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HM Courts
& Tribunals
Service

Leasehold Valuation Tribunal

Case number BIR/00CN/LSC/2011/0036

Property 7 Wesley Court, 116 City Road, Edgbaston, B16 0NL

1st Applicant Mr D Dodd (Tenant)

Respondent Anchor Housing Association (Freeholder)

Date of Application: 6th September 2011

Type of Application to determine reasonableness and payability of service charges to be incurred under section 27A(3)(c) and limitation of costs under section 20C of the Landlord and Tenant Act 1985- (The Act).

Tribunal: Mr R T Brown FRICS (Chairman)
Mr J Dove Solicitor

DECISION

1. The Tribunal determines the reasonable estimated cost of services to be incurred for the year ending 31st March 2012 is **£50,226.00**.
2. The Tribunal determine that no order shall be made limiting the right of the Landlord to recover its costs of these proceedings through the service charge.

REASONS FOR DECISION

The Application and Introduction

3. The Applicant seeks a determination of the reasonableness of the cost of services to be incurred in the year ending 31st March 2012.
4. It is not in dispute between the parties that a service charges is payable under the terms of the lease for the services provided.
5. Papers submitted by the Applicant include: The Application and enclosures which included the tenancy agreement, together with written statements dated 2nd November, 18th December 2011 and 10th and 11th January 2012.
6. Papers submitted by the Respondent comprise a letter dated 8th December 2011.

The Property and the Tribunal's inspection

7. The Tribunal inspected the property on the 23rd January 2012 in the presence of the Applicant, Mr D Dodd.
8. The development of sheltered housing constructed circa 1985 comprises a purpose built block of 25 flats. The development benefits from mature courtyard gardens and parking for approximately 10 cars.
9. The three storey property is constructed in traditional brick and tiles with double glazed windows and doors. The flats are heated from a communal boiler located on the Ground Floor and a lift serving all floors.
10. The common facilities include: Dayroom, kitchen, w/c and laundry, bin store on the Ground Floor, double guest room with sink, adjoining communal shower/w/c, and hairdressing room on the First Floor.
11. The Tribunal noted at their inspection:
 - The development was generally maintained to a high standard
 - Flat roofed areas had moss accumulation
 - Some gutters were defective and blocked
 - Mr Dodd pointed out a bald patch of grass outside the front entrance

The Law

12. The relevant law is set out in **Appendix 1** attached.

The Tenancy

13. The Tribunal was provided with a copy of the tenancy agreement dated 25th November 1991.
14. The Schedule of Services details the services to be provided which are more specifically described in the budget.

The Hearing

15. The Hearing took place at 11.30 am on the 23rd January 2012 at the Birmingham Office of the Residential Property Tribunal Service.
16. The hearing was attended by the Applicant Mr D Dodd.

The Applicant's Case

17. The Applicant's case stems from a general dissatisfaction with the way the management is conducted.

Relief Manager

18. The Applicant says the budget has increased from £845.00 to £1,480.00 without explanation from the Landlord. The Relief Manager only covers for 45 minutes every Tuesday instead of 2 hours. He also covers for the Manager's annual holiday.

Pest Control

19. The Applicant withdrew his objection to this figure.

Gardening additional work

20. The Applicant says this figure is budgeted every year and there is no evidence that any additional work is carried out.

Repair Maintenance etc

21. The Applicant says no repairs are carried out, however when questioned by the Tribunal he agreed that some repairs were undertaken. He accepted that the older the building and its equipment gets the greater the liability for repair.

Gardening Materials

22. The Applicant says that every year a charge for gardening materials was made for no reason but no such materials were ever found on the premises. He acknowledges that the reduction to nil in the budget means that no contribution is due for this item.

Overhead and Management

23. The Applicant says that no increase is justified on the basis of the inefficiency of the management. He supports this by reference to difficulties he has experienced in corresponding and dealing with complaints.

Kitchen and Bathroom Units

24. The Applicant made no further comment in the hearing having said in submission that the units were due for change two years ago but had not been changed.

Section 20C Application

25. The Applicant seeks an order from the Tribunal that the costs of these proceedings are not to be treated as relevant costs but makes no submission on this point.

The Respondent's Case

26. The Respondent's Case is set out in their letter of 8th December 2011 prepared by Mrs C Heywood, Senior Assistant Accountant.

Relief Manager

27. The budget has increased from £845.00 to £1480.00 and is set by the Respondents Area Manager. It is based on the expected number of days that cover will be required during the year. It would be required for sickness, training and holiday periods

Pest Control

28. This item withdrawn by the Applicant.

Additional Gardening Work

29. In the year ended 31st March 2011 and in the budget for this financial year a provision of £500.00 for each year has been included. This is to cover any additional work requested by tenants which falls outside the basic gardening contract. It is also to provide any necessary tree surgery.

Repair Maintenance etc

30. The Respondent says that the usage charge increased from the actual sum of £11,764.00 in the previous financial year to £13,192.00 in the budget due to the

installation of new security equipment costing £3,033.70. This sum is recovered from the tenants over a 10 year period.

Gardening Materials and Kitchen and Bathroom Units

31. No mention appears in Respondent's letter.

Section 20C Application

32. The Respondent makes no submission.

The Tribunal's Deliberations

General comment on evidence of the parties

33. The Tribunal considered all the evidence both written and oral presented.

34. It is unfortunate that the Respondent did not attend the hearing as the Tribunal did not have the benefit of interrogating its submission and seeking explanation to matters which were not clear from the information presented.

Relief Manager

35. The Tribunal calculated that the relief manager would spend approximately 196 hours per annum on cover i.e. 2 hours for 48 Tuesday mornings and 100 hours for 4 weeks holiday. The budgeted charge of £1,480.00 per annum works out at £7.55 per hour (including Tax, NIC and overheads) which the Tribunal considers to be reasonable.

Pest Control

36. No determination on this issue required as the Applicant accepts the Respondents figure to be reasonable.

Additional Gardening Work

37. On the evidence of their inspection and finding no trees on site the Tribunal does not consider this figure to be justifiable and accordingly it is removed from the budget.

Repair Maintenance etc

38. After allowing for the additional expenditure on the new security system this figure shows little increase over the previous year and the Tribunal concludes it is reasonable.

Gardening Materials

39. This item is shown as £Nil in the estimate and therefore the Tribunal makes no determination on this point.

Overhead and Management

40. The Tribunal notes that the increase sought is 2%. In the current economic climate without justification from the Respondent Landlord the Tribunal concludes that no increase in the budget figure is justified and this increase is therefore disallowed and the figure of £6,377.00 is determined

Kitchen and Bathroom Units

41. The Tribunal notes the Applicant's comments however maintenance of the interior of the flats falls under section 11 of the Act and is a Landlord's

responsibility and is not therefore to be considered as part of the service charge.

42. The Tribunal determines the budget for the year ending 31st March 2012 should be made up as per the Landlord's Budgeted figure with the following amendment
 - a. Additional Gardening works £Nil (was £500.00)
 - b. Overhead and Management £6,377.00 (was £6536.00)
43. This reduces the total budgeted adjusted expenditure from **£50,885.00 to £50,226.00**
44. On the assumption that the current reasonable standard is maintained overall the Tribunal finds that the estimated costs for the services to be provided are reasonable, subject to the variations identified in this decision. In the event that this becomes an issue then a subsequent application could be made to the Tribunal under section 27A(2) of the Act.

Section 20C Application

45. The Respondent makes no submission. The Tribunal considered the comments of the Applicant in his application with regard to the Tribunal to using its discretion to make an order preventing the Respondent from recovering the costs of these proceedings by way of service charge. In so far as they may be recoverable under the tenancy agreement the Tribunal makes no order.

Robert Brown
Chairman

Dated..... **30 JAN 2012**

Appendix 1 – The relevant law

Landlord and Tenant Act 1985

Section 18 Meaning of “service charge” and “relevant costs”

- (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 period

Section 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.

Section 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.
- (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

Section 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 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.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Lands Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (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.