

8335

HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of an Application under Section 27A and 20C of the Landlord & Tenant Act 1985 (as amended) for a determination of liability to pay service charges.

Case No: CHI/23UB/LIS/2012/0034

Property: 5 Berkeley Place, High Street, Cheltenham, Gloucestershire, GL52 6DB

Between:

Ms Sarah Clark, Ms R Lenton, Ms A Powell,
Mr S Kelly and Mr M Brunger ("the Applicants")

and

Mr Brian Williams ("the Respondent")

Members of the Tribunal: Mr I R Perry FRICS, Valuer Chairman
Mr A D McC Gregg, Lawyer
Mr J S McAllister FRICS, Valuer

Date of the Decision: 21st June 2012

Date of Inspection: 14th June 2012

Date of Hearing: 14th June 2012

Decision of the Leasehold Valuation Tribunal

The Tribunal determines that:

1. the "all inclusive service charge" for the period 1st July 2008 to the 30th June 2009 in the sum of £195 for the period 1st July 2009 to the 30th June 2010 in the sum of £150 and for the period 1st July 2010 to 30th June 2011 in the sum of £170 levied by the Respondent Mr B Williams in respect of the 5 flats at number 5 Berkeley Place, High Street, Cheltenham, Gloucestershire, GL52 6DB is not payable.
2. Further, the Tribunal makes an order pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended) that all costs incurred by Mr Brian Williams in connection with this application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

Reasons

The Application

1. On 24th February 2012 Ms S Clark applied to the Tribunal under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") to determine her liability to pay the service charges levied by Mr B Williams (The Respondent) in respect of her flat situated on the top floor of number 5 Berkeley Place, Cheltenham for the years ended 30th June 2009, 30th June 2010 and 30th June 2011. Ms Clark also applied for an order under Section 20C of the Act that any costs incurred by the Respondent in connection with the application should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by her.
2. Ms Rachel Lenton, Ms Anita Powell, Mr Sean Kelly and Mr Michael Brunger, the lessees of the other flats in the block, were all joined to the application by the Tribunal.
3. The Tribunal made directions on the 8th March 2012 providing for the parties to exchange written statements of case.
4. The Applicants full statement of case should include service charge demands for the years in question together with any accompanying documentation, service charge accounts and statements of account, any Section 20 (consultation) notices and any relevant correspondence.

5. The Respondent was directed to explain what the various service charges are in respect of, how they are calculated and what provisions the Applicant's lease authorizes them to be charged.

The Law

6. The statutory provisions primarily relevant to applications of this nature are to be found in sections 18, 19 and 27A of the Act.
7. Section 18 provides:
 - 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.*
8. Section 19(1) provides:-
 - a. *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period:-*
 - i. *only to the extent that they are reasonably incurred, and*
 - ii. *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.*
9. Section 27A provides:-
 - 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.*

Subsections 2 to 7 of section 27A are not relevant in this application.

10. Section 20C provides:-

- a. *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 ...leasehold valuation tribunal, ... 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.*
- b. ...
- c. *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.*

The Lease

11. Ms Clark holds the Property under the terms of a lease dated 24 September 2004 originally in the names of N D Kelland Esq and Miss R R Winch. The lease is for a term of 999 years from the 18 March 1999 at an annual rent of £50.

Service cost is defined in the lease as “means the expenditure incurred by the landlord in any Accounting Period in carrying out or procuring the carrying out of the service provision and any sums provided for periodic or anticipated expenditure as determined by the landlord from time to time and all other general costs incurred by the landlord in connection with the Estate including (without prejudice to the generality of the foregoing) the costs of employing any accountant, surveyor, agent, solicitor or other person in order to determine and certify the Service Cost and Service Charge and a charge in respect of the cost to the landlord of managing the Estate”.

12. By clause 5.3.2 “the fees and expenses of such managing agents and others and the cost to the landlord of the Service Provision and Managing the Estate shall form part of the Service Cost”.

13. By clause 5.3 of the lease, Mr Williams covenanted to use his reasonable endeavours to procure the carrying out of the Service Provision. The Service Provision is defined in the fifth schedule of the lease.

The Service Provision at sub paragraph 18 includes “the cost of making representations against or otherwise contesting any notice, request, direction, order, certificate or assessment served or issued by a statutory or other competent authority for which no tenant is directly liable or a proposal of a statutory or other competent authority that relates to or that would materially affect the estate (or any part of it)”.

Schedule 6 paragraph 8 of the lease required that "The landlord as soon as may be practicable after the end of each Accounting Period shall submit to the Tenant a statement duly certified (if so requested) by the landlord's accountant or surveyor giving a proper summary of the Service Charge for the accounting period just ended".

Inspection

14. The Tribunal carried out an inspection of the Property on the 14th June 2012 at 10.00am prior to the hearing, in the presence of Mr S Kelly the tenant of the first floor flat within the property. The Respondent did not attend.
15. 5 Berkeley Place comprises an inner terrace 5 storey building which appears to date from the Regency or early Victorian period and has been divided to provide 5 flats. Access is gained to the property by a front door which is controlled by a security system. The door leads into a communal hallway with stairs leading to the upper floors. The front doors of the ground floor, first floor and second floor flat each open onto the hallway or landing and each of these flats has its own bathroom accessed from a mezzanine landing.
16. The third floor flat is also reached from the communal hallway and has internal access to its own bathroom. The basement flat is accessed via steps down from the street at the front of the property.
17. The Tribunal was informed that the property is a listed building grade II. The main elevations are rendered. The roof could not be seen from ground level. There is a small unkempt garden to the rear of the property which we are informed is shared between all 5 flats. The internal communal areas appeared well maintained, clean and tidy.
18. The hallway, stairs and landings appear to be generally well maintained with fitted carpets and there is a modern fire alarm system evident within the ground floor hall.
19. The property is situated at the east end of Cheltenham main High Street and overlooks a municipally owned garden to the front.

The Hearing and the Issues

20. The hearing took place at Cheltenham Magistrates Court on 14 June 2012. Mr Charles Newington-Bridges appeared as Counsel for the Applicants. Miss Clark and Mr Kelly were also present. The Respondent did not attend nor was he represented at the hearing.

21. In their application and subsequent correspondence to the Tribunal, the Applicants had accepted that the ground rent, insurance premium and charges for electricity used in the common parts were all payable.
22. The issue which was to be determined by the Tribunal was:
 - a. The element referred to as "the all inclusive service charge" for the years ending 30th June 2009, 30th June 2010 and 30th June 2011.

The Evidence

23. The Tribunal had received written documents from both parties including written statement of case from the Applicant's solicitor and a witness statement from Mr S Kelly.
24. Mr Newington-Bridges presented a case on behalf of the Applicants.
25. He referred the Tribunal to Schedule 6 paragraph 7 of the lease which states that "the landlord as soon as may be practicable after the end of each accounting period shall submit to the tenant a statement duly certified (if so requested) by the landlord's accountant or surveyor giving a proper summary of the service charge accounting period just ended".
26. He contended on behalf of the Applicants that despite repeated requests no summary has ever been produced by the Respondent. Mr Newington-Bridges provided the Tribunal with a list of work carried out by the owners. This had not been circulated prior to the hearing and no copy had been given to Mr Williams.
27. Mr Newington-Bridges further contended that no works had been carried out to the property by the landlord for some years and that the tenants of the 5 flats had organised the regular maintenance and upkeep of the property. He contended that it was telling that Mr Williams had sent no receipts or invoices for works done to the property.
28. Mr Newington-Bridges referring to the Law contended that the covenant contained with Schedule 6 had been breached and therefore the Tribunal would be justified in saying that the service charge was not payable.
29. Mr Newington-Bridges referred the Tribunal to Section 19 (l) of the Landlord and Tenant Act 1985 which stated that relevant costs shall be taken into account when 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 a provision of services or the carrying out of works, only if the services of the works are of a reasonable standard; and the amount payable shall be limited accordingly.

30. Ms Clark and Mr Kelly provided evidence that they had more recently, together with the other Applicants, effectively managed the property for some years. These works included the refurbishment of the hallway, replacement of the security system, fitting of a keypad for security, decoration and regular cleaning of the common parts.
31. In particular they contended that they had taken over arranging and paying for all the insurance of the property in 2010. Ms Clark also contended that they had taken over responsibility for the electricity for the communal area having received letters from the electricity provider to say that the supply was to be disconnected unless payment was received. Ms Clark contended that the Respondent would not reply to correspondence. She specifically referred the Tribunal to a letter she had sent to the Respondent on 12 August 2008 asking for clarification of the service charge and a further letter she had sent on the 26 November 2009. She stated that the Respondent had not replied to this correspondence.
32. Mr Kelly gave evidence that the Applicants had had the locks to the property changed. Accordingly Mr Williams no longer has keys to the property but he has not requested any access.
33. Mr Newington-Bridges referred to section 20ZA of the Landlord and Tenant Act 1985 and said that no application had been made.
34. Mr Newington-Bridges then referred to the application under Section 20C of the Act. He referred to Schedule 5 Clause 18 of the lease and contended that the Respondent had made no meaningful representation to the Tribunal in respect of the matter in hand. He contended that the landlord had submitted a handful of documents, with no supporting evidence, which did not amount to representation so that no costs should be regarded as relevant costs to be taken into account when calculating the amount of any service charge.
35. The Tribunal also considered the Applicants' statement of case, which stated that:

The Respondent has not carried out any services nor incurred any expenditure which would justify this charge; and/or the Respondent has failed to provide a statement giving a proper summary of the service charge as required by each of the leases of the 5 flats in the building; and/or the Respondent has not complied with the terms of Section 19 of the Landlord and Tenant Act 1985; and/or in the event that the fixed annual demands are deemed to be a qualifying long term agreement pursuant to Section 20 of the Landlord and Tenant Act 1985, the Respondent has not complied with the consultation requirements set out in that Act.

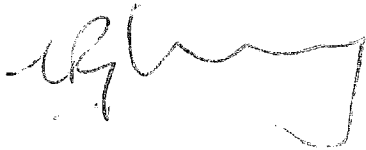
36. Mr Newington-Bridges also contended that the charges in dispute were not qualifying long term agreements.
37. The Tribunal considered the documents submitted by Mr Williams which included a signed but undated statement of facts and referring to a breakdown of the charges 'explained' to the Applicant's solicitors on the 30 December 2011. This referred to an annual charge of £170, presumably for the year ending 30th June 2011, which he stated averaged at £14.16 per month. There was no further reference to the charges for the years ending June 2009 or June 2010.
38. This letter referred to "maintenance, internal and external, management, administration, phone calls, fuel, transport, etc etc" but gave no detailed breakdown or justification nor provided any evidence as to these costs.

Conclusions

39. The Tribunal decided that the additional documents submitted by Mr Newington-Bridges detailing what works had been carried out by which individual Applicant should not be accepted as it had not been provided to the Respondent in advance of the hearing and the Respondent was not represented at the hearing.
40. The Tribunal further decided that whilst Mr Williams was not present or represented it should proceed to a decision based on the evidence provided.
41. In relation to the service charge for the periods ending 30th June 2009, 30th June 2010 and the 30th June 2011 the Applicants accepted charges for buildings insurance, ground rent, and electricity for common parts.
42. The Tribunal decided that the annual demands were not part of any qualifying long term agreement nor had they heard any evidence that the Respondent had complied with the consultation agreements under the relevant Act.
43. The Tribunal decided that there was no evidence as to whether any costs had been incurred by the Respondent nor whether any works had been done to the property.
44. The Tribunal further decided that, despite requests from the Tenants, no summary of actual costs had been provided by the Respondent and therefore the charges should not be regarded as reasonably incurred as required by Section 19 (I) of the Act.
45. The Tribunal concluded that the Respondent had not complied with the Landlord and Tenant Act 1985, nor with the requirements contained within the lease, nor with the directions issued by the Tribunal on 8th

March 2012, with particular regard to the second direction "this shall explain what the various charges are in respect of, how they are calculated and what provisions of the Applicant's lease authorizes them to be charged".

46. Accordingly the Tribunal determines that the "all inclusive service charge" for the years in question is not payable.
47. The Tribunal also considered the application made under Section 20C and decided that the documents provided by the Respondent did not constitute a submission to justify the reclaiming of any costs in relation to the application and they would not allow any of the costs of the application to be regarded as relevant costs to be taken into account when determining the amount of any service charge.



Mr I R Perry FRICS
Chairman
Dated 21 June 2012