

9291



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/00HD/LIS/2013/0055

Property : Flat 11 Wishford Mews, Radstock Road, Midsomer Norton, Bath BA3 2AW

Applicant : Mr Stuart Rogers

Representative : Applicant in Person

Respondent : Broadway Property Investments Limited

Representatives : Mr Alan Broadway and Mr Dean Broadway

Type of Application : Determination of the amount and liability to pay service charges

Tribunal Members : Judge A D McC Gregg (Chairman)
Mr Jan Reichel (Valuer Member)
Mr S Fitton (Lay Member)

Date and venue of Hearing : 11 July 2013
Old Priory Hotel, Church Square,
Midsomer Norton, Bath, Somerset
BA3 2HX

Date of Decision : 9 August 2013

DECISION

1. The Issues

- 1.1 In this matter the Applicant, Mr Stuart Rogers, is the long leaseholder of Flat 11 Wishford Mews, Radstock Road, Midsomer Norton, Bath BA3 2AW ("the Property").
- 1.2 The Applicant has applied to the Tribunal requesting a determination with regard to the service charges in respect of the years 2012 and 2013.
- 1.3 The subject premises forms part of a block of 14 flats which were constructed in or about October 2005.
- 1.4 The liability to pay service charges is governed by Section 27(A) of the Landlord and Tenant Act 1985 (as amended) and the terms of the Applicant's lease.

2 Inspection of Premises

- 2.1 On 11 July 2013 and prior to the hearing of this matter the Tribunal inspected the common parts applicable to Flat 11 Wishford Mews including the hallway and stairs leading from the front door, the car parking area at the rear of the premises, the small garden area at the rear of the premises and the garden areas at the front of the premises.
- 2.2 The Tribunal did not inspect the subject premises themselves, namely Flat 11 Wishford Mews.

3 Preliminaries

- 3.1 The Tribunal had already received written representations from both parties prior to the commencement of the hearing which included a copy of the lease in respect of Flat 11, correspondence between the parties, schedules showing how the service charges were made up, together with supporting documentation and photographs showing the car parking area to the rear of the premises and the garden areas to the rear and front of the premises.

4 Relevant Liabilities under the Lease

- 4.1 A copy of the Applicant's lease (Flat 11) had been provided to the Tribunal.
- 4.2 The lease which is dated 2005 is made between Oval Estates (Bath) Limited (1) and the Applicant (2).
- 4.3 The lease is for a period of 125 years from 1 January 2005 up to an including 31 January 2129.

4.4 The Applicant's obligations and liabilities to pay the service charge each year is set out in the Sixth Schedule of the lease (page 9-11) of the initial bundle and Application before the Tribunal.

5 The Law

5.1 The Statutory provisions primarily relevant to applications of this nature are to be found in sections 18, 19 and 27a of the Act.

5.2 Section 18 provides:

- 1) *In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part 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.*

5.3 Section 19 provides:-

- 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 payment, reduction or subsequent charges or otherwise.*

5.4 Section 27A provides:-

- 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*

- 7.8 He further stated that no statement had ever been sent to him by the Respondent setting out the Applicant's rights and the obligations of the managing agents.
- 7.9 Furthermore in his view there was no sinking fund and if there was one, the funds were not being paid into a designated trust account.
- 7.10 As a result, he felt that it was unreasonable for the service charges to be charged because no or no adequate information had been provided by the Management Company.
- 7.11 In summary, the main areas of his complaint were relating to the management of the company and the management and administration costs.
- 7.12 Finally, a house had been built at the rear of the property and he felt that he and the other tenants should have been given information with regard to the construction of this house before it was built since access to the house was via the access road to the car parking areas at the rear of the premises.
- 7.13 In response to a question by the Respondent, the Applicant had not turned up for an appointment to discuss these issues, he said that he felt it was pointless in going to such a meeting and besides which the meeting had been called at short notice.
- 7.14 In response to a question from the Tribunal as to whether the Applicant objected to the level of the service charges and whether they were unreasonable, the Applicant stated that he did not know and that the tenants were being presented with a "fait accompli".

8. The Respondent's Case

- 8.1 The Respondent stated that Oval Estates (Bath) Limited tended to bankroll the Respondent company and did not employ any staff.
- 8.2 There had been no objections from any of the other tenants from the premises.
- 8.3 The Respondent was adamant that they did respond to complaints and requests for maintenance.
- 8.4 The Respondent was not aware of the problem concerning the front door to Flats 1-5 and this would be looked at.
- 8.5 The Respondent had invited the Applicant to a meeting and suggested a number of alternative dates and times. A date was agreed but the Applicant has not kept that appointment.
- 8.6 The Respondent accepted that there had been some delays in presenting all

- the accounting figures but was adamant that the Applicant had received the accounts for the years 2010, 2011 and 2012 together with an estimate for the expenditure for 2013. The Respondent stated that they have now appointed a new chartered accountant who had put in place new systems.
- 8.7 The Respondent felt that they did a reasonable job by way of maintenance and management of the premises.
- 8.8 With regard to the sinking fund, this is not yet in existence due to the relatively young life of the premises, but it is intended to set up a sinking fund and they have monies in that fund in a separate account.
- 8.9 With regard to the house that had been built at the rear of the premises, the Respondent did not build it, all they did was grant it a right of access to the owner of that site, who had been extremely helpful to them when they were building the premises themselves.
- 8.10 The Respondent did not know whether the Applicant had decorated the hallway or not, but commented that a good job had been done.
- 8.11 The Respondent stated that they visit the premises at least once a year for an annual inspection and all more frequently when asked.
- 8.12 The Respondent felt the shrubs surrounding the premises were very attractive and that it was a question of balancing the cost against the reasonableness and the level of maintenance of the shrubs that was required.
- 8.13 The grass block paving at the rear car parking area had been used to help tree roots grow.
- 8.14 The Respondent was adamant that the service charges were reasonable for the services provided and that they provide a budget at the beginning of a year, the actual figures being sent out at the end of year.
- 8.14 The Respondent also stated that there are no long term contracts between related companies although they do employ people on an ad hoc basis as and when necessary and that there is no profit element in the fees charged for those services.
- 8.15 With regard to the administration fee, this is based on an hourly rate for time expended.
- 8.16 Finally, the Respondent's interpretation of the arrangement between the Respondent company and Oval Estates (Bath) Limited was that there had been no "long term arrangement or contract" between the companies.
- 8.17 He was unaware as to whether information had been sent to the tenants in 2007 concerning their management obligations.

9. **The Tribunal's Determination**

- 9.1 Having inspected the premises, considered the written representations from both parties and heard all evidence from both parties, the Tribunal concluded that service charges for the years 2012 and 2013 were, in all the circumstances, reasonable and appropriate.
- 9.2 The Tribunal did, however, recommend that to avoid difficulties in the future, the Respondent should carefully consider and apply the guidance and recommendations contained in the Service Charge Residential Management Code (2nd Edition) produced by the RICS.
- 9.3 With regard to the suggestion that the premises had been poorly maintained, particularly the communal gardens and car parking area at the rear, the Tribunal saw no evidence of this.
- 9.4 With regard to the complaint that there had been no audited accounts produced by the landlord, this was a matter that, whilst it may be a breach of covenant on the part of the landlord it is not within the jurisdiction of the Tribunal.
- 9.5 Whilst the Tribunal noted that the Respondent had, in all probability not given the Applicant a summary of the tenants rights and obligations pursuant to Section 21B of the Landlord and Tenant Act 1985 and the Respondent should do so, this did not in any way affect the Tribunal's decision as to the reasonableness of the service charges.
- 9.6 However, and since the service charges are not payable until a summary of the tenant's rights and obligations has been served, the service charges will not be payable until that summary has been (re) served together with the re-service of the summaries and demands themselves.
- 9.7 The Tribunal felt that the problems between the parties were utterly due to a lack of communication between them and hoped that both parties would address this issue to avoid problems in the future.

10. **Section 20(C) Application**

- 10.1 Whilst the Applicant had included an Application under Section 20(C) of the Landlord & Tenant Act 1985 and this was considered by the Tribunal and the Tribunal, in view of its findings, declined to make any order under this Section.

11. **Appeals**

- 11.1 A person wishing to appeal against this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office which has been dealing with the case.

- 11.2 The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making application written reasons for the decision.
- 11.3 If the person wishing to appeal does not comply with the 28-day time limit, the person all include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend the time or not to admit the application for permission to appeal.
- 11.4 The application for permission to appeal must identify the decision of the Tribunal which it relates, state the grounds of appeal, and state the result which the person is seeking.

.....
Judge Andrew Duncan McCallum Gregg

Dated: 9 August 2013