5044

LEASEHOLD VALUATION TRIBUNAL for the
EASTERN RENT ASSESSMENT PANEL
Landlord and Tenant Act 1985 – Section 27A
CAM/00KG/LSC/2009/0125

Property	:	3A Garage Villas, High Street, Aveley RM15 4BJ	
Applicant	:	Adam Ozbek	Tenant
Represented by	:	Mr Ozbek	In Person
Respondent	:	Regisport Limited	Landlord
Represented by	:	Mrs S Wisdom	Leasehold Legal Services
		Miss Moon	Countrywide
		Miss George	Countrywide
Date of Application:		9 November 2009	
Date of Hearing	:	15 April 2010	
Date of Decision	:	29 May 2010	
Tribunal	:	Mr John Hewitt	Chairman
		Mrs Evelyn Flint	DMS FRICS IRRV
		Mr David Cox	JP

DECISION

Decision

1. The decision of the Tribunal is that:

1.1 Service charges payable for the years mentioned below are as follows:

2005/6	Management fee	£ 58.75
	Insurance	£340.60
2006/7	Management fee	£117.50
2007/8	Management fee	£129.25
	Insurance	£202.32
2008/9	Management fee	£129.25
	Out of Hours Ins	£ 13.80
		£991.47

Less:

Credit	£ 0.35	
Paid on a/c	£325.65	£326.00

Balance due **£665.47**

1.2 The said sum of £665.47 will be payable by the applicant to the Respondent upon a compliant demand for the same being served upon him.

1.3 Any application for reimbursement of fees shall be made in writing by **4pm Friday 25 June 2010**. The application shall be copied to the opposite party at the same time as it is sent to the Tribunal.

If an application is made the Tribunal proposes to make a determination of it without a hearing, pursuant to Regulation 13 and appropriate directions will be given.

If an application is not received by the time and date specified it will be assumed that no such application is to be made and the file will be closed.

NB Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for use at the hearing.

The Lease

2. The Applicant is the current tenant and the Respondent is the current landlord of the Premises.
By a lease dated 14 February 1989 and made between:
(1) Dawson Developments Limited as landlord, and
(2) Richard Ernest Bailey and Helena Josephine Clynch as tenant
the Premises were demised for a term of 99 years from 25 December 1988 at a ground rent of £40 (rising to £120) per annum and on other terms and conditions therein set out.

3. Clause 4 of the lease imposes an obligation on the landlord to insure the Premises, to carry out repairs and redecorations and to provide other services as set out in the lease. It was not in dispute that the landlord's obligation is unconditional and is not dependent on being in funds provided by the tenant.

4. Clause 3(4) of the lease imposes an obligation on the tenant to contribute and pay one half only of the costs, expenses and outgoings mentioned in the Third Schedule.
The Third Schedule sets out a list of costs and expenses which broadly mirrors the landlord's obligations in Clause 4 but includes the costs of heating and lighting the main entrance and lobby and the costs, expenses and professional fees reasonably incurred in connection with the proper and convenient management and running of the building.
Paragraph 2 of the Third Schedule mentions an obligation to contribute one sixth of the cost and expenses of repairs and maintenance works in the grounds and the access way to/from the High Street

5. It was agreed that there is no provision in the lease obliging the tenant to pay sums in advance of the expenditure being incurred or on

account of the liability which arises and there are no provisions for balancing debits or credits.

6. The sums so payable pursuant to clause 3(4) appear to be service charges within the meaning of s18 of the 1985 Act.

Background

7. The Tribunal inspected the development prior to the hearing in the company of the Applicant and the Respondent's representatives. The development comprises six self-contained flats based on what appears to have been a pair of semi-detached houses and a house which subsequently have been joined together and adapted to create the flats. There are gardens to the front and rear.

8. It was not disputed that Mr Ozbek completed the purchase of the lease of flat 3A on 28 October 2005 and that he was registered at the Land Registry as the proprietor.

9. The Respondent employed Pier Management and then Johnson Cooper as its managing agents until 1 October 2008 when Countrywide were appointed to take over. Evidently a full set of records and papers were not provided to Countrywide on handover.

10. Separately the Respondent appears to continue to employ Pier Management to collect ground rent and contributions to the cost of insurance.

Matters in Dispute

11. A summary of the service charges claimed by the Respondent is at Appendix 1 to this Decision. These have been taken from annual accounts prepared by the Respondent which has selected a service charge year of 25 March to the following 24 March. Mr Ozbek did not challenge the cost of insurance or the Out of Hours Emergency cover. The remainder he challenged.

Matters Agreed

12. A cash account was provided at [86]. Mrs Wisdom said that the administration charge of £28.75 dated 09.11.09 was withdrawn.

13. It was agreed that over the relevant period Mr Ozbek had made payments on account totalling £325.65 and that he was entitled to a credit of £0.35 in respect of interest earned.

Evidence

14. We heard evidence from Mr Ozbek. Mrs Wisdom called Miss Moon to give evidence on Countrywide's management fee but otherwise did not call any oral evidence. Mrs Wisdom produced some invoices and documents and made submissions. To some extent Mrs Wisdom also wished to rely upon a written statement/records [28-31] maintained by Mr Ian McCarrigh who evidently has been a resident of flat 2B since 2004. This document had been submitted by Mr Ozbek in support of his case.

The Law

15. The relevant law we have taken into account is summarised in the Schedule to this Decision.

Findings and Reasons

Liability

16. The lease imposes an obligation to pay sums on demand. There is no provision in the lease for sums to be paid on account, for annual accounts and for balancing charges. It is therefore unhelpful that the Respondent and its managing agents have operated on the basis that such a regime is provided for in the lease. It has given rise to unnecessary complications.

17. Mr Ozbek acquired the lease on 28 October 2005. Mr Ozbek is not liable for any demands for service charges that may have been made

on his predecessor in title. Mr Ozbek is only obliged to pay service charges properly demanded of him since 28 October 2005.

Audit Fees

18. There is no mention of audit fees in the lease. The lease structure for service charges is very simple and basic. The landlord incurs a cost. The landlord is entitled to demand the appropriate percentage of each tenant, including Mr Ozbek. There does appear to be any need for any accounts, still less audited accounts.

19. Mrs Wisdom submitted that audited accounts were beneficial to tenants and sometimes avoided disputes. Mrs Wisdom was not aware of any enquiry made of the tenants at the development as to whether they wished to have the benefit of such accounts.

20. Mr Ozbek submitted that the managing agents did very little and provided so few services that really there was nothing to audit.

21. We have no hesitation in concluding that the lease does not oblige the tenant to contribute to the cost of audited accounts and also that it was unreasonable for the cost to have been incurred. Mr Ozbek is not required to contribute to the costs incurred.

External Repairs

22. Mrs Wisdom was unable to provide any information about external repairs or to provide supporting invoices. The items have been included in Schedule A – the expenditure to which Mr Ozbek is required to contribute one sixth. This might suggest that the repairs fell within paragraph 2 of the Third Schedule, but this is not clear.
Mrs Wisdom referred to [28] where there is reference to a door repair being carried out on 19 April 2005 and decorating in the summer of 2005 but this was all before 28 October 2005 and Mr Ozbek does not have any liability in respect of such works.

23. In the absence of any evidence to support the sums claimed we find that we cannot be sure that the sums were expended, were reasonably incurred, are reasonable in amount and are payable by Mr Ozbek. Thus we find that Mr Ozbek is not obliged to contribute to these claims.

Cleaning & Gardening

24. For the years 2005/6 and 2006/7 Mrs Wisdom was unable to provide any information or supporting invoices. There is a hint that the same contractor, JVS Facilities, provided both services. Evidently the cleaning was limited to the lobby and stairway to flat 3A, a very small area. We noted on our inspection that there was no power point in the lobby or stairway. Mrs Wisdom submitted that there was some support for some gardening work being done post 28 October 2005.

25. For the year 2007/8 there is a schedule of invoices [112] and copies of some of them are at [114-124]. The invoices are not very revealing. Mrs Wisdom was unable to provide a copy of the contract with JVS or a specification of what was supposed to be done. Mrs Wisdom explained that the Respondent relied solely on the accounts data.

26. Mrs Wisdom explained that no services were provided in 2008/9 because the Respodent decided to suspend services, allegedly due to arrears of service charges owed by some tenants in the development. It appears the Respondent may have overlooked its contractual obligations to Mr Ozbek as set out in the lease in this regard.

27. Mr Ozbek gave evidence. He explained that he had never seen any cleaning done on the lobby and stairway leading to his flat. He said that when he lived there (October 2005 to August 2008) he vacuumed the top landing and stairway. Miss Farmer, the occupier of the ground floor flat, 3B, cleaned the lobby area until February 2007 when she moved out.

Mr Ozbek produced a series of photographs of the gardens, which show them to be very overgrown. He said that in the early days he saw

gardening work being carried out on about 3 occasions, but nothing since. Only lawn cutting at the front was done; no pruning of shrubs or tree cutting. Ken, the occupier of flat 2B used to cut back shrubs as required.

So far as Mr Ozbek was aware the rear garden had never been touched.

Mr Ozbek was not cross-examined on his evidence.

28. We accept Mr Ozbek's evidence. We found him to be realistic and genuine, a witness upon whom we could rely with confidence. Mr Ozbek's evidence was corroborated to some extent by that of Mr McCarrigh, see for example [30 and 31]. We find that no cleaning of the lobby and stairway was undertaken. A little crude lawn cutting was undertaken. The Respondent was unable to explain to us what was expended on lawn cutting. The Respondent had no evidence at all. There was no material upon which we could rely. The Respondent has failed to satisfy us that sums were expended, were reasonably in amount and are payable by Mr Ozbek.

Management Fees

29. In the light of the foregoing Mr Ozbek submitted that there was minimal services provided and that the sums claimed were unreasonably high. In essence his complaint was that there was no effective management.

30. Mrs Wisdom accepted that she was in no position to justify the costs claimed in respect of management by Pier and Johnson Cooper. As regards Countrywide, Mrs Wisdom submitted that a step change in improvement took place, visits were made to the development and reports were made [154 -156]. We accept the reports, which are dated 17.03.09, 16.09.09 and 21.12.09 and whilst there is reference for the need to carry out works, by the date of the hearing no works had actually been carried out. Miss Moon gave evidence and said that £175 + VAT was Countrywide's basic management charge. Miss Moon was aware of complaints that tenants had and she said that she

recommended to them that they should apply to the LVT for a determination. She said that she sought to draw a line so that the new regime under Countrywide could go forward.

31. We find that the management charges sought to be recovered by the Respondent are unreasonable in amount given the low level of service provided. Members of the Tribunal drew on their accumulated experience and expertise in this area and took into account the level of management fees charged by local managing agents in what is a competitive market. The sums we find to be reasonable in amount and to be payable by Mr Ozbek are set out in paragraph 1.1 above.

Compliant Demands

32. Attention was drawn to some recent demands sent by Countrywide to Mr Ozbek. It appeared to that they were defective in that they wrongly suggested that the landlord was Regis Group PLC and also that they were not compliant with s47 of the Landlord and Tenant Act 1987. Compliant demands should set out clearly the name and address of the landlord. Such notices are for the benefit of tenants, many of whom will be lay people. In our view relevant information should be set out in such a way that the notices are meaningful to the recipients.

33. We have therefore made plain that the sum due by Mr Ozbek as determined by us is only payable upon a compliant demand being served upon him by the Respondent.

The Schedule

The Relevant Law

Landlord and Tenant Act 1985

Section 18(1) of the Act provides that, for the purposes of relevant parts of the Act 'service charges' 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.

Section 19(1) of the Act provides that 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 are of a reasonable standard;

and the amount payable shall be limited accordingly.

Section 19(2) of the Act provides that 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 of subsequent charges or otherwise.

Section 27A of the Act provides that 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

(e) the manner in which it is payable.

Landlord and Tenant Act 1987

Section 47 provides that every demand for rent, service charges or administration charges must contain the following information:

(a) the name and address of the landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

Where a demand does not contain the required information the sum demanded shall be treated for all purposes as not being due from the tenant to the landlord, until such time as the required information is furnished by the landlord by notice to the tenant.

Commonhold and Leasehold Reform Act 2002

Schedule 11

Paragraph 1 sets out a definition of a 'variable administration charge'.

Paragraph 2 provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Paragraph 5 provides that any party to a lease of a dwelling may apply to a Leasehold Valuation Tribunal for a determination whether an administration 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.

No application 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.

A tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9(1) provides that subject to paragraph (2) a Tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or any part of any fees paid by him in respect of the proceedings.

.....

John Hewitt

Chairman

29 May 2010