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MAN/00BT/LSC/2009/0089

LEASEHOLD VALUATION TRIBUNAL
OF THE
NORTHERN RENT ASSESSMENT PANEL

REASONED DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985
SECTION 27A (1)

Property:	15, Cotton Hill, Withington, Manchester M20 4XR
Applicant:	Mrs.L.Doyle
Respondent:	Centurion Developments (Europe) Limited
Tribunal members:	Mrs.C.Wood (Chairman) Mrs.E.Thornton-Firkin Mrs.H.Clayton
Date of decision:	25 March 2010

DECISION

The Tribunal determines as follows:

1. That the following amounts included in the service charges for the years 1 April 2006 – 31 March 2007, 1 April 2007 – 31 March 2008, and 1 April 2008 – 31 March 2009 have not been reasonably incurred, and where they relate to the provision of services or the carrying out of works are not of a reasonable standard:
   (i) **1 April 2006 – 31 March 2007**
   (a) Repairs and Maintenance: £2240
   (b) External landscaping: £2500
   (c) Site management/staff: £2600
   (d) Accountancy fee: £450
   (ii) **1 April 2007 – 31 March 2008**
   (a) Repairs and Maintenance: £2282
   (b) External landscaping: £2500
   (c) Insurance: £1218
   (d) Site management/staff: £2600
   (e) Accountancy fee: £450

(iii) **1 April 2008 – 31 March 2009**
(a) Repairs and Maintenance: £1974
(b) External landscaping: £2500
(c) Insurance: £1526
(d) Site management/staff: £2600
(e) Accountancy fee: £450

2. That, in view of the Tribunal's determination as set out in 1.above, the respective amounts should be limited as follows:
(i) **1 April 2006 – 31 March 2007**
(a) Repairs and Maintenance: £1740
(b) External Landscaping: £1250
(c) Site management/staff: £600
(d) Accountancy fee: £250
(ii) **1 April 2007 – 31 March 2008**
(a) Repairs and Maintenance: £1782
(b) External Landscaping: £1250
(c) Insurance: £344
(d) Site management/staff: £600
(e) Accountancy fee: £250
(iii) **1 April 2008 – 31 March 2009**
(a) Repairs and Maintenance: £1474
(b) External Landscaping: £1250
(c) Insurance: £1218
(d) Site management/staff: £600
(e) Accountancy fee: £250

3. That the total amounts chargeable as service charge for the respective years are as follows:
(i) **1 April 2006 – 31 March 2007**
(a) Repairs and Maintenance: £1740
(b) External Landscaping: £1250
(c) Insurance: £1260
(d) Site management/staff: £600
(e) Management fee: £600
(f) Accountancy fee: £250
Total: £5700.
The Applicant is liable to pay £475 (to the extent that payment has not already been made by the Applicant).
(ii) **1 April 2007 – 31 March 2008**
(a) Repairs and Maintenance: £1782
(b) External Landscaping: £1250
(c) Insurance: £344
(d) Site management/staff: £600
(e) Management fee: £600

(f) Accountancy fee: £250
Total: £4826.
The Applicant is liable to pay £402.16 (to the extent that payment has not already been made by the Applicant).
(iii) **1 April 2008 – 31 March 2009**
(a) Repairs and Maintenance: £1474
(b) External Landscaping: £1250
(c) Insurance: £1218
(d) Site management/staff: £600
(e) Management fee: £600
(f) Accountancy fee: £250
Total: £5392.
The Applicant is liable to pay £449(to the extent that payment has not already been made by the Applicant).

4. That in respect of such of the service charges where a demand for payment has been made on or after 1 October 2007, the Respondent has failed to comply with its obligations under the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 (" the Service Charge Regulations"), and that accordingly any of the Tenants, including without limitation the Applicant, may withhold payment of such service charges until compliance is made.

5. The Tribunal orders under section 20C Landlord and Tenant Act 1985 that the costs incurred by the Respondent in connection with the LVT proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Tenant.

6. The Tribunal in exercise of its power under regulation 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 (SI 2003 No 2098) orders that the Respondent reimburse the application fees of £250.00 paid by the Applicant in respect of the Application to the Leasehold Valuation Tribunal.

REASONS FOR DECISION

Background

1. The Applicant is the Tenant of 15 Cotton Hill, Withington, Manchester M20 4XR, ("the Property"). The Applicant occupies the Property under the terms of a lease dated 20th April 1984 made between Enbee Crescent Investment Limited (" the Landlord")(1), Cotton Hill Flats Management Limited ("the Company")(2) and Khodaie Khodaie ("the Tenant")(3), ("the Lease"). The Tribunal was advised that the Respondent acquired the freehold reversion to the Building (as

that term is defined in the Lease) of which the Property forms part, and the Company in 2006.

2. By an application to the Leasehold Valuation Tribunal dated 26 August 2009, the Applicant sought a determination under section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) in respect of the service charge payable under the Lease for the years 2006/07, 2007/08, 2008/09 and 2009 to the present date.

3. Directions were issued to the parties on 10 December 2009 which required:
(i) the Applicant to circulate her Statement of Case by no later than 8 January 2010;
(ii) the Respondent to circulate its Statement of Case by no later than 29 January 2010 and including copies of the documents listed in the Directions;
(iii) the Applicant to send further comments in response to the Respondent's Statement of Case by no later than 5 February 2010.
As the Applicant did not receive the Directions until 23 January 2010 as a result of postal delays, the time for submission of her Statement of Case was extended until 2 February 2010, and was received on 1 February 2010. The Respondent's Statement of Case and accompanying documentation was received on 29 January 2010.

4. In her Statement of Case dated 28 January 2010, the Applicant stated that there had been a decline in the provision of services since 2006 when the Respondent acquired the freehold reversion. Copies of photographs in support of the Applicant's contentions were referred to in, and attached to the Statement.

5. The Respondent's position as set out in paragraph 5 of the undated statement of Mr. Nasir Ul-Din Ahmed, a Director of the Respondent, is that the level of service charge is "fair and reasonable and reflect current market conditions", and that "...it is clear that the maintenance works have been done and have been done properly".

Inspection

6. The Tribunal made an external inspection of the Property and of the internal and external common parts of the Building on the morning of 22nd February 2010. The Property is one of 12 flats which comprise the Building. The flats are "grouped" into blocks of 4 flats; there are 3 separate entrances/internal communal areas/communal staircases. The Property is on the first floor of its block. There are communal lawned and paved areas to the front, rear and one side of the Building; to the other side of the Building there is parking. The Applicant's husband was in attendance during the inspection.

7. The following matters were noted by the Tribunal at the inspection:
(i) guttering and downpipes had been replaced at the Building but some of the work was incomplete/poorly executed;

(ii) there was evidence where drains had overflowed;
(iii) there was debris eg an old carpet and litter in the communal gardens;
(iv) there was a gate hanging off its hinges;
(v) there was little evidence of any cleaning having been done at the communal entrance and staircase giving access to the Property;
(vi) the light fitting on the first floor landing was detached from the ceiling;
(vii) there was no battery in the fire alarm;
(viii) there was a loose tile on the staircase floor;
(ix) there appeared to have been no recent window cleaning;
(x) there were no mailboxes for 2 of the 4 flats in the block in which the Property is situated;
(xi) it was not possible to inspect the roofs at the Building as it is a flat roof.

The Lease

8. Under Clause 5 of the Lease the Tenant covenants with the Company, and as a separate covenant with the Landlord, to pay to the Company " ...an annual subscription of a proportion calculated as provided in sub-clause 3(13)..." (which proportion is one-twelfth) so that "...the aggregate sum received by the Company shall equal the aggregate amount properly and reasonably required to be expended by the Company and the amount of any reserves properly and reasonably required by the Company...", first, "in connection with the performance and observance...of the covenants on the part of the Company...", secondly, "the wages of all the Company's employees and servants", and, thirdly, "administrative and office and other incidental expenses of the Company (including Accountants' fees and Managing Agents' charges) in initiating and running its business".

9. Clause 5 provides that such annual payments shall be made in advance and in 4 instalments.

10. The covenants of the Company in Clause 4(1) of the Lease include that the Company will:
(i) "...at all times...keep the foundations main walls timbers roofs mains drains and sewers and the exterior of the Building...and the staircases halls passages and such other internal parts of the building...as shall or may from time to time be used by tenants of flats on the Estate in common with other tenants in good and substantial repair and in clean and proper order and condition and properly lighted";
(ii) "...keep all the fixtures and fittings in the common parts of the building in good order and repair and will replace such fixtures and fittings as and when replacement is necessary or requisite";
(iii) "...at all times...maintain the grounds of the Estate...and the sewers drains pipes cables and wires...in good order and will repair and replace the boundary walls and fences...and will maintain and repair the roads and paths...in good order and condition and free from litter";
(iv) "...at all times...keep insured all buildings on the Estate..."

The Law

11. Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

(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.

12. Section 19 provides that –

(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 provision 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.

13. Section 27A provides that

(1) 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 date at or by which it is payable, and
(d) the manner in which it is payable.
(2) Subsection (1) applies whether or not any payment has been made.
(3) .....
(4) No application under subsection (1)...may be made in respect of a matter which –
(a) has been agreed by the tenant.....

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

14. In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

15. The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England)Regulations 2007 ("the Service Charge Regulations") provide that, in respect of a demand for payment of a service charge made on or after 1 October 2007, such demand should be accompanied by a summary of rights and obligations, in the form and containing the information as set out in the Service Charge Regulations. The Regulations provide that until compliance is made with their requirements, a tenant may withhold payment of the service charge.

The submissions.

16. A hearing was held at 5, New York Street, Piccadilly, Manchester M1 4JB at 11.30am on 22 February 2010. The Applicant attended in person and was accompanied by Mr. Kevin Hughes. The Respondent was represented by Mr. I. Hussein, Solicitor.

17. The Applicant explained that she had lived at the Property for 15 years and that, until the Respondent had taken over the management of the Estate in 2006, had paid the service charge. Since that time, the Applicant claimed that there had been a decline in the provision and standard of services: for example, halls were not cleaned, lawns were not cut, gates were not repaired, drains were blocked. The Applicant stated that the Property was for sale but that the condition of the communal areas was proving a disincentive to purchasers. The Applicant said that she had only seen the Respondent's employee, Chris Doughty, 4 or 5 times over the last 3 years. She had recently seen one of the other residents picking up litter. The Applicant maintained that she had made payment of £1066.

18. Mr. Hussein contended that the service charge was "fair, just and equitable" and that this was supported by the fact that no other tenants were making similar applications. He challenged the Applicant's assertion that any payment had been made and stated that the amount outstanding was £2144. He said that the Respondent had shown considerable forbearance in not taking action in respect of the Applicant's failure to make payment which, on the face of it, was a breach of the Lease. However they now wished to bring the account into line.

19. In response to questions raised by the Tribunal, it was confirmed that:

(i) the correct period for levying of the service charge was as stated in the Accountant's Certificate, namely, 1 April – 31 March, and not as on the Service Charge Certificate (1 March – 30 April);
(ii) of the 12 flats at the Estate, 9 were tenanted and 3 were privately owned;
(iii) communication of the amount of the service charge was by letter stating the amount only ie there was no breakdown of the amount charged, and nor had any compliance been made with the Service Charge Regulations in respect of amounts demanded since 1 October 2007. In particular, the Applicant had not previously received the Service Charge Certificates which were in the Bundle produced by the Respondent in support of its Statement of Case;
(iv) Medway Services Limited are retained as an "independent contractor" but with no "formal agreement" to provide maintenance and landscaping services to the Respondent;
(v) Mr. Hussein had no information about how often the Respondent's employee, Mr.C.Doughty, attends the Estate although he said that it was "regularly". He said that his role was mainly supervisory to ensure that the Estate was managed properly, and confirmed that some of his work related to the management of the tenanted properties;
(vi) Mr. Hussein confirmed that the management fee related to the "paper exercise" involved in management of the Estate eg drafting service charge certificates, letters, production of invoices etc;
(vii) Mr. Hussein had no information as to the apparent "break" in the insurance cover;
(viii) the accountancy services were not provided "in house";
(ix) in respect of the window frames, the Applicant conceded that, on balance, they were her responsibility but that it was unfortunate that the Respondent did not give her the opportunity, when replacing the frames in the tenanted properties, to replace hers at the same time by the same contractor as they would all then have looked the same;
(x) with regard to the question of the Respondent's costs incurred in respect of the application, Mr. Hussein confirmed that the Respondent would seek to recover these from the Applicant as service charge.

The Tribunal's Conclusions

20. The Tribunal must apply a three stage test to the application under section 27A:

(1) Are the service charges recoverable under the terms of the Lease? This depends on common principles of construction and interpretation of the lease.

(2) Are the service charges reasonably incurred and/or services of a reasonable standard under section 19 of the 1985 Act?

(3) Are there other statutory limitations on recoverability, for example consultation requirements of the 1985 Act as amended?

21. The Tribunal determined that all of the items listed in the Service Charge Certificates for the years 2006/07, 2007/08 and 2008/09 were recoverable under the terms of the Lease. The Tribunal further determined that the correct period covered by each Service Charge Certificate was from 1 April – 31 March.

22. As set out in paragraphs 1 and 2 of this Decision, the Tribunal determined that certain items within the service charge were not reasonably incurred and where they were incurred on the provision of services or the carrying out of works they were not of a reasonable standard, and were limited accordingly.
With regard to the item "Repairs and Maintenance", the Tribunal made this determination on the following grounds:
(i) the invoices supplied by the Respondent in support of these charges did not give sufficient detail what work had been done and when but, from their inspection and the evidence of the parties, the Tribunal determined that the charges had not been reasonably incurred and/or the works were not of a reasonable standard;
(ii) whilst it was apparent from the inspection that some work had been done on replacing the guttering and some of the downpipes, there were questions as to the quality of the work done eg on the downpipes, some of the joints were taped rather than a proper joint installed, some wall fixings had not been replaced, which could lead to further remedial work being required;
(iii) although there were invoices indicating that some work had been done to the roof, it was impossible to verify this on inspection;
(iv) because of the lack of information detailing the works which had been carried out, it was not possible for the Tribunal to limit specific items, but as they were satisfied that works had not been carried out to a reasonable standard, it was determined appropriate to make an arbitrary deduction of £500 per annum for each of the 3 years in question.
With regard to the item "External Landscaping", the Tribunal made this determination having regard to the condition of the external communal areas on the date of inspection and as evidenced in the copy photographs provided by the Applicant.
With regard to the item "Insurance", the Tribunal made their determination in the absence of any evidence as to the reason for the apparent "break" in the insurance cover for the period from 1 April 2007 to 18 December 2007.The Tribunal determined that in all probability there had been a failure to insure during that period and that the premium for the year should be apportioned accordingly. Further there was no invoice supporting the premium charged for the period from 1 April 2008 – 31 March 2009 and it was therefore assumed that the cover was renewed at the same premium as the preceding year (bearing in mind that this policy was only enacted as at 19 December 2007).
With regard to the item "Site management/staff", in making its determination the Tribunal had regard to the documentary evidence provided by the Respondent which constituted payslips for their employee purporting to support the amounts charged although the "payslips" were unusual in showing no gross pay, NI or

other deductions and allowances. The Tribunal also thought it unusual that the employee received a payslip for each development owned by the Respondent. Further, the Respondent's solicitor confirmed that this employee was employed in managing the Respondent's tenanted flats at the Estate (of which there were currently 9) as well as general site management. No evidence was produced by the Respondent's solicitor as to the number of hours spent at or the frequency of visits by the employee to the Estate. The Tribunal determined from their inspection of the Building that the supervisory duties said to being carried out by their employee were not to a reasonable standard. They thought that a reasonable charge for one visit per month and associated follow-up work would be £100 (£1200 pa) but that in view of the condition of the external and internal communal areas, this should be limited to £600.
With regard to the item "Accountancy Fee", the only work of which there was evidence was the Accountants' certificates appended to the Service Charge Certificate. Accordingly the fee was limited to £250.

23. The Tribunal noted that there was some evidence that the agreements with Medway Services Limited for repairs and maintenance and for external landscaping might be a single, or two separate, "qualifying long term agreements" as defined in Section 20 of the 1985 Act. If they were, then it was also noted that there had not been compliance with the statutory consultation requirements in this respect. However, in the absence of further evidence as to the terms of the agreement(s), the Tribunal was unable to make a determination to this effect.

24. The Tribunal determined that the management fee of £600 was reasonable.

25. The Tribunal noted that although the Application also related to the service charge for the period from "1 May 2009 to the present date", no evidence had been produced in this respect by the Respondent other than a "Service Charge Budget" for the relevant period. The Tribunal therefore determined that to the extent that the Service Charge for 2009/10 included items in respect of Repairs & maintenance, External landscaping, Insurance, Site management/staff, Management fee and Accountancy fee, these should not exceed the respective amounts determined as reasonable by the Tribunal for the Service Charge Year 2008/09, subject to the amounts being made known and the accounts finalized when either party may make application to the Tribunal for a further determination in respect thereof.

26. The Tribunal noted that the Respondent did not appear to be compliant either with the terms of the Lease in respect of the service on the Tenants of a Service Charge Certificate or, in respect of the service charges demanded on or after 1 October 2007, the Service Charge Regulations . The Tribunal further noted that until compliance had been made with the Regulations any Tenant could withhold payment of the service charge.

27. The Tribunal made the orders in respect of the Respondent's costs and return of

the application fees set out in paragraphs 4 and 5 above of the Decision as being just and equitable in all the circumstances.

Catherine Wood.

Catherine Wood
Chairman
Date 25 March 2010