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HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of a Claim transferred from the County Court (Service Charges)

Case No. CHI/29UD/LSC/2011/0173

Property: 36 Pinewood Place
Old Bexley Lane
Dartford
Kent
DA2 7WQ

Between:

OM Property Management Limited
("the Applicant")

And

Mr. A.R. Ahmed ("the Respondent")

Date of Hearing: 27th June 2012

Members of the Tribunal: Mr. R. Norman
Mr. R. Athow FRICS MIRPM

Date Decision Issued: 3rd July 2012

36 PINWOOD PLACE, OLD BEXLEY LANE, DARTFORD, KENT DA2 7WQ

Decision

1. In respect of the matters transferred from the County Court and which are within the jurisdiction of the Leasehold Valuation Tribunal, the Tribunal determined that Mr. A.R. Ahmed ("the Respondent") is liable to pay to OM Property Management Limited ("the Applicant") £3,478.43 calculated as follows:

	£
Service charges:	2,819.48
Interest under the terms of the lease:	390.20
Administration charges:	<u>268.75</u>
	3,478.43

2. In addition the Respondent is to pay to the Applicant the following sums:

A contribution towards costs:	500.00
Reimbursement of fees:	<u>150.00</u>
	650.00

Background

3. The Respondent is the lessee of 36 Pinewood Place, Old Bexley Lane, Dartford, Kent DA2 7WQ ("the subject property") and under the terms of his lease is required to pay service charges to the Applicant who is the Manager of the estate.

4. The application before the Tribunal arises from the commencement by the Applicant of proceedings against the Respondent in the County Court (Claim Number 1DA02481) seeking a declaration from the Court pursuant to the provisions of Section 81 of the Housing Act 1996 that the service charge claimed from the Respondent as detailed in the Particulars of Claim is payable in full by the Respondent together with Judgement for the sum due and costs.

5. Before the hearing, the Tribunal had received a bundle of documents from the Applicant. Nothing was received from the Respondent.

Inspection

6. On 27th June 2012 the Tribunal inspected the exterior and common parts of the purpose built block containing the subject property. Using the intercom and knocking at the door of the subject property produced no response and therefore it was not possible to inspect the interior of the subject property.

7. On behalf of the Applicant, the following persons were present: Mr. A Rankohi, Legal Consultant, Miss V. Beadle, Regional manager of residential properties and Miss J. Yirenkyi, Property Manager. There was no appearance by the Respondent or by anyone on his behalf.

8. Those present stated that the estate comprises some leasehold and some freehold properties and some social housing and indicated a number of areas in the estate (known as Edenwood) which were maintained by the Applicant. Those areas and the common parts of the block appeared to be maintained to a reasonable standard.

Hearing

9. The hearing was attended by Mr. Rankohi, Miss Beadle and Miss Yirenkyi. There was no appearance by the Respondent or by anyone on his behalf.

10. Service charges, interest under the terms of the lease and administration charges of £3,553.43 had been claimed by the Applicant but in response to questions from the Tribunal Mr. Rankohi recalculated the figure and amended the claim for those items to £2,819.48, £390.20 and £268.75 respectively making a total of £3,478.43.
11. Included in the documents provided in advance of the hearing there was a statement from Miss Yirenkyi. She confirmed the contents of her statement which included that she had been responsible for managing Edenwood, which included the subject property, since 16th January 2012 and that she had never had any contact with the Respondent.
12. Also included in those documents was a statement from Mr. Manfredi. In that statement he stated that he had been responsible for Edenwood from 1st February 2011 to 8th January 2012 and that he had never had any contact with the Respondent.
13. Miss Beadle told the Tribunal that she had managed Edenwood before Miss Yirenkyi and Mr. Manfredi and that she too had never had any contact with the Respondent.
14. Mr. Rankohi confirmed that there was no address for the Respondent on the Applicant's system or at the Land Registry other than the subject property and that all attempts to contact him at that address had been unsuccessful. The hearing bundle which had been sent to the Respondent was clearly too large for the letter box in the hall of the block and had been returned by the Post Office as it had not been called for. Nothing else had been returned by the Post Office. The Respondent's Mortgagee had been informed of the court proceedings.
15. The Tribunal had received no communication from the Respondent and a letter sent from the Tribunal Office to the Respondent dated 3rd January 2012 had been returned by the Post Office marked "addressee gone away".
16. The sum of £6,025.64 paid to the Applicant's solicitors in October 2010 in respect of the subject property had been received from the Respondent's Mortgagee.
17. The Applicant had provided to the Tribunal a copy of the lease of the subject property but page 12 was missing. Those present were unable to provide a copy of the missing page at the hearing but did provide on a laptop a copy of the relevant part of a similar lease and confirmed that the leases were in common form.
18. A map of the estate was produced on a laptop and Miss Yirenkyi indicated on it the areas maintained by the Applicant.
19. Mr. Rankohi referred to the statement of case, statements and accounts produced and submitted that all the service charges and administration charges had been reasonably incurred and were reasonable in amount and that the interest had been calculated in accordance with the provisions of the lease.

20. Mr. Rankohi applied for a determination that the Respondent pay costs of £500 and reimburse the hearing fee of £150 paid to the Tribunal, on the basis that the Respondent had acted unreasonably in relation to the proceedings in that he had not participated and that had he participated it may well have been that there would have been no need for a hearing.

Reasons

21. From the evidence produced and in the absence of any challenge from the Respondent, the Tribunal was satisfied that the amended figure of £3,478.43 was correct and payable by the Respondent.

22. The Tribunal's power to order payment of costs is contained in paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which provides in its material parts in relation to costs:

“10 (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where --

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed --

(a) £500, or

(b) Such other amount as may be specified in procedure regulations.”

23. The Tribunal found that the Respondent had acted unreasonably in relation to the proceedings by not responding to the proceedings and that consequently he should pay £500 towards the costs of the Applicant.

24. Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 provides that in relation to any proceedings in respect of which a fee is payable under those Regulations a Leasehold Valuation Tribunal may require any party to the

proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

25. Having regard to the fact that the Respondent has not provided any evidence or challenged any of the Applicant's evidence or indeed made contact with the Applicant or the Tribunal at all, and that had he done so there may not have been the need for a hearing, the Tribunal considers it just and equitable to make an order requiring the Respondent to reimburse the Applicant's hearing fee of £150 in respect of this hearing.



R. Norman
Chairman