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**HM Courts
& Tribunals
Service**

Leasehold Valuation Tribunal
case no. CAM/34UF/LSC/2012/0114

Applicant: Mr J Geddes (Lessee)

Respondents: Northampton Borough Council

Property: 36 Eyeletter House, St. James, Northampton, NN5 5EQ

Application: Application for a determination of the reasonableness of standard and cost of service charge (Section 27A Landlord and Tenant Act 1985) (The Act).

Application under section 20C of the Act for the limitation of service charge arising from the landlord's costs of these proceedings.

Tribunal: Mr R Brown FRICS
Mr J Morris LLB LLM PhD

DECISION

1. The Tribunal determine that the amounts identified in the Respondent's Summaries of Expenditure are reasonable and payable:
For the years ending 31st March:
1998: £117.20
1999: £238.55
2000: £244.80
2001: £247.70
2002: £251.02
2003: £257.92
2004: £265.56
2005: £274.05
2006: £280.77
2007: £294.25.
2. The Tribunal makes an order under section 20C of the Act that the Respondent may not recover the costs of these proceedings in so far as they may be recoverable by way of the service charge provisions in the lease.

REASONS FOR DECISION

The Application and Introduction

3. The Applicant seeks a determination of the payability and reasonableness of standard and costs of services in respect of the service charge years ending 31st March 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005 and 2006.
4. The issue before the Tribunal is specific and relates to the reasonableness and liability to pay for 'Repair and Maintenance of the Building' as identified in the Respondent's Summary of Expenditure.

The Property and the Tribunal's Inspection

5. The Tribunal inspected the property on the 14th December 2012 in the presence of the Applicant, Mr Geddes and employees of the Respondent, Ms J Liburd solicitor and Mr A Bradbury Leasehold Officer.
6. The property comprise a block of flats containing 9 self contained flats and providing 18 bed spaces.
7. The Tribunal's inspection revealed the block to be part of a three storey development of Flats constructed in traditional materials.
8. Generally the development appeared to be well managed with evidence of recent work undertaken including upvc double glazing (circa 1998), door entry system (2002), repairs to roof and fascias (2010), replacement aerials (2010) and railings (2012).

The Law

9. The relevant law is set out in **Appendix 1** attached.

The Lease

10. The Tribunal were provided with a copy of the lease dated 24th September 1997.
11. By clause 6 - the lessee's obligations. Sub paragraph (1) requires the Applicant to pay services charge.
12. By clause 12 -Service Charge. Sub paragraph (2) *'The proportion which the lessee shall contribute shall be the direct proportion of the number of bed or larger unit to which the expenditure is referable. The Council's decision as to the number of bed spaces for this purpose shall be final.'*
13. Clause 12 of the lease covers in detail the service to be provided which includes the maintenance of the building as a whole.

The Hearing

14. A public hearing was held after the inspection at Northampton Combined Court and was attended by the Applicant and employees of the Respondent: Ms Liburd, Mr Bradbury and Mr J Brown Divisional Accountant.
15. The members of the Tribunal explained at the outset of the hearing that the only question they could consider under this application was whether or not the costs incurred for the years in dispute were reasonable and whether or not the work had been carried out to a reasonable standard. It was further explained to Mr Geddes that as Applicant it was his responsibility to demonstrate that there was a case to be answered.
16. The Tribunal also explained that any dispute relating to what had and what had not actually been paid was not a matter which fell within its jurisdiction.

The Applicant's Case

Repairs and Maintenance

17. The Applicant says that for the years ending 31st March 2007 through to 31st March 2011 he received a rebate of service charge in respect of the Repairs and maintenance.
18. He asked the Respondent why the rebate only covered the years 2006 to 2011 and did not cover the whole period of his ownership since 1998. The response received was that the Respondent's records only went back as far as 2007.
19. The Applicant considers he is entitled to an equivalent rebate for the period in dispute. He says the fact that records are no longer kept by the Respondent is not his responsibility.
20. The Tribunal asked Mr Geddes if he was satisfied with the standard of works undertaken on the property by the Respondent. He replied that he had no complaints about the work undertaken.

Section 20C application

21. The Applicant seeks an order from the Tribunal that the costs of these proceedings are not to be treated as relevant costs but makes no submission on this point.

The Respondents' Case

Repairs and Maintenance

22. Giving evidence Mr Bradbury and Mr Brown explained that up to 2011 the system for charging for Repairs and Maintenance had been to estimate the cost of major works, apportion it over a notional period of 5 years and add that figure to the estimated cost of day to day maintenance. These two figures added together made up the charge for Repairs and Maintenance as shown in the annual summaries.
23. Mr Bradbury further explained that when it came to major works no additional charge was made. Neither was notice served under the procedure under section 20 of the Landlord and Tenant Act 1985.
24. The reasoning behind the use of this system was that it effectively avoided the section 20 procedure (In practice lessees were never actually charged more than £250.00 for any single item). This system came about because there were very few lessees under the Right to Buy in fact only 747 of the borough's 12000 units.
25. Following a review of the system the Respondent recognised it was no longer sustainable and that a system which accurately reflects the true costs of both major works and maintenance was required. Having decided to change the system to a more accurate system which would charge lessees in full for major works in the year the work was carried they decided that it was proper that lessees should receive a rebate in relation to that part of the Repairs and Maintenance Budget which was set aside for major works. They did this for the period 2008 to 2011 before introducing the new system.
26. The Respondents acknowledged that they no longer had any records covering the period prior to 2007 and in any event were probably unable to calculate what monies were spent on major works as opposed to maintenance. Works had been carried out in the period in dispute and these included the double glazing and the door entry system.

Section 20C application

27. The Respondents request an order be made that the costs of these proceedings be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

The Tribunal's Deliberations

General comment on evidence of the parties

28. The Tribunal considered all the evidence presented.
29. In making its decision the Tribunal considered the importance of the decision in *Schilling v Canary Riverside Developments PTD Ltd* (LRX/26/2005, LRX/31/2005 and LRX/47/2005) his Honour Judge Rich stated at paragraph 15: *'If a landlord is seeking a declaration that a service is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable'*.

Repairs and Maintenance

30. The Tribunal found that as a matter of fact (as clearly acknowledged by the Respondents by their decision to change the system) that the historic method of calculating the cost of major works was inappropriate where a block was occupied by lessee holding a long lease as opposed to tenants holding weekly or monthly tenancies.
31. The duty of the Tribunal is to make a decision based on the evidence before it and where that evidence is limited to make a judgement based on the knowledge and experience of the members who between them have many years experience of these issues.
32. In the first instance the Tribunal record that the Applicant had no dispute about the quality of any of the work undertaken.
33. The Tribunal then considered whether looked at overall the contributions made by the Applicant over the period were reasonable in the lights of the works admitted to have been undertaken and their own knowledge (but not any special knowledge) and experience.
34. The Tribunal concluded that since there was no dispute about the quality of the work the only issue for them to consider was the cost.
35. No evidence was before the Tribunal, from either party, as to the reasonableness or otherwise of the costs incurred. The Tribunal concluded that without such evidence they could not find the costs incurred to be unreasonable and further in their experience of such matters the figures put forward were reasonable.

Section 20C Application

36. The Tribunal note that neither party provides any evidence or makes any further submissions on this point. The Tribunal concludes that given the historic lack of clarity in the Respondent's accounting methods that the Applicant acted reasonably in bringing this matter before the LVT. Accordingly although finding in favour of the Respondent on point at issue the Tribunal concluded it was unreasonable that the Respondent should be able to recover its costs through the service charge.

The Tribunal's Decision

Reasonableness of standard and cost of cleaning

37. The Tribunal conclude that the costs incurred for the provision of repairs and maintenance for the years in dispute are reasonable.

Application under section 20C of the Act

38. The Tribunal makes no order under section 20C of the Act for the reasons set out in above.

Robert Brown
Chairman

Dated.....

Appendix 1 – The relevant law

Landlord and Tenant Act 1985

Section 18 Meaning of “service charge” and “relevant costs”

- (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, improvement 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 period

Section 19 Limitation of service charges: reasonableness

- (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 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.

- (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 Liability to pay service charges: jurisdiction

- (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

Section 20C Limitation of service charges: costs of proceedings

- (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 or leasehold valuation tribunal, or the Lands 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;
 - (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 Lands 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.

