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RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL

Decision of the Eastern Leasehold Valuation Tribunal on an application under section 27A of the Landlord and Tenant Act 1985 in respect of 20, Linnett House, Sturton Street, Cambridge CB1 2QE

Applicant : Patricia Hunter

Respondent : Anchor Trust

Case number : CAM/12UB/LSC/2012/0054

Date of Hearing : 14 June 2012

Tribunal Members Mrs Judith H. Lancaster BA Barrister-at-Law
Chairman
Mr Roland Thomas MRICS Valuer

INTRODUCTION

1. Under a tenancy agreement commencing on 8 February 2010 (the 'Agreement') Anchor Trust agreed to let 20 Linnett House, Sturton Street Cambridge, CB1 2QE (the 'Property') to the Applicant.

2. The Applicant made an application dated 27 March 2012 under section 27A of the Landlord and Tenant Act 1985 (the 'Act') for the Tribunal to make a determination regarding service charges for the years 2010/11, 2011/12, and 2012/13.

THE PROPERTY

3. The Property is located on the first-floor in a purpose-built block of 23 flats (the 'Building'), constructed of brick and tile, built approximately 40 years ago, located close to the centre of Cambridge. There is limited parking available behind the Building, and a modest communal garden.

4. There is an intercom door entry system, a communal hallway on each floor with a lift and stairs between the floors, an on-site manager, communal lounge and kitchen, laundry and guest bedroom. There is an emergency call system within the Property.

THE INSPECTION

5. At the inspection, the Tribunal noted that the Building and surrounding areas appeared to be in good order and well maintained.

THE TENANCY AGREEMENT

6. The Agreement is stated to be an assured non-shorthold tenancy agreement. No fixed term is set out, but the periods of the tenancy are stated to be from the first day of each month to the last day of each month.

7. The sums to be paid by the Applicant under the Agreement are a monthly rent for the Property (not including service charges), a monthly service charge, to include a general service charge and support costs, a monthly heating and hot water charge, and a monthly water charge.

8. Under the Agreement the Respondent is required to repair the structure and outside of the Building, repair all installations the Respondent has provided for heating, removing waste water, and supplying water, gas and electricity, repair the communal areas, insure the Building and decorate the outside of the Building and the communal areas.

9. A schedule headed 'Schedule of services and details of other charges' sets out details of the services provided for which the Applicant is required to pay under the terms of the Agreement, and states that the monthly charge for heating and hot water is that set by the service provider, and that the monthly charge for water is in line with the levels set by the service provider.

THE LAW

10. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.

11. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. A Leasehold Valuation Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.

12. Section 21B of the 1985 Act says that any demand for service charges must be accompanied by a statement of the rights and obligations of a lessee. If it is not, then such charge is not payable.

THE HEARING

13.The Applicant attended the inspection and the hearing. The Respondent did not attend either, nor did the Respondent comply with the Directions Order dated 26 April 2012 in which the Respondent was directed to file with the Tribunal and serve on the Applicant a statement in response to the application.

THE APPLICANT'S CASE

14.The main points of the Applicant's case may be summarised as follows;

a) the general service charge is excessive because;

- i)**the resident manager only works from 8.30 - 14.00 four days per week, and she is frequently away entirely to train other staff for the Respondent and she is not replaced, so residents have to rely on the emergency call service
- ii)**the charge for heating and hot water for the common parts is higher than it need be because the common parts are frequently too hot, and the lights and heaters are left on all night – the Applicant believes this is done by other tenants in the Building
- iii)**the gardening services provided are basic – cutting the grass and hedges and pruning the roses – and not done well or often enough – only once every 3-4 weeks in summer and infrequently in winter. Sometimes one person attends to carry out the gardening services, sometimes two, and they are only at the Building for a couple of hours. The Applicant has paid for additional bulbs, plants, pots fertiliser, slug repellent, rose spray and garden furniture
- iv)**the communal water charge is higher than it should be because there have been a number of leaks which have not been attended to quickly, in particular a leak in the roof, where the plumber who attended said that the water had been gushing out for a long time, and a leak outside the Applicant's front door which caused the roof to come down in the next door flat. All the plumbing is old and should be regularly checked
- v)**the Applicant has got stuck in the lift 3 times because it wasn't working properly, and the lift has broken down at least 6 times since the Applicant has lived in the Property being out of action for a number of days on some occasions

b)the charge for heating and hot water to the Property is excessive. The Applicant is able to turn off the heating to the Property, and, because she has a hot water pipe running through the Property, she rarely needs to turn on the heating – she has had to buy 2 air-conditioning units to reduce the temperature. The Applicant has installed an electronic shower, for which she pays separately, so she only uses hot water in the

basin and for washing dishes. Nonetheless she still pays a standard charge for heating and hot water, calculated on the basis of total cost for supplying heating and hot water to all the flats in the Building. Furthermore because the Property is classed as a double flat, for 2 persons, she pays more than those tenants occupying flats classed as single. None of the flats classed as double have ever been occupied by more than one person to the Applicant's knowledge, and they are very similar in overall size, the main difference being that the double flats have a separate bedroom, whereas the single flats have a bed-sitting room

c) the large increase in the monthly water charge from £8.98 for 2011/12 to a proposed monthly charge £47.44 from April 2012 is excessive. The Applicant has asked the Respondent for an explanation based on figures from the water meters, but has not received them, although the Respondent has said there have been a lot of anomalies. The Applicant assumes that the number of leaks referred to above must contribute to this.

THE RESPONDENT'S CASE

15. No representations were received from the Respondent.

THE DECISION

16. The Tribunal noted all the representations made by the Applicant and determined as follows:

- a) the general service charge, the charge for heating and hot water and the water charge are all service charges under section 18 of the Act
- b) section 21B of the Act (see paragraph 12 above) has been complied with
- c) the Tribunal consider that the amounts included in the service charge for the Scheme Manager Service and the Relief Manager, £12,918.00 and £763.00 respectively for 2010/11, £13,096.00 and £650.00 for 2011/12 and £13,283.00 and £432.00 for 2112/13 are reasonable for the level of service provided as described above
- d) the Tribunal consider that it is not reasonable for the communal charge for heating and hot water to have increased by more than 10% in any one year without adequate justification. This charge decreased from 2010/11 to 2011/12, but the proposed increase from £2415.00 for 2011/12 to £2,927.00 for 2012/13 has not been justified by the Respondents and therefore the Tribunal determined that the increase for 2012/13 should be limited to £241.50. The Tribunal noted the Applicant's representations regarding lights and heaters being left on overnight, but considered the overall level of charge as adjusted by the Tribunal, reasonable for the service provided
- e) the Tribunal consider that the amounts included in the service charge for the Gardening Contract and gardening materials, £1,133.00 and £40.00 respectively for 2010/11, £1,182.00 and

£90.00 for 2100/12 and £1,182.00 and £30.00 for 2012/13 are reasonable for the level of service described above. It was the Applicant's personal choice to spend further sums to improve the gardens and the Respondent is not under any legal obligation to reimburse her

- f) the Tribunal considers that it is not reasonable for the Communal water charge to have increased by more than 10% in any one year without adequate justification. The amounts included in the service charge for communal water are £1,146.00 for 2010/11, £989.00 for 2111/12 and £1,815.00 for 2012/13, and therefore the Tribunal determined that the increase for 2012/13 should be limited to £98.90. The Tribunal noted the Applicant's representations regarding the leaks but considered the overall level of charge, as adjusted by the Tribunal, to be reasonable for the service provided
- g) the Tribunal considers that the charges for repair, maintenance and usage of equipment, which includes the lift, £10,244.00 for 2010/11, £10,516.00 for 2011/12 and £9,059.00 for 2012/13 to be reasonable for the Building
- h) the Tribunal considers that it is not reasonable for the heating and hot water charge for the Property to be increased by more than 10% in any one year without adequate justification. The heating and hot water monthly charge was £60.82 for 2010/11, £40.95 for 2011/12, and £58.77 for 2012/13, and therefore the Tribunal determined that the increase should be limited to £4.10 per month for 2012/13. The Tribunal noted the Applicant's representations regarding the fact that she does not need to use much heating or hot water, but that is a matter of personal choice and the fact that there is a charge for heating and hot water for the Property was clearly set out in the overall charges when she entered into the Agreement. The Tribunal considers the overall level of charge, as adjusted by the Tribunal, to be reasonable for the service provided, given the size of the Property, regardless of whether the Property is described as being for single or double occupancy
- i) the Tribunal considers that it is not reasonable for the water charge for the Property to be increased by more than 10% in any one year without adequate justification. The monthly water charge was £9.94 for 2012/11, £8.98 for 2011/12 and £47.44 for 2012/13, and therefore the Tribunal determined that the increase for 2012/13 should be £0.90 per month.

17 Summary

On the basis of the Tribunal's determination as set out in paragraph 10 the general service charge for 2012/13 payable by the Applicant should be reduced from £168.72 to £164.71 per month, the heating and hot water charge for 2012/13 payable by the Applicant should be reduced from £58.77 to £45.05 per month and the water charge for 2012/13 payable by the Applicant should be reduced from £47.44 per month to £9.88 per month. No adjustments are to be made in relation to the charges for 2010/11 or 2011/12.

Judith H Lancaster
Chairman
10 July 2012.

Caution: For the purpose of reaching a decision the Committee inspected the subject property. Such inspection is not a structural survey and takes only a few minutes. Any comments about the condition of the property in this Statement of Reasons are made as a result of casual observation rather than detailed inspection. Please do not rely upon such comments as a guide to the structural condition of the property.