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HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

Property : 71, 73, 77 and 79, Branwell Avenue, Birstall, Batley

Applicants : (1) CRAIG L INGHAM (flat 71)
(2) MICHAEL J PATCHETT (flat 73)
(3) ADAM J THOMPSON (flat 77)
(4) SIMON DALTON (flat 79)

Respondent : PLACES FOR PEOPLE HOMES

Case number : MAN00CZ/LSC/2012/0009

Date of Application : 6 January 2012

Type of Application : Landlord and Tenant Act 1985, section 27A
Application to determine service charges

The Tribunal : A M Davies LLB (chair)
E Scull MRICS
H Aziz LLB

Date of decision : 25 April 2012

ORDER

- 1) The service charges payable by each of the Applicants in respect of management charges shall be reduced as follows:

For each of the years ending 31 March 2010 and 31 March 2012, to the sum of £160.

For the year ending 31 March 2013, to the sum of £175.

- 2) Pursuant to section 20C of the Landlord and Tenant Act 1985 and by consent the Respondent's costs of this application are not to be included in any service charge payable by the Applicant.

REASONS

The Lease

1. The Applicants raised issues relating to maintenance costs at Branwell Avenue for discussion with the Respondent at various meetings, the most recent of which was held on 4 January 2012. Subsequently, they applied to this Tribunal for a determination under section 27A of the Landlord and Tenant Act 1985 as to the services charges properly payable to the Respondent under the terms of their leases. The Tribunal has seen a copy of the lease of 79 Branwell Avenue dated 7 May 1993, and understands that there are no material differences between this and the leases held by the other Applicants.
2. Clause 7 of the lease provides that the leaseholder is to pay service charges monthly in advance as his contribution to the cost of services provided by the Respondent in each year ending 31 March ("the account year"). The costs to which each leaseholder contributes are (1) those costs which are estimated by the Respondent as likely to be incurred in meeting its obligations under the lease in the current account year, and (2) a reserve fund to meet major expenditure which the Landlord estimates it will incur at any time after the account year end. At the end of the year a balancing account is prepared with a surplus or deficit carried forward. The Landlord's costs are described as "*all expenditure reasonably incurred by the Landlord in connection with the repair management maintenance and provision of services for the Estate*", which expenditure is specified in more detail at clause 7(5) of the lease.
3. Clause 5 of the lease contains the Respondent's obligations, which include liability "*to maintain repair redecorate and renew*" the common parts of the Estate.

The Property

4. The Tribunal visited the flats at Branwell Avenue on the morning of the hearing and inspected the common parts in the presence of representatives of both parties. "The Estate" referred to in the lease consists of a building and gardens. The building was erected about 20 years ago and contains 2 separate entrances and staircases, off which are a total of 15 flats. The common parts of the Estate consist of front and back doors to the building with secure entry system; carpeted corridors and staircases; the exterior and structure of the building including all windows and frames, and the entrance doors and frames to each of the flats; enclosed gardens comprising refuse bin areas, lawns and shrub borders with some feature planting at the gate; and an external laundry drying area.

5. The Tribunal noted that the windows on the landings were warped to the point where they could not effectively be closed. Both exterior and interior of the building require redecoration. The carpet on the stairs and corridors was heavy duty, and in reasonable condition.

The Applicant's complaints

6. The Applicants complained that the cost of gardening services was too high, the standard of gardening and cleaning was inadequate, the charge for call-outs was prohibitively high and discouraged the reporting of faults, repairs were not carried out, increases in the service charges were not justified, and payments were wrongly being demanded following accounting errors by the Respondent and failure to meet repair expenditure from the maintenance reserve. Each of these issues was fully canvassed both in the parties' written representations and at the hearing. The Respondent was represented before the Tribunal by Mrs Chambers and Mr McKay, and the Applicants were represented by Mr Dalton and Mr Ingham.

Gardening services

7. The garden consists of grassed areas with shrub borders. The grass is not of lawn standard, and is not neatly edged. The shrubs are pruned and tidy, but the Applicants say that they were pruned excessively 2 years ago and have only just recovered. The annual charge for gardening services, which are provided by the Respondent's employed staff, is in the region of £2075 to £2180. Teams of two or three gardeners make approximately 16 visits per year to the property, mostly between April and October.
8. The Tribunal finds that the cost of gardening is not excessive for the work done, and that the standard of gardening, judging by its appearance on the Tribunal's visit, is reasonable and appropriate to the property. It is not obvious that, as the Respondent claims, the lawned areas are receiving 2 treatments per year to minimise weeds.

Cleaning

9. The Respondent hired external cleaners until problems were reported in or about 2010, and has since then employed its own cleaners. The annual cost was £1184 for the year 2009/10, and is now just under £1100. A credit of £310 was applied to the service charge account in 2010/11, to recompense the leaseholders for failures by the cleaning contractor during the previous year.
10. The Applicants say that cleaning has improved over the past 3 years, but invited the Tribunal to find that the carpets in the common areas needed steam cleaning and

that the staircase and corridors generally were not sufficiently clean. They say that the carpets are still not vacuumed thoroughly, that litter is not picked up off the floor, that the walls and paintwork on the staircases are not wiped down, and that no cleaning is done whenever the cleaner is on holiday.

11. The Respondent told the Tribunal that the cleaner attends one day a week for 1.5 hours, and admitted that no cleaning is done while he is on holiday. His work is checked periodically by Mr McKay, the Respondent's Housing Services Manager, who says that he is available by telephone and will respond promptly in the event of a complaint regarding cleaning or other services. The present cleaning charge covers the salary of the cleaner and the cost of materials but does not include a profit element. The Respondent confirmed that the cleaning specification could be altered if the leaseholders wished, but that some additional cost might have to be met.
12. On Inspection the Tribunal found that the carpets are sufficiently clean and do not appear to require steam cleaning. The common parts were reasonably clean given that the inspection took place on a Wednesday and the cleaner attends on Thursdays. The Tribunal finds that the standard of cleaning is appropriate to the nature of the property and to the amount being charged to the leaseholders. The staircases appear somewhat shabby because they are in need of redecoration.

Call out charges

13. The Respondent operates a system where faults reported by telephone by leaseholders are taken by a call centre. The Respondent adds a charge of £46 to the service charge account for each call unless it refers to a fault which has been repaired within the past 6 months. However the call records have not allowed for verification or cross referencing, and in some cases a single fault may be reported by a number of different leaseholders. Appreciating that this led to a repairs overcharge on the service charge account, the Respondent has now instituted a system for recording the faults on a monthly basis. The Tribunal were shown a list of call outs from Branwell Avenue during the year ending 31 March 2011, from which it was unclear whether complaints about breakdowns in the door entry systems were duplicated and how many of the resulting call out charges were justified.
14. The Applicants believe that reports of genuine major defects, such as windows failing to shut properly, were also charged as call-outs. The Respondent agrees that this is sometimes the case. An unfortunate result is that Mr Dalton reported the defective windows in his flat some 2 years ago and although no repair has taken place he has not formally reported them again because of the cost of doing so.

15. The Tribunal noted that the Respondent is now seeking to operate a fairer system. Moreover, it was agreed by the parties that reporting major defects should not attract a call out charge. As the Tribunal is not able to identify which call out charges have been correctly included in the service charge account, it has determined not to make a reduction.

Repairs

16. The Applicants complain of faulty windows, which, particularly on the upper floors, are failing to close completely and cause the leaseholders to incur high heating bills. This issue has not been addressed since it was first raised, although an assessment visit has now been arranged by the Respondent. A further complaint regarding badly leaking gutters was made at the hearing but had not previously been drawn to the attention of the Respondent.
17. The Respondent has had an Asset Management Plan (“AMP”) drawn up by an independent surveyor to assess what major work needs to be done over a 50 year period at Branwell Avenue, and to calculate the amount required each year to build up a sufficient Maintenance Reserve Fund to meet the cost of such items. The AMP is reviewed annually, and currently provides for external decoration in the account year 2011/2012 although this work has not yet been carried out. Internal decoration, and replacement of the carpets and entrance doors are scheduled to be carried out in the current account year. The anticipated cost of the external decoration in the AMP is £1800, but the Respondent, in obtaining quotations for the purposes of a section 20 consultation, had received estimates the lowest of which was over £10100. It was thought that this might refer to both external and internal decorations and include “pre-paint” repairs. Meanwhile, repairs to the window frames have not been allowed for in the AMP. The guttering and the windows are not due to be replaced until 2018. There are no plans currently to bring this work forward.
18. The Tribunal concludes that the Respondent is not fulfilling its obligation under the lease to keep the common parts of the building in repair. The state of the windows in the flats is unacceptable and should have been addressed when first raised. However the amounts charged for short term repairs appear to be reasonable, and provision for longer term repairs is by no means too high for the work planned.

Account increases and errors

19. Comprehensive documents provided by the Respondent indicated to the Tribunal that the accounts correctly reflected spending on maintenance costs at Branwell Avenue, and that errors were corrected when identified. The Tribunal does not accept the Applicants’ argument that they should not have to pay additional charges

in one year to correct the Respondent's accounting errors (which led to an undercharge) in the previous year. The Tribunal is satisfied that overall the expenditure items on the service charge account are reasonable, and that the increases year on year are justified.

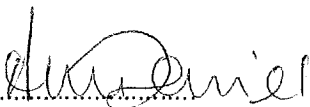
20. In or about 2009 the Respondent divided the repairs costs, as shown in the Service Charge Accounts, between longer term and current costs. This is required by the terms of the lease. The Applicants asked whether monies in the Maintenance Reserve Fund should be used for non-major repairs. The Tribunal finds that it is appropriate for the Respondent to reserve such monies for items identified in the AMP, although the AMP itself appears to be seriously flawed.

Management charges

21. The Tribunal has dealt with issues in this application which would not have arisen had management of the maintenance expenditure for the Branwell Avenue property been fully effective. While the Respondent has recently made some effort to improve its systems, the Tribunal notes its failure to deal promptly and effectively with (a) defective windows, (b) the duplication and proliferation of call-out charges, (c) substandard decorations (d) provision of cleaning during employee holidays, and (e) the error in the 2010/11 service charge account. The most serious management failing is the Respondent's rigid adherence to an AMP which does not properly reflect priorities for its repairing obligations under the lease.
22. The Tribunal therefore determines that a reduction in the management charge is appropriate for each of the three years in question. The reduction is to a level appropriate to the standard of management provided, with an allowance being made in the current year for anticipated improvements following discussions which took place prior to and at the hearing.

Costs

23. The Applicants applied under section 20C of the Landlord and Tenant Act 1985 for an order that the costs of the application should not be added to their service charges. The Respondent confirmed that it did not intend to make such an addition, and the section 20C order is therefore made by consent.

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A M Davies