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HM COURTS & TRIBUNALS SERVICE  
MIDLAND LEASEHOLD VALUATION TRIBUNAL

DECISION

On an application pursuant to sections 27A and 19 of the Landlord & Tenant Act 1985 for a determination of liability to pay and reasonableness of service charges.

<u>Applicant</u>	Pavilion Nottingham Limited - (the Landlord)
<u>Respondent</u>	H E Boyle – (the Tenant)
<u>Property</u>	Apartment 11, The Pavilion, 3 Russell Road, Nottingham NG7 6GB
<u>Case number</u>	BIR/00FY/LSC/2011/0026
<u>Date of Application</u>	17 July 2011
<u>Paper Determination</u>	21 February 2012
<u>Members of the Tribunal</u>	Mr. R. Healey LL.B., Solicitor Mr. C. Gell FRICS
<u>Date of determination</u>	23 FEB 2012

## **SUMMARY OF THE DETERMINATION**

(a) The Tribunal determines that it has no jurisdiction to determine the ground rent.

(b) The Tribunal determines that there is no evidence before it to show that the service charge demands contained the name and address of the landlord nor had the landlord notified the tenant of an address for service of notices. The service charge and administration charge demands are therefore not payable.

### **Introduction**

1. This is an application for a determination of liability to pay and reasonableness of service charges in accordance with sections 27A and 19 of the 1985 Act. The application is by the Landlord relating to the liability of the Tenant in respect of the Property for the periods from 1 January to 31 December 2010 and 1 January to 31 December 2011.

### **The Law**

2. The relevant law is set out in the Schedule.

### **Lease**

3. The leasehold interest in the Property is held by the Respondent under a lease dated 29 September 2005 made between Stirling Aviation Properties LLP of the one part and the Respondent of the other part ("the Lease") for a term of 999 years from 1 January 2002.

### **Directions**

5. Directions were issued on 29 July 2011, 15 August 2011, 9 December 2011 and 30 January 2012.

### **Matters for determination by the Tribunal**

6. The Applicant submitted the following invoices for payment –

(a) Invoice dated 10 December 2009 in respect of a service charge from 1 January 2010 – 30 June 2010 in the sum of £558.71 and a ground rent charge for the same period in the sum of £75.00.

(b) Invoice dated 9 June 2010 in respect of a service charge from 1 July 2010 to 31 December 2010 in the sum of £588.71; ground rent for the same period in the sum of £75.00 a supplementary payment charge of £162.39 and admin. fee to date of £100.00.

- (c) Invoice dated 30 November 2010 in respect of a service charge from 1 January 2011 to 30 June 2011 in the sum of £670.18
- (d) Invoice dated 30 November 2010 relating to ground rent for the period 1 January 2011 to 30 June 2011
- (e) Invoice dated 11 June 2011 relating to a service charge for the period from 1 July 2011 to 31 December 2011
- (f) Invoice dated 11 June 2011 relating to ground rent for the period 1 July 2011 to 31 December 2011.
- (g) The Applicant also produced service charge and ground rent demands for the 12 month period ending 31 December 2012 which were not taken into account by the Tribunal as they were outside the period specified in the original application.

### **Liability to pay**

- 7. The Tribunal determined that the ground rent invoices did not relate to a service charge the whole or part of which varies or may vary according to the relevant costs. (Section 18 of the 1985 Act) The Tribunal therefore does not have jurisdiction under section 27A of the 1985 Act.
- 8. The Tribunal as a preliminary matter determined to satisfy itself on the validity of the demands for the service charges as opposed to the ground rent demands.
- 9. The Tribunal endeavoured to obtain the relevant confirmation from the Applicant and gave its reasons for the request in paragraph 2b of its Directions dated 9 December 2011 and directed that the Applicant provide to the Respondent and the Tribunal – inter alia –

A copy of the service charge/estimated service charge demands for the years ending 31 December 2010 and 31 December 2011 together with a summary of the rights and obligations of tenants of dwellings in relation to service charges which accompanied the demand and notification of an address for service on the landlord.

*Reason: Landlord and Tenant Act 1985 s.21B  
Service Charges (Summary of Rights and Obligations, and  
Transitional Provisions) Regulations 2007 (SI 2007/1257)  
Landlord and Tenant Act 1987 sections 47 and 48.*

- 10. The Applicant failed to provide evidence that its name and address appeared on the demands, (Landlord and Tenant Act Section 47), nor evidence that it had notified the Respondent of an address for service (Section 48).

11. In the absence of such information the Tribunal determines that the service charge monies and administration charges demanded by the Applicant are not payable.



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Roger Healey

Chairman

23 FEB 2012

## The Schedule

### The Law

12. Section 27A of the Landlord and Tenant Act 1985 sets out the jurisdiction of the tribunal and the relevant clause (1) provides:

#### **S.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.*

13. Section 18 of the Landlord and Tenant Act 1985 Act gives the meaning of service charge as incorporated in section 27A above and provides :

#### **S.18 Meaning of “service charge” and “relevant costs”**

- (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.*

14. Sections 47 & 48 of the Landlord and Tenant Act 1987 (“the 1987 Act”) require certain information to be given to the tenant and in default the service charge is not due.

15. **S.47 of the 1987 Act - Landlord’s name and address to be contained in demands for rent etc.**

*(1) Where any written demand is given to a tenant of premises to which this Part applies the demand must contain the following information namely –*

- (a) *the name and address of the landlord, and*
- (b) *if that address is not in England and Wales, an address in England and Wales at which notices may be served on the landlord by the Tenant*

(2) *Where –*

- (a) *a tenant of any such premises is given such a demand, but*
- (b) *it does not contain any information required to be contained in it by virtue of subsection (1).*

*Then subject to subsection 3 any part of the amount demanded which consists of a service charge (or an administration charge) (“the relevant amount”) shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.*

(3) *[Not applicable]*

(4) *In this section “demand” means a demand for rent and other sums payable to the landlord.*

**16. S. 48 of the 1987 Act - Notification by landlord of address for service of notices**

(1) *A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.*

(2) *Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.*

(3) *[Not applicable]*