



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

Case Reference : CAM/26UK/LSC/2014/0010

Property : Flats at 3, 5-9 and 10 Woodview Court,
Grandfield Avenue, Watford WD17 4AN

Applicant : Mr R G Alexander and other leaseholders

Representative : Mr R G Alexander accompanied by Mrs J
Douglas, owner of Flat 7

Respondent : Gateway Property Holdings Limited

Representative : Mr B Day Marr, Operations Manager of
Gateway Property Management accompanied
by Miss E Collett and Mr M Lawton

Type of Application : Section 27A of the Landlord and Tenant Act
1985 and Section 94(3) of the Commonhold
and Leasehold Reform Act 2002

Tribunal Members : Tribunal Judge Dutton
Mrs S Redmond BSc MRICS
Mr J E Francis QPM

**Date and venue of
Hearing** : Watford Tribunal Service, Radius House, 3rd
Floor, 51 Clarendon Road, Watford WD17
4HP on Friday 9th May 2014

Date of Decision : 4th June 2014

DECISION

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DECISION

The Tribunal makes the determinations as set out in the findings section in respect of the matters in dispute.

The Tribunal determines that the Respondents should reimburse the Applicants with 50% of the application and hearing fee and the payment of the sum of £137.50 is to be made within the next 28 days.

The Respondents made no application for costs and accordingly an order Section 20C of the Landlord and Tenant Act 1985 can be made, it being just and equitable in the circumstances. The Applicants' request for costs is denied, the Tribunal not being satisfied that the Respondents acted in a manner contrary to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

For the avoidance of doubt and as a result of the document dated 10th May 2014 confirming that the leaseholders of flats 3, 5 – 10 wished Mr Alexander to represent them they are deemed to be Applicants for the periods in dispute and or for the period for which they were leaseholders if not throughout for both applications

BACKGROUND

1. On 9th May we heard two applications made by Mr Alexander as a leaseholder on behalf, it is said, of a number of other leaseholders both under Section 27A of the 1985 Landlord and Tenant Act (the Act) and under Section 94(3) of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act). The later application contained an addendum in which the lessees of Flats 3, 5, 6, 7, 8, 9 and 10 all confirmed that Mr Alexander was representing them. The directions issued by the Tribunal on 24th January had asked Mr Alexander at preliminary point 3 to provide written confirmation to the Tribunal that he was representing the individual leaseholders in respect of the application under Section 27A of the Act. He had misunderstood this and it was agreed at the conclusion of the hearing that provided within 14 days he remitted to the Tribunal a document signed by those leaseholders who were intending to be represented by him and to be parties to the application under Section 27A, they would be so joined. Mr Day Marr, to his credit, took no particular objection to this course of action, although he expected to see this made clear. Such a document was received dated 10th May 2014.
2. The application under Section 27A of the Act sought to challenge the service charge years 2011, 2012 and 2013. In respect of the years for 2011 and 12, there was a challenge made to the insurance valuation of £700, repairs and maintenance totalling £2,120 and the health and safety and fire risk assessment of £500. The challenge to the health and safety and fire risk assessment in the year 2012 continued but nothing else. In the year ending November 2013, which is the date of acquisition for the right to manage by Woodview Court RTM Company Limited, there was a challenge to a number of matters.

3. It is appropriate to record at this stage some items were resolved. For example, in connection with the year 2011 Mr Alexander abandoned any challenge to the service charges falling under the repairs and maintenance heading.
4. In the bundle of documents provided, unhelpfully numbered because it was broken down into different documents and then each document subsequently numbered, we had the applications, the directions, the statement by Mr Ben Day Marr on behalf of the Respondents, copies of relevant invoices and accounts for each year, a copy of the lease and the fire and health and safety risk assessment report. There were also documents relating to insurance and a copy of what purported to be a valuation report for insurance purposes.
5. In addition, at the hearing, the Respondents handed in evidence of the accounts in 2011 and some additional invoices, in particular the invoice relating to the valuation report which we will return to in due course.

INSPECTION

6. Prior to the hearing we inspected the subject premises. It assisted little in the determination of the matters before us. The property is a modern two storey building with mansard roof level comprising six flats, two at the upper floor and four flats on each of first and ground floor levels. Externally there was a bicycle store and refuge store and communal gardens to the rear which were accessed directly by two ground floor flats but could be accessed by others if they so wished. The garden area was in a reasonable order and was laid mainly to grass, shrubs and trees. The common parts were clean and carpeted and we noted the existence of fire alarms and velux windows on the top floor.

HEARING

7. The hearing was attended by Mr Alexander accompanied by Mrs Douglas, the owner of Flat 7. Mr Ben Day Marr represented the Respondents and was accompanied by Miss Collett and Mr Lawton. Mr Alexander told us that the final payments from Gateway had now been handed over to Qualitas who were representing the leaseholders and the right to manage company in respect of continuing service charge matters.
8. He then proceeded to deal with the items in issue, starting with the year 2011 and the insurance valuation. This document was contained in the bundle and comprises in essence one sheet of paper describing the property, the pricing levels and base unit costs with adjustments giving rise to a total estimated cost, presumably the rebuild figure, of £966,000. The document has no other heading on it, has no details of the author but appears to have been carried out following an assessment on 13th April 2012. The bill for this was produced by Mr Day Marr during the course of the hearing. The invoice was from Lease Valuation Limited in the sum of £700 without VAT dated 31st March 2011 with the details showing insurance valuation. The difference between the invoice date of March 2011 and the date of the assessment of April 2012 was explained away as being some form of administrative error. Mr Alexander's complaint was that the sum shown on the valuation was £966,000 but appeared nowhere in the insurance valuations either before or after the date of the assessment.

Furthermore, the sum demanded appeared in the accounts ending December 2011 notwithstanding that the assessment was not carried out until April 2012.

9. Mr Ben Day Marr said that the freeholder carries out the insurance and they arranged for the valuation to ensure that they were insuring at the correct amount. Lease Valuation Limited is an associated company of the freeholder and Mr Day Marr thought the assessment had been carried out by a Mr Dray although he did not know his qualifications. It appeared that he had also carried out the health and safety and fire risk assessments. As to why the valuation had not been included within the budget all he could say was that it had not been planned in the budget for year ending December 2011. Furthermore, they had been getting estimates from other companies who had been requested to carry out a valuation far in excess of the amount which was paid to Lease Valuation Limited and he did not want to put an inflated figure in the budget. The budget was, he said, just that and unanticipated matters could arise.
10. Insofar as the remaining matter for the year 2011 was concerned, and which also applied to the subsequent years, Mr Alexander challenged the need for health and safety and fire risk assessments on an annual basis, at least to the extent as set out in the reports provided within the papers. He thought that when the property was handed over to the current landlord in 2009 there should have been health and safety and fire reports available and therefore it was unnecessary to undertake a further detailed assessment in 2011. He did not think that the fire risk assessment had to be carried out on an annual basis nor indeed the health and safety review. If things changed during the year then that might be reason to do so. He had now obtained a quote in respect of fire risk assessments on an annual basis of something around £125 per annum. He did think it was perhaps reasonable for there to be an annual review but he thought that such reviews should be no more than £250 to include both the health and safety and fire matters. He also pointed out that this cost had not been included in the earlier years and thought therefore that the landlord had absorbed this expense and can see no good reason why it should suddenly now be passed on to the leaseholders. He also cast doubt on the efficacy of the reports and that part of them could have been covered as an element of the managing agents' work as they were not for risk assessment purposes. They were not, he said, value for money.
11. The Respondents' reply was that they had sought to get quotes from others which were more expensive and had decided, therefore, to bring the matter in effect in-house. The sum of £250 for fire risk assessment had been allowed by another Tribunal, although no details were given to us. It was also pointed out that Mr Dray appeared to have visited the property in 2012 on the same day as he visited to carry out the insurance valuation but there had been no amendment in the charge made. Mr Day Marr thought that in fact he had visited on different days. He also pointed out that the Respondents had forgotten to include VAT and that accordingly the increase in the year 2013 by £100 merely reflected the addition of VAT to the standard charge of £500. Mr Day Marr considered that the survey provided good value to the leaseholders and was necessary should there be a potential query by an insurance company if a claim were made.

12. Insofar as the year 2013 was concerned, and putting aside the question of the health and safety and fire assessment, there were some items of expenditure which were also to be reviewed. In Mr Alexander's written submission he had listed four items of expenditure as forming part of the repairs and maintenance which he wished to challenge. He also said he had added up the maintenance charge which came on his calculations to £924.31. The Respondents said that according to their computerised print-out it was in fact £942.31, the possibility therefore of some transposing of figures.
13. In respect of the four invoices the first was Dalemarsch in the sum of £282. There was concern that the invoice contained no breakdown of the various items of expenditure and it was suggested that some could have been dealt with by insurance. It was, however, made clear to Mr Alexander that the insurance excess was £250 and as the total invoice was barely more than that it was unlikely that an insurance claim would have been made. A question was raised with regard to the supply and planting of pansies which Mr Alexander raised with the managing agents indicating that they did not wish those to be planted. Mrs Douglas, however, said that she had for some time been asking the Respondents to insert some colour into the garden although it appeared to have taken them a number of years to actually get round to doing it.
14. Insofar as a Premier Garage Doors' invoice of £96 was concerned, we were told by Miss Collett that on a site inspection she had been unable to get the electronically operated estate gate to work. She had used two fobs but it had not moved and she had therefore called the company out to check it. Upon arrival they found it was to be working property but nonetheless a charge was made. Mr Alexander did not think that the Applicants should bear the whole of this cost. Mr Ben Day Marr pointed out, however, there was no benefit in the Respondents calling Premier Garage Doors unless they thought there was genuinely a fault, which was the case, and that the cost was therefore properly payable.
15. The invoice was from Gateway Facilities relating to repairs to a door following an apparent break-in. Mr Alexander suggested that no one knew about the break-in but the Respondents were able to confirm that a report had been received on 19th August 2013 indicating that bikes had been stolen and photographs were taken. Unfortunately no photographs were provided nor was the copy of the report.
16. The final invoice from Dalemarsch in the sum of £81.60 was not pursued by Mr Armstrong.
17. The next matter raised was the insurance premium in this year of £3,117. Mr Armstrong could not understand why this was the case bearing in mind the respective premiums payable for the year before and for the year going forward to June of 2014. It was pointed out to Mr Armstrong that the figure of £3,117 in fact included 18 months' insurance because the insurance period ran from June to June of each year whereas the accounting year was from January to December. The insurance was continuing until June 2014 and the cost for that had been shown in the accounts for year ending December 2013 as a pre-payment.

18. There was then challenge to the court fees in relation to the collection of debts from Flats 1 and 2 where apparently there had been recovery of money but as part of the compromise it seemed these costs were not recovered. There was also the question of a £500 floating balance at the conclusion of the service charge year which Mr Day Marr confirmed would be passed across to the Applicants on review at the end of the six month period which would be any time now.
19. At the conclusion of the hearing Mr Alexander had nothing further to add other than to say he believed that the proceedings were as a result of Gateway's failure to properly provide information. He sought a refund of the hearing and application fee but in the event nothing else. He told us he had been to Southend to see the invoices but had asked for copies then and there, which had not been provided. However, the bundle which he had now received did contain a number of the copies that he requested.
20. For the Respondents, Mr Day Marr confirmed that they would not be asking for costs. He accepted that there were issues to be resolved and he believed that those had been dealt with appropriately. It was not, he said, in their interest to go to a Tribunal and that answers had been given to the extensive questions raised by Mr Alexander.
21. The question as to the identity of the Applicants was raised at the conclusion of the hearing but as we have indicated above, Mr Day Marr took a pragmatic view and accepted that there was merely a technical error on the part of Mr Alexander in not including a list of the Applicants in the Section 27A application as he had in Section 93(4) application.

THE LAW

22. The law applicable to this matter is contained in the appendix attached.

FINDINGS

23. We deal firstly with the insurance valuation in the year 2011. We have our concerns about this. The invoice is dated some 12 months before the valuation was undertaken. The valuation was undertaken on the same day as a health and safety and fire risk assessment was taken. There is no reference as to who carried out the valuation nor did it appear to have any impact on the sums assured in respect of the property. We cannot see, therefore, that there was any benefit gained whatsoever to the leaseholders and in those circumstances we disallow the sum of £700. It seems to us it is neither here nor there whether it should have been included in the budget. The real fact is that this does not provide value for money and is an unreasonable expense.
24. We turn then to the health and safety issues. There have been three reports for each year from 2011 to 2013. Mr Alexander accepted that there should perhaps be an annual review but we agreed with him that it does not seem to us necessary to provide a full report as has been done where there have been no changes. If items such as petrol and other matters had been stored at premises as suggested by Mr Ben Marr then that is something that should have been

reviewed by the managing agents on their usual inspections. We accept that one report is perhaps necessary and the one in 2011 falls within that category. We are prepared, therefore, to allow the sum of £500 for that. The limited evidence we have from Mr Alexander suggested that he could have obtained a fire assessment for £125 on a follow-up basis for the subsequent years. It seems to us, therefore, that it would be reasonable to allow the sum of £250 for each of the years in respect of the assessments in 2012 and 2013. The reports essentially appear to be a tick box exercise and much of what is contained therein should be the subject of the regular reviews carried out by the managing agents. We find therefore, that to allow the £500 for the first report and £250 for the other two is reasonable, being a total of £1,000. We turn then to the costs for 2013. The invoice from Dalemarsh in the sum of £235 plus VAT seems to us to be perfectly reasonable. There is provision in the lease for gardening and if it is any consolation to Mr Alexander a recent unplanned visit to B&Q indicated to the Tribunal that one could purchase 24 pansies for £5. The sums involved, therefore, are fairly miniscule and bearing in mind the other work undertaken we find that invoice is perfectly reasonable and payable in full. The costs of Premier Garage at £96 are also payable. We accepted Miss Collett's version of events. If they did not appear to be working she did the right thing in getting them checked and the costs of so doing were properly incurred. In so far as the works to the cycle store lock is concerned again we find that is reasonable. The comments made by Mrs Douglas, who was it seems living at the property did not deny that a break in had occurred. The costs of supplying an improved lock to replace the broken one is reasonable and is payable.

25. Insofar as the court fees are concerned, again we find that those are payable. The lease provides for legal costs to be recovered and it is reasonable for a compromise to be effected given the amount of monies that we presume were involved and which were probably below the small claims fee in any event. Accordingly the sum of £522.50 is payable. In respect of the retention, this should now be repaid to the new managing agents who are dealing with the matter on behalf of the RTM company. We would have thought that any outstanding invoices would have worked their way through the system. If they have not, then that needs to be dealt with but as six months has now gone by it seems to us that this sum should now be released to the new managing agents.
26. Insofar as the sums that we have allowed in relation to the valuation and health and safety issues are concerned, those are repayable to the individual leaseholders. We believe that each leaseholder is obliged to pay one tenth of the cost. We find that these are monies that are due to leaseholders and are not uncommitted service charges. Accordingly at the moment, insofar as the application under Section 93(4) is concerned, it seems to us that the only uncommitted service charges is the £500 which has been retained and now, subject to any late invoices, should be released.
27. Given the partial success of Mr Alexander, it seems to us appropriate there should be a division of the fees payable to the Tribunal. We understand the total sum paid was £275 for the application and hearing fee and therefore we order that the Respondents should reimburse to Mr Alexander the sum of £137.50. We make no other order for costs.

Andrew Dutton

Judge:

 A A Dutton

Date:

4th June 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (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.

Section 19

- (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 provisions 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 repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate 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.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.