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CAM/00MD/LSC/2013/0024



**HM Courts
& Tribunals
Service**

**Leasehold Valuation Tribunal
Case Number: CAM/00MD/LSC/2013/0024**

Property : **3 Winvale,
Slough,
Berkshire,
SL1 2JQ**

Applicant : **Andrew Richard Hayes**

Respondent : **Slough Borough Council**

**Date of Order for
Transfer from
County Court** : **31st January 2013**

Type of Application : **Application for a determination of
liability to pay a service charge,
pursuant to section 27A of the Landlord
and Tenant Act 1985**

**Date of Paper
Hearing** : **20th May 2013**

Tribunal :

Mrs. J. Oxlade **Lawyer Chairman**
Mrs. S. Redmond BSc(Econ) MRICS **Valuer Member**

DECISION

For the following reasons, the Tribunal finds that:

- (i) the service charges incurred by the Respondent in respect of caretaking, repairs, and management of the premises in the service charge years 2007/8, 2008/9, 2009/10, 2010/11, 2011/12 and to be incurred in 2012/13 are reasonable and payable under the lease,
- (ii) the case shall be transferred to the County Court.

REASONS FOR THE DECISION

Background

1. Slough Borough Council ("the Respondent") is the freehold owner of 3 Winvale, Slough, Berkshire ("the premises"). Andrew Richard Hayes ("the Applicant") is the lessee of the premises, arising from the assignment to him of a lease of the premises, made on 12th February 1983 between the Respondent and Edward and Mary Whiteford.

County Court Proceedings

2. On 20th August 2012 the Respondent issued a claim in the Slough County Court for unpaid service charges and ground rent, in the sum of £3082.90. The particulars of claim specified the sums demanded, whether or not the sum was estimated or final, and the service charge year to which it related. The sums claimed as service charges were as follows:
 - £128.93 for year 2007/08 demanded on 6th October 2008 ("service charge adjustment")
 - £272.26 for year 2008/9 demanded on 1st October 2008 ("service charge")
 - £337.50 for year 2009/10 demanded on 1st April 2009 ("service charge")
 - £193.69 for year 2009/10 demanded on 1st April 2010 ("estimated service charge")
 - £ 367.50 for year 2010/11 demanded on 1st October 2010 ("estimated service charge")
 - £235.00 for year 2011/12 demanded on 1st April 2011 ("estimated service charge")
 - £637.52 demanded on 6th June 2011 ("preliminary chargeable works, asbestos/drain surveys")
 - £155.91 demanded on 1st November 2011 ("service charge of £235 less 2010/11 adjustment of £79.09")
 - £237.50 for the year 2012/13 demanded on 1st April 2012 ("estimated service charge").

The issues raised in the defence

3. Judgement in default had been entered against the Applicant, but was set aside. The Applicant filed a defence to the claim, on limited grounds, as follows:

- there were no signs of maintenance being carried out,
 - the Respondent was unable to provide details of maintenance carried out,
 - caretaking duties were not being carried out.
4. On 31st January 2013 District Judge Devlin transferred the case to the LVT.

Tribunal's Jurisdiction

5. By virtue of the Landlord and Tenant Act 1985 the LVT has jurisdiction to consider whether service charges that have been or will be incurred are reasonable and payable:

"s27A An application may be made to a leasehold valuation tribunal ("LVT") for a determination whether a service charge is payable and, if it is, as to –

(c) the amount which is payable ...".

Section 19(1) of the 1985 Act provides that "relevant cost shall be taken into account in determining the amount of the service charge payable for a period –

(a) only to the extent they are reasonably incurred, and

(b) where they occurred on the provision of services or the carrying out of works, only the services or works are reasonable standard; and the amount payable shall be limited accordingly".

6. When the County Court transfers a case to the LVT, the Tribunal's jurisdiction is defined by what the Order for transfer defines that task to be. Paragraph 3 of Schedule 12 of the Commonhold and Leasehold Reform Act, provides that:

"3(1) Where in any proceedings before a Court there falls for determination a question falling within the jurisdiction of a LVT, the Court –

(a) may by Order transfer to a LVT so much of the proceedings as relate to the determination of that question".

7. This statutory provision has been interpreted as acting as a limit on the LVT's jurisdiction, so that it can only consider the issues raised by the parties in their claim and defence, see John Lennon v Ground Rents (Regisport) Limited [2011] UKUT 330. If the parties wish the Tribunal to go beyond what is contained within the claim and defence, then the parties can either (a) consent to an extension of the LVT's remit, or (b) issue an application under section 27A of the 1985 Act. Neither has taken place in this case. The limitation on the Tribunal's jurisdiction is

important to bear in mind in this case, in light of the matters which the Respondent has raised in the papers filed in response to Directions made (and referred to in paragraphs 23 to 29).

Directions

8. On 7th March 2013 Directions were made for the filing of evidence, the preamble to which set out the Tribunal's limited role:

"The Applicant filed a defence to those proceedings on the basis that there were no signs of maintenance being carried out, and the Respondent was unable to say what maintenance has been carried out; further, that no caretaking was being carried out.

From the defence filed in those proceedings the issues appear to be narrow, and so the evidence adduced in these proceedings should focus on those limited issues".

9. As the issues raised in the defence indirectly touched on the Respondent's management function, the Respondent was also asked to file evidence as to the costs of management. It follows that the Tribunal can look only at the service charges incurred in respect of maintenance, caretaking, and management, and will only make a determination on the reasonableness of those items.

Paper Determination

10. The Directions provided that the LVT would consider the application on the basis of the evidence filed and an inspection of the premises; further, that the application would not be considered at an oral hearing, unless requested by either party, which neither party requested.
11. In compliance with Directions the Respondent filed a statement of case (entitled "Applicant's response to defence"), and witness statements from the following: Anne May (Neighbourhood Housing Officer) dated 16th April 2013, Deborah Viljoen (Leasehold Manager for the Respondent) dated 16th April 2013; Carol Clegg (Area Housing Manager) dated 11th April 2013, and Les Carter (Property Maintenance Manager) dated 12th April 2013. The Respondent filed statements of account and service charges demands in Appendix A, caretaking timetable and duties (both external and internal) in Appendix B, and information relating to responsive repairs and decoration in Appendix C.
12. The Applicant did not file any evidence, neither by way of witness statement nor documentation.

Inspection

13. On 20th May 2013 the Tribunal attended the premises for inspection in the presence of the Applicant and Ms. Deborah Viljoen (Leasehold Manager for the Respondent).
14. It was apparent from the Tribunal's inspection that major works had been undertaken, and were at the snagging stage. The Applicant wished to point out items of snagging relating to the major works, but the Tribunal explained that this was not relevant to the current limited issues before the Tribunal. The parties agreed that the condition of the premises as seen by the Tribunal was not a reflection of its condition from 2007/8 to 2012/13, and so the purpose of the inspection was limited. Mr. Hayes wished to explain the poor service that he had received in terms of cleaning/caretaking/repairs, and lack of communication, but the Tribunal explained that it could not take oral evidence from either party at the inspection.
15. The Tribunal noted that there were five four-storey blocks. The subject block had a wide communal entrance hall and stairs to the upper floors; there were bin areas to the left of the block, and grounds which were part of the estate (as opposed to council land), and so liable to maintenance under the terms of the lease.

The lease

16. The lease provides by clause 4(2) that the lessee will pay by way of additional rent, a proportionate part (defined as 1/8th) of the expenses and outgoings incurred by the Council in the repair, maintenance, insurance and provision of services and the other heads of expenditure set out in the Third Schedule. The Third Schedule includes the costs of providing a caretaker and such staff as the Council shall in its absolute discretion deem desirable or necessary including the management of the building (clause 6). The lease provides by clause 5(1) that the Council will provide the services referred to in clause 4(2), subject to the lessee's payment.
17. The Tribunal observes that the Applicant did not dispute that the Respondent could recover the costs demanded under the terms of the lease.

Findings

18. The Respondent adduced evidence of the works undertaken and costs demanded by way of service charges from the Applicant for repairs, caretaking, and management, from which the following information was extrapolated by the Tribunal:

Service charge year	Caretaking	Maintenance and repairs	Management
2007/8	£223.08	0	£119.55
2008/9	£203.11	£31.26	£130.49
2009/10	£203.11	£45.93	£138.36
2010/11	£180.57	£59.00	£97.18
2011/12	£164	£3.39	£82.17
2012/13 estimated	£164	£5.49	£95.28

19. The Respondent filed a witness statement from Anne May, Neighbourhood Housing Officer dated 16th April 2013, saying that she was the housing officer for Winvale from 2008 to March 2011 and that estate inspections were undertaken bi-annually. She produced the inspection, monitoring and grading forms from March 2007 (B5) to November 2012 (B13). Further, she produced the caretaking timetable, and duty lists (both external and internal); there were weekly visits up to January 2011, and fortnightly thereafter. The witness statement of Les Carter, Property Maintenance Manager dated 12th April 2013 said that he was in post from 2006 onwards, and that during that time there were repairs raised for the subject block, and produced copies of the schedules of responsive repairs (Appendix C 1). Some cyclical repainting took place in 2007/8, but the costs were written off (and so not billed to the service charge account). He disputed that the building had been in a state of disrepair. The statement of Deborah Viljoen, Leasehold Manager for the Respondent, dated 16th April 2013 provides an overview of the situation and said that she was not aware of any complaints made by the Applicant, save one in relation to anti-social behaviour in 2009. Further, that the inspection reports do not suggest that there were any issues with the standard of caretaking.
20. From the evidence filed the Tribunal is satisfied that throughout the period there were responsive repairs taking place on an ad hoc basis, that caretaking and cleaning was taking place, and that the Respondent was exercising management functions in monitoring the premises by way of inspection and liaising with lessees to deal with complaints and gathering in of service charges.
21. It is not clear what the Lessee's case or complaint really is, because he has not filed evidence in support of his case nor given any detail. He has not responded in writing to the Respondent's case. The Respondent admits that from 2007 onwards all expenditure was considered against the backdrop of the prospect of major works taking place. The Tribunal considers that it is likely that in terms of repair the Council did the bare minimum to keep the building in reasonable condition, so not to unnecessarily spend money which would be wasted if the major works took place. There is adequate evidence of responsive repairs, and that cyclical painting in 2007 was not charged

to the lessees, because of the backdrop of major works. There is adequate evidence that caretaking was taking place and that there was some management of the building.

22. The Tribunal has scrutinised the costs charged to the Applicant for the above services, which on an annual basis are at the lower end of the scale of what could be charged. In light of the evidence adduced by the Respondent, and in the absence of any effective challenge by the Applicant, the Tribunal finds the costs have been reasonably incurred and recoverable under the terms of the lease.

Service charges not considered

23. For the sake of clarification, it seems wise to be clear about what the Tribunal has not considered.
24. Firstly, in the statement of case, the Respondent said that major works had been undertaken in the block and service charge costs of £23,651.65 had been incurred. The Respondent filed a multitude of documents relating to major works (Appendix E), and said that the Panel determination in 2010 made a determination as to the scope and costs of the major works.
25. The first point is that in light of the limitation on the jurisdiction of the Tribunal arising from the transfer of proceedings (set out in paragraphs 5 to 10 above) in which proceedings the service charges for major works were not demanded, the LVT cannot in these proceedings consider the reasonableness or payability of the costs arising from major works.
26. Further, the Respondent appears to have misunderstood the determination of 27th July 2010 - which does not make any findings about the reasonableness of costs, and expressly says so at paragraph 1 of the decision. Accordingly, any dispute about the reasonableness or recoverability of those costs or standard of works can be referred to the LVT for determination by either party making an application.
27. Finally, at the inspection Ms. Deborah Viljoen said that the sum of £637.52 included in the County Court proceedings was no longer demanded (as it was rolled up into the major works costs of £23,651.65, which were capped at that amount). Accordingly, the Respondent will adjust downwards the sum sought to be recovered in the County Court proceedings by £637.52 (referred to in paragraph 2 of the reasons).
28. Additionally, the Respondent sought a determination that the estimated service charge costs for 2013/14 were reasonable, yet as this was not part of the County Court proceedings, the Tribunal cannot consider this.

29. The remainder of the damages sought in the County Court relate to ground rent, over which the LVT has no jurisdiction (save when an application has been made for determination of a breach of the lease, which has not been made).
30. In light of the above, the County Court retains jurisdiction over this dispute and so it is transferred back to the County Court, which may give effect to the decision of the LVT.

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Joanne Oxlade

Chairman

22nd May 2013