007 was reasonable at £40 plus vat per unit, in addition to the £20 plus vat per unit charged to the Estate Costs account.

The inspection.

The Tribunal inspected the development on Friday 26th February 2010. Our inspection was external only, and of a general nature, but with particular regard to the issues that had been raised in the parties' representations.

The site appeared to be reasonably well maintained and managed. There was no evidence of inadequate management. The Parking signs, referred to in the Applicants' evidence were in position. The flat itself had no common parts. The windows and doors were uPVC. The soffits and some barge boards were wooden. The limited amount of soft landscaping appeared to be well tended.

The Law.

Landlord & Tenant Act 1985

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.

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.

The Determination.

The Tribunal met, following the inspection, to consider the evidence, which had been filed and served in accordance with the Directions of 30th October 2009, and to take account of the parties' representations.

Car parking

Whilst we recognise that the layout of the estate and the facilities provided may cause potential parking difficulties, there was no evidence, at the time of our inspection, of any failure on the part of Rawcliffe or its agents. The car parking warning notices were evident. We accepted the explanation of the Applicant as to the reasonable efforts that had been made to resolve these matters.

Estate Costs

These are £94.69 for flat 20 for 2007. They include landscape maintenance and water and electricity to the site. The amount and the apportionment are reasonable

Milford Costs.- cleaning

It is self evident, from the correspondence, the Applicants representations and the service charge accounts and demands, that no charge has been raised. The provision in the Lease may be otiose, but that has no bearing on this application.

Milford Costs. – decorating

This is a provision of £19 for flat 20 for 2007. It is a modest amount. There will be a limited need, from time to time, to redecorate the small amount of external woodwork and renovate any faded or stained white uPVC. The provision against future cost is reasonable.

Milford Costs. – insurance

The issue, in law, is not whether the premiums are the cheapest available, but whether or not the charges have been reasonably incurred. *Forcelux v Sweetman* [2001] E.G.L.R. 173. The issue has been discussed between the parties in correspondence. Trinity invited Mr Smith to submit alternative quotations. None have been submitted to us by Mr. Smith.

There is nothing to suggest that the buildings insurance premium (£6982) is unreasonably incurred or inappropriately apportioned. £1606 is attributed to the Milford account. That represents £267.66 per annum for buildings insurance for flat 20. That is not an unreasonable amount for 2007.

Managing Agents charges.

In our experience an annual charge totalling £60 plus vat is modest and not unreasonable for the managing agents' fees, in respect of a development of this type, on the terms of a lease such as this. We considered whether the additional items for Surveyors Fees (£350) and Company administration Costs (£250) could be a duplication of management charges but concluded that they were not, and even if they were, the modest level of management charges leaves sufficient headroom to absorb them.

Costs.

There were no applications regarding costs, whether under Section 20C of Landlord & Tenant Act 1985 or otherwise. The Tribunal considered the issue of its own volition, but did not consider any Order was necessary or appropriate.

Fees.

We consider the Respondents refusal to pay the service charge, as demanded, to have been without foundation. The Applicant, as a consequence, has been obliged to make this application as part of its obligation to collect and enforce service

charges. The Respondents' resistance to this application has been without merit. We therefore require the Respondents to reimburse the Applicant with the whole (£100) of the application fee. *Leasehold Valuation Tribunals (Fees) (England) Regulations 2003. Regulation 9.*

Martin J Simpson

Chairman

26th February 2010.