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MAN/00CX/LIS/2010/0017

RESIDENTIAL PROPERTY TRIBUNAL SERVICE.

LEASEHOLD VALUATION TRIBUNAL

LANDLORD & TENANT ACT 1985 – Section 27A

Property 10 Anderson House, Fairview Court, Shipley, BD17 5LE

Applicant Ms. Patricia Elizabeth Unwin

Respondent Cavstole Limited

9th November 2010.

Tribunal members:- Mrs C M Hackett, Ms. J A Jacobs, Mr. M J Simpson.

DECISION:-

The service charges claimed by Cavstole Ltd via the Managing Agents, Arthur Ingham & Co, from Miss Unwin, are reasonably incurred as claimed. They are due and payable by Miss Unwin in the sum of £480 for 2007-8 and £720 for 2008-9. (subject to credit for payments made, if any)

Application.

By an application date 28th April 2010, lodged with the Tribunal offices on 29th April, Miss Unwin, the leaseholder of 10 Anderson House, sought a determination of the reasonableness of service charges for the years 2004-5 to 2009-10 inclusive. She also sought an Order that the managing Agents negotiate a contract for their services, that the tenants be allowed access to invoices and bank statements and further commented that the building is in a very poor state of repair and 'like a slum'.

Procedure.

A pre trial review and Direction hearing was held on 23rd July 2010. It was attended by Miss Unwin and Mr Shaw of the Managing Agents. The outcome of those Directions was that the reference to the Tribunal was limited to the years 2007-8 and 2008-9. The parties were directed to file their evidence sequentially and the Respondent was ordered to furnish appropriate invoice and expenditure documentation, to prepare a Scott schedule and formulate and supply a Hearing Bundle.

The Applicants written case.

Miss Unwin set out 5 items that she sought to challenge. Grass cutting costs, cleaning of communal areas, administration charges, repairs (including the failure to repair her garage) and 'other matters' (which included the way in which an insurance claim had been handled, solicitors costs and the cost of the Health and Safety survey –the Traynier Consultancy invoice).

The Respondents written case.

The grass cutting costs and gardening in general had reduced from £60 per visit to £55 per visit. There were 17 visits per year (2 per month April to October and one per month in November, December and March)

The cleaning was done monthly (although twice monthly would be preferable) at a cost of £37.14 plus vat per visit.

Walter Ingham's charge for managing the development on behalf of Cavstole Ltd is £75 per flat per year plus 10% of all expenditure.

No major repairs have been carried out during the period being considered by the Tribunal. Estimates have been obtained for replacement of the fascia boards, soffits and gutters in upvc. The consultation process will begin once it is known whether the LVT is satisfied with the service charges to date and the management of the development.

The insurance claim was properly processed and is in any event outside the period under consideration. The solicitor's costs were the subject of a specific County Court Order, and outside the period under consideration.

The Traynier Consultancy account was for a necessary Health and Safety report and obtained at modest cost.

The applicants reply.

Miss Unwin maintained that the outside area was 'scruffy'. She averred that it might be possible for the cleaning contractor to suggest a more cost effective way of working. She based her challenge of the Administration charge on the fact that it had trebled in four years. She emphasised the non repair of her garage. She accepted that other items raised by her were outside the scope of this reference.

The Lease

Miss Unwins lease is dated 17th December 1980 for a period expiring on 1st August 2079. It provides, in Schedule, 7 for the landlord to carry out all the matters for which service costs are sought. It provides, in schedule 6, for the payment of 1/12th of those costs by Miss Unwin. The Service Charge accounting year runs from 1 August in each year.

The Law

Landlord & Tenant Act 1985

19 Limitation of service charges: reasonableness

(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.

27A Liability to pay service charges: jurisdiction

(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.

The inspection.

The Tribunal members inspected the development, in the presence of Mr Shaw of Walter Inghams, at 10. 30 am on Tuesday 9th November 2010.

It is a modern purpose built block of 12 flats with individual garages and off street parking. There is a small grassed area to the front and a steep sloping bushed area to the rear and elevated drying area at one end of the block. Each group of 4 flats is served by a common staircase which was carpeted and decorated to a satisfactory standard. It is reasonable to assume that the decorating will need renewing shortly. There was no evidence of inadequate cleaning.

Externally the property was in a fair state of repair. The wooden barge boards and soffits will soon be in need of replacement. A downpipe to the external garage block was in need of replacement. Miss Unwin's garage door had failed, but it was apparent that this was due to an inadequate re hanging of the door and not any fault of the landlord.

Situate in a good residential area, in an elevated position, there was no evidence to justify an allegation that the development was 'a slum' or even 'scruffy'.

The hearing

The applicants representations.

This took place at Shipley Town Hall at 11.30 following the inspection. It was attended by Miss Unwin and Mr. Shaw.

Although her oral representations were extensive, detailed and not always to the point, it was possible to discern, from that which was relevant, that she wished to restrict the expenditure to a pre determined amount and to then ascertain what might be obtainable for that amount, She did not have any specific amounts in mind. In fact, when properly pressed by the Tribunal, she suggested amounts that were greater than some of the actual charges being levied.

It was apparent that she had no complaint about the standard of cleaning and described Mr Hawkesworth in glowing terms. She speculated as to whether the occupants could arrange to do it themselves, but accepted that in this day and age such arrangements were likely to be impracticable

She accepted that the proposed roof/soffit/barge board repairs would be necessary and, in part, justified her wish for restricted expenditure on the items that she challenges, as being in preparation for that major expenditure.

She did not challenge the Tribunals observation that the problem with her garage door was because of the re-hanging having been carried out inappropriately, She disclosed that this had been done by a third party to whom she lent the garage for storage.

The Respondents' representations

Mr Shaw succinctly amplified the representations set out in the Scott Schedule. He confirmed that until 2008 the level of service charge had been set at £480 per flat per annum, increasing to £720 pa for last year and the current year, so as to begin to establish a sinking fund (approx £5000 now in hand) for pending major expenditure. The main item being the proposed roof works for which estimates had been obtained. The cost was likely to be £15000. This was in part due to the fact that with three storey of height, and a steeply sloping site, it would be necessary to scaffold rather than utilise a cherry picker access platform.

The Hearing Bundle prepared by Mr. Shaw included all the relevant invoices so as to properly address Miss Unwins concerns regarding accountancy and audit, originally raised in her Application form, but, rightly, not pursued subsequently.

He confirmed that the best estimate obtained for the pending redecoration of the common parts was £1650 from a non VAT registered local decorator.

The Determination.

Grass cutting and gardening.

From our inspection it is obvious that the standard of gardening is satisfactory. The cost is reasonable and there is no proper scope for any reduction. The small strip of land to the right of the entrance drive is not maintained. It is unclear to whom it belongs. If Cavstole assumed responsibility for this strip one would expect a commensurate increase in gardening costs.

Cleaning of communal areas.

Our inspection indicates that this is carried out to a good standard, especially bearing in mind that it is done only monthly. The cost is modest. Self cleaning is not a practical proposition. The Lease permits (indeed requires) the landlord to keep the common parts clean.

Administration Charges and Managing Agents fees.

The development is competently managed. The fixed fee of £75 per flat per annum is low when one considers that all the work carried out in dealing with the Court and LVT work generated (mainly by Miss Unwin) is not additionally charged for. Even the mixture of a flat fee and a 10% fee on expenditure does not render the management costs unreasonable. It is apparent from the letters submitted from the vast majority of the other tenants, that they are well satisfied with the work of the landlord and the management of Walter Ingham & Co.

The significant increase in annual charges has been reasonable and proportionate. It is authorised by the Lease. It is prudent management and will provide a modest buffer to the substantial demands that will have to be made via the service charge account in the next year or so for the roof works, of which Mr. Shaw provided the details.

Repairs

Our inspection reveals that there is no significant want of repair. The roof works are in hand. The garage down pipe is a recent issue and we accept that the managing agents will attend to it promptly. The defective garage door is not the responsibility of the Landlord. It is a defect caused by those to whom Miss Unwin allowed use of the garage and should be repaired at her own expense

Other matters.

Most of the other matters raised by Miss Unwin were outside the scope of this determination. The Traynier Consultancy account was reasonably incurred and in our experience of modest cost. It again illustrates the professionalism of Mr Shaw in obtaining a low cost quality service without yielding to the temptation to spend the tenants money freely so as to increase his percentage management fee.

Conclusion

We are satisfied that each and every item of service charge expenditure is reasonably incurred. The works are to at least a satisfactory standard and often better. The service charges claimed and the work to which they relate, including the provisional sums on account of pending major items are in accordance with the Lease. The Service Charge payable for 2007-8 is £40 per month (£480 pa) per flat and for 2008-9 £60 per month (£720 pa) per flat.

A handwritten signature in black ink, appearing to read 'M J Simpson', written in a cursive style.

M J Simpson.
Chairman.