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HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

S.27A & S.20C of the Landlord & Tenant Act 1985 (as amended)("the Act")

Case Number:	**CHI/21UF/LIS/2011/0024**
Property:	**19 Hillman Close Timberyard Lane Lewes East Sussex BN7 2FA**
Applicant:	**Felicity Newman**
Respondent:	**Guinness South Limited**
Appearances for the Respondent:	**Clive Adams Solicitor**
Date of Inspection/ Hearing	**23rd February 2012**
Tribunal:	**Mr R T A Wilson LLB (Lawyer Chairman) Miss C D Barton BSc MRICS (Surveyor Member)**
Date of the Tribunal's Decision:	**8th March 2012**

THE APPLICATION.

1. This was an application pursuant to S.27A of the Act for a determination of the liability of Miss Newman to pay service charges in respect of the property covering the years 2006 to 2012 inclusive.

THE DECISION IN SUMMARY.

2. The Tribunal determines that all the service charges in respect of each year challenged by Miss Newman are payable in accordance with the payment provisions of her tenancy without deduction or set off.

JURISDICTION.

3. The Tribunal has power under S.27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to

resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when service charge is payable.

4. By S.19 of the Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

THE TENANCY AGREEMENT

5. The Tribunal was provided with a copy of Miss Newman's Assured Tenancy Agreement. It is dated the 17th April 2000. At the commencement of the tenancy the initial weekly rent was stated to be £51.58 plus an additional £2.68 stated to be in respect of Service Charge A.

6. The tenancy agreement provides for the rent to be reviewed on an annual basis and this review is covered in clauses 3.2 and 3.3.

7. Clauses 3.4 to 3.11 cover the operation of the service charge. At 3.4 the Respondent must provide the services set out in Schedules A to D attached to the tenancy agreement.

8. At clause 3.8 provision is made for the service charge to vary from year to year based on the tenants contributions in the previous year and on how much the services in the current year will cost to deliver. The new amount demanded must be reasonable and at least one months notice must be given before the new rate becomes payable.

9. Clause 3.10 deals with surpluses and deficits and provides that the tenants share of any surplus or deficit will be the same as the tenants share of the total cost of services. The tenants service charge for the next year is adjusted to take into account any surplus or deficit.

10. Clause 3.10 mentions service charge accounts and although there appears to be no obligation on the Respondent to prepare accounts the Respondent does prepare and issue tenants with management information and abbreviated service charge accounts on an annual basis.

11. Schedule A lists the services provided to all homes on the estate and Schedule B lists all the services provided to homes within individual blocks. Schedules C & D do not apply to the subject property.

INSPECTION.

12. The Tribunal inspected the property prior to the hearing in the presence of the parties' and their representatives. Hillman Close is a purpose built estate completed in early 2000 comprising 3 x three storey blocks compromising 24 flats plus a terrace of 9 houses making 33 units in total. There are 6 flats per communal hallway which are accessible via secure door entry systems. External walls are of cavity masonry built on steel frames with metal external balconies. Roofs are of pitched and slated type. The development is within walking distance of Lewes town centre and backs the River Ouse. The site is accessed from an adopted roadway. There is a selection of private car parking spaces to the front and the Tribunal was told that these are available to residents on a permit basis. There are communal gardens comprising lawned areas, planted beds and semi mature trees and shrubs linked by a series of pathways.

BACKGROUND AND PRELIMINARY MATTERS.

13. At the hearing the issues in dispute over which the Tribunal had jurisdiction were identified as: -

    a. Communal gardening contractor
    b. Management costs
    c. Communal lighting bulbs and their repair
    d. Communal water rates and electricity supply
    e. Door Entry Costs
    f. Bulk Rubbish removal
    g. Communal cleaning
    h. Communal TV aerial costs

14. Both parties had set out their positions on the issues in their statements of case and both parties had submitted bundles containing their evidence. At the hearing the parties expanded upon the points made in the statements and each of the disputed items is considered below.

15. The Applicant confirmed that the above categories of expenditure comprised in each year 100% of the costs making up the service charge and that in effect she challenged every item of expenditure in every year i.e. from 2005/6 to 2010/11 inclusive. She also challenged every item in the budget for 2011/12.

16. The Tribunal first considered the terms of the tenancy agreement to see if each service charge item was contractually recoverable subject to the test of reasonableness. The original tenancy agreement was available for inspection at the hearing but did not include either Schedule A or Schedule B. However, the hearing bundle prepared by the Respondent contained what the Respondent said was a true and complete copy of the original. This comprised a copy of the Guinness Trust standard form of Assured Tenancy agreement 1997 edition incorporating Schedules A and B.

17. The Applicant expressed doubt that she had been given a full copy of the tenancy agreement at the start of her tenancy and in particular she had no recollection of being given the two Schedules. The evidence of the Respondent was that the two Schedules had been given to the Applicant at the commencement of the tenancy agreement and that the lack of Schedules was not an issue pleaded by the Applicant in her statement of case or in her application to the Tribunal.

18. On this issue the Tribunal has concluded, on the balance of probabilities, that a full and complete copy of the tenancy agreement was given to the Applicant at the commencement of the tenancy. The main body of the tenancy makes frequent reference to the Schedules and it is not possible to properly construe the document without the Schedules. There was no evidence before the Tribunal to suggest that the Guinness Trust, a professional landlord with a substantial property portfolio, had not properly concluded the tenancy formalities at the commencement of the tenancy.

19. In the light of the above finding, the Tribunal concludes that there is provision in the tenancy agreement for all of the contested service charge items to form part of the service charge payable by the Applicant subject to the cost being reasonable and the services being delivered to a reasonable standard.

CONTESTED ITEMS COVERING THE YEARS 2005 TO 2011 INCLUSIVE.

a. Garden Maintenance Contract from £1.12 to £1.22 per week

The Applicant's case.

20. The Applicant contends that the plants only survive because of the work carried out by the residents. In her application to the Tribunal she claims that the price for gardening has increased even though the service has decreased. She acknowledges that the contractors do attend twice a month but she is not satisfied that they deliver any tangible benefit. She asserts that the price being paid to the contractors is too high. On being questioned by the Tribunal as to what would be a reasonable sum she put forward the figure of £280 per year.

The Respondents' case

21. The Respondents reject the figure of £280 per year as being wholly unrealistic bearing in mind the size of the communal gardens. They state that even on the current rates the amount being charged to each tenant is £1.22 per week which they contend is a reasonable and affordable charge for grounds and garden maintenance.

The Tribunal's determination.

22. On the day of inspection the Tribunal considered the grounds of the property to be in relatively good heart and they showed signs of being regularly maintained. The flowerbeds were in seasonal condition and relatively weed free. The grassed areas all appeared to be in reasonable condition for the time of the year and the shrubs showed evidence of having been recently pruned.

23. Drawing on its own experience and knowledge of gardening contracts, the Tribunal considered that the yearly charges in each of the contested years were reasonable and represented fair value for money. Indeed the Tribunal noted that the charges had hardly increased at all over the years in question. The Tribunal was presented with conflicting evidence as to the standard of work in previous years but did not have before it enough evidence to overturn the amounts charged by the Respondent on the grounds of poor workmanship. In short the Applicant did not lead sufficiently persuasive evidence to warrant a reduction of the charges for any of the years.

b. Management fee ranging from 81 pence per week in 2006 to £1.21 per week for the current year

The Applicant's case.

24. The Applicant is critical of the service provided by the Respondent. She asserts that there are serious defects which the Respondent fails to rectify. The Applicant further asserts that her needs are ignored whilst other tenants who are louder and more persistent in their complaints receive attention. She also claims that at the outset, the services of a housing officer were included in the 15% management charges but this is no longer available.

25. She was unwilling to accept that any management fee was justified even though it was pointed out to her that her tenancy agreement does enable such a charge to be made.

The Respondent's case.

26. The Tribunal was told that the management fee equated to 15% of the costs of providing the services in each year. The charge covers the costs incurred by the Respondent in providing the services in particular for arranging contractors, receiving and settling invoices, raising service charge statements and calculating service charge proportions.

The Tribunal's determination.

27. The Tribunal has considerable experience of the level of fees charged by managing agents in the area and drawing on this experience is satisfied that the management charges for each of the contested years is reasonable. The 15% formula is sometimes applied to estates where all of the costs are recoverable from the tenants including the capital costs of repairing and maintaining the exterior. In this case the charge excludes these items which gives rise to a lower management fee. In other cases, a flat fee of approximately £200 per annum is charged per unit. If this method of calculation were used here, the Applicant would be paying £3.85 per week; more than three times what she is currently charged.

28. Even if the Applicant's allegations are correct; that breaches of the lease have been committed (and the Tribunal makes no such findings), the Tribunal does not consider that the appropriate remedy for these breaches constitutes a reduction in the management charges. The jurisdiction and remedies for these matters lie with the County Court. On the evidence before it the Tribunal considers that the estate is being managed to a reasonable standard and that the management fee in each of the contested years is very reasonable and is therefore payable in full.

c. Communal lighting, repairs, bulbs

The Applicant's case.

29. Miss. Newman complains that there have been continual problems with the lighting which she has told the Respondent about. She claims that the communal lights had been wrongly specified when the property was constructed and had no water resistant properties resulting in the bulbs blowing the circuits frequently. In her application form she claims that a lasting repair has not been made for some eleven years. She accepts that occasionally internal lights need to have their bulbs replaced, but considers that she should not be expected to pay for repairs that are not lasting or effective.

The Respondents' case.

30. The Respondent's evidence was that they found the Applicant's comments confusing and they were not sure what she was trying to get at. Their position was that £0.40 per week per flat for communal lighting and electricity was not excessive but entirely reasonable and properly recoverable against the service charge account.

The Tribunal's determination.

31. The Tribunal also found the Applicant's evidence on this issue not entirely clear. There is communal lighting serving the individual blocks internally on each floor, there is a light in the recessed area externally to the front of each block and also

lights serving the communal areas. On the day of inspection the internal lights appeared to work.

32. The Tribunal accepts the evidence of the Respondent that a cost of £0.40 per week for this service is reasonable. It is inevitable that bulbs will blow from time to time and that the wiring circuits will require attention. The Tribunal reviewed the charges made for works to the communal lighting in each of the years and noted that these ranged from £0.16 per week to £0.40 per week over the challenged years. Not large sums and there was no evidence to displace the Respondent's figures which are therefore upheld.

d. Communal electricity and water supply

The Applicant's case

33. The Applicant's position on each of these items is much the same. The electricity is used mainly by others for the use of the TV system and she should not have to pay for a service that she has no need of. Further, for most of the year the exterior lighting is inoperative. Simarily the water is only used by the gardeners and she does not use the facility. At the outset of the tenancy there was no charge for these facilities so why should she be expected to pay for them now?

The Respondent's case

34. The Respondent counters that the water rates amount to just £0.04 per week per unit or £75 per year for the whole of the estate. Lighting and water is supplied communally and the costs are in their opinion reasonable.

The Tribunal's Decision

35. On these issues the Tribunal once again prefers the evidence of the Respondent and can find no fault with the amounts charged for any of the years. The Applicant asks the question should she be expected to pay for a service which was once provided without charge. The simple answer is yes. There is provision for these items to be recoverable as service charge in her tenancy agreement and the tenancy agreement makes it very clear at clause 3.9 that the Respondent does not have to take into account whether or not a tenant actually uses any of the services provided, when calculating the tenant share. The fact that charges may not have been applied at the outset does not mean that the Respondent is precluded from making a charge in the future. For the current year a charge of £0.80 per week for communal electricity and just £0.04 for communal water is in the Tribunal's opinion extremely reasonable as were the amounts charged in previous years.

e. Door entry system

The Applicant's case

36. The Applicant's argument is that originally no charge for this service was made and that gradually charges have been introduced. She claims the door entry system is inflexible and prevents the postman from delivering mail. She does not consider it reasonable for a charge to be levied in these circumstances especially as the Respondent will not allow residents to change the timer settings which would make the system more useful and would bring down the cost to the residents.

The Respondent's case

37. The Respondent's position is that the current rate equates to just £0.60 per week and covers the cost of servicing and maintaining the door entry systems. They consider this charge to be reasonable and point to the fact that in earlier years no charge was made because the system required no attention. The Tribunal was told that no part of the capital cost of the system has been charged to the residents.

Tribunal's determination

38. Applying its collective experience on the costs of door entry systems, the Tribunal is satisfied that the costs have been reasonable in each of the years. It is understandable that no costs were incurred in the early years as the system was newly installed. However as these systems become older they are prone to failure and are bound to require attention. The annual costs have not been in the Tribunal's judgment excessive in any of the years ranging in the last three years from 60p to 84p per week and are as a result upheld.

f. Bulk Rubbish removal

The Applicant's case

39. The Applicant complains that the bin shelters for the flats have been used to deposit unwanted items of furniture. She has not been able to identify the culprits, but it has been necessary to inform the Housing Association because it has made the use of the bins impossible. The Applicant considers that she should not be expected to pay for rubbish removal when she only deposits a small black refuse sack once a month which she often hands personally to the 'dust man'.

The Respondent's case.

40. The Respondent's position is that the current provision for the removal of bulky furniture equates to approximately £0.15 per week per flat, which the Respondent believes to be very affordable. This charge is to recover costs of having to arrange for the removal of items that may have been dumped by residents or sometimes by outsiders. They point to the fact that if no items are dumped in the year then the provision is carried forward to another year by way of a credit.

The Tribunal's determination.

41. The Tribunal is aware that fly tipping can be a problem on estates of this kind, and very often it is not possible to catch the culprits. In this case the Tribunal is satisfied that the terms of the tenancy agreement enable the Respondent to make a charge for the service of removing large items discarded on the estate. However the Tribunal heard evidence that there have been very few incidents of fly tipping in the last three years even though the amount set aside for fly tipping in each year has varied from between £250 and £350. Bearing in mind the surplus that must now be standing to the credit of the tenants for this cost heading, the Tribunal considers that for the time i.e. for the service charge year 2012/13 there is no need for further reserves to be made for this item.

g. Communal Cleaning Charges

The Applicant's case

42. The Applicant says that the cleaning contractors visit the property no more than once a fortnight and take about four minutes to hoover "using our electricity" and then lightly mop the internal landings and stairs. Residents are expected to clear up any mud or rubbish. As the cleaning contract is superficial, it does not restore the original appearance of the floor covering which remains dirty looking. She complains that the contractors will not clear cobwebs away from the door. With six residences sharing each block a charge of £8 each per fortnight plus electricity is too high for what in effect amounts to just four minutes of unskilled work.

The Respondent's case.

43. The Respondent asserts that the current projected cost for the cleaning of just over £4 per week per flat is entirely reasonable. They seek to discredit the Applicant's cost comparisons which calculate an hourly charge averaging over £200 as wholly unrealistic as it is calculated on the erroneous assumption that the cleaners attend only 20 minutes per week, or just over 17 hours per year. They assert that the charge of £4 per week per flat is entirely reasonable and this charge is specifically provided for under the terms of the tenancy agreement and is therefore properly due and chargeable.

The Tribunal's determination

44. On the issue the Tribunal is once again satisfied that the charges for cleaning of the common ways in each of the years is reasonable and in line (albeit at the high end) of what the Tribunal would expect for an estate of this kind and configuration. The Tribunal noted that the cleaning charges varied from £3.53 per week in 2005/6 to the current charge of just over £4 per week. On the day of inspection the Tribunal found that the common parts were clean. In the circumstances no reduction for any of the years is merited.

h. Communal TV aerial service

The Applicant's case.

45. In summary the Applicant's case is that she does not have or use a television which is an unwanted luxury / leisure activity that she cannot afford and does not want. She objected to the installation of a communal TV aerial which she considers is unsightly and feels that the Respondents have wrongly forced the new system upon her without proper consultation. She maintains that there is already an analogue aerial installed in the roof which works and therefore there was no need to replace the existing system with a new one. She claims that it is not a communal TV aerial because the estate does not have a communal lounge or a communal TV. The Applicant raises numerous other arguments and objections to the TV upgrade project undertaken by the Respondents in 2010 and considers that she should not have to contribute towards the running costs.

The Respondent's case

46. The Respondent's case is that it was necessary to replace the old analogue TV aerial system to prepare the estate for the national switch over to digital. The

Tribunal was told that no part of the capital cost of installing the system has been or is to be charged to the residents. The current charges of 82p per week represent the on going maintenance costs of the system. The Respondent claims that they had received advice that the old analogue TV aerial could not be properly adapted to receive a digital signal and that in any event the former system was only able to access analogue channels.

The Tribunal's determination

47. On this issue the Tribunal again prefers the evidence of the Respondent and is satisfied that the charges are reasonable and properly recoverable as a service charge item. It is a fact of life that TV across the UK is going digital, and the existing analogue TV signal will soon be switched off and replaced with a stronger digital TV signal. The switchover in the Lewes area is likely to take place some time this year and the Tribunal understands that communal systems which are not converted are unlikely to access the full range of channels after the switchover has occurred. The Tribunal notes that no part of the cost of installing the system is to be charged to the residents, and having regard to this the Tribunal has no hesitation in confirming and determining that the current charge of £0.82 per week is reasonable and payable by the Applicant whether or not she chooses to avail herself of the service.

S. 20C APPLICATION

48. The legislation gives the Tribunal discretion to disallow in whole or in part the costs incurred by a landlord in proceedings before it. The Tribunal has a wide discretion to make an order that is just and equitable in all the circumstances.

49. The Tribunal was told that the Respondent did not intend to pass any of costs incurred in relation to these proceedings to the service charge account and therefore did not oppose the application.

50. In these circumstances the Tribunal grants the application and makes an order under S.20C of the Act to the effect that no part of the Respondents costs in these proceedings are recoverable from the Applicant by way of service charge.

Dated 8th March 2012

Signed

R. T. A. Wilson LLB

Chairman