

10344



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

Case Reference : CHI/00MR/LIS/2014/0030

Property : 41 Waverley Road, Southsea, Portsmouth,
Hampshire PO5 2PJ

Applicants : Mr & Mrs J Gilmore (Flats 1 & 3)
Ms C Mills (Flat 2)
Mr O Roberts (Basement Flat) (the Tenants)

Representative : Mr J Gilmore

Respondent : Waterglen Limited (the Landlord)

Representative : Mr Shomik Datta of counsel

Type of Application: Application for determination as to reasonableness
of service charges pursuant to Sections 19 and 27A
Landlord and Tenant Act 1985

Tribunal Members : Judge P.J. Barber
Mr P D Turner-Powell FRICS Surveyor Member
Ms J Dalal Lay Member

Date and venue of Hearing : 15th September 2014 Court 3, Chichester Magistrates
Court & Tribunals Centre, 6
Market Avenue, Chichester
PO19 1YE

Date of Decision: 30th September 2014

DECISION

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Decision

- (1) The Tribunal determines in accordance with the provisions of Sections 19 and 27A Landlord and Tenant Act 1985 (“the 1985 Act”) that :
 - (a) In regard to the final quarterly service charge for the calendar year 2013, the Tribunal makes no determination in respect of service charges in a sum of £1678.26 on the basis that the charge had been withdrawn by the Respondent; and
 - (b) In regard to the estimated service charge demands relating to the first two quarters for the calendar year 2014, the amount of £3561.43 is reasonable and payable on the basis of a budget provision.
- (2) In regard to the application in respect of costs made by the Applicant pursuant to Section 20C of the 1985 Act, the Tribunal makes no order.

Reasons

INTRODUCTION

1. This application was dated 12th May 2014 and was made pursuant to Section 27A of the 1985 Act for determination of the reasonable service charges payable by the Applicants to the Respondent. The application addressed the service charges levied in respect of the period 30th September 2013 to 24th December 2013, and also the estimated service charges for the period 25th December 2013 to 23rd June 2014. Directions had been issued in the matter on 9th June 2014.
2. The claim relates to service charges in respect of the four flats at 41 Waverley Road, Southsea, Portsmouth, Hampshire PO5 2PJ (“the Building”). 41 Waverley Road is an end terraced Victorian house, converted latterly into 4 flats.
3. A specimen copy lease for the Flats was provided to the Tribunal, namely the Lease dated 29th January 1988 in respect of the Second Floor Flat made between St Mary`s Estates Limited (1) Robyswan Limited (2) for a term of 125 years from 29th September 1983. The Tribunal was advised that whilst all of the leases are not identical, it was not believed that there are any material differences.
4. Countrywide Estate Management (“CEM”) have been the managing agents throughout the periods referred to in paragraph 1 above.
5. Counsel for the Respondent had on 12th September 2014, filed a skeleton argument and chronology of the case.

INSPECTION

6. The Tribunal inspected the property immediately prior to the hearing in the presence of Mr and Mrs Gilmore of the Applicants and Mr S Datta, Mr J Butler

and Mr M Green for the Respondent. The Building was constructed in or about the mid Victorian period and comprises a former end terraced house with bay windows at the front to the Ground and Basement Floors, and with beige painted stucco rendered elevations under a pitched and tiled roof. A communal front door, approached by steps from the pavement, provides access to the three upper flats; the basement flat has its own separate entrance at the side of the Building. There was an area of garden at the rear and side of the Building in a neglected state. The painted stucco rendering was in poor condition and visibly lifting and fractured in a number of places.

7. The communal front door leads to a common entrance hall and staircase area; the walls were papered and emulsion painted and there was a carpet of reasonable quality which was nevertheless in a dirty condition.
8. The Ground or Hall Floor Flat is Flat 1; Flats 2 & 3 were at first and second floor levels respectively although Flat 3 featured a mezzanine floor at the rear. The Tribunal carried out a brief internal inspection of Flats 1 & 3 and damage to the ceiling, apparently as a result of water ingress, was visible in various rooms in Flat 3. The Tribunal also noticed a fire door within Flat 3 which appeared to lead, as an emergency escape route, to the property next door, possibly installed when the Building was converted into flats in or about the 1980s. There were also some signs of water ingress problems to Flat 1.
9. No access was obtained to the outside of the roof, but the Tribunal noted as a result of inspection from ground floor level, that there was evidence of some lifting of tiles at the front gable edge of the roof.

THE LAW

10. Section 19(1) of the 1985 Act provides that :

“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.”

Sub-Sections 27A (1), (2) and (3) of the 1985 Act provide that :

“(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 cost, 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.

11. "Service Charges" are defined in Section 18 of the 1985 Act as follows

(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, improvements, 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

18(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 or later period.

HEARING & REPRESENTATIONS

11. The hearing was attended by Mr and Mrs Gilmore on behalf of the Applicants. For the Respondent, Mr Shomik Datta appeared, accompanied by Mr Butler, Mr Green and Ms Louise Vidgeon, all of CEM.

12. Mr Gilmore had only been provided with copies of the Respondent's skeleton argument and chronology shortly before the hearing and he said it contained new information, including reference to case law. Mr Datta submitted that the documents did not introduce new evidence and that the reference to case law was merely general, rather than specific. The Tribunal suggested that Mr Datta should during the course of his submissions make clear any references to case law, if they were of substance or significance, or if he wished to rely on them specifically in relation to any of his representations.

13. Service Charge Period 30th September to 24th December 2013

Mr Datta submitted on behalf of the Respondent landlord that the charge of £1678.26 for each of the 4 flats, had been demanded in error and accordingly the Respondent agreed that such sum was not payable by any of the 4 lessees. On the

basis that this charge had been withdrawn, there remained no issue to be determined by the Tribunal.

14. Service Charge Period 25th December 2013 to 23rd June 2014

The service charges for this period are based on estimates and the items challenged are in respect of 5 separate sub-categories upon which the parties were invited to address the Tribunal one by one, as follows :-

Cleaning Costs

On a budget figure basis, Mr Gilmore agreed that the estimates based on £250.00 per annum for the Building were reasonable; however his concern is that both now and in the past, no cleaning has been done.

Health & Safety

Mr Gilmore submitted that health & safety fire risk and asbestos checks had been carried out in 2012 and that as they were only required every 5 years, a further check after just 2 years, was unreasonable. Mr Gilmore said that he had spoken on the telephone to someone at the Health & Safety Executive who had advised that a report was only required every 5 years. Mr Gilmore submitted that the managing agents could, and should, themselves carry out required annual checks of emergency lighting, fire alarms and any blockages of communal areas. Mr Datta called Mr Butler to give evidence; Mr Butler said that CEM now carry out 6 visual inspections each year including taking photographs. However in addition to this Mr Butler said that CEM engage a specialist firm, Watson Wild & Baker on a national basis to carry out other health & safety work since they are more properly qualified. Mr Butler said that the advice given by Watson Wild & Baker was to the effect that 2 years is a prudent period for reporting for this particular type of property. Mr Butler also said that Watson Wild & Baker were an independent company with no connection to CEM, and that they received no commission from them. Mr Datta referred to clause 5(4)(j)(ii) of the lease which he said, permits employment of persons "for the proper maintenance, safety and administration of the Building" and that it was a reasonable and prudent step to check such matters. Mr Datta said that the charge of £250.00 for the report was reasonable.

Accounting

Mr Gilmore said that some entries in the 2013 accounts had been incorrect and also that the accounting period for service charges had been changed from 1st October to 30th September, to 1st January to 31st December thus causing confusion and a lack of clarity. Mr Gilmore also complained that there was uncertainty regarding how the reserve or sinking fund was held and invested. Mr Datta said that the errors in the 2013 accounts had been minor and that the Applicants had suffered no loss as a result; he added that the service charge year or accounting period as stated in the leases, is actually 1st January to 31st December. Mr Datta said that the budget figure of £150.00 for accounts in 2014 was reasonable and that the Applicants had produced no other or comparable estimates for the work from other sources. Mr Datta added that the reserve fund was held by CEM on trust although not in a separate account; Mr Butler said that an audit of the accounts would not be required for management of a property of less than 5 units.

Management Fees

Mr Gilmore said that CEM were increasing their management charges for 2014 by 18.7% to £1056.00 and that this did not represent value for money. Mr Gilmore added that there had been frequent changes of property managers for the Building over recent years and that a reasonable figure would be £800 for the management of all 4 flats. Mr Gilmore also referred to management charges for other flats he said he owned in Southsea, typically £600-£700 per annum, although no detailed evidence was included in the bundle. Mr Datta submitted once again that the 2014 charges in question were budget figures only; as such, he said the amount was reasonable, equating to a charge of £220.00 plus VAT per flat per annum. Mr Gilmore complained that the Respondent had engaged in bullying tactics in regard to demands for payment of service charges; Mr Datta formally rebutted any use of such tactics. With regard to the 18.7% increase, Mr Butler said that this was due in part to the introduction of ARLO, being an on-line system for improved management and also allowing provision for inflation.

Major Works – Roof Replacement

Mr Gilmore said he did not disagree that the roof needs replacing; he said that the roof has been in a poor state of repair for many years and that historic neglect has resulted in the replacement costs now being even higher than they would otherwise have been. Mr Gilmore referred to historic assurances given by a previous CEM property manager, James Farrow, and added that he had obtained an estimate for roof replacement of £9,000.00 & VAT with the benefit of a 10 year guarantee. Mr Gilmore referred to ongoing flooding and water ingress problems being suffered by the tenants throughout the period whilst the work was being delayed; he said that the sinking fund which he believes should now be about £5,000.00, should be applied towards the cost, plus the proceeds of an insurance claim made, thus resulting in the tenants having to pay a much smaller contribution than the current estimated cost of £25,000.00. Mr Datta said that estimates have been obtained in 2014 as a result of a proper tendering exercise based upon a full and detailed specification and resulting in estimates of cost varying between approximately £21,500 and £47,000 exclusive of fees; he added that the budget figure was based on the lowest quote. Mr Datta said that earlier estimates did not appear to cover the full extent of work required and that there was no adequately pleaded evidence of historic neglect. Accordingly Mr Datta submitted that it is reasonable to conclude in the present circumstances that the budget figure of £25,000.00 is reasonable. Mr Datta said that this budget amount includes provision for external surveyor`s fees although CEM would be prepared to waive their own supervision fees thus resulting in a budget figure of approximately £19,800.00 plus VAT.

16. In closing, Mr Datta submitted that the issue is only whether the budget figures represent reasonable estimates of the work which needs to be done. Mr Datta said that the Applicants had conceded on the cleaning costs and that the estimated charges regarding health & safety were reasonable and prudent. As regards frequency, Mr Datta said it should be remembered that the Building is a converted Victorian structure and that as a result, two yearly Health & Safety reporting was reasonable. In regard to accountancy, Mr Datta said that various accountancy services would be required and that the charge of £150.00 was entirely reasonable. In regard to management fees, Mr Datta submitted that a unit cost of £220.00 per annum was entirely reasonable for this sort of property and that no clear or substantive alternative comparable evidence had in any event been provided by the

Applicants. In regard to major works, Mr Datta submitted that there was little dispute about whether the works were necessary and that the budget figure was based upon the lowest tendered estimate obtained in relation to a detailed specification for the work, compiled by a chartered surveyor; he said the counter evidence was weak and not based upon a similarly full and detailed specification so could not be considered to be properly comparable. Mr Datta submitted that the basis of the challenge to budget figures was fundamentally misconceived, based largely upon a compendium of historic complaints, not relevant to a budget for costs proposed.

17. Mr Gilmore said in his closing statement, that the cleaning costs were conceded as reasonable; he said that he had been submitted to years of bullying by the Respondent, referring to correspondence in section 5.24 onwards in the bundle. Mr Gilmore suggested that errors had been made by Mr Datta and that the previous LVT case had been largely to do with external repair. Mr Gilmore further submitted that the Respondent had failed to repair throughout its ownership and that the only way forward was to apply the reserve fund of approximately £5,000, plus the £3,000 proceeds of the insurance claim he had previously made, thus resulting in the tenants having to bear only about £500 each, assuming roof work costs to be, properly in his view, in the region of £9,000. Mr Gilmore said that he and his wife had lost rental income from their two flats due to their having to reduce the rent charged to their sub-tenants, resulting from the various water ingress problems arising over several years.

18. In regard to the application relating to the landlord's costs, made by the Applicants pursuant to Section 20C of the 1985 Act, Mr Gilmore said that the Respondent had provided a poor service to the tenants over the last 10 years or so and were guilty of historic neglect of the Building, resulting in this application and that accordingly the landlord's costs of these proceedings should not only be excluded from future service charges but, he said his application and hearing fee of £440.00, plus £100.00 photocopying charges and £39.69 courier delivery fees should be ordered to be payable by the Respondent. Mr Datta said in reality the Applicants' challenges were precipitate and misconceived and that as the budget figures were reasonable, no order should be made; he rebutted any suggestion made by Mr Gilmore as to the use by the Respondent in the matter of bullying tactics.

CONSIDERATION

18. The Tribunal have taken into account all the oral evidence and read all the documents provided, as well as considering those case papers to which we have been specifically referred and the submissions of the parties.

19. In regard to 2013, the amount as challenged had been withdrawn by the Respondent on the basis that it had been raised in error and accordingly there remained no charges to be determined by the Tribunal.

20. In regard to 2014, the costs were all estimates or budget figures and the question was therefore whether such amounts would be reasonable, assuming the work was to be properly carried out. In regard to cleaning, the estimated costs were accepted as reasonable by Mr Gilmore for the Applicants on this basis. In regard to Health & Safety charges, the main concern raised was in regard to frequency; the Tribunal takes the view that it is not unreasonable given the age, character and nature of the Building, for the Respondent to provide for 2 yearly reports by its

specialist advisor. In regard to accountancy, it was not disputed that some work had previously been carried out in earlier years, although Mr Gilmore had complained as to past inaccuracies; nevertheless as a budget figure, the sum of £150.00 appeared not unreasonable and no alternatives had been put forward in evidence. Similarly the Tribunal considers the management fees proposed at £220.00 & VAT per unit to be within a reasonable range and no clear or persuasive comparable evidence of alternatives had been offered. In regard to major works, the Respondent's budget figures had been based on the lowest estimate resulting from a tendering exercise which had been carried out on the basis of a detailed specification. The Tribunal considered it had not been clearly established by the Applicants that their alternative figure was based on the same detailed specification. Accordingly the Tribunal considers that the Respondent's budget figure for the proposed works is not unreasonable.

21. In regard to the application regarding costs, under Section 20C of the 1985 Act, the Tribunal has some sympathy with the Applicants in regard to their complaint about accounting inaccuracies, on the basis that the Respondent's £1678.26 charge for the final quarter of 2013, had been withdrawn. However in the light of the fact that the Tribunal finds the budget amounts for the period challenged in 2014 to be reasonable, no order will be made under Section 20C, and similarly no costs order will be made regarding application, hearing, photocopying or courier fees.

22. The decision of the Tribunal in regard to 2014 service charges is in relation to budget or estimate figures and accordingly, it was noted that it would remain open to the Applicants at a future date, to challenge the actual expenditure in relation to the Building for this period should they wish so to do.

23. We made our decisions accordingly.

Judge P J Barber

PERMISSION TO APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.