

**LEASEHOLD VALUATION TRIBUNAL for the
EASTERN RENT ASSESSMENT PANEL
Landlord and Tenant Act 1985 – Section 27A
CAM/22UE/LSC/2010/0077**

Property : 10 Homestead Court, 46 High Street
Hadleigh SS7 2PB

Applicant : Castle Point Borough Council Landlord
Represented by : Ms Riz Awan, Mr David Randerson and Mr
Nigel Perks all of CPBC

Respondent : Mrs Ann Patricia Sims Tenant
Represented by : Mrs Sims In Person

Date of Hearing : 6 September 2010
Date of Decision : 13 October 2010

Tribunal : Mr John Hewitt Chairman
Mr Gerard Smith MRICS FAAV
Ms Cheryl St Clair MBE BA

Decision

1. The decision of the Tribunal is that:
 - 1.1 Service charges were payable by the Respondent (Mrs Sims) to the Applicant (the Council) as follows:

2005/6	£417.84
2006/7	£300.02
2007/8	£282.20
2008/9	£381.46
2009/10	£457.57 (On account)

A breakdown showing how these sums are arrived at is set out in the appropriate column of Part 1 of Appendix 1 attached to this Decision.

- 1.2 As at the date of the issue of court proceedings and the date of the hearing of the reference there was due and payable by Mrs Sims to the Council the sum of £1,379.08 as set out in the cash account which comprises Part 2 of Appendix 1.

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.

Background

The Lease

2. On 6 June 1983 the Council granted to Andrew John Sims and Mrs Sims a long lease [1] of the Property, Mr and Mrs Sims having exercised the Right to Buy provisions of the Housing Act 1980.
3. Clause 2(d) [3] of the lease imposes an obligation on the part of the tenant to contribute a due proportion of the costs incurred by the Council in carrying out the obligations or functions set out in the Third Schedule.

The scheme provided for is that the Council is to prepare a budget of reasonably estimated expenditure. The due proportion is payable in full in advance. At the year-end the Council is to prepare an account of expenses actually incurred. If there is a balancing credit it may be retained by the Council and credited to the tenant's account. If there is a balancing debit it is payable on demand.
4. The Third Schedule [7] sets out a detailed list of "*Management repairs maintenance and running costs*" divided up under a number of headings as follows:

Lighting-supply of energy and maintenance

Amenity areas

Drying areas

Water supply

Insurance of buildings

Communal television aerials

Painting

Structure repairs

5. Homestead Court is a block of twelve self-contained flats served by two separate staircases. It was not in dispute that the due proportion of expenses payable is one sixth of the expenditure related to that part of Homestead Court served by the staircase leading to flat 10.

6. The terms of the lease were not in dispute.

The proceedings

7. In April 2010 the Council issued legal proceedings against Mrs Sims in Northampton County Court (Claim Number 0QT42504) [9] and claimed the sum of £2,561.06 alleged arrears of service charges. A defence was filed [10].

8. The proceedings were transferred to Southend County Court and on 9 June 2010 District Judge Parfitt ordered that: *"The matter be transferred to the Land (sic) Valuation Tribunal for determination"*.

9. Directions were duly given and the referral came on for hearing before us on 6 September 2010. Earlier on that day we had the benefit of an inspection of Homestead Court and the adjacent amenity areas and garage and forecourts.

10. At the commencement of the hearing Ms Awan took us through the papers to show us how the alleged arrears of £2,561.06 were arrived at. These comprised the on account estimates for the years 2006/7, 2007/8, 2008/9 and 2009/10 and the balancing debits and credits for

the years 2005/6, 2006/7 and 2007/8 plus a one off charge of £616.67 relating to a new door entry system. The charge of £616.67 was withdrawn when it was accepted on behalf of the Council that Mrs Sims had not agreed to contribute to this expenditure which was outside the scope of the lease.

11. We were therefore concerned with the amount of the routine service charges claimed for the years in question. The sums claimed by the Council are set out in the relevant columns of Part 1 of Appendix 1.

The gist of the case for the Respondent

12. Mrs Sims stated that she had decided to stop paying the service charge demands because whenever she received a bill she contacted the Council for further information because she said that in large part very few services were provided and that there was little or no adequate supervision. An example was cleaning of common parts. This is allegedly undertaken on a weekly basis but it was plain from our inspection that cobwebs had accumulated around the windows in the common parts and plainly they had not been cleaned properly for some months.
13. Mrs Sims became frustrated that she did not receive any adequate response from the Council; simply demands for money and the threat of proceedings. She therefore considered that the only way she might get the Council to focus on the issues was to withhold service charges. Mr Perks, who is relatively new to his post, accepted that historically the Council had failed to respond to issues raised by Mrs Sims, partly due to a failure of communication within and between Council departments and groups. He said that these issues had or were to be addressed.
14. We therefore went through the service charge accounts as follows:

Repairs

2005/6 £154.67 [46]

15. The Council had no documents to support the expenditure claimed. The largest item claimed was £836 for repairs to the front porch and associated scaffolding. Mrs Sims accepted that some repairs were carried out but scaffolding was not employed. In the absence of relevant information the members of the Tribunal called on their accumulated experience and expertise in these matters and we allowed a sum of £500 for the repairs plus an associated £40.54. We disallowed an expense of £52.03 because this related to a key for flat 2 which we found to be outside the scope of the service charge regime. We thus arrived at a figure of £90.09 as being Mrs Sims' share of the costs.

2006/7 £29.80

16. The Council withdrew this item which related to repair to the door entry system to flat 9. They accepted that the door entry installation had been an improvement not a repair, and that while tenants had been consulted, there had been no express consent by Mrs Sims as a leaseholder, to pay the cost

2007/8 £22.74

17. The Council withdrew this item.

2008/9 £4.06

18. This item was not challenged by Mrs Sims.

Window Cleaning

19. The evidence of Mrs Sims, which we prefer, was to the effect that no window cleaning had been carried out for several years. Mr Perks said that his understanding was that window cleaning was carried out on an infrequent basis, perhaps 2 to 4 times per year. He accepted that window cleaning had not been undertaken recently because the window cleaner had retired and had not been replaced, although the procurement process was now in train.

20. The Council did not put in any evidence that window cleaning had been carried out in the years claimed.
21. In these circumstances we disallowed all the claims to this alleged expenditure.

Building Cleaning

22. Mr Perks took us through the current generic specification of what cleaning is supposed to be carried out on a weekly basis. This included sweeping the floors and stairways of the common parts and washing the floors by hand or mop using disinfectant, wiping shelves and window cills, dusting of handrails and the sweeping of the porches and entrance ways.

The work was carried out by an in-house team which is administered by a different department within the Council. Mr Perks assumed that the supervisor visited the premises on a regular basis and that reports of such visits were made. None have been disclosed. Ms Awan told us that she had requested same from the department concerned but that it had failed to respond to her request. Evidently the Council has now placed a contract for this service with Pinnacle. The contract was the responsibility of the Housing department but the Streetscene department had some responsibilities to supervise the service.

23. Mrs Sims was very critical of the level and extent of communal parts cleaning undertaken. She gave us accounts of how little time and effort was expended by the cleaners who turned up.
24. Mrs Sims' evidence struck a chord with the members of the Tribunal because we were able to see for ourselves at the inspection the poor state of cleanliness of the common parts, including residual adhesive carpet tape from carpeting long since removed.

25. We conclude that the lack of evidence provided by the Council was telling and was an example of lack of communication/acceptance of responsibility within the Council and its various departments.
26. We accept the evidence of Mrs Sims which was compelling and supported by our own observations. Drawing on our accumulated experience and expertise in these matters we decide that a reasonable contribution to cleaning payable by Mrs Sims is £42 per year for each of the years in question.

Electricity

27. Mrs Sims did not challenge the costs of electricity.

Grounds Maintenance

28. This was another hotly contested issue and Mrs Sims was very critical of the poor level of grounds maintenance. Mrs Sims said that the grass was regularly cut but the cuttings were not collected up; just left to rot away.

Mrs Sims claimed that shrubs were not now cut back regularly and properly and many were overgrown.

Mrs Sims also complained that rubbish and debris left by outgoing tenants was not removed promptly. On the occasion of our site visit some such abandoned goods were to be seen.

29. Mr Perks told us that this service was now also provided Pinnacle under a generic contract which was also supervised by Streetscene. Mr Perks accepted that service levels had been reduced over time in order to save costs. He said that Homestead Court had been taken off the schedule for shrub maintenance; he did not know why.

Mr Perks explained that the grass cutting was not now required to be box cut.

Mr Perks assumed that Streetscene carried out periodic inspections to ensure adequate levels of service but he was not aware of any written reports having been issued.

Mr Perks accepted that his department was responsible for the long leasehold estate but explained that services were provided by other departments over which he had little or no influence. He also accepted that complaints about poor service levels did not appear to be picked up and progressed properly. Mr Perks said that this was one of the areas in which he was trying to bring about improvements.

30. Drawing on our accumulated experience and expertise in these matters we decide that a reasonable contribution to Grounds Maintenance payable by Mrs Sims is £40 for 2005/6 and then £30 per year for each of the remaining years in question in order to reflect the reduction in the service level provided.

Insurance

31. The cost of insurance was not challenged by Mrs Sims.

Painting/Structural

32. It was explained that the sums claimed were paid into a reserve fund which would be drawn upon if/or when any such works were carried out. Mrs Sims did not challenge the costs as such but she did wish to know the amount which stood to her credit in the reserve fund. Ms Awan said that this information would be provided promptly.
33. Mr Perks explained that the Council had, as a matter of policy, decided not to undertake any redecoration or repairs to its blocks of flats unless it was necessary to do so for urgent health and safety reasons.
34. We were surprised at such a policy. It seems to us that if a landlord grants a long lease and makes a contractual commitment to provide services and to carry out repairs and redecoration it cannot unilaterally decide not to comply with those obligations. It would surprise us if a local authority were to adopt a position or a policy which does or might result in that authority being in breach of a legal or contractual obligation.

35. If the policy is as Mr Perks said and if the Council has no real intention to carry out painting or structural repairs it seems to us that the Council should repay to Mrs Sims the amount standing to her credit in the reserve fund.

Supervision and Management

36. Mr Perks explained that this expenditure was claimed at 20% of costs incurred. He said that this was a long standing policy which pre-dated him taking up his post. Mr Perks did not know if a profit or loss was made; he guessed that the service breaks even.
37. Mrs Sims was critical of the poor level of supervision.
38. We conclude that despite the name given to the expense it is really intended to reflect the costs of administration and management. A rate of 20% would appear to be high but given the very few services provided the actual cost to Mrs Sims is not that high. As can be seen from Part 1 of Appendix 1, the adjusted figures for this cost calculated at 20% range between £40.23 and £63.17 over the four years in question. We find that these sums are within the range of what is to be regarded as reasonable and that they compare favourably with what an external managing agent would charge in the private sector for managing a block such as Homestead Court in Hadleigh.
39. In these circumstances we find that for the years in question a rate of 20% is a reasonable rate. However this should not be assumed to hold good for the future, especially if major works were to be undertaken. We suggest to the Council that some effort is made to correlate and justify the actual cost of management and administration and the costs re-charged to long lessees.

Conclusions

40. In the light of our findings we have set out in Part 1 of Appendix 1 the sums we have allowed for the service charges for the years in question. We have then calculated the year-end balancing credit adjustments required. That data has enabled us to prepare a cash account showing how it is that we find that as at the date of the issue of the court proceedings and the date of the hearing of the reference there was due and payable by Mrs Sims to the Council the sum of £1,379.08 by way of service charges.

The Law

41. Relevant law we have taken into account in arriving at our decision is set out in the Schedule to this Decision.

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.

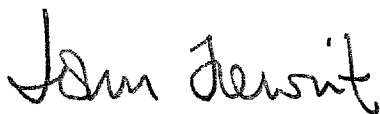
Section 19(2) of the Act provides that where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction of subsequent charges or 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.

Section 27A(3) of the Act provides that an application may be made to a leasehold valuation 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.



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John Hewitt

Chairman

13 October 2010

Part 1	2005/6		2006/7		2007/8		2008/9		2009/10	
Expense	Claimed	LVT	Claimed	LVT	Claimed	LVT	Claimed	LVT	Claimed	LVT
Repairs	£ 154.76	£ 90.09	£ 29.90	£ -	£ 22.74	£ -	£ 4.06	£ 4.06		
Window Cleaning	£ 2.28	£ -	£ 1.93	£ -	£ 1.93	£ -	£ 1.97	£ -		
Building Cleaning	£ 114.11	£ 42.00	£ 124.87	£ 42.00	£ 116.08	£ 42.00	£ 123.87	£ 42.00		
Electricity	£ 63.75	£ 63.75	£ 83.19	£ 83.19	£ 66.70	£ 66.70	£ 143.88	£ 143.88		
Grounds Maintenance	£ 60.11	£ 40.00	£ 41.10	£ 30.00	£ 42.22	£ 30.00	£ 43.72	£ 30.00		
Insurance	£ 80.00	£ 80.00	£ 62.47	£ 62.47	£ 62.47	£ 62.47	£ 65.59	£ 65.59		
Sub-Totals		£ 315.84		£ 217.66		£ 201.17		£ 285.53		
Supervision & Management	£ 102.77	£ 63.17	£ 76.46	£ 43.53	£ 70.59	£ 40.23	£ 84.38	£ 57.10		
Painting/Structural	£ 38.83	£ 38.83	£ 38.83	£ 38.83	£ 40.80	£ 40.80	£ 38.83	£ 38.83		
Totals	£ 616.61	£ 417.84	£ 458.75	£ 300.02	£ 423.53	£ 282.20	£ 506.30	£ 381.46		
Estimated Billed	£460.60	£460.00	£350.20	£350.20	£621.93	£621.93	£481.30	£481.30	£457.57	
Balance	£156.01	£42.16	£108.55	£50.18	£198.40	£339.73	£25.00	£99.84		
Part 2										
Cash Account										
Item	Date	Debit	Credit	Balance						
2006/7 On/ac estimate	?	£ 350.19		£ 350.19						
2005/6 Balancing credit	03.04.07		£ 42.16	£ 308.03						
2007/8 On a/c estimate	03.04.07	£ 621.93		£ 929.96						
2006/7 Balancing credit	23.05.08		£ 50.18	£ 879.78						
2008/9 On a/c estimate	23.05.08	£ 481.30		£ 1,361.08						
2007/8 Balancing credit	06.02.09		£ 339.73	£ 1,021.35						
2009/10 On a/c estimate	06.02.09	£ 457.57		£ 1,478.92						
2008/9 Balancing credit	06.09.10		99.84	£ 1,379.08						

John Hewitt

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