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HM Courts
& Tribunals
Service

Leasehold Valuation Tribunal

Case number BIR/00CN/LIS/2011/0059

Property Kelsey Close, Nechells, Birmingham, B7 4JL

Applicant D and K Bugajczyk (Flat 4)
Joined Applicants N Ramsey (Flat 2 and 6)
F Faquih and F Gaibe (Flat 10)
I and R Roberts (Flat 34)

Respondent Birmingham City Council

Date of Application 18th December 2011

Type of Application to determine reasonableness and payability of service charges under section 27A (1) and an order under section 20C of the Landlord and Tenant Act 1985- (The Act).

Tribunal: Mr R T Brown FRICS (Chairman)
Mr J H Dove Solicitor advocate

DECISION

1. The Tribunal determines that the cost of cleaning in the year 2009 and the cost of cleaning and repairs in the year 2010 are reasonable in accordance the Respondents financial statements for the year's in question.
2. The Tribunal makes an order, under section 20C of the Landlord and Tenant Act 1985, determining that the costs of these proceedings, insofar as they may be recoverable under the leases by way of service charge, are not recoverable.

REASONS FOR DECISION

The Application and Introduction

3. The Applicants seek a determination of the reasonableness of the cost of certain specific services incurred in the years ending 31st March 2009 and 2010.
4. Those specific services are:

In 2009:

1. Cost of cleaning £7719.39

In 2010:

1. Cleaning £8,022.83
2. Repairs specifically (total cost):

Ref No	Job	Job No	Date	Cost £
1	Double glazed unit	2376960/1	17/04/2009	296.74
4	Single glazed unit	2454315/1	23/06/2009	259.58
5	Window damaged by fire	2455019/1	04/09/2009	896.68
14	Single glazed window metal	2598564/1	03/11/2009	1552.75
15	Re-glaze in Perspex	2598564/2	10/12/2009	237.43
16	Re-glaze in Perspex F22	2598564/3	09/12/2009	61.42
17	Re-glaze in Perspex F22	2598564/4	09/12/2009	40.93

5. The Tribunal limits its determination to the matters in dispute only

The Property and the Tribunal's inspection

6. The Tribunal inspected the estate on the 22nd May 2012 in the presence of the Applicants: Mr Bugajczyk (the son of the Applicant), Mrs Roberts and Mrs Ramsey and for the Respondents Ms K Nicholls (Leasehold Manager), Ms C McQueen (Housing Officer) and Mr P Hewitt (Neighbourhood Caretaker).
7. The building comprises a three storey block of 25 flats with stairways at each end and open balconies to access flats on the 1st and 2nd floors. Ground floor flats have their own entrance doors.
8. The property is maintained to a basic standard commensurate with its age and construction and is in need of redecoration to the common areas. The Tribunal noted cobwebs at high level.
9. Externally there are communal gardens, refuse and drying areas.

The Law

10. The relevant law is set out in **Appendix 1** attached.

The Lease

11. The Tribunal was provided with a copy of the Lease of Flat 4 dated 22nd September 2003. This Lease the Tribunal understand is typical of the Leases.
12. The Lessees (Applicants) covenant at clause 3(c) to pay the service charge and this is not disputed by the parties.
13. The service to be provided by the Landlord (Respondent) is detailed in the Sixth Schedule.
14. The cost of the service charge to each leaseholder is 1/25th of the total service charge.

Paper Determination

15. With the agreement of the parties and in accordance with regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003/2099 the matter was considered without an oral hearing on the papers submitted by the parties.

The Applicant's Case

Cleaning

16. The Applicants case in respect of the cleaning in 2009 and 2010 is that it is too expensive and they have not received the 'enhanced service' for the years in dispute detailed in a letter to residents dated 13th May 2010.
17. The Applicants had carried out their own survey of the standard of cleaning and the survey sheets showed a general dissatisfaction. The Applicants further claim that second floor communal windows are not cleaned externally.

Repairs

18. In particular with regard to Ref 4 and 14 (above) there are no single glazed units.
19. With regard to Refs 5, 16 and 17 these items relate to individual flats and should not be charged to the service charge.
20. Ref No 5 was a result of fire damage and should be recovered from insurance.
21. The cost of the replacement of similar windows varies considerably.

Section 20C Application

22. The Applicants make an application for an order that the cost of these proceedings shall not be recovered from the service charge.

The Respondent's Case

Cleaning

23. In written statements dated 21st March and 30th April 2012 on behalf of the Respondent Mrs Nicholls says with regard to cleaning that the Respondent introduced a Neighbourhood Caretaking and Cleaning Scheme in 2006/7 which led to an increase in cleaning charges. Contract cleaners were replaced by directly employed staff.
24. In 2011 this scheme was reviewed to more accurately reflect the cost across the different types of property in the Respondent's management.
25. The apportionment of cost in 2008 and 2009 was based on the information available at the time.
26. Following Directions Order No 2 the Respondent produced 'Low Rise audit cleaning reports' for the years in dispute.

Repairs

27. With regard to repairs the Respondent says that no repairs to single glazed units have been carried out. The descriptions of breakdowns are generic descriptions for call centre purposes and do not necessarily match the work undertaken when the contractor actually sees the work required.
28. The communal areas of the low rise blocks are not insured because of the high level of the premiums. If the Respondent did insure the Applicants would have to pay a proportion of the premium instead of a proportion the cost of repair.
29. James Nicholls by email dated 22nd October 2010 confirmed to Sophia Munir (Leasehold Officer) that work to replace four windows had been undertaken.
30. In response to the Directions Order No 2 the Respondent produced the 'job sheet/certification' for each of the jobs in dispute. The letter explained that there were no invoices as such because the contractor was paid on a price per property basis based on the material and labour costs. These costs are reported to the Respondent's quantity surveyor and are used to recharge the cost to the service charge via an excel workbook.

Section 20C

31. The Respondent makes no submission on this part of the application.

The Applicants Response to the further submissions

32. In a letter to the Tribunal dated 30th June 2012 the Applicants say the response is less than satisfactory insofar as the information provided does not comply with the requirements of the Commonhold and Leasehold Reform Act 2002.

33. Further the Respondent failed to substantiate the work or the basis of cost. No valid VAT invoices have been produced.

The Tribunal's Deliberations

General comment on evidence of the parties

34. The Tribunal considered all the written evidence and information obtained at their inspection.

Cleaning

35. The Tribunal had some difficulty in understanding the Respondent's new (2010) method of calculation as, for example, in respect of the caretaker's costs the total does not add up to 100%. In any event this is not relevant to the years in dispute which are calculated across (the Respondent's) housing stock as a whole. No clear identification is made of the calculation of the actual (as opposed to apportioned) cost.

36. While the Tribunal understands the Respondent's intention to spread the cost across its entire housing stock this does not necessarily result in the cost to an individual block being reasonable for the purposes of a determination under section 27A. Neither does it demonstrate that the standard of service provided is reasonable.

37. The 'low rise audit cleaning reports' indicate that the Respondent considers that the cleaning is on most occasions carried out to a 'pass' standard. It is not clear to the Tribunal, from the documents supplied, what the definition of a 'pass' standard is and against what criteria that standard is judged.

38. Doing 'the best it can' with the information provided and not having the benefit of a hearing at which Parties could be questioned the Tribunal came to the conclusion that the standard of cleaning was of a reasonable standard given the nature of the surfaces (concrete floors and rough render finish to walls) to be cleaned.

39. On the basis its inspection and the evidence given by the Parties the Tribunal concluded, using its knowledge, judgement and experience of these matters that:

- to achieve a reasonable standard of cleaning would require a minimum of 4 hours per week (including the bin area) and at £20.00 per hour (contract and administration) the annual cost would be £4,160.00.
- it was unlikely that the external windows were cleaned weekly and that monthly cleaning would be the norm. On this basis 12 window cleaning visits per annum at £300.00 each (to allow for the cost of access equipment) produces an annual figure of £3,600.00.
- allowing a further £500.00 for graffiti removal making a grand total of £8,260.00.

40. On this basis the Tribunal concludes that the sums charged by the Respondent for both 2009 (£7719.39) and 2010 (8,022.83) was reasonable.

Repairs

41. The Applicants at the inspection agreed that work had been carried out to the communal areas but remained dissatisfied as the cost thereof.
42. Notwithstanding the Respondent's liability to insure as per clause 4(b)(vi) of the Lease, it is noted that the communal areas of the low rise blocks are not insured because of the high level of the premiums required. In the Tribunal's view the costs of repair is partially if not totally offset by the fact that no contribution is made to the insurance premium. The Tribunal concludes that whilst there may be a technical breach of clause 4(b)(vi) of the Lease (i.e. the Respondent's obligation to insure); the Respondent has chosen not to comply with this covenant because of the prohibitive level of premium. The counterbalance to this saving to the Applicants is that they may have to contribute a proportion of the costs of any work that would otherwise be covered by such insurance.
43. The Tribunal found the further evidence supplied in respect of the repairs to be of little additional assistance. It was unable to interpret the copies of the spreadsheet in any meaningful way and the summary merely reproduced information already in the Tribunal's possession. The Tribunal makes a finding of fact that the system of logging and costing repairs as presented and the use of generic instructions had in this case resulted in an unacceptable lack of clarity.
44. The Tribunal concluded, with the benefit of its inspection and the evidence of the Parties, that the work had been carried out and having reached that conclusion it went on to consider whether or not the work was of a reasonable standard and at reasonable cost.
45. The Tribunal concluded on the test of the balance of probabilities that the standard and cost of the work was reasonable. In reaching this conclusion the Tribunal used its own knowledge judgment and experience of these matters but remains concerned that the systems in place for the running of the management are less than clear and transparent to a lessee with little experience of property management.

Section 20C Order

46. Given the Tribunal's decision in this matter it might follow that no order should be made. However given the difficulty the Tribunal had in interpreting the evidence submitted by the Respondent the Tribunal considers that the Applicants, although largely unsuccessful, had no choice but to a make the application. According the Tribunal makes an order preventing the Respondent recovering the costs of these proceedings from the service charge.

Robert Brown
Chairman

Dated 24th July 2012

Appendix 1 – The relevant law

Landlord and Tenant Act 1985

Section 18 Meaning of “service charge” and “relevant costs”

- (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, improvement 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 period

Section 19 Limitation of service charges: reasonableness

- (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.
- (2) 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 or subsequent charges or otherwise.

Section 27A Liability to pay service charges: jurisdiction

- (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 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.
- (3) An application may also 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