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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LONDON RENT ASSESSMENT PANEL

Case Reference : LON/00AH/LSC/2013/0002

Property : Flats E and F, 31 Croham Road, South
Croydon, CR2 7HB

Applicants : Donna Ridley (Flat E) and Lisa
Moore (Flat F)

Represented by Donna Moore

Respondent : 31 Croham Road Freehold Limited

**Represented by Michael Grinter –
Managing Agent**

Date of Application : 3rd January 2013

Type of Application : Section 27A Landlord and Tenant Act
1985. Determination of the
reasonableness and payability of
service charges.

Tribunal : Mrs H. Bowers (Chairman)
Mr A. Lewicki
Mr P. Clabburn

**Date and venue of
Hearing** : 20th May 2013
Alfred Place, London

DECISION

For the following reasons the Tribunal finds that:

- 1. The “Maintenance Charge” for 2011-2012 based on a 1/6th share is £403.17.**

2. The "Interim Maintenance Charge" for 2012-2013 based on a 1/6th share is £403.17, payable in two payments of £201.58 for 30th September 2012 and £201.59 for 31st March 2013.
3. An order is made under section 20C of the Landlord and Tenant Act 1985, that any costs arising in respect of this application will not be treated as "relevant costs" for any future service charge year.
4. The Respondent is to reimburse the Applicants the total sum of £250 in respect of the application and hearing fees.
5. No award for costs is made under Schedule 12 paragraph 10 Commonhold and Leasehold Reform Act 2002.

REASONS

Introduction:

1.) This matter arises from an application to the Tribunal dated 28th December 2012 seeking a determination of service charges in relation to Flat E and Flat F (the subject Flats), located in a small development of six flats in a converted Victorian House, 31 Croham Road (the Property). The application is for a determination of the liability to pay and reasonableness of service charges under section 27(A) (and section 19) of the Landlord and Tenant Act 1985 (the Act).

2.) The case was considered by a pre-trial review on 5th March 2013 and Directions were issued on that day. The application and the Directions identified that the following matters were in dispute the service charges for the service charge years June 2011 to June 2012 and from June 2012 to June 2013. In particular a determination is sought whether the costs (actual or estimated expenditure) have been correctly demanded according to the terms of the lease; whether the landlord has complied with the consultation requirement under section 20 of the Act; whether the expenditure is reasonable and payable; whether an order under section 20C of the Act should be made and whether an order for the reimbursement of application/hearing fees should be made. It was confirmed that there were no service charges for the period up to 24th June 2011.

The Law:

3.) A summary of the relevant legal provisions is set out in the Appendix to this decision.

The Hearing:

4.) The hearing was held on 20th May 2013 at Alfred Place, London. The Applicants were represented by Ms Ridley. The Tribunal had received a communication from Ms Moore that explained that she was unable to attend the hearing. Mr Grinter, the managing agent, represented the Respondent. He was accompanied by Mr R Dawson, Mrs J Dawson and Mr P Day, all directors of the Respondent company.

Background:

5.) At the start of the hearing Mr Grinter on behalf of the Respondent acknowledged that the sum of £1,078.73 (page 45 of the bundle) claimed for service charges for the period up to April 2012 was now withdrawn.

6.) Subject to the determination of the current application, the Respondent is seeking a 1/6th contribution from each of the two Applicants in respect of the audited service charge accounts for June 2011 to June 2012. The total service charge figure for the period is £2,659.00 (page 58 of the bundle). A 1/6th share would be £443.17.

7.) The estimated service charge figures for June 2012 to June 2013 are set out on pages 53 and 54 of the bundle and the total sum for the year is stated to be £8,967 and a 1/6th share is £1,494.50. After questions from the Tribunal Mr Grinter acknowledged that the sums originally being sought did not comply with the requirements of the lease. Mr Grinter conceded that the sums that should be charged for 2012/13 should be 1/6th of the preceding years expenditure (namely 1/6th of £2,659.00). This amounts to £443.17 of which 50% (£221.58) can be claimed as the Interim Maintenance Charge on the two payment dates.

The Lease:

8.) The Tribunal were provided with a copy of the lease for Flat 2 of the first floor of 31 Croham Road, dated 22nd March 1985. We understand that the leases are in similar form. This lease was originally between Rubitone Enterprises Limited as Lessor and Malcolm Graham Ian Whiteley and Julie Margaret Chappell as the Lessees. The lease was for a term of 99 years from 29th September 1984. The particulars of the lease specify that the Interim Maintenance Charge is £150 and that the Lessee's share of the Maintenance Fund is 1/6th.

9.) The First Schedule to the lease defines certain terms including the property and the common parts. It also defines the Maintenance Year as running from 24th June each year. The Maintenance Charge is defined as *“the amount or amounts from time to time payable under Clause (2) of Part 1 of the Fifth Schedule and shall include Value Added Tax payable thereon”*. The Interim Maintenance Charge is defined as *“the sum specified in Paragraph 8 of the Particulars or one half of the Maintenance Charge for the immediately preceding Maintenance Year whichever is the greater.”* The Maintenance Fund is defined as *“the amount from time to time unexpended from the payments of Maintenance Charge made to the Lessor by the Lessee and the lessees of Other Demised Parts of the Property”*.

10.) The Fifth Schedule of the lease sets out the arrangements for the payments towards the service charge. In particular paragraph 2 states that the lessee is to pay *“to the Lessor a Maintenance Charge being that percentage specified in Paragraph 9 of the Particulars of the expenses which the Lessor shall in relation to The Property reasonably incur in each Maintenance Year and which are authorised by the Eight Schedule hereto (including the provision for future expenditure therein mentioned) the amount of such Maintenance Charge to be determined by the Lessor’s Managing Agent or Accountant acting as an expert and not as an arbitrator as soon as conveniently possible after the expiry of each Maintenance Year and FURTHER on 31st day of March and 30th September in each Maintenance Year (“the payment dates”) to pay in advance on account of the Lessee’s liability under this Clause The Interim Maintenance Charge PROVIDED THAT upon the Lessor’s Managing Agents’ or Accountants” certificate being given as aforesaid there shall be paid by the Lessee to the Lessor any difference between the Interim Maintenance Charge and the Maintenance Charge so certified.”*

11.) The Eight Schedule details the costs and expenses that may be charged upon the Maintenance Fund. In particular paragraph 14 states that it should include *“Such sum or sums from time to time as The Lessor’s Managing Agents shall consider desirable to be paid to The Lessor for the purpose of accumulating a reserve fund as a reasonable provision against the prospective cost expenses outgoings and other matter mentioned or referred to in this Schedule or any of them PROVIDED THAT the amount payable under this paragraph shall not in any one year exceed Thirty per cent of the total costs incurred in the previous maintenance year in relation to the other paragraphs of this Schedule”*.

Representations:

12.) Whilst the Tribunal was grateful for the concessions made by the Respondent and set out in paragraphs 6 and 7 above, it is still necessary to

examine the service charge items in respect of the application and aspects that remain in dispute.

2011-2012

Insurance - £1,219.00

13.) Included in the papers was a Residential Property Owners Policy Schedule from Zurich that was dated 15th July 2011 and was for the period 28th July 2011 to 28th July 2012. The stated premium was £1,253.09 including Insurance Premium Tax. Identified in this document was insurance cover of £25,000 for communal contents.

14.) Ms Ridley suggested that the level of cover for the communal contents was excessive as the communal areas only included carpets. She also stated that the benefits of the policy were not available to her and as such she should not have to contribute to the premiums. It was explained that a ceiling came down in her flat in March 2011 and the repair work was not carried out until September 2011. Asbestos surveys were carried out to the ceiling materials and the area was covered with a sheet. On 4th April 2011 a Mr S Thomas attended the flat and on questioning from Ms Ridley produced a Proficiency Certificate in Buildings Surveys and Bulk Sampling for Asbestos that was dated November 2006. Sampling was undertaken and a test certificate was produced by Precision Analysis from a sample received on 5th April 2011. This test certificate stated that "No Asbestos Detected", but the certificate provided a caveat that "*Where the sample is not taken by the Analyst, Precision Analysis NW Ltd cannot be responsible for the inaccurate or unrepresentative sampling*".

15.) Ms Ridley was concerned about the competence of Mr Thomas undertaking the asbestos sampling. After the sampling the repair work was carried out in September 2011. Ms Ridley suggests that her contribution to the insurance should be reduced by 50% to reflect her limited access to the insurance cover.

16.) Mr Grinter explained that the claim made by Ms Ridley in March 2011 was in respect of the previous service charge year and was not in respect of the years currently under consideration. In response to the issue regarding the amount of cover for communal contents it was stated that this is a standard amount in a policy and would not impact the level of premium charged.

Gardening - £120

17.) Ms Ridley stated that she did not dispute the sum of £120 for gardening work carried out to the property. Her concern was that only one side of the property had been cleared.

18.) It was explained by Mr Grinter that the price agreed with the gardener for £120 was only to cut the grass. Any additional work undertaken by the gardener

was at the gardener's discretion and there was no additional charge for that work.

Electricity - £240

19.) Ms Ridley stated that the communal lighting was on a time sensor system and as such there would not be a significant demand for electricity in the communal parts. It is stated that the sum of £240 is excessive in the absence of any electricity bills. It was confirmed that there are three hallways with lighting, but no fire alarm system connected to the electricity supply. As there was no cleaning of the communal parts, then there should be no electricity consumption for cleaning. Ms Ridley had undertaken some cleaning of the areas but had not used the communal supply.

20.) Mr Grinter explained that there had been no electricity invoices as these had been paid by Mr Kerr, a director of the Respondent company, who is now deceased. The Respondent had problems in resolving these issues in respect of the deceased's estate. It was confirmed that there was an independent supply to the communal areas. It was also confirmed that if the sum for the period was less than £240, then the over paid sum would be reimbursed. Regarding the cleaning for the communal parts Mr Day suggested that the tenants in the flats may have undertaken ad hoc cleaning of the common parts and used the electricity supply for those purposes.

Management Fee - £600 & Accountant's Fee - £480

21.) Ms Ridley confirmed that these aspects were not disputed.

2012-2013

22.) It was accepted that given the lease arrangements then the Interim Maintenance Charge could only be based on the £150 as provided in the particulars of the lease or the sum relating to the preceding year's expenditure.

Consultation

23.) There were two aspect to the consultation process that were of concern to the Applicants, the first was in respect of a qualifying long term agreement for the appointment of a managing agent; the second aspect was in regard to some major works.

24.) With regards to the qualifying long term agreement, a notice of intention was served on 24th September 2012 inviting written observations and details of any nominated managing agent to be sent to Mr Grinter within 30 days of the notice. In the notice two proposed managing agents were specified and these were Mr Grinter himself and HML Andertons Limited. A second notice, the Statement of estimates in relation to the proposal to enter into a long-term agreement was sent out on 11th February 2013. This notice included an undated

proposal that appears to have come from HML Andertons and was signed off by Lara Fitzgerald, a Business Development Manager, and a proposal from Mr Grinter. The notice also stated that another nominated managing agent, Let's All Move had been contacted but had declined to submit a proposal. However, in an email from Chrissy Mouskis, an Associate Director of HML Andertons, that was dated 13th February 2013, it stated that Lara Fitzgerald had not worked for the company for the last three years. The Applicants had been concerned about the lack of transparency with this issue.

24.) In response Mr Day, a Director of the Respondent company, stated that they had experienced problems finding an agent to manage the development. Mr Grinter offered that the respondent would go through the consultation process again.

25.) The second consultation was in respect of major works to the Property. In the Notice of Intention to carry out work dated 24th September 2012, the Respondent indicated the work to be undertaken and that two contractors, V Clements and Joe Linnane, had been approached to provide estimates. Again any observations and nominated contractors were to be supplied to Mr Grinter. The second stage notice, the Statement of Estimates in relation to the proposed work, was dated 11th February 2013. Ms Ridley stated that this second notice had not included all the responses in the summary of responses. She had written regarding the extent of the works and the omission in respect of repair work required to some holes at the Property.

26.) In response to questions from the tribunal it was acknowledged that the quotations were at least two years old and Mr Grinter had assumed that the contractors would have honoured those quotations. He confirmed that he would seek confirmation of those prices and if they quotations were now higher, he acknowledged that he would need to re-commence the consultation process. In response to the issue of the extent of the works to be undertaken and the comments from Ms Ridley, he confirmed that the proposed works did not cover the works to the holes in the property.

Application Fee - £100; Hearing Fee - £150 and Application under Section 20C,

27.) Ms Ridley explained that if the proper procedures had been followed then it would have been unnecessary to submit an application to the Tribunal. There had been a lack of transparency and answers should have been provided from the start. Mr Grinter was not an experienced property manager and at the pre-trial review he had struggled to answer certain questions.

28.) In response Mr Grinter explained that it was only when the case was at the pre-trial review stage that the issue regarding the service charges and compliance with the lease was raised. The Applicants had raised a number of

issues such as the insurance issue, which could only be resolved after hearing the submissions from both parties at the hearing. The Respondent had been unaware of the Applicants' objections until the application was made and the issue explored at the pre-trial review.

Costs – Schedule 12 paragraph 10 Commonhold and Leasehold Reform Act 2002 (the 2002 Act)

29.) Ms Ridley made an application under Schedule 12 paragraph 10 of the 2002 Act seeking the reimbursement of her costs. The sum claimed excluding the application and hearing fee is £187.85 and related to the costs of printing, postage, travel to the pre-trial review and the hearing and miscellaneous costs.

30.) In support of her application she stated that in the Respondent had acted in an unreasonable manner in respect of compliance with the Directions and this had put the Applicants to extra expense.

31.) There had been a meeting with Mr Grinter to resolve the dispute, but Mr Grinter had not taken up any of the issues in an attempt to settle the matter.

32.) The Respondent's representative submitted that the Respondent had not acted in a vexacious or unreasonable manner. The Applicants had already received 90% of the material and that the email on 3rd May 2013 related to a two page witness statement. Mr Grinter had endeavoured to act in a courteous and respectful manner throughout the matter. Mr Grinter tried to reach a settlement, but there were some issues where agreement could not be achieved. It was confirmed that the Respondent was not seeking any costs under Schedule 12 paragraph 10 of the 2002 Act.

Conclusions:

33.) The Tribunal acknowledges that in some cases it may be difficult for a Lessor to arrange its finances in order to manage a building. However, the lease is the contractual arrangement between the parties and it is this document that guides how money may be claimed from the lessees in respect of service charges or any reserve fund. Any financial shortfall or any funding arrangements that may be required are a natural consequence of a landlord's position of ownership.

2011-2012

Insurance - £1,219.00

34.) There are two particular issues in respect of the insurance premium. The first relates to the sum of £25,000 cover for the communal contents. Whilst this sum seems excessive in respect of the potential value of the contents of the communal part, no evidence has been presented to indicate that the premium is increased to reflect this level of cover. The Tribunal accepts the submissions

made on behalf of the Respondent, that such a level of cover is standard and would not impact on the level of premium. The second issue relates to Ms Ridley's insurance claim. It is noted that the claim that was made was in the earlier service charge years and is not an item of cost under current consideration. Accordingly, we make no determination on this point.

Gardening - £120

35.) Ms Ridley did not dispute the sum of £120 charged for this item. The extent of her complaints related to the scope of the gardening works and that a particular area had not been covered by the contract. The jurisdiction of the Tribunal is limited in that it cannot seek to enforce works to be carried out. It may only look at the works that have been undertaken and examine whether that work and the costs are reasonable. In this case as the sum is not disputed we have no further jurisdiction on this point.

Electricity - £240

36.) The Tribunal is surprised that the service charge accounts have been prepared and audited without the relevant receipts relating to the electricity. There is no evidence that the Respondent had incurred any cost in respect of electricity charges at the Property during this service charge year. Accordingly, the Tribunal finds that the sum of £240 in respect of the electricity has not been incurred by the Respondent in this period and as such cannot be recovered by the service charges in this service charge year.

Management Fee - £600 & Accountant's Fee - £480

37.) Ms Ridley confirmed that these aspects were not disputed.

Summary 2011-12

38.) The total sum being claimed in the service charge account was £2,659.00. From this sum the figure of £240 is to be deducted in respect of charges not incurred by the Respondent for electricity. This leaves a net figure of £2,419.00 a 1/6th share is £403.17 for the 2011-2012 service charge year.

2012-2013

39.) It was accepted that given the lease arrangements then the Interim Maintenance Charge could only be based on the £150 as provided in the particulars of the lease or the sum relating to the preceding year's expenditure, whichever is the highest. From paragraph 38 the service charge determined for 2011-2012 was £403.17. Therefore in accordance with the terms of the lease a sum of £201.58 is the Interim Maintenance Charge for 30th September 2012 and £201.59 is the Interim Maintenance Charge for 31st March 2013. Once the final accounts have been prepared in accordance with the terms of the lease, then any balancing charge may be made or any over spend may be retained as part of the Maintenance Fund.

Consultation

39.) This issue in respect of the consultation process for the qualifying long-term agreement may not be relevant to the substantive decision. The consequence of the lack of compliance with the consultation process is to limit any costs arising to £100 per leaseholder. In the current case the fee being claimed for the managing agent is £100. This sum would not be reduced by a defective consultation process and the Applicants have acknowledged that the level of management fees are not unreasonable. However, the Tribunal considers that it is necessary to provide some comment to the activities undertaken by the Respondent in this aspect. The consultation process is a procedure to provide leaseholders with protection from unscrupulous landlords. The proposed consultation would have failed in this objective in a number of ways. There was a clear lack of transparency. One of the two proposals relied upon was at least three years out of date. More concerning is that the management of the consultation process was undertaken by Mr Grinter, one of the proposed agents. He would obviously have had the proposal from HML Andertons available to him before he made his own proposal. This demonstrates a clear transgression from the principles of fairness and if the process had been one upon which reliance was to have been made, then the significant breaches would have invalidated the consultation and would have had the consequence of limiting any costs claimable via the service charges.

40.) In respect of the second consultation relating to the major works, the Tribunal acknowledge that technically the consultation appears to have been carried out. However, the Tribunal is concerned about the delay since the receipt of the quotations. The reassurances provided by the Respondent are noted and if the quotations are now revised, then the respondent will need to complete a new consultation process.

Application Fee - £100; Hearing Fee - £150 and Application under Section 20C.

41.) There have been a number of defects in the management of the service charge. It appears that the parties have tried to reach an agreement. However, one of the fundamental problems was the Respondent's lack of knowledge as to the mechanism of the lease and undertaking clear communication to help facilitate trust between the parties.

42.) This lack of communication and understanding of the lease mechanism would have been frustrating to the Applicants. The Tribunal accepts that the only method to resolve these disputes was for an application to be made and the lack of settlement by the Respondent has resulted in the hearing of this case. Accordingly, the Tribunal makes an order under section 20C of the Act. Namely any costs relating to the current application should not be treated as "relevant charges", and added to the service charges in future service charge years. For the

same reasons, the Tribunal also determines that the Respondent is to reimburse the Applicants the sum of £250.00 in respect of the application and hearing fees for this matter.

Costs – Schedule 12 paragraph 10 Commonhold and Leasehold Reform Act 2002 (the 2002 Act)

43.) The threshold for an award of costs under Schedule 12 paragraph 10 of the 2002 Act is high. Whilst the Tribunal understands the frustrations of the Applicants, the actions of the Respondent needs to be of a frivolous, vexatious, abusive, disruptive or otherwise unreasonable nature in relation to the proceedings for an award to be made. Although it is accepted that there were some documents that were delivered by email and may have resulted in additional printing charges on the behalf of the Applicants' this in itself is not an indication of frivolous, vexatious, abusive, disruptive or otherwise unreasonable behaviour. Therefore the Tribunal makes no award for costs against the Respondent.

CHAIRMAN
Helen C Bowers

DATE 26 JUNE 2013

APPENDIX

LANDLORD AND TENANT ACT 1985

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 of 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 21B Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

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.
- (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 subject of determination by a court, or
 - (d) has been 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 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, 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.

.....

(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.

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 unreasonable 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 regulation.
- (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.

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