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FIRST – TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**BIR/37UD/LIS/2012/0034**
Property	:	**18 Riddles Court Watnall Nottingham NG16 1LB**
Applicants	:	**Mr Berardino Romano & Mr Marcos John Sala**
Representative	:	**In person by Mr Berardino Romano**
Respondent	:	**OM Management No 2 Limited**
Representative	:	**Ms Misbah Khan**
Type of Application	:	**Application for a determination of liability to pay and reasonableness of service charges pursuant to sections 27A and 19 of the Landlord and Tenant Act 1985 and for an order pursuant to section 20C of the Act that none of the costs incurred by the Respondent in connection with the proceedings be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants**
Tribunal Members	:	**Mr R Healey (Chairman) & Mr V Ward FRICS**
Date and venue of Hearing	:	**24 June 2013 at Nottingham Magistrates' Court**
Date of Decision	:	10 JUL 2013

DECISION

Introduction

1. This is an application by Mr Berardino Romano and Mr Marcos John Sala ("the Applicants") for a determination of liability to pay and reasonableness of service charges to OM Property Management No2 Limited ("the Respondent") in respect of the financial years ending 31 December 2008, 31 December 2009 and 31 December 2010 relating to Apartment 18 Riddles Court Watnall Nottingham NG16 1LB ("the Property") and further that the Tribunal order that none of the Respondent's costs in connection with the proceedings are to be regarded as relevant costs taken into account in determining the service charge.

2. The leasehold interest in the Property is demised to the Applicants by an Underlease made between Chaworth Place Management Company Limited of the one part and the Applicants of the other part ("the Lease") whereby the Property is demised to the Applicants for a term of 150 years (less 10 days) from 6 January 2004.

3. A pre-trial review was held on 25 June 2012 and Directions issued. The Applicants were informed that general allegations were not sufficient and that detailed specific allegations would be required at the hearing. In accordance therewith the Respondent produced inter alia invoices/receipts for each of the items of expenditure shown in the service charge statements/accounts for the relevant years. A Scott Schedule was prepared by the parties showing the items in dispute and was before the Tribunal.

Inspection

4. On 24 June 2013 the Tribunal Members attended at Riddles Court Watnall Nottingham ("the Building"). They were met by Mr Dean Kirk, a representative of the Applicants and also by representatives from the Respondent. With their assistance the Tribunal inspected common parts, the internal courtyard and the external appearance of the Building generally when viewed from both the courtyard and the highway.

5. The Tribunal observed a defective repair to a boundary fence, a plastic strip deposited in the courtyard said to have been knocked from the entrance to the Building by a vehicle, vegetation in gutters, external window frames requiring cleaning, water leaking from gutters, external metal fence requiring repainting, damaged door to electricity meters with replacement lock of different type fixed in an alternative position, door to hallway requires cleaning, internal hallway not decorated, door to rear courtyard reveals lock replaced in alternative position and door requires cleaning.

6. Upon inspection it was not apparent to the Tribunal whether the issues observed were present during the service charge years 2008, 2009 and 2010.

The Law

7. The relevant law is contained in sections 19, 20C and 27A of the Landlord and Tenant Act 1985.

Hearing

8. Evidence of the state of disrepair or lack of maintenance of the Building was limited to the evidence of the Applicants and the financial documentation provided by the Respondent. There was no photographic evidence or written evidence, nor any independent witness evidence presented by the Applicants to the Tribunal.

9. The Tribunal heard evidence and/or submissions from the Applicants in respect of each of the items set out in the Scott Schedule. In reply Ms Khan referred to the documentary evidence before the Tribunal and made submissions. Some of the items in the Scott Schedule did not reveal a dispute. Other items that were originally in dispute were withdrawn by the Applicants following explanation being given by Ms Khan. The Tribunal heard evidence on the items remaining in dispute from the Applicants and submissions in response by Ms Khan.

Service charge year 2008

Landscape maintenance

10. Mr Berardino Romano submitted that the general quality of workmanship was inconsistent. There was very little grass cutting and on one occasion the grass was left to grow up to the windows. Evergreen bushes needed the occasional trim.

11. Ms Misbah Khan for the Respondent responded that there is no evidence before the Tribunal, there are no photographs and no evidence of complaints. She refers the Tribunal to the Contract for Gardening Services (132 in the bundle) and particularly to the provision for fortnightly visits in the summer and monthly in the winter.

12. The Tribunal considered the contract and determines that it makes satisfactory provision for gardening services. Mr Romano was unable to give specific dates and times of failures by the gardening contractors. There is no evidence of written complaints nor any photographic evidence before the Tribunal. There is no evidence from other leaseholders nor from any independent person. The Tribunal finds that the complaints are too general in nature and lack any supporting evidence and therefore determines the charge of £89.15 reasonable.

Cleaning common areas

13. Mr Romano submits that minimal time was spent by the cleaners; little time was spent with a vacuum cleaner and the internal common parts were never cleaned dusted or polished.

14 Ms Khan refers the Tribunal to the cleaning contract (126 in the bundle). She submits there is no evidence in support of the Applicants' claim.

15. The Tribunal finds the Cleaning Contract reasonable. It finds the allegation general in nature without any specific incident. Again there is no evidence in support. The Tribunal determines the charges of £106.03 reasonable.

Sweeping

16. Mr Romano submits that he has never seen any sweeping done in the courtyard. He has seen a contractor with a blower. The car park is often cleaned by residents.

17. Ms Khan replied that the gardeners used a blowing machine and this may have caused confusion which was accepted by Mr Romano.

18. The Tribunal finds the Sweeping Contract (143 in the bundle) reasonable. The Tribunal finds the allegations to be general in nature and lacking in evidence. The charges of £10.32 are determined reasonable.

Repairs and maintenance

19. Mr Romano submits that he is unaware of any maintenance undertaken. He submits the internal door access security system and electricity meter doors were reported faulty but left for months until repaired. The subsequent repair is of poor quality and looks unsightly.

20. Ms Khan responds that the locks are a small proportion of the maintenance charge as evidenced by the accounts. She submits that the allegations are vague.

21. The Tribunal finds the workmanship to be of poor quality and determines that £45.00 be deducted from the contractors charges. The sum of £1.80 is therefore deducted from the service charge account.

Directors Insurance

22. The parties agree that the charge for directors insurance be removed. The Tribunal therefore determines the sum of £6.00 be deducted from the service charge account.

Admin/Management

23. The parties agree the correct figure charged to the accounts is £202.54. Mr Romano challenges the amount of the charges. He submits that his account has not been managed in a professional and competent manner. His evidence is that he challenged the accounts with the Respondent but continued to get reminders regarding the

outstanding service charge. He accepts that the sum claimed is a proper amount if the management had been properly undertaken.

24. The Tribunal has already found defective workmanship and this has been dealt with by making a deduction from the contractors account. The Tribunal find, on the evidence available, no other defects in the management and accordingly the charge is upheld.

Service charge year 2009

Landscape maintenance

25. Mr Romano again submits that the general quality of workmanship iss inconsistent. Evergreen bushes needed the occasional trim.

26. Ms Khan for the Respondent responds that there is no evidence before the Tribunal, there are no photographs and no evidence of complaints. She refers the Tribunal to the Contract for Gardening Services (132 in the bundle) and particularly to the provision for fortnightly visits in the summer and monthly in the winter.

27. The Tribunal considered the contract and determines that it makes satisfactory provision for landscape maintenance. There is no evidence before the Tribunal of written complaints, no photographic evidence, no evidence from other leaseholders, nor from any independent person in support of the alleged failures of the contractors. The Tribunal finds the complaints are too general in nature and lack any supporting evidence and therefore determines the charge of £87.40 reasonable.

Cleaning common areas

28. Mr Romano submits that minimal time was spent by the cleaners; little time was spent with a vacuum cleaner and the internal common parts were never cleaned dusted or polished.

29. Ms Khan refers the Tribunal to the cleaning contract (126 in the bundle). She submits there is no evidence in support of the claim.

30. The Tribunal finds the Cleaning Contract reasonable. It finds the allegation general in nature without evidence of any specific incident. Again there is no evidence in support. The Tribunal determines the charge of £103.22 reasonable.

Sweeping

31. Mr Romano submits that any sweeping of the parking area by contractors was minimal and was undertaken by the residents themselves.

32. The Tribunal finds the Sweeping Contract (143 in the bundle) reasonable. The Tribunal finds the allegations to be unsupported. The charge of £11.04 is determined reasonable.

Repairs and maintenance

33. Mr Romano is unaware of any maintenance being undertaken by contractors. He submits the internal door access security system and electricity meter doors were reported faulty but left for months until repaired. The subsequent repair is of poor quality and looks unsightly.

34. Ms Khan responds that the locks are a small proportion of the maintenance charge as evidenced by the accounts. She submits that the contractors accounts are to hand and the Applicants make no challenge to them.

35. In the previous year the Tribunal found the workmanship relating to the locks to be of poor quality and made a deduction for it. There is no challenge to the remaining contractors' accounts and the charge of £38.59 is upheld.

Building Insurance premium

36. The premium is agreed by the parties at £107.07 instead of £110.57 as previously stated. The Tribunal determines the sum of £3.50 be deducted from the service charge.

Admin/Management

37. The parties agree the correct figure charged to the accounts is £223.01. inclusive of VAT. Mr Romano challenges the amount of the charges. He submits that his account has not been managed in a professional and competent manner. His evidence is that he challenged the accounts but continued to get reminders. He accepts that the sum claimed would be a proper amount if the management had been properly undertaken.

38. Mr Romano submits that the general upkeep of the property has been poor. In particular there was a loss of security for some months, failure of upkeep of décor in the internal common parts, exterior window frames not cleaned, vegetation in gutters, and failure to repair damaged archway and replace plastic strip and inadequate repair of a fence.

39. Ms Khan submits that money was limited. Attempts were made to repair the doors. A loss of security is not accepted. There is nothing to suggest that any of the defects existed in 2009. There is no photographic or other evidence or documented complaints before the Tribunal.

40. On a balance of probabilities the Tribunal finds the Applicants' complaints set out in para 38 to be proved. The Tribunal finds that the failure to manage may properly be reflected by a deduction of £22.30 from the management charges and so determines.

Value Added Tax

41. The Respondent acknowledges that VAT is included in the management charges and that no further addition is required. By consent it is determined that the sum of £10.81 be deleted from the accounts.

Service charge year 2010

Landscape maintenance

42. Mr Romano submits there was very little grass cutting, evergreen bushes needed trimming and weeding maintenance was required.

43. Ms Khan responds that there is no evidence before the Tribunal, there are no photographs and no evidence of complaints.

44. The Tribunal finds that the Applicants' evidence is unsupported and determines the charge of £97.30 reasonable.

Cleaning common areas

45. Mr Romano submits that minimal time was spent by the cleaners; little time was spent with a vacuum cleaner and the internal common parts were never cleaned dusted or polished. He gave evidence that the power supply to the common parts was not available for some time and submitted that as a result no electrical equipment was used for cleaning the common parts.

46. Ms Khan offered to delete the November 2010 cleaning bill of £5.84 in its entirety

47. The Tribunal finds the Cleaning Contract reasonable. It finds the Respondent's offer acceptable and determines the sum of £5.84 be deleted from the charges.

Repairs and maintenance

48. Mr Romano observes that this cost heading has substantially increased since last year. He is unaware of any maintenance being undertaken by contractors. He refers again to the loss of security when locks were inoperative and to the poor workmanship evident on the electricity meter replacement locks.

49. Ms Khan responds that the locks are a small proportion of the maintenance charge as evidenced by the accounts. She submits that the contractors accounts are to hand and the Applicants make no challenge to them.

50. The Tribunal has previously found that there was some loss of security in the building and that the replacement locks on the doors show evidence of poor workmanship. This has been taken into consideration for the previous year and the Tribunal is not satisfied that the problem existed beyond the one year. The Tribunal notes that the Applicants do not challenge any individual accounts. The Tribunal therefore confirms the figure of £93.31 shown in the accounts.

Admin/Management Fees.

51. The Applicants accept the charges under this cost heading as reasonable providing the service rendered is acceptable. The Applicants challenge the charges on the basis of the failure to manage. The Applicants say that they were unable to obtain clarification of the costs relating to maintenance and repairs.

52. Ms Khan responds by saying that there were three meetings between the Applicants and the management company. The Applicants conceded that the meetings had taken place but that it was not possible to reach an agreement.

53. On the basis of the evidence before it the Tribunal is unable to find any defect in the management and the fee of £245.56 is upheld.

54. Ms Khan on behalf of the Respondent undertook that the costs incurred in connection with the proceedings would not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants and requested that on the basis of this undertaking no section 20C order be made.

Summary of the determination

55. On the basis of the determinations set out above the following deductions are made in respect of each of the following service charge years –

55.1 2008 a deduction of £1.80.

55.2 2009 a deduction of £36.61.

55.3 2010 a deduction of £5.84.

56. On the basis of the Respondent's undertaking the Tribunal makes no section 20C order.

Roger Healey (Chairman)

10 JUL 2013