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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/22UB/LSC/2013/0022**
Property	:	**19 Grant Close,** **Wickford,** **Essex SS12 9NF**
Applicant	:	**John Michael Roberts**
Respondent **Represented by**	:	**Cranfield Park Management Co. Ltd.** **Debbie Perry (lay representative)**
Date of Application	:	**28th February 2015**
Type of Application	:	**To determine reasonableness and payability of service charges**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **Roland Thomas MRICS** **John Francis QPM**
Date and venue of hearing	:	**6th May 2015 at Southend Magistrates' Court, 80 Victoria Avenue, Southend-on-Sea, Essex SS2 6EU**

DECISION

UPON the Respondent agreeing to supply to the Applicant proper service charge accounts prepared by chartered accountants for the years ending 31st December 2010, 2011, 2012 and 2013 by 6th June 2015 and for the year 2014 by 6th July 2015

AND UPON the Respondent's representative saying that she would not make a charge for her representation of the Respondent before this Tribunal which will be added to any future service charge account

IT IS ORDERED that this application be dismissed subject to the Applicant being able to apply for re-instatement in the event of the above agreements not being complied with **AND** that **NO ORDER** is made pursuant to section 20C of the **Landlord and Tenant Act 1985**

Reasons

Introduction

1. This application is made for 2 reasons. Firstly, the Applicant, despite having asked, in writing, on some 5 occasions for copies of service charge accounts for the years after 2009, these have not been provided. Secondly, although the lease for the property contains service charge provisions whereby he contributes 9.25% of service charges for 12 properties in Grant Close, it seems that the management regime has joined Grant Close to nearby Napier Crescent which has 20 very similar properties and each road is paying 50% of the service charges. He considers this to be unfair.

2. The management is undertaken by a service charge company set up by the lease which is run by just 2 leaseholders, including Mr. John Gillies who attended the hearing. Complacency has meant that others do not seem to want to get involved. As the case has progressed, 2 things have emerged. Firstly, the initial management, which was left to a commercial managing agent, left a great deal to be desired. The current managing agent (since April 2012) appears to be doing its best to try to sort matters out and at 7.30 pm on the evening before the hearing it finally obtained draft accounts for 2011. Ms. Perry, from the current managing agent, has now been told by the accountants they are now using, that final accounts for the missing years can be prepared within a couple of weeks.

3. The second thing to emerge is that the Applicant has not done what many people tend to do i.e. just to stop paying service charges. He realises that this would be a rather pointless exercise because it merely puts more pressure on management rather than leaving them to try to sort matters out.

4. Various attempts were made to adjourn the hearing but the Tribunal felt that the more time that was allowed would merely compound an already difficult situation.

The Inspection

5. The Tribunal decided that as there was no specific criticism of the amount of any individual service charge or standard of service being provided, an inspection of the property before the hearing was not required. No request for an inspection was made by the parties.

The Lease

6. The Tribunal was shown a copy of the lease. It is dated 28th February 1997 and is for a term of 999 years from the 1st January 1995 with an annual ground rent of 99 pence. The Applicant bought the leasehold interest on 11th April 2014.

7. There are the usual covenants on the part of the management company to maintain the common parts and structure of the buildings and to insure them and the Applicant is liable to pay 9.25% of the total estate charges for the 12 one bed roomed flats in Grant Close.

8. Clause 6 is the joint covenant to comply with the service charge regime in Schedule 6. That Schedule (Part 1) provides that a payment in advance can be demanded on the 1st January and 1st July in each year. Then, as soon as is practicable after 31st December in any year, the management company has to prepare a certificate or account of the maintenance expenses which must

distinguish between expenditure and a reserve fund. Part 2, paragraph 11 allows the setting up of a reserve fund. It is the certificates or accounts which the Applicant complains have not been provided since 2009.

The Law

9. Section 18 of 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'.

10. 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.

The Hearing

11. The hearing was attended by the Applicant, Mr. Gillies, a director (unpaid) of the Respondent and Ms. Perry. It was conducted in a very civil atmosphere and the parties are to be commended for this. Ms. Perry was able to tell the Tribunal that she had obtained the draft 2011 accounts and the hearing really consisted of a free ranging discussion about how matters could be resolved. As it was known that the accounts requested could be provided within a limited period of time, the Tribunal suggested the form of Order set out above which was agreed. Neither party wanted this dispute to continue.

12. The Applicant raised a point about the reserve fund. It seems that the exterior of the properties need maintenance and the reserve fund has gone down from several thousand pounds when he bought the property to a much lower figure which will not cover the anticipated cost. The Tribunal was able to compare the 2009 accounts with a set of the 2010 accounts which had been produced just a few days before the hearing. These appeared to show that the carried forward reserve from 2009 was much more than the brought forward reserve in 2010. There was a note mentioned but not disclosed which may have explained matters.

13. Mr. Gillies said that when the previous managing agent was involved, the directors were concerned that money had been taken out of the reserve for day to day running expenses. Indeed, that was one of the reasons for their changing managing agents. The Tribunal pointed out that this appeared to be more serious than that and Ms. Perry readily agreed that the accountants should be asked to find out what had happened to the reserve. The Applicant and the other leaseholders should obviously be kept informed about this, particularly as the reserve is evidently going to be needed shortly.

Discussion

14. The problem posed by this application is not easy to resolve by an order from this Tribunal. The lease is not very well worded. Certificates of service charges have not been produced in accordance with the terms of the lease. However, the lease does not say that the service charge is not payable if the certificates are not provided. That would seem to be what was intended. If the dispute had continued, it may be that the Tribunal would have had to consider ways to interpret the lease such as the principle of *contra preferentem*.

15. In his application, the Applicant asks whether the Tribunal considers it 'acceptable' for service charge contributions to be demanded when the certificates have not been produced. What the Tribunal finds to be 'acceptable' is not the question. It is whether it is lawful to make such demands, absent the certificates. The lease does not make this condition clearly and unequivocally.

16. The other issue raised is the management regime and whether it is 'acceptable' for the properties in the 2 roads to be managed together. Again, whether it is acceptable to the Tribunal is irrelevant. The question is whether it is lawful and the answer is that unless there is complete agreement, it is not.

17. The lease provides that the Applicant's contribution is 9.25% of the cost of maintaining the 12 properties in Grant Close. That is the clear contractual provision set out in the lease. If Grant Close is maintained with Napier Crescent – and the Applicant said that he would see the sense in this – then if Napier Crescent has 20 properties, he should only be paying 9.25% of 37.50% of the whole cost, not 9.25% of 50% of the whole cost.

Conclusions

18. As the certificates or accounts wanted by the Applicant can apparently be provided within a fairly short period of time, the Tribunal's suggested Order, readily agreed by the Applicant, would appear to be the most cost effective and least controversial solution. Having said that, there is a clear issue over the reserve. If that is simply an accounting issue i.e. that funds have not been removed from the Respondent but have merely been used incorrectly for day to day running expenses rather than large items of future expenditure, it is hoped that common sense will prevail and an amicable resolution be achieved. If it transpires that funds have been stolen, then the police may have to become involved.

19. On the question of what proportion should the Applicant be paying, the Tribunal's views are set out in the 'discussion' above. This issue must be resolved immediately. It is clear that the leaseholders of Grant Close appear to have been paying more than their fair share of service charges. This is building up a possible claim by the leaseholders of Grant Close from the leaseholders of Napier Crescent. If left, this could turn into quite a large claim.

20. Mr. Gillies said that he had some concerns about this when the regime was introduced by the developer or the first managing agent but had been unable to change matters. The Tribunal hopes that for 2015 and onwards, the respective proportions can be changed to what they should be i.e. a 37.50%/62.50% split in total cost between Grant Close and Napier Crescent respectively. Hopefully, this will draw a line under the past and there will be no need for recriminations.

21. The suggestion made at the hearing by Ms. Perry was that as soon as the accounts had been prepared, there should be an AGM of the Respondent called, to which, perhaps, the Applicant should be invited. No doubt efforts can be made to ensure a quorum when formal policies can be proposed which resolve these outstanding issues.

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Bruce Edgington
Regional Judge
7th May 2015