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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/22UL/LSC/2014/0006**
Property	:	**First Floor Flat,** **297 Eastwood Road,** **Rayleigh,** **Essex SS6 7LQ**
Applicant	:	**Regisport Ltd.**
Respondent	:	**Paul Joseph Bryant and Debbie Bryant** **(sued as Mr. P & Ms. D Bryant)**
Date of transfer from Southend County Court	:	**10th December 2013**
Type of Application	:	**To determine reasonableness and payability of service charges and administration fees**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **Roland Thomas MRICS** **John Francis QPM**
Date and venue of hearing	:	**26th March 2014 at Holiday Inn, Festival Leisure Park, Basildon, Essex SS14 3DG**

DECISION

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1. The Tribunal determines the amounts claimed by the Applicant in the court proceedings as follows:-

Date	Item	Claim(£)	Decision
31.12.10	service charge	356.91	not reasonable or payable
31.12.11	service charge	441.50	-ditto-
31.12.12	service charge	276.00	-ditto-
28.02.13	Legal expenses	300.00	-ditto-
31.07.13	interest	87.05	-ditto-
31.07.13	In house legal expenses	180.00	-ditto-
		1,641.46	

From the claim, the Tribunal therefore determines that none of it is reasonable or payable.

2. The application is transferred back to the Southend County Court under case no. 3YQ50525.

Reasons

Introduction

3. On the 30th August 2013, the Applicant, as freeholder of the building of which the property forms part, issued proceedings in the County Court against the long leaseholder of the property claiming the sums referred to in the decision above.

4. The Respondent filed a defence which says:-

> *"We dispute this whole claim for the following-: We have lived here since 15/6/2007 For the first 3 years there was no request for service charges – AS WE DON'T GET ANY SERVICES – Then out of the blue we got a bill for a service charge so I called them to ask why as we didn't get any services – I had to explain that we live in a flat which is in an old Edwardian terraced house that has been converted there are no communal areas we each (the 2 flats) have our own private gardens accessed only through our flats – the small front garden belongs to the downstairs flat as per the deeds of the property. Our front doors are accessed through a porch door one step and we can open our front door this small area also belongs to the downstairs flat (although they have to allow us access as per the deeds) Our bins are kept on the public footpath as all the other houses in the road as properties are terraced. We clean our own windows. The person I spoke to said they would look into it and get back to me they never did. 2 years ago we received a service charge bill from another company. I called again explained about the property as above. They said there still a service charge – I asked for a breakdown of services provided – they said there wasn't any – I asked for dates of services again they said there wasn't any – <u>They said we had to pay the service charge even though no services provided</u> I then asked how they got that amount – they didn't know – so basically they want us to pay a service charge – A large service charge For absolutely NO SERVICES! We already pay £200 per year ground rent and £400 buildings insurance We have always paid these charges on time and will continue to do so. But a service charge for no services – we might as well throw the money away!*

5. The claim was transferred to a Leasehold Valuation Tribunal by order of District Judge Ashworth on the 10th December 2013. In fact, by that date, the Leasehold Valuation Tribunal had been subsumed into the First-tier Tribunal, Property

Chamber which took over all of its jurisdictions and powers.

6. The Applicant was ordered to file and serve a statement justifying the claim. A statement from Neil Harmsworth from the managing agents, Gateway Property Management ("Gateway") dated the 13th February 2014 was filed and served and appears in the bundle of documents provided for the Tribunal at pages 1, 2 and 3. However, apart from quoting several clauses from the lease and saying that the claim is owed, this statement does not justify the claim at all. It simply says, in effect, that a bundle of supporting documents will provide the evidence.

7. The bundle does indeed contain copies of computer print outs from Gateway and from a previous managing agent. However, apart from 2 items, all the claims are for management fees, interest and professional fees. These 2 items are taken from statements of account rather than invoices and are on pages 25 and 31. Page 25 refers to a charge from Morgan Sloane Chartered Surveyors whom the Tribunal recognises as a firm frequently used by the Applicant. The charge is £223.25 for a 'stock survey'. It is questionable as to whether a long lessee should have to pay for the landlord to establish what property it has and what condition it is in.

8. The other entry on page 31 refers to £200 claimed on account for repairs and maintenance in 2010. There is no invoice or service charge demand and no evidence that any such repairs were actually carried out in any following years.

The Inspection

9. The members of the Tribunal inspected the outside of building in which the property is situated in the presence of Mrs. Bryant. They were not invited into the property itself to see the interior (save for the entrance hall) but saw the front and they were just able to see the back from the end of the garden. Also present at the inspection were Mr. Ben Day-Marr, Ms. Carly Melling and another colleague from Gateway.

10. The property is the first floor maisonette in the middle of a terrace of three houses. The Respondent describes them as Edwardian and the Tribunal has no reason to doubt that. They are of rendered brick/block construction under what is now an interlocking concrete tiled pitch roof. At the front there is a small boundary wall between the public footpath and a small front garden. The ground floor flat has a bay window with what appeared to be the original slate roof over.

11. It the rear, one can see two Velux type windows in the roof so that the property is on 2 floors. This was confirmed by Mrs. Bryant. There is a door to the rear at first floor level and a set of wooden steps down to the garden. All windows appear to be uPVC double glazed units. The condition of the building is reasonable without any obvious repairs or decoration needed immediately.

12. The tribunal was able to see the internal passageway behind the street door which

had an attractive modern tiled floor, was clean, well decorated and led to the entrance doors to the 2 flats.

13. The parties must obviously be aware that this was a casual inspection which took a few minutes and was not a survey, structural or otherwise.

The Lease

14. The Tribunal was shown what appeared to be a copy of the counterpart lease dated 15th June 2007. The lease is for a term of 125 years from the 1st January 2007 with an increasing ground rent. There are the usual covenants on the part of the landlord to maintain the structure of the property and to insure it and for the lessee to pay a share of the cost of doing this as a service charge.

15. Of relevance to the issues in this case, the service charge provisions include the ability of the Applicant to recover any cost or expense incurred by the landlord arising out of any breach of the terms of the lease and for costs incurred in the management of the building.

The Law

16. Section 18 of the **Landlord and Tenant Act 1985** ("the 1985 Act") defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.

17. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.

18. Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") provides for the same conditions and jurisdiction with regard to administration charges which are defined as including payments demanded in addition to rent "*...in respect of a failure by the tenant to make a payment by the due date to the landlord...*".

19. In *Schilling v Canary Riverside Development PTD Ltd* LRX/26/2005; LRX/31/2005 & LRX/47/2005 His Honour Judge Rich QC had to consider upon whom lay the burden of proof. At paragraph 15 he stated :

> *"If the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook4 case make clear the necessity for the LVT to ensure that the parties know the case*

which each has to meet...."

The Hearing

20. The hearing was attended by those who were at the inspection. In order to get to the hearing venue, Mrs. Bryant volunteered to take a taxi rather than go by bus which would have taken 1½ - 2 hours. The Tribunal thanks her for that.

21. Ms. Melling represented the Applicant. She said that the writer of the statement in the bundle, Neil Harmsworth was not present but she 'adopted' his statement. The Tribunal chair explained to her that the Tribunal was concerned to see from the bundle that there did not appear to have been any 'management' of this building at all. She was asked for an explanation. In particular, she was asked whether anyone had inspected the building.

22. She said that someone had visited the building on the 30th May 2013 but there was no record of this. She claimed that a letter had been written to the lessees starting the section 20 (of the 1985 Act) consultation process arising from that inspection. She said that this proposed works to the boundary wall where there was a lot of cracking, drain clearance, gutter clearance and external painting. She added that there was "not much to do". They would be preparing a schedule of works.

23. She relied upon the case report which had been include in the bundle relating to 76A Pall Mall, Leigh-on-Sea, which was a Leasehold Valuation Tribunal decision, to support her proposition that having an office and a backup staff were necessary and management fees were intended to cover this sort of overhead as much as anything. The Tribunal preferred the evidence of Mrs. Bryant who said that the only communication she had from Gateway was a demand for money. Thus it seems that Gateway did not set out to inform the Respondents of the services they offered and the facilities the Respondents could call upon.

24. Mrs. Bryant put it to Ms. Melling that when the lessees had had an insurance claim, they reported the matter direct and the insurance company dealt with things. Ms. Melling said that often people would report insurance claims to Gateway, despite their not being involved with insuring the building. Insurance was arranged by and claimed by the landlord direct.

25. She accepted a point made that it was better for any person inspecting the property to speak to the lessees direct. She did not contest the suggestion that no-one had actually spoken to the lessees. She had no information about what Morgan Sloane had done and confirmed that the £200 on account of repairs etc. in 2010 had been credited back and formed no part of the claim.

26. Mrs. Bryant said that the lessees had had no claim for service charges for the first 4 years from 2007 when they acquired the lease. They had maintained the building themselves. She confirmed that the landlord had done nothing to the property at all during her ownership. There was no evidence of any visit to the

property by anyone on behalf of the landlord and she had not received any letter from Gateway indicating major works. All she had received were 2 demands for money as set out in her defence to the court action.

Conclusions

27. Landlords of long leases certainly have a bad press. In many cases, this is not justified. Evidence is usually produced of some activities which show that there is active management – even if the long leaseholder is somewhat sceptical. There was some such evidence in the Pall Mall case relied upon by Ms. Melling although it has to be said that this Tribunal is not bound by any decision made by a previous Tribunal.

28. The problem in this case is that Gateway took over management in April or July 2012. Ms. Melling made it clear that this was one property amongst many they took over. The previous managing agents, Countrywide, instructed by another landlord, Ground Rents (Regis) Ltd., appear to have undertaken no management except to instruct Morgan Sloane to undertake a 'stock survey' whatever that may be. There was no invoice for Morgan Sloane's fee and no copy report available to the Tribunal. Ms. Melling said that they had been asked for but not received from Countrywide. Again, that it not the lessees' problem.

29. During the years claimed for in the court proceedings i.e. up to 31st December 2012, Gateway do not appear to have done anything either. The lease says that the lessees have to pay service charges to include the landlord's cost of management. However, if there has been no management, then the landlord will incur no cost. Any landlord who had to meet the management fee itself, would want to know what had been done to justify any fee claimed. In this case, any reasonable, commercially minded landlord would have refused to pay a management fee where there had been no management.

30. Thus the Tribunal is faced with this problem. Because a previous landlord had not undertaken any management, the lessees maintained the building themselves out of their own pockets. That was obvious to the Tribunal when it inspected. Countrywide then came onto the scene and just charged management fees. They were then followed by Gateway who have done the same. The work undertaken by Morgan Sloane seems to have been a landlord wanting to know what property it had in its portfolio and what its condition was. That is not a cost which should be paid by the long leaseholder if nothing was done as a result. That is simply information gathering on the part of the landlord.

31. Even now, the Tribunal was troubled by what is being proposed. As has been said, it preferred the evidence of Mrs. Bryant in respect of the key facts in dispute. Accordingly it is not satisfied that a letter has been received by the lessees proposing works. The boundary wall at the front of the property is very low level and there was nothing about its condition which would seem to require urgent attention. The exterior decorative state of the property indicated to the Tribunal that cyclical decoration would not be needed for at least 2 years. Perhaps the

gutters and drains may need to be cleared but there were no signs of this and perhaps Gateway might have asked whether the lessees have this in hand as they have dealt with this sort of thing in the past.

32. In summary, therefore, this case highlights and is an example of what can happen when a professional landlord employs professional managing agents to just take a property on their books and start making charges. If Gateway did inspect in May 2013 – and without any report or record of this, the Tribunal has some doubts – then the lessees may have to accept that there will be managing agents' fees to pay for the year 1st January 2013 onwards. However, if the lessees continue to deal with day to day maintenance and the condition of the property continues to need little attention, a 'reasonable' management fee would be less than £200 per annum. However, as far as this claim is concerned, the Tribunal finds that as there has been no management for the period up to 31st December 2012, the landlord is not entitled to recover the cost of a managing agent. It therefore follows that no legal fees or interest are recoverable.

33. There has been no application for an order under section 20C of the 1985 Act which would prevent the landlord seeking to recover the cost of representation before this Tribunal as part of any future service charge. For the avoidance of doubt, if such an application had been made, it would have been granted.

34. For future reference, the Tribunal will repeat something it has often said to Gateway i.e. they are not entitled to charge both a managing agent's fee and an additional accounting fee. The RICS Code of practice makes it absolutely clear that the fixed managing agent's fee should include the preparation of service charge accounts.

35. In addition, the Tribunal was concerned to note that each lessee appears to be paying £400 per annum for buildings insurance. Although it is not part of this dispute, it does appear to be a very high amount for each flat in this type of property unless there is a very bad claims record for this building and/or some other problem with insurable risk of which the Tribunal is unaware.

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Bruce Edgington
Regional Judge
28th March 2014