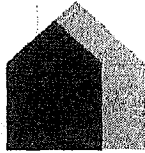


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Residential
Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 SECTION 27(A)

223 Somerset Gardens, White Hart Lane, London N17 8HB

Case Reference: LON/00AP/LSC/2009/0556

Mr David Finberg

Applicant

Taunton Court Management Company Limited

Respondent

Dates of hearing:

11 January & 25 March 2010

Tribunal:

Mr M Martynski (Solicitor)
Mr C Gowman MCIEH MCM BSc
Mrs L Walter MA(Hons)

Present:

Mr Finberg

DECISION

Summary of decision

1. The following amounts are not payable by the Applicant:-
 - (a) Any sum in respect of cleaning, garden maintenance and repairs that exceeds £130.00 per annum for the years 2007-9 is not payable.
 - (b) Any sum in respect of management fees that exceeds £50.00 per annum for the years 2007-9 is not payable.
 - (c) No sum in respect of Door Entry System/Aerial is payable for the years 2007-9.
 - (d) Any sum in respect of reserve fund that exceeds £200.00 per annum for the years 2007-10 is not payable.

2. The Tribunal makes an order under section 20C Landlord and Tenant Act 1985 that none of the costs incurred, or to be incurred, by the Respondent in connection with these proceedings are 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 Respondent is to pay to the Applicant the fees he has paid to the Tribunal in the sum of £250.00 by no later than 30 April 2010.

4. The Respondent is to pay to the Applicant costs of £134.00 by no later than 30 April 2010.

Procedural background

5. At the original hearing of the application on 11 January 2010, the Applicant was present but there was no attendance on behalf of the Respondent Company or its managing agents. A fax from Goldfield Properties Limited ('the Managing Agents') was sent to the Tribunal offices at 10.19am on the day of the hearing (after the Tribunal clerk had telephoned their offices) saying that their representative Mr Donnelan, was unable to attend the hearing due to adverse weather conditions.

6. The Respondent had not complied with the directions given earlier in the proceedings in that no invoices for service charge expenditure had been sent to the Applicant. Further the Respondent had provided company accounts for the Respondent rather than service charge accounts and had not provided any reserve fund accounts. Accordingly the Tribunal did not have essential information for determination of the proceedings.

7. The Tribunal adjourned the hearing and gave further specific directions asking the Respondent to provide the missing information required to properly determine the application. On that day, the Tribunal inspected the building in question. The Managing Agents were advised of the intention to inspect and given an opportunity to attend the inspection. On the inspection only the Applicant was present.

8. The Respondent failed to comply with the directions issued by the Tribunal on 13 January 2010.

9. At the adjourned hearing on 25 March, there was again no appearance from the Respondent or the Managing Agents. When the Managing Agents were telephoned by the Tribunal clerk, they explained that they had failed to diarise the hearing.

10. Despite being hampered by a lack of information, the Tribunal decided to proceed with the final hearing and to determine the issues in the case. Given the history of the application so far, the Tribunal had no confidence that any further progress would be made if the matter were adjourned a second time.

Inspection

11. The block in which the Applicant's flat is contained is one of five blocks all built at the same time. Of those blocks, different blocks are treated as different and separate areas for the purpose of the service charge. To the Tribunal's knowledge, there are at least three separate areas controlled by separate management companies. The area in which the Applicant's flat is situated comprises 106 flats¹. That unit is controlled by the Respondent² which is a party to the leases. The area in which the Applicant's flat is situated appears to include, at least one block and the gardens and roadways around that block.

12. Under the terms of his lease, the Applicant pays a 0.869% share of the total expenditure for his area.

13. The Applicant's block is built in sections with each section having its own main entrance door and communal hallways and stairs.

14. The Tribunal found the block in question to be poorly maintained. Several gutters were blocked. There were numerous areas where ivy was growing on the exterior walls. There were also numerous areas where, due to ongoing problems with overflow pipes, there was damp staining/possible damp penetration/blown plaster on exterior walls.

15. There was little evidence of recent and regular gardening. Rubbish was strewn on lawns and in bushes. The courtyard garden area was heavily littered with dog faeces.

16. A number of loose wires were attached at various places on exterior walls.

17. The locks on the front doors to at least three entrances to the block were broken allowing unrestricted access to the common areas in question (and accordingly to the individual flats' front doors).

18. The Tribunal inspected the communal area where the Applicant's flat is situated and another similar communal area in the block. Those communal areas were poorly maintained. In the latter area there was damp staining and holed plaster. In the former area there was a broken socket and covers were missing from inspection/maintenance hatches to service pipes. Decoration generally was poor.

19. The Tribunal also inspected the neighbouring block, Somerset Hall (not part of the Applicant's area for the purpose of the service charge), which contrasted sharply with the subject block. That neighbouring block was well maintained with clear evidence of proper gardening and estate cleaning. The fabric of the block had none of the problems evident to the block in question.

¹ This is according to the lease. The service charge percentage payable by the Applicant, assuming that all flats pay an equal amount, would indicate that there are 115 flats.

² In which, the Tribunal presumes, all leaseholders in the block have a share and equal membership – the extent to which this company is functioning effectively or at all is not clear.

The service charge information

20. At the final hearing, because of the failings of the Respondent, the Tribunal was left in a position of having incomplete information on the actual service charges over the years.

21. For the years 2007-8, all the Tribunal had were the Respondent's company accounts. For the years 2007-10 the Tribunal had service charge estimates. However all these estimates were identical.

22. The Tribunal did not have any service charge accounts showing the total expenditure for each year and the share of that expenditure payable by the Applicant. It did not have the Applicant's individual service charge account.

23. The Tribunal did not have any invoices at all for any of the service charge items.

The issues and the Tribunal's decisions

Windows

24. At the time he moved in, the Applicant replaced two windows in his flat for which he sought permission (which was given) from the freeholder. The Applicant believed that he had to pay an administration charge in respect of that to the freeholder. He was unsure of the amount paid, he thought it may have been in the region of £100.00.

25. The Tribunal is unable to make a ruling on this matter as; (a) it cannot be sure of the amount in question; (b) it has no clear details of what exactly was asked of the freeholder.

Electricity

26. The figures that the Tribunal had were as follows:-

07	£4,244 (as per accounts)
08	£5,122 (as per accounts)
09	£1,500 (as per estimate)
10	£1,500 (as per estimate)

27. The Tribunal assumed that these figures covered electricity supplied not only to the internal communal parts to the Applicant's block, but also to other external communal areas.

28. The Applicant thought that these figures were high and possibly inflated.

29. The Tribunal had no real way to assess the reasonableness of these figures other than to conclude that, at their highest, they amounted to approximately £40.00 for the year to the Applicant, which was a figure that did not seem unreasonable. The charges for electricity, so far as they are known and set out in this decision are therefore reasonable and payable.

Cleaning, garden maintenance and repairs

30. The figures that the Tribunal had were as follows:-

07	£31,209 (as per accounts)
08	£38,103 (as per accounts)
09	£27,745 (as per estimate)
10	£27,745 (as per estimate)

31. The fact that such different items were all lumped together is, like so many other aspects of the management of the Managing Agents, unsatisfactory, especially given the failure to provide invoices and other information requested by the Tribunal.

32. According to the Applicant, he had never witnessed any external window or other external cleaning. He confirmed that there was internal common parts cleaning and that the grass was mowed occasionally and that he had seen people around the block undertaking works of an unspecified nature.

33. Set against this the Applicant pointed to the general disrepair and the general unkempt appearance of his block and the surrounding area. This is supported and confirmed by the Tribunal's own inspection.

34. The Tribunal has allowed for the fact that there is cleaning (internal) to the value of possibly £6,000 per annum and gardening to the same value. No evidence was provided in respect of anything else within this category. The Tribunal has allowed however another 'contingency' sum of £3,000. In the absence of any evidence from the Respondent, the Tribunal is unable to determine what other expenditure is reasonable.

35. In respect of the years 2007-9, any sum which exceeds £130.00 (Applicant's share) is not reasonable and not payable by the Applicant.

36. As for 2010, if a service charge were demanded for this item, it would, in principle be payable. The amount payable however would depend on what was demanded and whether the work or service paid for was reasonable.

Management fees

37. The figures that the Tribunal had were as follows:-

07	£12,455 (as per accounts)
08	£13,676 (as per accounts)
09	£12,455 (as per estimate)
10	£12,455 (as per estimate)

38. The management in this case appears to be lamentable. Reference is made to the comments above concerning the Managing Agent's behaviour in these proceedings. There was little evidence of proper management on inspection of the property. The fact that the external door to the communal lobby and stairs of the Applicant's part of the block was unrepaired for a period of something like three years is testament to a very poor standard of management. There are other examples;

- the production of estimated expenditure year on year that contain identical figures indicating no thought or proper preparation into these documents

- the lack of regard to the provisions of the lease when charging management fees (see below)
- a failure to provide service charge accounts to the tenants in accordance with the lease
- a failure to provide proper service charge demands (see below)

39. The Applicant's lease provides that the management fees charged will not exceed 10% of the total expenditure. It is clear that, at least for 2008, the fees charged do exceed 10%. In all the estimated accounts from 2007-10 the management fees exceed 10%. This is despite the fact that this overcharging has been pointed out to the Managing Agents and to Mr Donnellan (managing director of the Managing Agents) in the Tribunal's decision dated 14 May 2007 [*96 Somerset Gardens, N17 – Reference: LON/00AP/LSC/2007/0017*]. The continued overcharging by Mr Donnellan's company is, at the very least, extremely poor behaviour.

40. The management fee of (at its lowest) £12,455 works out at approximately £117 per flat. Whilst this is at the lowest end of the scale of expected fees for a block of this type, that charge assumes a basic and competent service – such a service does not appear to have been provided in this case. For the years 2007-9, any fee exceeding £50 per annum (Applicant's share) is unreasonable and not payable.

41. As for 2010, if a service charge were demanded for this item, it would, in principle be payable. The amount payable however would depend on what was demanded and whether the work or service paid for was reasonable. If the Managing Agent's performance does not improve, no more than £50.00 per annum would be payable. In any event, no amount that is greater than 10% of the Annual Expenditure (as defined in the lease) would be payable under the terms of the lease.

Door entry system/Aerial system

42. The figures that the Tribunal had were as follows:-

07	£1,012 (as per accounts)
08	£897 (as per accounts)
09	£1,500 (as per estimate)
10	£1,500 (as per estimate)

43. The door to the Applicant's part of the block was broken for three years. The Tribunal noted that various other doors were broken. The Applicant's door was only repaired after the Tribunal's inspection in January.

44. Given the above and the lack of any evidence to support the charge, the Tribunal concludes that for the years 2007-9, no charge would be reasonable for this item.

45. As for 2010, if a service charge were demanded for this item, it would, in principle be payable. The amount payable however would depend on what was demanded and whether the work or service paid for was reasonable.

Metered water

46. The figures that the Tribunal had were as follows:-

07	£36,647 (as per accounts)
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- 08 £30,282 (as per accounts)
- 09 £16,000 (as per estimate)
- 10 £16,000 (as per estimate)

47. The figures at their highest amount to approximately £318 per annum for the Applicant's flat. There is nothing unusual about this sum. Although there is no supporting documentation for the item, the Tribunal concludes that the 2007 and 2008 sums are payable and that if similar sums are demanded in 2009 and 2010, they would be payable.

Reserve fund

48. The figures that the Tribunal had were as follows:-

- 07 £43,370 (as per accounts)
- 08 £43,370 (as per accounts)
- 09 £43,370 (as per estimate)
- 10 £43,370 (as per estimate)

49. In the absence of any information from the Respondent in relation to planned maintenance or provision for major works the Tribunal, using its own experience, considered that the provision for the reserve fund (which breaks down at approximately £376 per flat) appears excessive. For the years 2007-10, any sum in excess of £200 (Applicant's share) is unreasonable and not payable.

Costs and fees

Costs - section 20C Landlord and Tenant Act 1985

50. This section provides as follows;

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, residential property tribunal or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, 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.

51. Given the failings on the part of the Respondent and the fact that the Applicant has been largely successful in challenging the level of service charge, the Tribunal makes an order pursuant to the above section in connection with any costs incurred by the Respondent in these proceedings.

Fees

52. For the reasons given above, the Tribunal orders that The Respondent must reimburse the Applicant the fees he has paid to the Tribunal in the sum of £250.00 by no later than 30 April 2010.

Penalty costs

53. Pursuant to Paragraph 10 of Schedule 12 Commonhold and Leasehold Reform Act 2002 the Tribunal has the power to order payment of costs from one party to another in circumstances where a party has, in the opinion of the tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. The Tribunal gave notice to the Respondent that it was considering making such an order in its directions given in January 2010. The Respondent made no representations on this (or any other) issue.

54. The Tribunal concludes, that the Respondent has behaved unreasonably in that it has failed to provide the Tribunal and the Applicant with the documents and information as ordered in the original and supplementary directions and has also behaved unreasonably in failing to ensure attendance at any of the three hearings in this application (the directions hearing and the two final hearings). This has put the Applicant and the Tribunal to considerable inconvenience.

55. The Applicant has spent £14.00 in travel to Tribunal hearings and has costs of £120.00 of preparing for the hearings making a total claim of £134.00 which the Tribunal allows in full. These costs should be paid by 30 April.



.....
Mark Martynski – Tribunal Chairman
30 March 2010