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HM Courts
& Tribunals
Service

Leasehold Valuation Tribunal

In the matter of S.27A (Service Charges) of the Landlord & Tenant Act 1985.
and Para. 3 Schedule 12 Commonhold and Leasehold Reform Act 2002

DECISION AND REASONS

Case Number: CHI/24UF/LSC/2011/0015

Applicant: Royal Clarence Yard (Phase 1) Ltd

Represented by: Carl Fain of Counsel

Respondent: Mr J Hurlock (in person)

In Attendance: Ms N Jhavar, Charles Russell Solicitors
Mr P Atkinson, OM Property Management
Mr D Pratt, Berkeley Homes
Mr Gareth Brown, MML Anderton
J Hodder, Berkeley Homes.
Mr D Hayes, to assist the Respondent.

Property: 23, Regents Place
Weevil Lane
GOSPORT
Hampshire
PO12 1AY

Date of Court Order: 15 April 2010

Date of Inspection and Hearing: 26 October 2011

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Surveyor Chairman)
Mr S Griffin LLB (Legal Member)

Date of this Decision: 21 November 2011

THE DECISION

1. The service charges for the years ended 31 December 2004 to 2007 (inclusive) were reasonably incurred and payable and interim service charges for the periods from 1 January 2008 to 30 June 2009 are reasonable estimates and payable.
2. The Tribunal's jurisdiction is limited to the Decision in paragraph 1 above and the case is now remitted to Portsmouth County Court for final determination.

REASONS

BACKGROUND

3. This is an application for a determination under S.27A of the Landlord and Tenant Act 1985 (The 1985 Act) following an Order of Portsmouth County Court dated 15 April 2010 transferring the case to the Leasehold Valuation Tribunal. The transfer was not received by the Tribunal until 26 January 2011.
4. By Directions given on the 25 February the Tribunal Directed and gave notice that the matter should proceed on the paper track without an oral hearing. Following a request from the Respondent the Tribunal Further Directed on 7 April 2011 that an oral hearing would be held. Detailed Directions were issued for the conduct of the case.
5. Written statements and documents were received from both parties and considered by the Tribunal at and prior to the oral hearing.

6. **LAW**

7. Section 27A of the Act 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 to whom it is payable

- b. the person by 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.

There are certain exceptions that limit the Tribunal's jurisdiction under section 27A but none of those exceptions are relevant to this case.

8. In order to interpret payability the Tribunal has also had regard to Ss.18 & 19 of the Act.

9. Section 18 provides that the expression "service charge" for these purposes 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 relevant costs."

10. "Relevant costs" are the costs or estimated costs incurred or to be incurred by the landlord in connection with the matters for which the service charge is payable and the expression "costs" includes overheads.

11. Section 19 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 or works are of a reasonable standard and the amount payable shall be limited accordingly.”

12. Para. 3 Schedule 12 Commonhold and Leasehold Reform Act 2002 (the 2002 Act) provides that a court may transfer to a Leasehold Valuation Tribunal a question falling within the Tribunal's jurisdiction.

LEASE

13. The Tribunal was provided with a copy of a counterpart underlease dated 27 February 2004 in respect of apartment 89 at Admiralty View which is understood to be the property now known as 23 Regents Place. The Respondent is the lessee (tenant), the Applicant is the head lessee and the Respondent's direct landlord, the freehold owner is understood to be Berkeley Homes (Hampshire) Ltd. The lease is for a term of 999 years (less 10 days) from and including 1 January 2002.
14. The Tribunal has had full regard to the lease but for the purpose of this determination little turns on the terms in detail. Suffice to say that the service charge arrangements are set out in Schedule 8 of the lease and involve the preparation of provisional service charges being an estimate of future expenditure which is paid in advance. At the end of each accounting period, there is a reconciliation providing that any over payment is taken as a credit against future payments or is repaid. If there is any underpayment the amount to be paid by the tenant to the landlord.
15. There is no dispute regarding the arrangements for payment or receipt of service charges.
16. In general terms the tenant covenants to keep the Premises in good and substantial repair. The Premises mean the interior of the property, which is defined in detail but specifically excluding windows and window frames and the part above the concrete soffit or below the concrete slab at floor level, or any part of the roof space. There is no dispute regarding interpretation.

17. The landlord is responsible for the provision of services set out in Schedule 8 of the lease. These include the maintenance, repair, protection and decoration of the retained premises.
18. There is no dispute regarding the respective responsibilities of the landlord or the tenant.

INSPECTION

19. Members of the Tribunal in company with Counsel and representatives of the parties generally inspected the exterior and common ways of the building and the interior of the subject flat.
20. The property comprises a self contained maisonette located on the 4th and 5th floors of the building which comprises 12 self contained flats being part of a development constructed in about 2003. The building appears to be of framed construction with brick cladding and a flat roof with various patio additions. The top floors are of individual design with external cladding. On the ground floor there is car parking and externally further parking, landscaping, and lighting. There is a dustbin area and a building housing the pumping station.
21. The Tribunal members noted that there was a chipped window and a cracked window pane on the west elevation of the flat. In the upper part there was clear evidence of water penetration through the roof area and part of the ceiling had been removed to expose the construction. There was also evidence of water penetration in the stairwell area.
22. The Applicant does not dispute the physical condition of the property.

THE HEARING

23. Counsel for the Applicant had prepared a skeleton argument which he presented to the Tribunal. The Respondent had had an opportunity of seeing this prior to the commencement of the hearing but he objected to this late document being admitted.

24. The Tribunal Chairman explained that the skeleton was there to assist the Tribunal in absorbing the case to be presented by the Applicant and it was not intended to introduce any new matters in evidence.
25. Counsel referred the Respondent and the Tribunal to his legal submission in respect of *Continental Property Ventures Inc v White* and provided the Tribunal and the Respondent with a copy of that decision.
26. After a brief discussion the Tribunal admitted the skeleton argument on the grounds that if Mr Hurlock believed that he had been disadvantaged in any way he should raise the matter during the the hearing and the Tribunal will consider his objection at the time.
27. At the outset it was clear that the Respondent pursued his case on the basis of work not done or services not provided to a proper standard by the Applicant or its managing agent. He did not promulgate any case to object to the amount of the service charges or whether they had been reasonably incurred or at reasonable cost. It was explained by the Chairman that the Tribunal's jurisdiction was limited by statute and it had no jurisdiction to deal with the counter claim.
28. The Respondent accepted that this had become clear during the course of proceeding and he accepted that any issues relating to the counter claim, or matters other than service charges which he may have raised at the County Court, should be properly addressed in that jurisdiction and not at the Tribunal.
29. However, the Tribunal continued to examine the specific matters that had been challenged by the Respondent, identified in detail in the Further Directions dated 7 April 2011. The Respondent had been requested to provide a written statement setting out the details of his various challenges which he had not done, so the Tribunal relied on his oral evidence.
30. Dealing with the matters issue by issue as follows:

Damaged Windows

31. There is no dispute that there is damage to two windows. The Respondent asserts that the Applicant has failed to carry out its obligation under the terms of the repairing covenant but this is not a matter for the Tribunal.
32. The Applicant advises that works to the broken window were authorised by the Applicant's insurers and the Respondent was informed that he may proceed with the work.
33. It is the Applicant's position that there is no basis for the service charge to be varied in respect of this issue as there has been no charge made for any work to the windows.

Water Supply

34. The Respondent explained that there was a period when the water supply was interrupted. There was a dispute between the parties as to the precise dates and timing of the occurrence but this inconsistency could not be resolved.
35. The Applicant again asserts that this is a breach of covenant issue and not a service charge matter but the Respondent still argues that the Landlord has failed in its duty.
36. The Applicant believes that there is no basis for a reduction in the service charge.

Cleaning

37. The Respondent describes a period when there was no cleaning being carried out at the property. The Applicant accepts that for a short period the cleaning of the internal areas across the whole of the development was stopped due to lack of funds caused by non payment of service charges. During that period no costs were incurred and no charges were made to the service charge account. It is the Applicant's position that the cleaning staff were providing an excellent service and no complaints had been received.

38. The Respondent asserts that until recently the cleaning has been carried out to a poor standard and at various residents' meetings there have been expressions of dissatisfaction regarding the quality of cleaning.

General Overcharge

39. During the course of proceedings it became clear that this issue related mainly to the cost of window cleaning at the property. The Respondent identifies that the windows to his flat have never been cleaned and a similar situation exists for the adjoining property. As the windows to the top floor are not cleaned there should be an reduction in the overall cost reducing the charge to the top flats to 80% of the total.
40. Mr Atkinson of OM Management was called to explain that the window cleaning was undertaken by a "Pole Reach" system whereby a long extended pole was used from ground level to clean the outside of the windows. Under questioning and discussion Mr Atkinson agreed that because the top floor flats were recessed from the face of the main building it was quite likely that the "Pole Reach" system would not clean the windows.
41. The Applicant's evidence is that the charges made relate only to the work done. The Respondent has no challenge to the overall cost which, under the lease, he has to pay his proportion. Whether or not the landlord might be challenged for not cleaning the windows is a matter for the County Court and not the Tribunal.

Failure to Repair Water Leak

42. This is the principal issue of concern of the Respondent relating to the ingress of water through the roof at the property rendering his flat unlettable.
43. The Applicant asserts that there had been no payments to third parties or charges made to the service charge in respect of these matters, and it could not therefore be argued that the services were unreasonably incurred or of unreasonable amount.

44. The Respondent confirmed that his main issue was the lack of action and the fact that his premises remained unable to be occupied.

Managing Agent's Charge

45. During the course of the hearing it became clear that the Respondent was dissatisfied with the quality of work provided by the managing agent. He conceded that the amount charged was satisfactory but the job was not being done properly. The Respondent did not offer any suggested financial adjustment to take account of the costs. The Applicant believes that the agents charge is reasonable.

Water Charges

46. Water is supplied to the flats as part of the services provided by the landlord. The details of these charges had been provided to the Respondent but he was concerned that the allocation of the costs was fair in relation to the size of the premises.

CONSIDERATION

47. The Tribunal retired to consider its determination.
48. It became apparent at the outset and certainly during the course of the proceedings that the Respondent had no formal objection to the amount of the service charges already incurred or the estimates of future costs.
49. Having heard the detailed evidence the Tribunal found that there was nothing of substance on which an objection to the matters before it had been raised. In none of the cases had any costs been added to the service charge where work had been carried out, or was intended to be carried out, to which the Respondent objected.
50. The Respondent had produced a detailed counter claim in the County Court but none of the issues raised is a matter for this Tribunal.

51. The Tribunal has no hesitation in determining that the service charges already raised are reasonably incurred and payable, and those to be raised for the relevant years are reasonable and payable, and determines the matter accordingly.

Dated 21 November 2011

[signed Brandon H R Simms]

Brandon H R Simms FRICS MCI Arb
Chairman