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HM COURTS AND TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Application relating to payability and reasonableness of a service charge under the Landlord and Tenant Act 1985 and an administration charge under the Commonhold and Leasehold Reform Act 2002

Case numbers	BIR/41UH/LIS/2012/0001 & BIR/41UH/LAC/2012/0001
Property	Apartment 7, Denmark House, 81 Willow Drive, Cheddleton, Leek, Staffordshire ST13 7FB
Applicant	St Edwards Park Management Company Ltd
Respondent	Mr Mark Frederick Finney
Date of inspection	2 August 2012
Tribunal	Mr C J Goodall, LLB, MBA Chairman Mrs S Tyrer FRICS
Date decision issued	15 AUG 2012

Summary of decision

1. The Tribunal determines that:
 - a. No payment is required at the present time from the Respondent for either service charges or administration charges due to non-compliance by the Applicant with section 21B of the Landlord and Tenant Act 1985 (in relation to service charges) and paragraph 4 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (in relation to administration charges).
 - b. If the Applicant complies with section 21B of the Landlord and Tenant Act 1985 in relation to a service charge demand for the service charge year 2011/12, the sum of £1,251.52 would be payable by the Respondent.
 - c. None of the administration charges totalling £240 claimed by the Applicant are due from or payable by the Respondent.

Background

2. Mr Mark Finney ("the Respondent") is the tenant of a flat known as Apartment 7, Denmark House, 81 Willow Drive, Cheddleton, Leek ST13 7FB ("the Flat"). Denmark House itself contains nine flats and is a detached, purpose built block constructed in the last 10 years. It is part of a larger development of a former hospital site in Cheddleton, now known as St Edwards Park ("St Edwards Park"). The Respondent purchased the Flat on a leasehold basis from Redrow Homes (Midlands) Ltd ("Redrow") on 23 November 2007. The lease ("the Lease") is for a term of 125 years from 1 Feb 2004 and is made between Redrow, the Respondent, and St Edwards Park Management Company Ltd ("the Applicant").
3. The Applicant claims that the Respondent has failed to pay service charges and administration fees due under the Lease. It commenced proceedings in the Stoke-on-Trent County Court to recover the charges and fees said to be due.
4. On 6 Jan 2012, the County Court ordered that those proceedings be transferred to this Tribunal. Application forms were then completed by the Applicant for determination by this Tribunal of the payability and reasonableness of the service charge and administration charges. The application for consideration of the service charge was dated 9 Feb 2012, and the application for consideration of the administration charges was dated 21 March 2012 and received by the Tribunal on 22 March 2012. There was an inspection of St Edwards Park and Denmark House on 2 August 2012. The Tribunal then determined the applications on the basis of the written documentation provided by the parties.
5. The Applicant has appointed RMG Limited to manage the whole of St Edwards Park, and it is RMG Ltd who effectively has conduct of these proceedings on behalf of the Applicant, so far as the Tribunal understands it.

The claims

6. The Applicant says that the Respondent owes £1,285.26 in outstanding service charges. It claims these are service charges for the year 1 April 2011 to 31 March 2012. This sum was invoiced to the Respondent on 5 May 2011. The sum claimed is split on that invoice into "service charge" of £1,169.96 and "reserve fund" of £115.30. In this decision, this claim will be called the Service Charge Claim.
7. Although the Applicant has produced a statement of account in its bundle of documents which shows that total alleged arrears of service charges are £3,330.74 (as at 19 June 2012), the only service charge sums in issue in these proceedings are the 2011/12 service charges.
8. In addition to the Service Charge Claim, the Applicant has also claimed from the Respondent certain administration charges, namely £180 for legal debt collection fees, £42 for an administration fee, and £18 for official copies of the Land Registry entries relating to the Flat. These have been invoiced to the Respondent in three separate invoices all dated 19 August 2011. Other administration fees are also shown on those invoices, but the only administration charges in issue in the County Court proceedings and these Tribunal proceedings are the three charges mentioned in this paragraph. In this decision, this claim will be called the Administration Charge Claim.

The Inspection

9. The inspection took place in the presence of Mr Jamie Goodwin, who is employed by RMG Ltd as the site manager for St Edwards Park. The Respondent did not attend. In addition to the members of the Tribunal, Mr Nigel Thompson, Vice-President of the Midlands Leasehold Valuation Tribunal, attended as an observer.
10. St Edwards Park is the site of a substantial former hospital / sanatorium which has been attractively developed for residential use. The former hospital itself and former outlying wards or nurses homes have been converted into a mix of townhouses and apartments, set in attractively laid out grounds with mature trees, grass areas, and landscaped parking spaces. A number of undeveloped parts of the site have been in-filled with new apartment blocks, one of which is Denmark House. Other areas of St Edwards Park have been developed with town houses, maisonettes, and detached houses. There are about 18 or 19 substantial buildings which have been converted or added in addition to an area of new build detached houses.
11. There are also some feature buildings on the site, namely a former water tower and a chapel. Both are converted to residential use. These are not within the management responsibility of the Applicant.
12. Denmark House itself is a three storey brick built building with pitched roof. There is a front door with electronic entry control leading to a carpeted communal hall and staircase. There are three apartments on each floor. The communal areas are lit and heated by electric storage heaters and have a fire alarm / detection system. Windows in the communal areas are regularly cleaned. The communal areas have apparently not been

painted since construction but are in good condition, clean, and well kept. Cleaning and minor repairs to the communal area are undertaken on a monthly basis.

The Tribunal's task

13. The effect of the transfer of the County Court proceedings to the Tribunal is that the Tribunal has to consider whether the sums claimed in the County Court proceedings are in fact payable by the Respondent. To do that, the Tribunal will consider:
- a. The legal background under which the Tribunal operates,
 - b. The terms of the Lease which contains the rights obligations and responsibilities of the Applicant and the Respondent,
 - c. The material evidence and submissions of the parties,
 - d. Whether the Tribunal agrees that the Service Charge Claim is valid, and
 - e. Whether the Tribunal agrees that the Administration Charge Claim is valid.

The legal background in relation to service charges

14. Under Section 27A of the Landlord & Tenant Act 1985 (" the 1985 Act"), the Tribunal has jurisdiction to decide whether a service charge is or would be payable and if it is or would be, the Tribunal may also decide:-
- a. The person by whom it is or would be payable
 - b. The person to whom it is or would be payable
 - c. The amount, which is or would be payable
 - d. The date at or by which it is or would be payable; and
 - e. The manner in which it is or would be payable
15. In effect, this gives an opportunity for both a proposed budget for service charges to be raised with the Leasehold Valuation Tribunal and a further opportunity for the sums then actually spent, when they are known, to be challenged.
16. Section 19(1) of the 1985 Act provides that:
- "Relevant costs shall be taken into account in determining the amount of the 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 and the carrying out of works, only if the services or works are of a reasonable standard:
- and the amount payable shall be limited accordingly."
17. A service charge is only payable if the terms of the lease permit the Lessor to charge for the specific service. The general rule is that service charge clauses in a lease are to be construed restrictively, and only those items clearly included in the Lease can be recovered as a charge (*Gilje v Charlgrove Securities* [2002] 1EGLR41).

18. The construction of the lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. Essentially the Tribunal will decide reasonableness on the evidence presented to it (Yorkbrook Investments Ltd v Batten [1985] 2EGLR100).
19. The effect of Section 19(1) of the 1985 Act is that if the lease authorises the service charges, they are only payable to the extent that they are reasonably incurred; and where they are incurred, only where the services for which they are incurred are of a reasonable standard.
20. The Act also imposes some procedural obligations upon landlords / management companies, one of which is contained in section 21B of the 1985 Act. This is headed "Notice to accompany demands for service charges" and it provides:

"(1) A demand for payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

...

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand."
21. The Service Charges (Summary of Rights and Obligations and Transitional Provisions) (England) Regulations 2007 (SI 2007/1257) set out the details that must accompany a service charge demand.

The legal background in relation to administration charges

22. The statutory provisions relating to administration charges are contained in Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). An administration charge is defined in para. 1 as "an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable directly or indirectly ... in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is a party to his lease otherwise than as landlord or tenant, or in connection with a breach (or alleged breach) of a covenant or condition in his lease."
23. A second issue is then raised in Schedule 11 of the 2002 Act as to whether the administration charge is variable. It will be so if the amount of the charge is neither specified in the lease nor calculated in accordance with a formula specified in the lease.
24. If there is a variable administration charge, Schedule 11 of the 2002 Act then provides that it is only payable to the extent that it is reasonable.
25. Para. 4 of Schedule 11 of the 2002 Act requires any demand for an administration charge to be accompanied by a summary of the rights and obligations of a tenant in relation to an administration charge. The content of the summary is to comply with the Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 (SI 2007/1258).

26. Para. 5 of Schedule 11 of the 2002 Act then gives the Leasehold Valuation Tribunal jurisdiction to determine the payability of an administration charge in terms which are similar to s27A of the 1985 Act (see para. 14 above).

The Lease terms in relation to service charges

27. The Lease contains a covenant (i.e. a promise) by the Respondent to pay "the Material Charges Percentage" (clause 3(4)(a)). The Material Charges Percentage is defined as 11.11% of the Material Charges for the Building, 5% of the Material Charges for the Development, and 0.32% of the Material Charges for the Estate. Clause 3(4)(b) provides that the Material Charges Percentage is to be paid in advance in half yearly instalments on 1 April and 1 October in each year.
28. This requires an understanding of the meaning of the words and phrases used in the paragraph above which have capital letters. Material Charges means the total amount to be spent on all the items set out in the seventh schedule (see below), plus a contribution towards a sinking fund for items not carried out annually, in addition to the management fees incurred by the Applicant for managing the Development. The amount to be charged is to be computed in accordance with the terms of the Sixth Schedule.
29. The Building is defined as Denmark House. The Development is defined as the land on which Denmark House stands, together with the other apartment blocks, the surrounding land, the car parking spaces and the boundary walls and fences. This is described in the Lease as an area edged green on plan A attached to the Lease (unfortunately no such plan was supplied to identify this area to the Tribunal).
30. The Estate means St Edwards Park now or formerly comprised in title numbers SF459203 and SF460492. Unfortunately the title plans were not supplied to the Tribunal.
31. The Sixth Schedule says that the Material Charges are to be computed not later than the beginning of March immediately preceding the commencement of the service charge year which starts on the following 1 April. The computation is to comprise an estimate of the expenditure to be incurred for that following year identifying the categories of likely expenditure, an appropriate reserve, and management fees. In effect this is the production of a budget for the forthcoming year
32. At the end of each Material Charges year, accounts for actual expenditure are to be prepared. Any adjustment for the year can be collected or an overpayment credited for the benefit of the tenant.
33. The Seventh Schedule sets out the items on which expenditure is to be incurred. It includes obligations in respect of all the buildings in the whole development, though as is shown above, the Respondent appears primarily responsible only for his share of the maintenance of Denmark House. Nevertheless, the headings are of some assistance in identifying the general areas for expenditure. These are:
- a. Decoration and Repair of Structure and Maintenance of Grounds
 - b. Decoration and Repair of Common Hallway Areas
 - c. Payment of outgoings (which are for rates taxes and costs of water supply)

- d. To employ staff
 - e. Television Aerial Radio Relay and Internal Telephone
 - f. Enforcing Covenants of Other Tenants in Favour of the Company
 - g. Insurance against fire
 - h. Third Party Insurance
 - i. Payment of Taxes
 - j. Estate Maintenance
 - k. Other services and expenses.
34. The Tribunal notes that there is no clause allowing the charging of costs of litigation or debt recovery as part of the service charge.
35. There is a power in the Sixth Schedule allowing the Applicant to vary the Material Charges Percentage if in the reasonable opinion of the Applicant it shall become necessary or equitable to do so. Notice of variation must be served on the tenants.

The Lease terms in relation to administration charges

36. In clause 2(9) of the Lease, the Respondent covenants "To pay to the Lessor as arrears of rent all costs charges and expenses including solicitors' counsels' surveyors' costs and fees at any time during the said term incurred by the Lessor in or in contemplation of any proceedings in respect of this Lease under Section 146 and 147 of the Law of Property Act 1925 ... including in particular all such costs charges and expenses of and incidental to the preparation and service of a notice under the said sections and of and incidental to the inspection of the Demised Premises and the drawing up of schedules of dilapidations and costs charges and expenses as aforesaid ..."
37. This is the clause under which the Applicant makes the Administration Charge Claim.

The material submissions and evidence of the parties

38. The Applicant simply asserts that the Service Charge claimed (of £1,285.26) is due. There is in the bundle a very useful spreadsheet which shows a budget for the 2011/12 service charge year for the whole of St Edwards Park, in which there is a specific column for Denmark House. At the top of the spreadsheet there is a summary of the total budgeted costs for the three specific categories of charges set out in the Lease, apportioned for Denmark House as follows:

Estate Charge	£2,123
Development Charge	£403
Buildings Charge	£9,042
Total	£11,567

39. In the main body of that spreadsheet, there is a more detailed budget of the anticipated service charge costs under general headings such as grounds maintenance, cleaning, insurance etc. The total of the items budgeted in this list is £9,041.78. The Tribunal has assumed that these are the budgeted costs for the Buildings Charge for Denmark House

(rounded) in the summary. These costs include sinking fund contributions for decoration and a "reserve" fund.

40. The Tribunal does not know how these cost estimates for Denmark House result in an individual charge to the Respondent of £1,285.26. There is no document that explains this apportionment.
41. There is a witness statement on behalf of the Applicant from Mr Jamie Goodwin which the Tribunal has considered. He states that the sums demanded from the Respondent were computed and demanded in accordance with the provisions of the lease but does not explain how.
42. The Respondent sent a letter to the County Court outlining his objections to the service charge. The points he made which the Tribunal considers are material are:
 - a. He disputes the amount charged for the service charge,
 - b. He says there has been a 50% increase in the service charge from 2007 to 2010, and
 - c. Invoices and statements were not in the correct format

The Tribunal's decision on the Service Charge Claim

43. The invoices in the bundle of evidence produced by the Applicant do not comply with the requirements of section 21B of the 1985 Act. Consequently, the Tribunal decides that no service charge is payable at the present time in accordance with section 21B(3) of the 1985 Act.
44. The Applicant was effectively seeking to operate the terms of the Sixth Schedule when it originally demanded the 2011/12 service charge. To comply with the Lease it should have demanded one half of the budgeted expenditure for 2011/12 from the Respondent on 1 April 2011. The second half of the budgeted expenditure should then have been demanded on 1 October 2011.
45. Paragraph 19 of this decision explains that the Tribunal should consider whether the proposed budgeted service charge is payable. It does this by considering whether the proposed budgeted expenditure is a reasonable estimate of the sums that it would be reasonable to incur for that year. On the assumption that the Applicant will wish to cure the problem caused by section 21B of the 1985 Act by making a further demand for a 2011/12 service charge from the Respondent that complies with that section, the Tribunal needs to consider what a reasonable budget sum would be.
46. Broadly, the Tribunal accepts the majority of the proposed budgeted expenditure for the Buildings Charge set out in the Applicant's spreadsheet. However, the Tribunal does not consider that it would be reasonable to incur separate and additional costs for a 10 year condition report (£95.19), or a health and safety inspection (£54.53). The Tribunal considers that these costs would normally be part of the management costs already allowed in the budget (£1,445.54). The Tribunal also considers that a budgeted sum of £286.53 for electrical repairs and light bulbs for a building only constructed relatively recently is excessive and substitutes £150 in its place (a reduction of £136.53).

47. The Tribunal therefore deducts the individual amounts of £95.19, £54.53 and £136.53 from the total budgeted Building expenditure for Denmark House of £9,042. It determines a budgeted sum for the Building Charge element of the service charge for Denmark House of £8,755.75. The Respondent is responsible for 11.11% of that sum – i.e. for £972.76.
48. In addition, the Respondent must pay a contribution towards the Development Charge. Within the definition of Material Charges Percentage in the Lease is a requirement for the Respondent to pay 5% of the Development Charge. According to the spreadsheet, there are 157 units at St Edwards Court and if they are all responsible for 5%, there will obviously be substantial over-recovery. If all apartments at Denmark House pay the same proportion of the Development Charge (which the Tribunal assumes), Denmark House alone would be responsible for 45% of it. That must be incorrect.
49. The Tribunal also notes that at the base of the spreadsheet, the total budgeted expenditure on Development for St Edwards Park is given as £7,024. Denmark House is allocated a proportion of £403, which is 5.73% of the Development cost. In practice therefore, it would appear that the Applicant is not operating the Development charge in accordance with the Lease anyway.
50. On this paper determination, it is not possible to resolve this issue. Until this can be further considered, and bearing in mind that at this stage only a budget figure is being considered, the Tribunal allows the sum of £44.77 (which is one ninth of the Denmark House contribution to Development costs shown on the spreadsheet) for this item.
51. The Respondent must also contribute 0.32% of the Estate costs. It is very unclear to the Tribunal precisely what these costs comprise, but there is total budgeted expenditure on the spreadsheet of £73,124, and at this stage, the Tribunal allows as part of the budget the Respondent's proportion of £234.00.
52. The Tribunal therefore determines that a reasonable sum to charge the Respondent as the budgeted service charge for 2011/12 is £1,251.52, calculated as follows:

Building Charge	£972.75
Development Charge	£44.77
Estate Charge	£234.00

53. At the date of this decision, the actual expenditure for 2011/12 will have been incurred. No doubt before long the Applicant will produce formal accounts for that year and will compute the over or under payment due from the Respondent under clause 3(4)(c) of the Lease. If the Respondent disputes the amounts actually expended, he is entitled to make a further application to the LVT for consideration of that actual expenditure.

The Tribunal's decision on the Administration Charges Claim

54. The Tribunal disallows all of the Administration Charges claimed for the following reasons:

- a. The clause in the Lease under which the Applicant claims that these charges are payable is clause 2(9). That clause only gives the Lessor the right to claim sums under it, not the Applicant.
- b. None of the Administration Charges claimed were in any event, in the opinion of the Tribunal, incurred in connection with, or in contemplation of, the service of a s146 notice.
- c. There is no other provision in the Lease allowing the Applicant to charge general administration charges for administrative tasks in connection with the collection of outstanding service charges.
- d. The Applicant failed to attach the statutory information required by para. 4 of Schedule 11 of the 2002 Act to the Administration Charge demands.

Signed

Mr C J Goodall
Chair

15 AUG 2012