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HM Courts
& Tribunals
Service



Residential
Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL (eastern)
LANDLORD AND TENANT ACT 1985 Sections 27A and 20C ("the Act")

CAM/26UJ/LSC/2011/0141

Property: 5 Rose Garden Mews, Troutstream Way Loudwater,
Hertfordshire WD3 4LA

Applicant: Mr S M Langley

Respondent: Loudwater (Troutstream) Estate Limited

Attendances: Mr Langley, accompanied by his wife
Mr J B Watkiss and Ms J Berry from Rumball Sedgwick

Date of Hearing 16th February 2012

Tribunal Members: Mr A A Dutton chair
Miss M Krisko BSc (Est Man) FRICS
Mrs N Bhatti

Date of decision: 28th February 2012

DECISION

The tribunal determines that the service charges payable by Mr Langley are as set out on the attached schedule. The tribunal orders that the provisions of section 20C shall apply in relation to the Respondents costs and declines to make any orders under the Commonhold and Leasehold Reform Act 2002 schedule 12 paragraph 10 or to award the costs of the application or the hearing to Mr Langley.

REASONS

Background

1. This matter came before us on 16th February 2012 as the result of an application made by Mr Langley, the owner of 5 Rose Gardens Mews, Loudwater, Hertfordshire WD3 4LA (the flat). The application, which was dated 20th October 2010, sought a termination from us in respect of the service charge years 2010/2011 and 2011/2012. In respect of the earlier year Mr Langley challenged the fees claimed for the managing agent, costs in respect of repairs and maintenance and gardening and professional fees. For the budget year 2011/2012 he thought that the gardening, audit fees and management fees were excessive.
2. Directions were issued by the tribunal on the 8th November 2011 and those had been complied with. In a bundle of documents running to some 312 pages we had the following:
 - (1) A statement of reply by the respondents to the application.
 - (2) Copies of the leases for 4, 5 and 7 at Rose Gardens Mews.
 - (3) A copy of the service charge account for the year ended 31st March 2011 with correspondence and demands relating thereto.
 - (4) Copies of various invoices to support the sums claimed by the respondent.
 - (5) Further correspondence passing between Lawton Prior and Mecklenburgh, Rumble Sedgwick the new managing agents and Mr Langley.
 - (6) A copy of a further statement of reply made by the Respondents.
 - (7) A statement made by Jemma Berry of Rumble Sedgwick, who is now looking after the development.
 - (8) Some miscellaneous documentation which included some job sheets, further correspondence and copies of the registered title.

Inspection

3. Prior to the hearing we inspected the development in which the flat is to be found. The development is on the Loudwater Estate near to Rickmansworth, a private development of some 170 plus houses under the management of the Respondents. In the heart of the development is the area called Rose Gardens Mews which appears to be a converted eighteenth century house which has been extended to the north side, which has created part of the flat occupied by Mr and Mrs Langley and to the west which has created an additional building known as flat 7. Within Rose Garden Mews there are seven properties. However, No 3 Rose Gardens Mews is not included within the service charge regime for the remaining six properties and No 7 is also to an

extent excluded as it is a stand alone accommodation. At the time of our inspection we noted that the northern boundary wall appeared to be in a poor state of repair perhaps caused by tree roots. The storm drain to the front of Mr Langley's property appeared to be fractured and the paviers which are the subject of some works were somewhat uneven. The decorations to the northern elevation seemed to be in reasonable order. The same could not be said of the southern elevation where save for the UPVC windows which had been installed in flat No 1, the remaining window frames were in need of decorative repair. The south side of the property has quite substantial car parking but there is limited garden land made up mainly of small beds, bushes and trees.

Hearing

4. At the Hearing Mr Langley represented himself and the Respondents were represented by Mr Watkiss, a retired solicitor and Miss Berry. Some residents had also come to the hearing as observers.
5. Prior to the Hearing we had the opportunity of reading the bundle of papers and it is not necessary for us to recount in detail that which is contained therein.
6. One matter we clarified at the commencement of the Hearing was the percentage proportions for each flats contribution to the service charge costs. There had been some confusion but it was agreed that the percentages set out in the supplemental reply by the Respondents prepared by Mr Watkiss and dated 19th January 2012, correctly stated the position. In truth the misunderstandings with regards to the percentages had no direct impact on Mr Langley. It appears to be common ground that whilst the managing agents had misunderstood some of the percentage arrangements, they had not done so as far as Mr Langley was concerned and he paid a 20% contribution both in respect of matters relating to the maintenance of the building and to the common parts which is also known as the courtyard. Mr Langley, however, took the misunderstanding by the managing agents as evidence of their inefficiencies which should be translated into the level of management fees that they could recover.
7. Mr Langley in his submissions to us told us that he thought the property had been converted in 2003 and that there had been no external decorations since that time. He had raised his concerns with the Respondents. It appears to be accepted by the Respondents that decoration work is required and that the Respondent has the liability for undertaking those works and to recover the costs from the lessees. The first matter that Mr Langley sought specifically to challenge related to the schedule of works prepared by Aston Associates at the behest of Lawton Prior and Mecklenburgh (LP&M). This schedule formed the basis for a notice under section 20 of the Act although, for various reasons, the matter was not progressed at that time. Mr Langley's view was that the schedule was worthless as it was not sufficient for the purposes of obtaining tenders for notices to be given under section 20 of the Act. It was nothing more than a schedule of dilapidations which did not assist with regard to the works required to the subject premises.

8. Mr Langley then challenged three invoices with which he took particular exception. The first was an invoice from Colin Pearcy relating to the cleaning of the paviers to the front of his and his neighbour's property at a charge of £350.15 plus VAT. He thought the charge was too high and it was not clear when the two visits had been made. He challenged also an invoice for £70.50 from a G Crawley which states to be in respect of checking external lighting and replacing a low energy lamp and finally he challenged an invoice from French Polish Ltd in the sum of £192 which related to some works to external lights which he thought had been unnecessary as the lights had been renewed the year before and could not therefore understand why there should be these addition charges.
9. For the year 2010/2011 he also challenged the gardening fees. He had asked to see a specification for the works undertaken by the gardener who it appears had been retained by the lessees. He thought that they number of visits were excessive. According to the documentation before us based on notes prepared by a Mr Silva he visited the property some 46 times a year at a charge of £25 each time. Apparently the replacement gardener now visits the property fortnightly for eight months and then once a month for the remaining four months of the year at a price of £30 per visits which Mr Langley thought was a reasonable price. In truth he did not challenge to any degree the £25 per visit being charged by the previous gardener. It was the frequency of the visits which caused concerns.
10. The final challenge to this earlier year which continued into the year 2011/2012 was the question of the managing agent's fees. He thought that the charges by LP&M were unreasonable based as they were upon a percentage of the costs incurred. His view was that they should have been dealt with on a unit cost basis as was now being charged by Rumble Sedgwick. The thought that LP&M were not in truth managing the property but merely paying the bills. The management appeared to have been left to the lessees to deal with as. For example, the gardening. Insofar as Rumble Sedgwick's costs are concerned he argued that the contract appeared to be for more than 12 months and that therefore any costs that could be recovered in respect thereof was limited as a result of the failure to serve consultation notices under section 20 of the Act.
11. As the budget year for 2011/2012 he thought that the managing agent's and auditor's fees were on the high side and whilst he accepted the visiting ratios of 16 fortnightly visits and four monthly visits at £30 per visit this would give a budgeted figure of £600 and not the sum of £800 as claimed. Insofar as the auditor's fees were concerned we had in the file correspondence from Myers Clark indicating that they would be willing to undertake the works at the price of £350 plus VAT and not therefore the figure of £600 as shown in the budgeted accounts. Finally on the question of managing agent's fees whilst not resiling from his argument that the fees that could be recovered were limited as a result of the failure to consult under the Act, he was of the view that the management fees should be approximately £150 plus VAT per unit if they were not limited to the sum of £100. In support of this contention he relied upon some comparable figures that he has obtained from Colin Cohen Property Management in respect of a property at Randall Court, London NW7. The fees charged equated to a

sum of £150 per unit. He had also obtained a further quotation from Link Property Services who would charge the sum of £1,200 inclusive of VAT.

12. We then heard from Miss Berry on behalf of the Respondents with comments made by Mr Watkiss. She had prepared a statement, which was in the bundle and which we had read. She thought that the schedule of works prepared by Aston Associates were of no use. A new schedule was apparently in place which had been agreed with Mr Langley and a surveyor from Rumble Sedgwick and it was hoped that works would proceed in 2012 at an anticipated cost, excluding VAT and fees, of £16,500. The section 20 procedures would have to be restarted but she did not think that the Respondent was in breach of the lease in so far as decorating was concerned as there are was no specific timeframe.
13. She commented upon the percentages which we had referred to at the beginning of the Hearing section of these reasons. She told us that Rumble Sedgwick had relied upon the information passed to them by LP&M which was incorrect. She thought it was a failure on the part of Rumble Sedgwick not to have read the leases more carefully although as she pointed out this had no impact on Mr Langley as his charge of 20% had never been in doubt. At this point Mr Watkiss confirmed that he had been a director of the Respondent company until 2008, but had then retired from the board. He was not a director but had become involved in the running of the company again due to unfortunate illnesses to a number of directors and persons involved in its day to day management.
14. Mr Watkiss told us that he had discussed the gardening arrangements with the present gardener and there was an exchange between the parties concerning an area known as the "weed patch" which was in truth the access drive to a wooden garage lying the east of the development. Mr Langley wished to have the moss covering removed and it was agreed that that could be done. Miss Berry confirmed that the managing agent's views were that the 16 fortnightly visits and the four monthly visits were adequate for the purposes of maintaining the garden area.
15. On the question of managing agent's fees she told us that this determined by such things as the type of property, the lease and the anticipated amount of work required. It was the view of Rumble Sedgwick, agreed by the Respondents that the charge of £250 per unit for the works that she would undertake as set out in her witness statement was reasonable. Insofar as the management contract was concerned it was argued that this did not breach section 20 of the Act for the simple expedient that it contained a three month notice period which could be invoked at any time. It was only if the notice was given within the first 12 months of the contract that a penalty was payable but otherwise it could be brought to an end by giving notice. She told us that the new contract to be entered into which would be from April of this year would be on a 12 monthly basis. As to the evidence of comparable managing agents fees put forward by Mr Langley she thought that they were not helpful. No information was given as to the development in London and the proposal from Link was by a company which is not, she thought, a member of the RICS or ARMA.

16. Criticism had been levelled at the small reserve fund payment which was being claimed. Miss Berry accepted that it was good practice to set up a reserve fund and it was her intention to meet with the lessees to discuss how they could move forward with regard to funding of the proposed decorative works.
17. At the conclusion of the hearing Mr Watkiss sought to recover the costs of the proceedings as a service charge telling us that solicitors' fees in the region of £6,000 had been incurred and there would also be fees for the attendance of Rumble Sedgwick. He thought he was also out of pocket with expenses of between £200 and £300. He also thought that there had been unreasonableness on the part of Mr Langley and that therefore the provisions of the Commonhold and Leasehold Reform Act 2002 would apply and that we could order costs.
18. Mr Langley sought a refund of the application and hearing fees. He told us that the proceedings had now established the correct service charge contributions and had been borne out of frustration at the lack of response from the Respondent Company. He told us that he had gone to a tremendous amount of work to bring the case and that he thought he should be able to recover costs under the 2002 Act on the grounds of the respondent's failure to deal with matters. He thought he had incurred specific costs in the region of £150.

The Law

Please see attached rider.

Findings

19. We will firstly deal with specific invoices which were challenged by Mr Langley. We start firstly with the invoice from Colin Percy in the sum of £350.15. The narrative of the invoice states as follows "*scrub brick slip paviors with patio cleaner to remove algae and wash clean, two separate visits £298 plus VAT of £52.15.*" We contrasted this expense to an unchallenged charge by French Polish Ltd in respect of the jet pressure washing of approximately 10m² of estate communal pathway in January 2011 where a charge inclusive of VAT of £106.80 was levied. We had the opportunity to inspect the area of paviors which is not substantial and we do think the charge of £298 plus VAT is high. Comparing these costs to the charges made by French Polishing Ltd, which we accept may have been to flagstones rather than the more complicated paviors, nonetheless the sum claimed was high and we therefore allow the amount of £180 plus VAT at 17½% which gives the figure of £211.15. The other two invoices which were challenged related to external lighting. Mr Langley challenged the invoice from G Crawley on the basis that it appears to relate only to the replacement of the low energy lamp and that having a contractor from Caddington to visit seemed unreasonable. In fact the invoice related to checking of external lighting and the worksheet from Rumble Sedgwick which was dated 2nd December 2010 states: "*can you please attend to replacing bulbs on the outside light on the south courtyard entrance and check all other external lighting is working.*" The figure of £60 plus VAT seems reasonable and we allow it. The other disputed invoice related to the cost of £192 from French Polish Ltd dated 7th March 2011. Although we accept this is fairly soon after works had been carried out to the lights, we would not accept that the invoice

was fictitious and indeed it is not alleged to be and in those circumstances the costs for the works seem to us to be reasonable and are allowed.

20. Insofar as the gardening is concerned we agree with Mr Langley the present rate of attendance at 16 fortnightly visits and four monthly visits seems reasonable. Taking the rates charged by the gardener at that time of £25 per visit we find that the sum of £500 is reasonable for gardening for the year ending 2011. Insofar as the professional fees charged we see that there was a claim on behalf of Ashtons in the sum of £705 and the sum of £343.69 to Sedgwick Kelly in respect of legal advice given relating to the terms of the lease. It had been suggested that LP&M had sought this advice as they were uncertain as to the entitlement of the landlord to undertake the decorative works. It seems to us that it is pretty clear from the lease that such works were allowed. Furthermore the person who prepared the lease (Mr Watkiss) was we think readily available for discussions and the position could have been established without the need to incur solicitors fees. Miss Berry has herself accepted that the schedule prepared by Ashtons was of no use. Accordingly we disallow in total the professional fees for this year in the sum of £1,049.
21. Finally we turn to the question of the managing agent's fees. Certainly it is now unusual for managing agent's fees to be on the basis of a percentage of the costs incurred. That is not something that the RICS supports and one would normally expect to see charges on a unit basis. However, we will for the purposes of this year allow that 10% charge to stand. However, it has to be recalculated based on the deductions we have made. LP&M managed the property for six months and accordingly as the total of the expenses was £4,092.35, their management fee for the year, inclusive of VAT, would have been £480.84 divided in half gives the figure of £240.42. Insofar as Rumble Sedgwick is concerned we were not terribly happy with the standard of management in the early part of their involvement. Incorrect information was given with regard to the percentages and all in all the matter could have been dealt with better. We think that a figure of £100 per year per unit would be reasonable. However, again this is only for a six month period and we therefore calculate that inclusive of VAT the sum for the involvement by Rumble Sedgwick would be £352.50 giving a total management fee for the year ending in 2011 of £592.92.
22. We turn then to the estimate for the year ending 2012. We find that the contract with the managing agents does not breach section 20. It is capable of determination upon three months' notice and in those circumstances therefore we do not accept that it is a contract for more than 12 months. The landlord has agreed to pay Rumble Sedgwick the sum of £250 plus VAT. They are a firm of reputable local agents and we are satisfied that that is a reasonable sum to allow as a budget figure.
23. As so far as gardening is concerned it appears to be common ground that 20 visits are required and at £30 per visit that gives the figure of £600 for the budgeted figure which we would allow instead of the £800. Insofar as the audit fee is concerned we have seen correspondence from Myers Clark indicating a figure of £350 plus VAT and it seems to us that is the figure that should appear in the budget documents. We have prepared a schedule at the end of these

reasons setting out what we consider to be the financial situation for the two years. We suspect that if Mr Langley has paid, as we understand is the case, for 2010/2011 then there will be a credit to be given to him which should be offset against the contribution that he is required to make under the terms of his lease in respect of the budgeted figure. We were told that Mr Langley had not paid the contribution in September. We will leave the parties to agree the sums that are outstanding as a result of our findings.

24. We should address the question of the costs. We find that the Respondents do have liability for the issues that arose particularly in the year 2010/2011 and in those circumstances therefore find that it would be inappropriate for them to be able to recover the costs of these proceedings as a service charge. Accordingly we make an order under section 20C of the Act that the costs of the proceedings are not to be regarded as a relevant cost to be taken into account in determining the amount of any service charge payable by the tenant considering it as we do to be just an equitable in the circumstances.
25. We do not accept that either party has acted in such a way as to invoke the costs provisions contained in schedule 12 paragraph 10 to the Commonhold and Leasehold Reform Act 2002. In our finding neither party has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably and in those circumstances no order is made.
26. Insofar as the application and hearing fee is concerned we have some sympathy with Mr Langley in making the applications that he did but he had only limited success in respect of the budgeted year and the errors concerning the percentage contributions did not in truth affect him. In refusing the Respondents their rights to recover any costs of these proceedings as a service charge it seems equitable to disallow any application by Mr Langley for reimbursement of the fees that he paid.
27. We do hope that the parties can now move forward. It seems that Mr Langley has been included in the works schedule in respect of the development and that Miss Berry will be taking a more proactive approach than perhaps was the case with her predecessors.

Andrew Dutton – chair

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28th February 2012

**Schedule of service charges in respect of Rose Garden Mews,
Troutstream Way, Loudwater, Herts WD3 4LA**

Case number CAM/26UJ/LSC/2011/0141

<u>Expenditure 2011</u>	£ claimed	£ allowed
Managing agents fees	1215*	592.92
Insurance	2106	2106
Repairs and maintenance	1379	1240.35
Gardening	1275	500
Professional fees	1049	0.0
Accountancy	188	188
Bank charges	<u>58</u>	<u>58</u>
	£7270.00	£4685.27

Mr Langley's liability is 20% of £4685.57 being £937.11

***managing agents fees**

6 months of LP&M at 10% of £4092.35 = £240.42

6 months of Rumball Sedwick at £100 per unit

For the year = £352.50 (both inclusive of VAT)

**For the budget year to March 2012, which appears to exclude insurance,
the figure is reduced to £5760 from £6,290 giving a liability to Mr Langley
of £1152**

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (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.

Section 19

- (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 provisions 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

- (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.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the Tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration 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 or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
 - (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
 - (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.