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**HM Courts
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Service**

LEASEHOLD VALUATION TRIBUNAL
Case no. CAM/00KG/LSC/2012/0101

Property : 59 Garner Court,
Dunlop Road,
Tilbury,
Essex RM18 7BG

Applicant : Freehold Managers (Nominees) Ltd.

Respondent : Mr. Chijioke Ezenwa Igbokwe

**Date of transfer from
Barnet County Court** : 7th August 2012

Type of Application : To determine reasonableness and
payability of service charges and administration
fees

The Tribunal : Bruce Edgington (lawyer chair)
Roland Thomas MRICS
Peter Tunley

**Date and venue of
hearing** : 9th November 2012, Park Inn Thurrock,
High Road, North Stifford, Grays RM16 5UE
Essex SS2 6EU

DECISION

1. The Tribunal finds that in respect of the amount claimed by the Applicant from the Defendant in the Barnet County Court under case no. 2QT53853, the amounts claimed for service charges in the sum of £923.33 are reasonable and payable.
2. The Tribunal also finds that of the administration fees claimed of £292, only the sum of £200 is reasonable and payable
3. The Tribunal makes an order pursuant to Section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") preventing the Applicant from recovering its costs of representation before this Tribunal from the Respondent as part of any future service charge demand save for the administration fees determined to be payable (see below).
4. This matter is now transferred back to the Barnet County Court under case no. 2QT53853 to enable either party to apply for any further order dealing with any

other matter not covered by this decision including enforcement, if appropriate.

Reasons

Introduction

5. In or about the May or June 2012 a county court claim form was issued by the Applicant claiming £1,215.33 in service charges and administration fees from the Respondent. The Respondent filed a defence. By an Order made on the 25th July 2012 by District Judge Martin, the 'case' was transferred to this Tribunal. In fact the court has no power to transfer a 'case' to a Leasehold Valuation Tribunal and this Tribunal has therefore inferred that questions as to whether the service charges and administration fees claimed were payable and/or reasonable were transferred. These are the only matters in the court proceedings which are within this Tribunal's jurisdiction.
6. On the 9th June 2012, the Respondent filed a defence. This document refers to an investigation by the Property Services Ombudsman; it refers to the absence of a sinking fund, it alleges a failure on the part of the Applicant to comply with the terms of the lease which has resulted in a negative impact on the resale value of the property and alleges that the administration fees are unreasonable. These assertions are written in very general terms.
7. Much of this defence amounts to allegations of breach of contract involving claims for damages and/or specific performance which are not matters within the jurisdiction of this Tribunal. As will be seen, this Tribunal can only deal with the issue as whether service charges or administration fees are reasonably incurred. There seems to be no argument that if they have been reasonably incurred, they would be payable under the terms of the lease.
8. After the case was transferred to this Tribunal, procedural directions were issued timetabling the case to a hearing. The Applicant was ordered to serve a statement by 7th September 2012 attaching the service charge demands referred to in the county court claim form and to set out its justification in law and principle for the service charges bearing in mind the comments from the Respondent in his defence.
9. A statement was provided, albeit late. The Respondent was then ordered to file a statement specifying exactly what service charges etc. were in dispute and why and, in respect of such charges, what the Respondent would consider to be reasonable. Whilst the Respondent did file a statement, the allegations were, once again, very general. There were broad statements saying that the total cost of gardening, general repairs, window cleaning and cleaning incurred between 2007 and 2011 were unreasonable.
10. It is relevant to record here that a Leasehold Valuation Tribunal with the same members determined similar issues with similar allegations in respect of 16 Garner Court by a statement of decision and reasons dated 17th September 2012. That decision was sent to the parties in this case and they will therefore be aware of its terms. However, the Tribunal appreciates that the court will not have seen that earlier decision and certain parts of that decision will therefore be referred to herein.

The Inspection

11. The members of the Tribunal inspected the estate for the purpose of the decision in 16 Garner Court and therefore did not feel it necessary to re-inspect. For the record, the description of the Tribunal from that earlier decision was as follows.
12. The development was built about 10 years ago and consists of a terrace of blocks of 8 flats each over 4 storeys and a separate smaller terrace of 2 blocks of 6 flats each over 3 storeys. There appear to be some 68 flats in the development. The members of the Tribunal walked around the grounds which consisted of a large car park, some grass areas with beds of shrubs and areas for rubbish bins. 2 of the common areas inside were seen where stair cases go to the upper floors. The stairs were carpeted and reasonably clean despite some engrained dirty marks but the walls were marked and in need of decoration.
13. The development is close to the centre of Tilbury which is a small town adjacent to docks. Many of the shops in the high street had metal shutters covering the doors and windows. Both the town and the development had the look of being neglected and unkempt.
14. One of the walls of Garner Court had some graffiti on it. The grass areas did not appear to the members of the Tribunal to have been mown for some time. Large parts of the grass did not need mowing anyway because the grass had been put onto what appeared to be earth over hard core or pebbles which were showing through and mostly devoid of anything that could really be described as grass. The beds of shrubs looked neglected and there were weeds.
15. The Tribunal was concerned to see many tripping hazards such as metal drains standing proud of the grassed areas and holes. At one end of the car park close to an area which was not level and had a large pool of water from rainfall the night before, there were several of what appeared to be large kerb stones just lying around. If, as is alleged, the lighting of this area is poor, all of these things would appear to be dangerous. As there are expenses in previous years' accounts for money spent on health and safety assessments, one is puzzled as to how these things are there. The drain covers appeared to have been like that for years.
16. Someone had put their washing out to dry on one of the shrubs.
17. It is also relevant to say that the Tribunal found that one of the security doors fitted in 2011 was in an insecure state. A metal plate covering the locking mechanism in the door should have had 4 screws to secure it. It had one and that was loose.

The Lease

18. The Tribunal was shown a copy of the original lease. It is dated 10th August 2004 and is for a term of 99 years from the 1st January 2004 with an increasing ground rent.
19. There are the usual covenants on the part of the landlord to maintain the common parts and structure of the property and to insure it and the Respondent

is liable to pay 1.4053% of the total estate charges. As no issue is raised in the defence about the payability of any item of service charge or administration fee, these reasons will not repeat the relevant provisions in the lease.

The Law

20. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.
21. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. A Leasehold Valuation Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.
22. Section 27A(4) of the 1985 Act states, in effect, that this Tribunal has no jurisdiction to determine a service charge which has been "*agreed or admitted by the tenant*". The mere fact of payment is not necessarily to be taken as such an agreement or admission. However, if payment is made in a situation where there is no complaint, this is clearly indicative of at least an admission.
23. Section 20C of the 1985 Act enables a Tribunal to make an order that the landlord's costs of representation before a Tribunal cannot be recovered from a tenant as part of a future service charge. This power must be exercised so as to make the decision 'just and equitable'.
24. Paragraph 1 of Schedule 11 ("the Schedule") of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") defines an administration charge as being:-

"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable...for or in connection with the grant of approvals under his lease; or applications for such approvals...or in connection with a breach (or alleged breach) of a covenant or condition in his lease."

25. Paragraph 2 of the Schedule, which applies to amounts payable after 30th September 2003, then says:-

"a variable administration charge is payable only to the extent that the amount of the charge is reasonable"

26. Paragraph 5 of the Schedule provides that an application may be made to this Tribunal for a determination as to whether an administration charge is payable which includes, by definition, a determination as to whether it is reasonable.

The Hearing

27. The hearing was attended by the Respondent and Nives Dalby from number 67 Garner Court, plus Dan Potter and Sean Moran from the managing agents. The Tribunal first asked the Respondent to address the issue of whether he had accepted or admitted the service charges claimed and paid for. It was

established that he had in fact paid for all the demands for service charges up to and including the payment on account of service charges due on the 1st January 2011 without protest.

28. He admitted in a letter to the court that the first time he had raised dissatisfaction with the Applicant was by letter dated 19th November 2009 which was at page 143 in the bundle. That letter merely made general allegations that the state of the development was going downhill and that this should be addressed. It did not suggest that service charges previously claimed were not reasonable or payable. He pointed to a number of e-mails in the bundle which showed that he continued to raise issues which is correct. However, he continued to pay some service charge demands thereafter without protest.
29. In his evidence, he said that at that stage he did not want to get into an argument with the Applicant and felt that he should use moderate language. The Tribunal accepts this. However, the fact remains that up to and including the payments he made of £746.07 on the 5th January 2011 and £10 on the 1st March 2011, there had been no specific challenge to any particular service charge, merely general allegations that the building and grounds were not being maintained properly.
30. He sought to call Ms. Dalby to confirm that things were wrong with the management for some years and to produce her photographic evidence. The Tribunal refused to allow this evidence to be called as there was no witness statement from Ms. Dalby and therefore neither the Tribunal nor the Applicant would have any idea as to what she was going to say. The Tribunal's procedural directions had made it clear that in respect of any witness evidence to be relied upon, there must be a witness statement in the hearing bundle or the Tribunal may not accept such evidence. It was also significant that Ms. Dalby was also involved in the 16 Garner Court case and seemed to be a leading personality in the right to manage process. That is not to criticise her, merely to suggest that she has an agenda which is not necessarily the same as the Respondent.
31. The Tribunal chair explained the difficulty in jurisdiction (Section 27A(4) of the 1985 Act) to those present at the hearing. He also explained to the Respondent that what he seemed to be wanting was an order for specific performance of the contract or damages for breach of such contract both of which were matters for the court and not this Tribunal. When these matters were explained, both he and Ms. Dalby accepted that were ignorant of the law in this field and had not understood these matters.
32. The remainder of the hearing was really taken up with Mr. Potter saying that he accepted that the service provided was not as good as he would want but that as tenants were not paying service charges, providing a good service without resources was impossible. He failed to grasp the basic problem that the upkeep of this estate had obviously not been fully up to standard for some years and this was probably why the tenants were not paying. The comments of the Tribunal in respect of 16 Garner Court which were designed to assist the court in any determination of a Part 20 claim by the Respondent (set out below) were put to Mr. Potter and Mr. Moran for comment. They declined to make any comment.

Conclusions

33. The Respondent makes no criticism of the amount of the service charges themselves if the services were being provided. He states that the services have been provided but not adequately. His main complaint is that the service providers have not been adequately supervised by the Applicant or its managing agent and the tenants should therefore be compensated. He appears to be one of a number of tenants who have taken a similar course and the Tribunal was told that the right to manage provisions are being implemented which will enable the tenants to take over the management themselves.
34. The Respondent has asked the Tribunal to determine that service charges going back to 2007 have been unreasonable. The Tribunal cannot look into anything other than those service charges which have been transferred to it by the court i.e. payments on account for 2011 and 2012. Even if it could go beyond that, the Tribunal finds that the earlier service charges paid by the Respondent were paid without protest and were admitted. He was simply hoping that things would improve at that time. The position has been different since the court proceedings were issued. However, the amounts claimed for service charges since March 2011 have been for amounts on account of future service charges which are simply estimates. Nothing has been said by the Respondent to suggest that these estimates are wrong. Therefore, the Tribunal concludes that all the service charges claimed i.e. £923.33 are both reasonable and payable.
35. As far as administration fees are concerned, they consist of a charge of £48 for each of the second and subsequent letters written asking for arrears to be paid (a total of 4 letters in this case), plus £96 as a fee for referring the case to solicitors and £4 as a Land Registry fee incurred to make sure that the leasehold interest was still vested in the Respondent. This 'tariff' had been notified to the tenants at some stage but this Tribunal still has jurisdiction to say whether these fees are reasonable.
36. Part of the management of any block of flats involves chasing tenants for service charges and the management fee reflects this. However, the Tribunal accepts that there comes a stage when additional letters can be charged separately to the tenants concerned provided, as in this case, that the lease permits this. No justification was given for the level of such charges as are claimed in this case. The Tribunal considers that £25 is reasonable for the additional chasing letters rather than the £48 claimed. It is certainly the case that the 2008 service charge was outstanding for at least 3 years. £96 for the work needed to collate all the necessary information in order to properly instruct solicitors is reasonable as is the Land Registry fee. Thus the amount reasonably incurred by way of administration fees is £200.

Costs

37. As the Applicant's representatives attending the hearing were administrative staff from the managing agents and as they did not comply with the Tribunal's directions on time, the Tribunal considers that it is just and equitable to make an order preventing the Applicant from recovering its costs of representation before this Tribunal from the Respondent.
38. Having said that, the real issues are within the court proceedings i.e. should

there be an order for specific performance or the payment of damages. Upon determination of those issues, the court may take a different view as to any costs payable within the court proceedings themselves.

39. The following section of this decision is the information supplied to the court in the case concerning 16 Garner Court. It has been cut and pasted from that decision because the court in that case was different from the court in this case. The page number for the accounts in the bundle provided for this case is 90 rather than the 170 referred to below. However, it is the same set of accounts.

For the Court's assistance

40. Once this case is back with the court, the Applicant may well try to re-instate the case and request that there is a hearing before a District Judge. In order to assist the court, the Tribunal did question the Applicant's representative on the entries in the last service charge accounts at page 170 in the bundle, so that it could try to make some assessment as to whether the service charges set out are reasonable or not. This is the statement of service charge expenditure for the year ending 31st December 2011. Following the inspection of the site and the questioning of those at the hearing, the Tribunal's conclusions are as follows.
41. The Tribunal decided that the entries under the headings **Management and administration** and **Contribution to reserves** were reasonable and payable. As to the items under the other heading **Maintenance costs**, the Tribunal's conclusions under the various subheadings are as follows. Unfortunately, Ms. Day was not managing the site for most of the period in question and there was therefore little 'evidence' from the Applicant on the points:-

Communal cleaning – the claim is for £5,304 which, if the job was done properly, would be a reasonable figure. There are allegations that it was not done properly and one such instance was actually witnessed by Ms. Day and referred to in her evidence as set out above. A substantial discount would appear to be appropriate.

Window cleaning – the claim is for £1,040. Again, if the job were done properly, this would be a reasonable figure. There are complaints that it is not done properly with Mr. Adekunle saying that the windows had only been cleaned once in the last year i.e. in March 2012. Once again, a discount would appear to be appropriate.

Gardening – the claim is for £3,900 or about £75 per week which is excessive. One issue raised by Ms. Day was that many people allowed dogs to defecate on the grass and this has to be cleared up. The Tribunal estimated that ½ a day a week would be enough to clear this up, mow the grass and keep the shrubs maintained from April to October with less in the winter months. The Tribunal's view is that this could be done within a budget of £1,500 per annum.

Communal electricity – this claim is for £3,446 which is substantially less than in some previous years. The lessees do not dispute this figure as such but say that it should be less for the reasons stated in the defence. The internal lights are on 24 hours a day whereas they could be on timed/sensor switches which would save money. Ms. Dalby told the Tribunal that the necessary equipment is

fitted but it just needs setting up and activating properly. However, the problem is that the lessees want better lighting in the car park. The Tribunal agree that timed/sensor switches do save money. Last year, if that had happened, the communal electricity could have been as low as £2,000. However, with better lighting in the car park, a true and reasonable cost would be £3,000 per annum.

Day to day maintenance – this is the item which really puzzled the Tribunal. It is a claim for £15,108 i.e. about £290 per week following a budget of £6,000. When asked what this was for, Ms. Day said that it was for replacing light bulbs, sorting out trip hazards and reacting to calls from residents. With all the other claims and, in particular, a management fee, the Tribunal simply could not see any justification for any figure under this heading at all.

Pest control – the claim is for £1,512. The Tribunal did notice some traps at the site but this figure seemed to them to be very high. No-one at the hearing suggested that there was a particular infestation which needs a great deal of attention. A fair and reasonable figure for this work would be 4 visits to the site per year at £60 i.e. a gross figure of £240.

Refuse removal – the claim for £1,866 for the emptying of all the bins seemed to be reasonable.

Out of hours fees – this is a claim for £330 and no-one was able to say what it was for. Assessed at nil.

Door entry system – the claim is for £543 which would be reasonable for a maintenance contract. However, there is a dispute about whether the system installed in 2011 is the correct one which is, of course, a different issue.

TV and satellite maintenance – a claim for £366 which would appear to be reasonable

Emergency services – again, there seemed to be no justification for this claim which is assessed at nil.

Buildings insurance – the claim is for £16,082 or just over £235 per flat. This seemed to the Tribunal to be a very high figure. In dealing with insurance, a Tribunal would normally want to see the claims record, alternative quotes and details of any commission paid to intervening agents. This Tribunal had none of this information and is therefore reluctant to interfere.

42. It is hoped that both the court and the parties will be assisted by having this information and assessment.

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Bruce Edgington
Chair
12th November 2012