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HM Courts & Tribunals Service

Leasehold Valuation Tribunal
Case no. CAM/00KB/LSC/2012/0031

Premises:	50 College Road, Bedford MK42 9PL
Hearing:	30 May 2012
Applicants:	Paul Gregory (leaseholder) in person
Respondent:	Bedford Pilgrims Housing Association (landlord)
Represented by:	Mr William McFarland, Resident Services Manager
Members of Tribunal:	Mr G M Jones - Chairman Mr R Brown FRICS Ms C St Clair MBE BA

ORDER

1. The following service charges in respect of 50 College Road, Bedford are not payable by the Applicant:

   (a) Any contribution towards the cost of damage repair number 1399005 £63.82 and damage repair number 1405105 £135.43;

   (b) Any contribution to cost of the damage caused by emergency services to the communal entrance door or common parts at College Road in lawfully effecting entry on or about 7 March 2012.

2. The Respondent shall not be entitled to include in any service charge account for 50 College Road, Bedford its costs (if any) of or in connection with the Application herein or in attending the hearing thereof.

G M Jones
Chairman
18 July 2012

REASONS

0. BACKGROUND

The Property

0.1 The subject property is a one bedroom first-floor flat in a small development of five flats owned by BPHA. The development dates from approximately the 1980's; it is of brick and tile construction, on two floors, with UPVC double-glazed windows. It is a reasonably well-maintained block. The two ground floor flats have their own separate entrances, while the three first floor flats share a communal entrance, hallway, staircase and landing. The building spans a gated access to an enclosed car park with allocated spaces and individual garden areas adjoining. There is one garage; but that is separately let by BHPA. The Applicant is the only leaseholder in the block; the other occupants are monthly assured tenants. Until 2006 he had no problems with his neighbours.

The Lease

0.2 The Applicant exercised his right to buy in 2004 after occupying his flat as an assured tenant for some 15 years. His lease is dated 19 August 2004 and is in fairly standard "right-to-buy" form. For present purposes, only two aspects of the lease need be noted.

0.3 Firstly, there are the usual provisions for maintenance etc of common parts to be carried out by the landlord and for the tenant to contribute to the costs thereof. In relation to the communal entrance used by the first floor flats, the Applicant's contribution is the same as for other services, namely one fifth. In the circumstances, BHPA are liable to contribute the remaining four fifths.

0.4 Secondly the lease contains the usual landlord's covenant for quiet enjoyment in the following terms:

> "That the lessee performing all the covenants and obligations on his part herein contained shall have quiet enjoyment of the demised premises as against the Association and all persons claiming title through the Association."

It is to be noted that the assured tenants of the other flats in the development claim title through BHPA. The assured tenants by their tenancy agreements no doubt covenant not to cause a nuisance or annoyance to the Applicant and other neighbours and BHPA has the power to choose where to place prospective tenants and take firm action against any assured tenant who is in breach of that obligation.

1. THE DISPUTE

1.1 It is not suggested that the Applicant is in breach of the terms of his lease except as regards service charge contributions. The Applicant objects to making contribution to specific repair costs which, he says, have arisen by reason of the erratic behaviour of his neighbours at numbers 46 and 48. It is clear that the Applicant has

reported various incidents to the police over the last five or six years.

1.2 A new tenant moved into number 46 in 2006 and it is common ground that he does behave erratically from time to time by reason of psychiatric problems he has, whereby damage of an annoying but relatively minor character has been caused to fixtures and fittings in the common parts. This is confirmed by a letter from Inspector Everett of Bedfordshire Police dated 21 February 2012.

1.3 On several previous occasions BHPA has acknowledged that items of damage had been caused by this tenant repeatedly slamming doors and windows. On those earlier occasions BHPA elected to meet the costs of repairing the damage and has not sought to pass on any part of such costs to the Applicant through his service charge.

1.4 Another aspect of this tenant's obsessive behaviour is to stand in the communal hallway repeatedly pressing the light switch, which is on a timer. The Applicant points out that this must increase the electricity charges to which he is required to contribute, though it is impossible to say by how much.

1.5 Unfortunately for the Applicant, the tenant of number 48 also has psychiatric problems. She appears to have severe depressive tendencies and in moments of depression often calls emergency services. In 2009 alone, the Applicant was told, she called the police on 176 occasions. The police and fire service attend on a regular basis to ensure that she is all right and on more than one occasion have been obliged to break into the communal hallway to gain access to her flat for her own protection. The most recent of these occasions was on 7 March 2012. The Applicant expresses the hope that he will not be required to contribute to the cost of repairing that damage.

2. THE ISSUES

2.1 The Applicant's heads of claim can be summarised as follows:

(a) He objects to contributing to a charge of £63.82 for repairing the door, damaged by the tenant of number 46 repeatedly slamming it. He says that this cost should be met by BHPA out of its general funds and, in any event, the repair was not very well done, the joint between the threshold and the underlying brickwork not being adequately made good and the threshold itself being poorly fixed.

(b) He objects to contributing to a charge of £135.43 for replacing a window handle broken by the same tenant repeatedly slamming the window.

(c) He asks the Tribunal to find that he is not liable to contribute to the cost of repairing the damage done by emergency services on 7 March 2012.

3. THE EVIDENCE AND THE FACTS

3.1 There is very little dispute as regards the relevant facts. These Reasons will not set out the evidence save insofar as it is necessary to explain how disputed issues of

fact have been resolved.

4. THE LAW

Service and Administrative Charges

4.1 Under section 18 of the Landlord & Tenant Act 1985 (as amended) service charges are amounts payable by the tenant of a dwelling, directly or indirectly, for services, repairs, maintenance, improvement, insurance or the landlord's costs of management. Under section 19 relevant costs are to be taken into account only to the extent that they are reasonably incurred and, 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. Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable. As will be seen, there may be other reasons why particular items included in a service charge are not payable by the tenant.

4.2 Under section 27A the Tribunal has jurisdiction to determine whether a service charge is payable and, if so, the amount which is payable; also whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for those costs and, if so, the amount which would be payable.

4.3 In deciding whether costs were reasonably incurred the LVT should consider whether the landlord's actions were appropriate and properly effected in accordance with the requirements of the lease and the 1985 Act, bearing in mind RICS Codes. If work is unnecessarily extensive or extravagant, the excess costs cannot be recovered. Recovery may in any event be restricted where the works fell below a reasonable standard.

Information for tenants

4.4 Under section 21 of the Landlord & Tenant Act 1985 a tenant liable to pay service charges may in writing require the landlord, directly or through his agent, to supply him with a written summary of the costs incurred in the last accounting period which are relevant costs in relation to the service charges payable or demanded. Amongst the information the landlord must provide is the aggregate of any amounts received by the landlord on account of the service charge in respect of relevant dwellings and still standing to the credit of the tenants at the end of the relevant accounting period. The landlord must supply the summary within one month of the request or within 6 months of the end of the accounting period, whichever is the later.

4.5 Under section 22 the tenant may, within 6 months of receiving the summary, require the landlord in writing to afford him reasonable facilities for inspecting the accounts, receipts and other documents supporting the summary and for taking copies or extracts from them. The landlord must make those facilities available to the tenant for a period of two months beginning not later than one month after the request was made. Under section 25, failure to comply with the provisions of sections 21 or 22 is a criminal offence. The Commonhold & Leasehold Reform Act 2002 contained provisions amending these sections; but those provisions are not yet in force.

Costs generally

4.6 The Tribunal has no general power to award inter-party costs, though a limited power now exists under Schedule 12 paragraph 10 to the Commonhold & Leasehold Reform Act 2002 to make wasted costs orders. In general, if the terms of the lease so permit, the landlord is able to recover legal and other costs (eg the fees of expert witnesses) associated with an application to the Tribunal from the tenants through the service charge provisions i.e. he is entitled to recover a contribution to such costs not only from the defaulting tenant but from all tenants.

4.7 However, under section 20C of the Act of 1985 the Tribunal has power, if it would be just and equitable so to do in the circumstances of the case, to prevent the landlord from adding to the service charge any costs of the application. In the Lands Tribunal case Tenants of ***Langford Court –v- Doren Ltd*** in 2001 HH Judge Rich QC said that the LVT should use section 20C to avoid injustice. Clearly the manner in which this discretionary power is (or is not) exercised will vary depending upon the facts of each individual case. The relevant factors in this case are discussed in section 5 of this Decision.

4.8 In addition, under regulation 9 of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003 the Tribunal may order a party to reimburse the Applicant in respect of application and hearing fees. This power is likely to be exercised in cases where the applicant is substantially successful, unless he has been guilty of unreasonable conduct in connection with the application, e.g. where he has unreasonably rejected a proposal for mediation or a fair and proper offer of compromise.

5. CONCLUSIONS

5.1 Mr McFarland explained that the procedure followed by BHPA in cases of damage to common parts is to pursue residents who have caused criminal damage for the cost of repairs. In other cases, the costs are borne by BHPA and, where there are leaseholders liable to contribute through service charges due contribution is claimed from such leaseholders in the usual way. The effect of this is that such costs will generally not be borne by public funds. The means whereby BHPA decide into which category an item of damage falls is by reference to the decision of the local Police Force as to whether the damage amounts to criminal damage.

5.2 In the cases with which this application is concerned, it appears that the circumstances did not amount to criminal damage and therefore fall to be dealt with like any other repair. Mr McFarland's witness statement states that BHPA were, in any event, "unable to substantiate" Mr Gregory's reports. However, at the hearing Mr McFarland acknowledged that he had no reason to doubt Mr Gregory's account.

5.3 In those circumstances, it appears to the Tribunal that BHPA ought to have accepted Mr Gregory's account. However, by the test BHPA was operating, it remains the fact that the costs of repair fall to be added to the service charge

account. The question is, whether that is the right test.

5.4 The Tribunal has no difficulty is concluding that it was reasonable for BHPA to commission the repairs in question. However, the Tribunal agrees with Mr Gregory in his criticism of the surprising cost of replacing the window handle and of the standard of repair of the external door frame. Nevertheless, the repair is functional. Of course, we do not yet know how much that latter repair cost, as it will appear in the 2012 service charge account. It is to be hoped that BHPA will take steps to ensure that the repair is properly completed. Subject to those points, the costs were reasonably incurred.

5.5 .However, in the judgment of the Tribunal, the items of damage in question were the responsibility of persons "claiming title through" BHPA. It is the function of a housing association to provide housing for socially disadvantaged persons, some of whom may find it difficult or even impossible to get accommodation in the private sector. But, if the consequence of housing such persons is to cause nuisance or annoyance to neighbouring tenants, BHPA may be liable to compensate the neighbouring tenants for such nuisance or annoyance. Of course, a claim for damages for nuisance cannot be brought in the Tribunal; it is the province of the County Court. But where the nuisance impinges upon service charge obligations, it is open to the Tribunal to consider whether the relevant service charges are payable by the affected tenants.

5.6 Furthermore, in the judgment of the Tribunal, it is irrelevant whether the damage amounts to criminal damage. Persons who are not responsible for their actions are not criminals; but their actions may nevertheless cause nuisance and annoyance to neighbours, for which the landlord is liable through the covenant for quiet enjoyment if it is within his power to prevent it. A landlord who brings to a block tenants whose problems make them liable to be disruptive to neighbours, must accept responsibility for the consequences. For a housing association, this is, from time to time, an inevitable consequence of its duties as a provider of public sector housing.

5.7 There are two ways of analysing the present situation. Either the disputed service charge contributions are not payable because those items should never have been added to the service charge or the Applicant is entitled to a set-off as part of his claim for breach of covenant. Whichever is the correct analysis, the Tribunal is satisfied that these charges are not payable by the Applicant.

Costs

5.8 Overall, the Applicant having won, the Tribunal concludes that it would be just and equitable in the circumstances of the case to order that the landlord should be disentitled from treating its costs (if any) of and arising out of the application as relevant costs to be taken into account in determining any service charge relating to the property. No application or hearing fees were paid by the Applicant.

Geraint M Jones MA LLM (Cantab)
Chairman
18 July 2012