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Residential
Property
TRIBUNAL SERVICE

**EASTERN REGION RENT ASSESSMENT COMMITTEE
LEASEHOLD VALUATION TRIBUNAL
LANDLORD AND TENANT ACT 1985 ('the 1985 Act') and Schedule
11 to the COMMONHOLD AND LEASEHOLD REFORM ACT 2002
(‘the 2002 Act)**

Case Number: CAM/22UC/LSC/2010/0084

DECISION

<u>Premises</u>	20 Highfield Path, Millers Drive, Great Notley, Braintree, Essex CM77 7FD
<u>Applicants</u>	Fairhold (Yorkshire) Limited (landlords)
<u>Representation</u>	Mr A Andresen (solicitor) and Mr N O'Connor (manager) both of Solitaire Property Management Limited (managing agents)
<u>Respondent</u>	Mr G White and Mrs C White (leaseholders)
<u>Representation</u>	In person
<u>Date of Hearing</u>	3 November 2010
<u>Date of Inspection</u>	3 November 2010
<u>Date of Decision</u>	25 November 2010
<u>The Tribunal</u>	Professor James Driscoll, solicitor (Lawyer Chair), Mr G Smith MRICS FAAV and Ms C St Clair MBE BA
<u>The Decision Summarised</u>	<ol style="list-style-type: none"> 1. The administration charge made for late payment in the sum of £57.60 was reasonably incurred and is recoverable from the leaseholders. 2. The leaseholders are to pay this sum to the landlord by 8 December 2010. 3. This matter is transferred back to the Chelmsford County Court.

Introduction

1. This is an application for a determination of service charges following the transfer of proceedings in the Chelmsford County Court. On 14 May 2010 the Court ordered the transfer of a claim for unpaid service and administration charges to this tribunal.
2. It concerns the premises which is one of a number of flats all of which have been sold on long leases. The applicants are the owners of the freehold and the landlords under the flat leases. We will refer to the applicants as the 'landlords'. They have appointed managing agents who have the conduct of this application. We will refer to them as the 'managing agents'. The managing agents were appointed in 2006 replacing another firm of agents.
3. The respondents are the joint leaseholders of the flat (at 20 Highfield Path) and we will refer to them as the 'leaseholders'. The leaseholders also own another flat in the same development. This is flat numbered 80. Both flats are sublet on assured shorthold tenancies by the leaseholders.
4. The landlords claim that service charges have not been paid for 2006, 2007, 2008 and 2009. The leaseholders admit that some charges have not been paid. They complain that they have found it difficult to obtain full explanations and documents for these charges. The leaseholders also question whether an administration charge of £57.50 is recoverable and they also sought to raise the issue of costs and section 20C of the Act.

The hearing and the inspection

5. Two members of the tribunal inspected the premises prior to the start of the hearing. (unfortunately the chair was delayed and was unable to attend the inspection). At the hearing Mr Andresen, the solicitor representing the managing agents, told us that some of the charges are irrecoverable as a result of section 20B of the Act which bars recovery of charges which were incurred more than 18 months before the service charge was demanded. The leaseholders questioned certain charges which are described by the managing agents as 'balances bought forward'.
6. We proceeded to consider the charges for each of the years. As the hearing progressed it became apparent that the leaseholders now accepted that the charges (other than the carry forward figures) were properly incurred under their lease and that for the most part the charges were reasonably incurred. They expressed some reservations about the gardening costs as they considered that the gardening works were probably carried out too often. In the end the leaseholders told us that they now accepted the service charges currently claimed.

7. These figures were revised to take account of the charges barred by the operation of section 20B. The parties then reached agreement on the payment of the service charges which are the subject of these proceedings. (Similarly, agreement was reached for the charges for their other flat which the landlords are also seeking recovery via county court proceedings which have also been transferred to this tribunal, though the tribunal has yet to receive the papers on that application). The terms of that agreement are summarised as an appendix to this decision.
8. As the parties reached agreement on these charges we did not have to make a determination of them. Indeed we do not have jurisdiction to do so (see: section 27A(4) of the Act which provides that no application can be made in respect of a matter which has been agreed or admitted by the leaseholder).

Our decisions

9. This left us to deal with the determination of an administration charge of £57.50 (for the 2008/9 year) which the landlords submit was reasonably incurred. The leaseholders dispute this. There was also an issue which we raised with the parties over the application of section 20C of the Act and the landlord's professional costs.
10. Dealing first with the administration charge, we refer to schedule 11 to the Commonhold and Leasehold Reform Act 2002. It is common ground between the parties that the charge is an administration charge within the meaning of paragraph 1 of that schedule. Under that schedule such charges have to be reasonable. Given the history of this matter and the fact that the landlords had to institute proceedings for unpaid charges we cannot see how that specific charge is unreasonable. Accordingly this charge is recoverable from the leaseholders.
11. Turning to section 20C Mr Andreson fairly made the point that the leaseholders had not notified the tribunal prior to the hearing that they wished to raise section 20C as an issue. If we had to rule on this issue we would not have made an order under section 20C as we think the landlords were justified in incurring the costs of proceedings.
12. In reaching these decisions we have borne in mind that the leaseholders consider that the managing agents have not responded to their frequent requests for information and documents. We note also that the leaseholders, having been provided with information in the documents and statements made in these proceedings are now satisfied as to the recoverability of the service charges, which have been backed up by documentation. We do not consider that it is either wise or fair for leaseholders to withhold charges in these sorts of circumstances. For example, the leaseholders did not challenge the landlord's costs of insuring the premises, yet they did not pay their contribution to these costs.
13. This matter is now to be transferred back to the Chelmsford County Court.

James Driscoll

James Driscoll (Lawyer Chair)

Dated: 25 November 2010

Appendix

Matters agreed by the parties at the hearing held on 3 November 2010

Mr and Mrs White will pay the sums of £488.56 for the service charge year 2007; £597.95 for 2008 and £701.55 for 2009

The landlords will suspend the claim for the 'carry over' figure from the previous managing agents pending further enquiries

Mr and Mrs White and the landlords will each check their records to find out what was actually paid to the previous agents

The landlord will calculate the revised interest and the court costs involved and advise Mr and Mrs White accordingly

Once the charges have been paid for 2007, 2008, 2009, the costs and interest and the carry over figure is agreed and settled the landlords will discontinue the court proceedings