



**Residential
Property**
TRIBUNAL SERVICE

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 – SECTION 27A

Ref: CHI/00HX/2010/0105

Property: 28, Ventnor Close, Swindon, SN25 3HN

Applicant: Mr J P Johnson

Respondent: Swindon Borough Council

Attendance: Ms N Muir - Counsel

Ms Haygarth

Mr P Holohan

Mr M Szczepanek

Ms R Manroe

Mr I Burbidge

Date of hearing: 2nd November 2010

Date of decision: November 2010

Tribunal: Mrs H C Bowers (Chairman),
Mr T D George

DECISION

In respect of the period 1st April 2010 to 31st March 2011: the sum for Communal Repairs/Redecoration of £100.00 is reasonable and payable; the sum for Estate Services of £69.68 is not payable under the terms of the lease and the sum for Administrative & Management Charge that is reasonable and payable if £125.

Introduction

1.) An application that was dated 15th July 2010 was received by the Tribunal seeking a determination under Section 27A of the Landlord and Tenant Act 1985 (the Act) as to the reasonableness of service charges payable in the year 2010.

2.) A review of the application was undertaken and Directions were issued on 18th August 2010. It would appear that the sum of £124.79 per quarter (which equates to £499.16 for the whole year) is being disputed.

3.) The Applicant questioned why the service charge had doubled. In particular the Applicant asked why a warden was being used and noted that the management fee was excessive.

Background

4.) The Applicant holds a leasehold interest (as lessee) in 28 Ventnor Close (the subject property). The Respondent is the freeholder of the development, which includes the subject property.

The Lease

5.) The lease of the subject property is dated 30th October 1989 ("the Lease") and was originally between The Council of the Borough of Thamesdown as lessor and John Paul Johnson as lessee.

6.) Under clause 4(2) of the Lease the lessee covenants to pay a service charge and provides details of the service charge mechanism. In particular this clause states that the lessee is to pay "*one quarter (1/4) (hereinafter called "the said proportion") of the costs reasonably incurred by the Council (a) in complying with its obligations under paragraph 14 of Part III of the Sixth Schedule to the Act, (b) in carrying out the covenants contained in Clause 6(2) hereof (including the Council's reasonable administrative and management costs in respect thereof) and (c) in carrying out any improvements to the Building and the property....."*

Clause 6(2) of the Lease states:

"(2) Without prejudice to the Council's obligations under paragraph 14 of Part III of the Sixth Schedule to the Act the Council hereby covenants with the Lessee as follows:-

(i) To insure and keep insured (with the Lessee's interest noted on any policy) the property (but not the contents thereof) and the Building against loss or damage by fire tempest flood and such risks as are usually covered by a comprehensive policy of insurance in the full re-instatement value thereof in an insurance office of repute or by its own insurance fund

(ii) To keep the structure and the exterior of the property and the Building including drains gutters and external pipes and any other property over or in respect of which the Lessee has any right by virtue of this lease or the Act in repair including making good any structural defects therein."

Inspection

14.) The Tribunal made an inspection of the property on 2nd November, prior to the hearing. The subject property is a first floor maisonette in a two storey, purpose built block. The property would appear to date from the 1940's – 1950's and is of rendered brick and tiled construction. There are no internal common parts, as each maisonette has its own direct access point at ground floor level.

15.) The extent of the external common parts are a footpath giving access to the property and running to the front of the building and around the rear of the building to the garden areas. There is a small communal drying area.

The Law

16.) Paragraph 14 of Part III of the Sixth Schedule of the Housing Act 1985 states amongst other matters:

"(2) There are implied covenants by the landlord –

(a) to keep in repair the structure and exterior of the dwelling-house and of the building in which it is situated (including drains, gutters and external pipes) and to make good any defect affecting the structure;

(b) to keep in repair any other property over or in respect of which the tenant has rights by virtue of this Schedule;

(c) to ensure, so far as practicable, that services which are to be provided by the landlord and to which the tenant is entitled (whether by himself or in common with others) are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services;"

Section 18 of the Landlord and Tenant Act 1985 provides:

- "(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 or later period"*

"Section 19

- (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

- (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”

Representations

17.) There were written representations from both parties and a summary of each case is detailed in the following paragraphs. The following items were identified at the hearing as being in dispute and required a determination from the Tribunal.

18.) We were advised that the estimated service charge in respect of the subject property for the period 1st April 2010 to 31st March 2011 was a total of £485.65 and was made up from the following figures:

a)	Annual Ground Rent Standard Charge -	£10.00
b)	Building Insurance Premium -	£99.04
c)	Communal Repairs/Redecoration -	£100.00
d)	Estate Service -	£69.68
e)	Administrative & Management Charge -	<u>£206.96</u>
		£485.65

19.) Mr Johnson confirmed that he had no dispute in respect of item a), the ground rent of £10 and item b), the building insurance premium of £99.04. He did however question item c) the communal repairs and redecoration of £100; item d) the estate service of £69.68 and item e) the administrative and management charge of £206.96.

Applicant's Case

20.) In respect of the £100 for communal repairs and redecoration, Mr Johnson stated that he was concerned that he was merely charged this sum

no matter what works were undertaken and that he received no refund for any unspent money.

21.) With respect of the Estate Service, Mr Johnson explained that he did not require the services of a warden and considered that this was a tenant's charge rather than a charge to the leaseholders. He questioned whether he was liable to pay the charge under the terms of his lease. Regarding the management charge, Mr Johnson considered that this was a high figure. Overall he was hopeful that the Tribunal would reduce the charges.

Respondent's Case

22.) Regarding the sum in respect of Repairs and Redecoration, the Respondent confirmed that this was only an estimated sum. If the sum is not spent, then there will be a credit back to the Applicant.

23.) Turning to the issue of the Estate Service of £69.68, this was a sum in respect of warden services. Prior to the 2010/11 service charge year this item had not been charged to the leaseholders. It was explained that this was a benefit to everyone and that there were two levels of charges dependent upon whether there was an internal communal area. In the case of 28 Ventnor Close, this was classified as having no internal communal area and therefore a lower charge applied to this property. There had been a consultation process and the consensus was for the continuation of the warden service. It was explained that there was a proactive element to the service that included educational visits. Other tasks included in the warden service were removal of fly tipping; helping with gardening and dealing with the clear up after drug incidents. It was confirmed that Mr Johnson would have the benefit of these services including the collection and disposal of old furniture items. These services had been highlighted in a magazine circulated to all the leaseholders, and Mr Johnson acknowledged that he had not read the magazine so was unaware of the availability of the services. It was acknowledged that the Respondent had two roles, one as a local authority and one as a landlord. Although there could be an overlap in the roles, it was confirmed that the cost side was clearly split.

24.) In respect of the Administration and Management Charge of £206.96, it was confirmed that this reflected the actual cost of management and was a standard charge for all leaseholders. In larger blocks there were specific costs associated to caretaking and cleaning activities and these costs were not included in Mr Johnson's service charge. In previous years the charge to the leaseholders had not truly reflected the costs of providing the administration and management service. Mr Burbidge, the Housing Finance Manager of Swindon Borough Council, explained the elements that comprised the charge of £206.96. There had been a change in re-charging following a review of

processes at Swindon Borough Council to ensure that the rents received from tenanted properties were not subsidizing the leaseholder element of the portfolio.

25.) Ms Muir submitted that she was relying upon the Sixth Schedule Part III (14)(2) of the Housing Act 1985 as to issue of payability. It is a question as to whether the warden service is a service to which the leaseholder is entitled to use. It was suggested that the services of the warden were available to the leaseholder and that he was entitled to use those services. The use of the word "installation" in that part of the Act was not a limitation to the services that could be provided by the landlord. It was stated that there was no challenge as to the level of the cost or the standard of the service provided. No evidence had been produced to challenge the level of the charge or the reasonableness of the service.

Tribunal's Decision

26.) First the Tribunal considered the issue of the sum of £100 as an estimate of the repairs and redecorations to be carried out at the subject property. The Tribunal notes the comments of the Respondent that this is only an estimated sum and that any under-spend will be credited back to Mr Johnson's account. Overall this is not an unreasonable sum of money for minor repairs. Accordingly, we determine that the sum of £100 is reasonable and payable. This determination does not prevent the Applicant from questioning any sum which is finally expended and when full details have been provided at the end of the accounting year.

27.) The first issue in respect of the Estate Charge for the Tribunal to address is the question as to whether the items are payable under the terms of the lease. We are satisfied that clause 6(2)(ii) of the Lease does not make any provision for the recovery of expenditure in respect of services. Turning to paragraph 14 of Part III of the Sixth Schedule to the Housing Act 1985, paragraph 14(2)(c) states: "*to ensure, so far as practicable, that services which are to be provided by the landlord and to which the tenant is entitled (whether by himself or in common with others) are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services; ...*". This could allow for the recovery of an Estate Charge if the lease requires services to be provided by the landlord. However, the Tribunal could not find any provision in the lease that requires the landlord to provide the Estate Charge services and consequentially there are no provisions in the lease to which the tenant is entitled to these services. It cannot be that the landlord can dream up any kind of services and charge the tenant for them. To make any sense of the very inadequate clause 14(2)(c) the services must be contracted for under the terms of the lease and must be an express entitlement which the tenant has under the lease. Both elements

have to be present and in fact neither are present in this case. Accordingly, the Tribunal determines that as there are no provisions in the lease for this item to be included in the service charge, then the sum is not payable.

28.) In respect of the Administration and Management Charge, the Tribunal are satisfied that clause 4(2) of the Lease allows for the Respondent to charge administration and management costs in the service charges. The question then arises as to whether the level of the charge is reasonable. The Tribunal appreciates the calculations undertaken by the Respondent to provide a charge that reflects the costs in providing the management services. However, we are an expert Tribunal and can rely upon our own general knowledge and experience. In this case the administration and management service for the subject property must be minimal given the lack of internal common parts and overall construction and repair of the building in which 28 Ventnor Close is situated. If this property was in private ownership and managed by a managing agent in the private sector, then we anticipate that the Administration and Management Charge would be no more than £125 per annum. Accordingly we do not find that it would be reasonable for the Applicant to be charged a sum in excess of this amount. We determine that the Administration and Management Charge is reduced to £125 for the service charge year 2010/11.

Section 20C

29.) Mr Johnson had not made an application under the provisions of section 20c of the Act for an order from the LVT that any costs associated with the current application should not be treated as "relevant costs". However, the Respondent confirmed that any costs incurred in respect of the application would not be added on to future service charges. The Tribunal are grateful to the Respondent for this acknowledgement.

Chairman
Helen Bowers

November 2010