



10180

**FIRST TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CAM/22UC/LSC/2014/0053

Property : 44 Trinovantian Way, Braintree,
Essex CM7 3JBN

Applicants : John Arthur Churchward and
Christine Chuchward

Respondent : Maltings Management Company
(Braintree) No 2 Limited

Date of Application : 12th May 2014

Type of Application : To determine reasonableness
and payability of service
Charges and administration charges

Date of Hearing : 23rd July 2014

Appearances : The Applicants appeared in person;

Mrs Bevan (a Director of the
Respondent company) appeared for
the Respondent;

Miss Cole (a representative of the
Managing Agents) appeared for the
Management Company

Tribunal : **Judge:** Mr Graham Wilson
Members: Roland Thomas MRICS
Mr David Cox

DECISION

- (1) The Tribunal decided that the following service charge items appearing in the service charge accounts under "Flats Service Charge" were not payable by the Applicant for the service charge period since 1st April 2009 under the terms of a lease dated 24th June 2004 ("the Lease"):
- Communal Cleaning
 - Electricity
 - Repairs and Maintenance.
- (2) The Tribunal's reasons appear below.

- (3) The Tribunal made no Order as to costs.

Reasons

Introduction

1. The subject property was a maisonette held under the Lease. The maisonette was a single unit over three garages reached by a ground floor front door which served only the maisonette. There were no common parts. The development comprised a total of 198 flats and houses. There were similar flats/maisonettes elsewhere on the development, but none were shown to the Tribunal that were the same.
2. The relevant provisions of the Lease were
 - (i) Clause 3.5, which obliged the Tenant to pay the Service Charge.
 - (ii) The Service Charge was defined as:

“the Service Charge” means firstly a fair proportion of the total cost of the aggregate Annual Maintenance Provision for the Block in each maintenance year and secondly a fair proportion of the total cost of the Annual Maintenance Provision for the Maintained Areas both charges to be computed in accordance with part 2 of the Fourth Schedule (or such other proportion as may be determined pursuant to part 1 of the Fourth Schedule).
 - (iii) The Fourth Schedule provided for the Annual Maintenance Provision.
3. The Applicants argued that such was the nature of the subject property that the three service charge items referred to were not fairly payable by them.
4. There was produced to the Tribunal by the Applicant a document called “Budget Figures” for the period 1st April 2009”. This account showed an “Estate Charge Budget” and below that, and in addition, “Flats Service Charge”. The service charge items challenged all appeared under the latter heading.

The Law

5. This is contained in the Landlord and Tenant Act 1985, section 27A

An application may be made to the 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

The Parties' Cases

6. The Applicants argued as follows

- (i) Communal Cleaning. The Applicants pointed to the explanatory note produced by the Managing Agents which explained what each item comprised. This item was for the cost of cleaning “the common parts of your building”. The Applicants argued that this charge was unwarranted, as there were no common parts.
 - (ii) Electricity. The explanatory note described how this related to “the communal areas in your building”. The Applicant’s argument was the same – there were no common parts.
 - (iii) Repairs and Maintenance. This item was, the explanatory note stated, “an amount towards the upkeep of the internal common parts”. The Applicants repeated their argument.
7. Mrs Bevan, for the Management Company (who had not been involved in the exchanges via letter and email leading up to the proceedings and who had been asked to appear before the Tribunal at short notice) argued that the Lease stipulated that a proportion of the Annual Maintenance Provision was payable by the Tenants. In a substantial development such as this, it was simply impracticable to prepare service charge accounts/demands on the tailor-made basis proposed by the Applicants. To do so, said Mrs Bevan, would risk opening what she described as “a can of worms”, with Tenants taking issue with items for which, they would argue, they derived no benefit.
8. In response, the Applicant explained that he was making no challenge to the Estate Charge Budget. It would be a simple matter to relieve the Applicants of liability for parts of the Flats Service Charges that were inapplicable.

Decision

9. The Tribunal considered the terms of the Lease. It noted that the draftsman had chosen to use the words “a fair proportion”, as opposed to imposing a percentage liability. It was possible that, faced with the diversity of the estate, he had made a conscious decision to introduce the “fair proportion” concept.
10. The Tribunal found itself unable to accept that “a fair proportion” could be arrived at simply by applying the service charges across the board – by dividing the total by the number of flats. It was decided that the Applicants should not be charged for items from which they derived not the remotest benefit. It would not be unreasonable to impose on the Respondent the obligation to adjust the service charge demands accordingly.
11. The Tribunal thus found in favour of the Applicants.
12. The Applicants had withdrawn their Application for an Order under section 20C of the 1985 Act.

GRAHAM WILSON

Dated: 28 July 2014

© CROWN COPYRIGHT 2013