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HM COURTS & TRIBUNALS SERVICE

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

**LANDLORD AND TENANT ACT 1985
SECTION 27A (1)**

Property: 20, Muncaster Court, Castlefields, Runcorn, WA7 2SP
Applicant: Mr.D.Henry
Respondent: Plus Dane Group
Tribunal: Mrs.C.Wood (Chair)
Mr.D.Bailey
Tenancy Agreement: Secure Tenancy Agreement dated 12 January 2009
made between CDS Housing CDS Association Limited
(1) and the Applicant (2)
Date of decision: 8 January 2013

DECISION

Background

1. The Applicant is the Tenant of the Property.
2. By an application dated 14 March 2012 the Applicant sought a determination under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") in respect of the reasonableness of, and his liability to pay, service charges for the service charge year April 2011 – March 2012 and April 2012 – March 2013.
3. Directions were issued to the parties dated 22 August 2012 in which it was stated that the matter would be determined without a hearing unless either party requested one within 21 days No such request was received from either party.
4. The following written evidence was submitted by the parties:
 - 4.1 Respondent's Statement of Case and supporting documents received under cover of letter dated 17 September 2012;
 - 4.2 Applicant's Statement of Case and supporting documents received on or about 20 October 2012.

Inspection

5. The Tribunal inspected Muncaster Court at or about 10.00 am on Friday 14 December 2012. The Applicant was in attendance during the inspection.

The Tenancy Agreement

6. The relevant provisions of the Tenancy Agreement for this purpose are as follows:
 - 6.1 under clause 1.1, the Tenant is obliged to "...pay the rent, including any service charge, every Monday for the week to come", and under clause 2, it states "You must pay the service charge";
 - 6.2 under clause 2.1, the service charge is defined as "...your fair share of the cost to us of providing the services set out in the service charge schedule";
 - 6.3 clause 2.2 provides: " We will charge for services on the basis either of reasonable costs incurred during the previous accounting period or of estimates for the current or next accounting period. We will add a management and administration charge to these costs...";
 - 6.4 Schedule 1 to the Tenancy Agreement states: " The attached schedule lists the services we may charge for in respect of this agreement. These services may be increased, added to, removed or varied in accordance with this agreement".

The Law

7. Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

(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, improvements 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 or later period.

8. Section 19 provides that –

(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.

9. Section 27A provides that -

(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 date at or by which it is payable, and
- (d) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3)

(4) No application under subsection (1)...may be made in respect of a matter which -

(a) has been agreed by the tenant.....

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

10. In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].

Submissions

11. In its statement, the Respondent confirmed as follows:

11.1 the service charge is currently £7.60 per week;

11.2 the service charge includes services to both Muncaster Court and the common areas of the wider Castlefields estate;

11.3 the apportionment of the service charge for services to Muncaster Court is 1/24th;

11.4 the services currently charged within the service charge are:

- (a) scheme cleaning;
- (b) TV relay/licence;
- (c) relamping;
- (d) ground maintenance;
- (e) door entry;
- (f) provision for replacement of communal entry and door entry;
- (g) management charge.

12. In his statement, the Applicant raised the following points:

- 12.1 that there seemed to be an anomaly in the apportionment of the service charge;
- 12.2 with regard to the charge for TV licence;
- 12.3 the apportionment of the charges for ground maintenance and the services provided;
- 12.4 the charges are not reasonable and not value for money, and that his involvement in the tender process and performance meetings is “ a lip service approach to tenant power”.

Determination

13. The Tribunal must apply a three stage test to the application under section 27A:

(1) Are the service charges recoverable under the terms of the Lease?
This depends on common principles of construction and interpretation of the lease.

(2) Are the service charges reasonably incurred and/or services of a reasonable standard under section 19 of the 1985 Act?

(3) Are there other statutory limitations on recoverability, for example consultation requirements of the 1985 Act as amended?

14. The Tribunal determined as follows:
 - 14.1 that all of the services charged within the service charge are properly chargeable under the terms of the Tenancy Agreement;
 - 14.2 that the apportionment of the services is in accordance with the terms of the Tenancy Agreement;
 - 14.3 the service charges have been reasonably incurred and/or the services are of a reasonable standard, and the Applicant is liable to pay them accordingly.

**Catherine Wood
Chairman of the Leasehold Valuation Tribunal
8 January 2013**