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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference :	CHI/00MS/LIS/2013/0118
Property :	Flats 9, 10 & 11 Tate Court, Tate Road, Redbridge, Southampton SO15 0NL
Applicants :	Ms Ann Boothby Mrs Tracy Johnson Mr Andrew Pack (the Tenants)
Representative :	Mrs Tracy Johnson
Respondent :	Mrs Ashton (the Landlord)
Representative :	---
Type of Applications:	Application for determination as to reasonableness of service charges pursuant to Sections 19 and 27A Landlord and Tenant Act 1985
Tribunal Members :	Judge P.J. Barber Mr P D Turner-Powell FRICS Surveyor Member
Date and venue of Hearing :	2nd June 2014 Tribunal Offices, 1st Floor, Midland House, 1 Market Avenue, Chichester PO19 1JU
Date of Decision:	13th June 2014

DECISION

Decision

(1) The Tribunal determines in accordance with the provisions of Sections 19 and 27A Landlord and Tenant Act 1985 ("the 1985 Act") that unless and until they may be properly demanded in accordance with the requirements of Section 21B of the 1985 Act, none of the service charges demanded are payable by the Applicants for the period 1st October 2007 to 28th September 2013

(2) Subject as at (1) above the Tribunal determines that in the event of such service charges being properly demanded, and/or for the period from 29th September 2006 to 28th September 2013 the only service charges which are reasonable and payable by the Applicants in the one-quarter shares as provided for in their leases, would be the charges for insurance, cumulative communal electricity costs for the period of £168.83 and cumulative drainage costs of £937.48; similarly also the TV aerial charge of £70.50 in 2008/09 and the Tree Surgeon charge of £28.75 in 2009/10.

(3) In regard to the application in respect of costs made by the Applicants pursuant to Section 20C of the 1985 Act, the Tribunal determines that none of the costs of the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by any of the Applicants.

Reasons

INTRODUCTION

1. The application in this matter was dated 6th December 2013 and was made pursuant to Sections 27A and 19 of the 1985 Act for determination of the reasonable service charges payable by the Applicants to the Respondent. The application addressed issues arising over the period 2005 to 2013; however as a result of a case management hearing and Directions issued on 13th February 2014, the Applicants agreed to limit the service charge years for the Tribunal to determine, to those for 2007 onwards.

2. The claim relates to service charges in respect of Tate Court, Tate Road, Redbridge, Southampton SO15 0NL ("the Block"). Flat 9 (Mrs Boothby) is a ground floor maisonette held pursuant to a Lease dated 3rd August 1990; Flat 10 (Mrs Johnson) is a first floor maisonette held pursuant to a Lease dated 26th July 1990 and Flat 11 (Mr Pack) is also a first floor maisonette held pursuant to a Lease dated 31st August 1990. The leases are all in broadly similar format.

3. The Respondent, Mrs Ashton, acquired the freehold interest in the Block in or about 2004 since which time she appears to have managed the Block directly, without assistance from managing agents.

INSPECTION

4. The Tribunal inspected the property prior to the hearing; the Block comprises 4 maisonettes identifiable for postal purposes as 9-12 Tate Court, Tate Road, Redbridge, Southampton SO15 0NL, although a small sign was noted to be

attached to a low brick side wall, referring to the Block as "9-12 Tate Road". Tate Road is unmade up and also leads to a row of much older railway cottages to the north and, further west, another development of flats or maisonettes apparently of a similar age to 9-12 Tate Court and being known as 1-8 Tate Court. The Block was constructed in or about 1990 of brick under a pitched and tiled roof. External inspection only, was carried out; some of the fascia board showed signs of disrepair and the guttering appeared to be in need of cleaning; most of the windows appeared to be of UPVC construction.

5. The Tribunal noted that there was a medium size rear garden greatly overgrown with long grass which was untended and excessively long; there were two small timber sheds in the rear garden and a sun lounge at the rear of one of the ground floor maisonettes. The Tribunal noted a relatively new metal fence which had been erected around the outside edge of a verge which appeared to form the northern side boundary of the Block and there was also an older brick wall standing a short distance within such metal fence. It was noted that each of the 4 maisonettes has its own front door at ground floor level at the front or western side of the Block, where there was also some parking provision and a rather untidy small area of garden.

6. There was a strip of garden to the south side of the Block enclosed by metal fencing. The main railway line adjoins the Block further to the south. None of the parties was present at the external inspection.

THE LAW

7. Section 19(1) of the 1985 Act provides that :

"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."

Sub-Sections 21B (1) to (3) of the 1985 Act provide that :

(1) A demand for the 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

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations

(3) A tenant may withhold payment of a service charge which has been demanded from him if sub-section (1) is not complied with in relation to the demand

The relevant regulations referred to in Section 21B(2) of the 1985 Act are the Service Charges

(Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 S.I. No. 2007/1257

Sub-Sections 27A (1), (2) and (3) of the 1985 Act provide that :

"(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 cost, 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.

"Service Charges" are defined in Section 18 of the 1985 Act as follows

(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, improvements, 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

18(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 or later period.

HEARING & REPRESENTATIONS

8. Mrs Johnson attended and spoke on behalf of herself and her two neighbours Mrs Ann Boothby and Mr Andrew Pack who were also present; in addition Mr Nigel Johnson and Mr Cox attended and also, Mr John Mortimer the proposed manager. The Respondent did not attend the hearing and was not represented.

9. By way of preliminary clarification, Mrs Johnson confirmed that there are 4 maisonettes in the Block, being Nos 9, 10, 11 & 12 Tate Court; Mrs Johnson added that the sign erected on the low wall on the north side of the Block, which the Tribunal had noted during its inspection, had been erected by the Respondent, but she said it had caused confusion over postal deliveries, since it refers to "9-12 Tate Road" rather than "9-12 Tate Court". Mrs Johnson said it was one of the complaints, that since the sign was, in the view of the Applicants, unhelpful, it was as such not a reasonable or necessary item of expense within the service charges to the Applicants.

10. Mrs Johnson made submissions to the Tribunal, with assistance from the other Applicants, separately for each of Flat 9, Flat 10 & Flat 11 and in respect of each of the service charge summaries, respectively for the years 2006/7; 2007/8; 2008/9; 2009/10; 2010/11; 2011/12 & 2012/13. The service charge year for each of the flats is the period beginning 29th September. Mrs Johnson further advised the Tribunal that none of the insurance elements of any of the service charges for any of the years in question is disputed.

(1) 2006/07

In regard to all three flats, Mrs Johnson submitted that the amounts charged by the Respondent for electricity had been amended from the original annual certificates, and referred to Pages 409-410 in the bundle which showed electricity costs for all 3 flats for the period 2004-2011. Mrs Johnson said that these adjusted figures, including the cumulative total of £168.83 for electricity are now agreed. In regard to management fees, Mrs Johnson said that no invoices were ever issued by the Respondent and that in any event, Clause 4 Part IV of the Schedule to the leases allows for inclusion in service charges only of "The fees of the Lessor`s Managing Agents" and not the lessor`s own fees or charges for management. In regard to the purported element of service charge which referred to "Rental charge for use of my estate by your regular visitor" in a sum of £100.00 per week, Mrs Johnson submitted that the Lease contained no provision allowing for this. In regard to the item of £60.00 included in the certificate for Flat 9, for the "cost of repainting the fence you defaced", Mrs Boothby said that a friend had simply creosoted the fence in order to tidy and preserve it, and that there was no question of it having been defaced, or being in further need of repair. In regard to the certificate for this year in respect of Flat 10, Mrs Johnson referred to Page 151 of the bundle and pointed out that no invoice had been produced in respect of the £30.00 item claimed for replacing seedlings; similarly items of £270.00 for repairing damage alleged to have been caused by her strimmer, and £282.00 to repair "criminal damage to building when installing your personal tv aerial and cost of removal of same" were said by Mrs Johnson to be unreasonable and personal charges in any event, even if they could be justified which she said they were not, and not appropriate as service charge items. In regard to Flat 11, Mr Pack only acquired the property in or about April 2013 and accordingly has no liability for service charges in respect of the Block prior to that date.

(2) 2007/08

In relation to Flat 9, Mrs Johnson said that the same comments as for 2006/07 above were applicable in regard to charges for electricity, management and visitors. In regard to interest charges generally, Mrs Johnson submitted that no summary of tenant rights and obligations had been attached to any of the service charge demands for any of the years in question and that accordingly such demands had not in fact been properly served so as to comply with Section 21B of the 1985 Act, with the result that the lessees were entitled to withhold payment of the service charges demanded, in any event. Mrs Johnson indicated that interest charges ought not fairly to be added when the charges were in any event either unreasonable or not properly and lawfully demanded.

(3) 2008/09

For Flat 9, Mrs Johnson said that the same comments as before applied in respect of the charges for management, electricity and visitors. In this year, additional "rental charges" had been added for use of the estate by an animal, and also for a shed; Mrs Johnson submitted that the leases contained no provision allowing for this. In regard to the item for repairs to drains, Mrs Johnson said that as with the electricity charges, this item had similarly been subsequently adjusted by the Respondent and she referred to Pages 409-410 in the bundle. Mrs Johnson said that the cumulative total for all the flats in respect of all the years in question, in a sum of £937.48 is agreed. The item of £70.50 for TV aerial work is agreed.

(4) 2009/10

In regard to Flat 9, Mrs Johnson indicated that the same comments as above in regard to management, electricity, drain repairs, visitors, animal and shed rentals, are again applicable. The item of £28.75 for a tree surgeon is agreed. However the charge of £19.38 for signage is not agreed; Mrs Johnson explained that this was the charge which had been levied on all 3 lessees for the sign referred to in paragraph 4 above, which she said was misleading and unnecessary as an item of expenditure. In regard to the charge of £677.50 raised against each lessee for railings installed, Mrs Johnson explained that the work was wholly excessive and unnecessary. The railings had been erected as a response to a request for repair of a single small insert type fence panel in the original brick garden wall; Mrs Johnson said that instead of simply replacing that panel, Mrs Ashton had arranged for an entirely new railing fence to be erected around the outside of the verge at a short distance from the existing brick wall. Mrs Johnson said that this was a duplicative and excessive solution to the problem and that in any event, as the cost was greater than £250.00 for each lessee, prior consultation should have occurred in order to comply with the statutory requirements of Section 20 of the 1985 Act. In regard to the item for gardening, Mrs Johnson said that the gardens have been in the same highly neglected state as today, if not worse, for a number of years and that it was absurd to incur significant expenditure on plant items which were inappropriate for use in a garden which is wholly overgrown.

(5) 2010/11

Mrs Johnson said the same comments as before applied in regard to management, drains, electricity and rental charges for visitors, animal and shed.

(6) 2011/12

Mrs Johnson once again confirmed similar comments as before in respect of charges for management, and visitor, animal and shed rental amounts. In regard to the item of £64.45 for garden plants Mrs Johnson reiterated that this was an inappropriate and unreasonable charge given the state of the garden.

(7) 2012/13

Mrs Johnson said that the same comments as before apply in respect of management, visitor, animal & shed rental, and electricity. For Flat 9 a fine of £90.00 had been included for "irresponsible behaviour" for putting food on the ground for birds thus attracting rats; Mrs Johnson said there is no provision in the lease for this. Similarly an item of £250.00 had been included for "replacement costs of communal property in back garden deliberately destroyed"; Mrs Johnson said this related to access work necessary when Southampton City Council had attended to deal with a vermin problem in the overgrown garden and in any event there was no invoice produced for this. In regard to Flat 11, Mr Pack similarly disputed the charge of £250.00 for "replacement costs of communal property" on similar grounds as stated above.

11. Mrs Johnson submitted in further support of the application, that no access to the communal gardens had been possible by the lessees, since the railing fencing had been erected and the gate kept locked by the Respondent. Mrs Johnson added that the Respondent had formally "suspended" access to the communal gardens by the lessees, ever since her letter dated 27th January 2010, a copy of which was included in the bundle at Page 233, on the pretext of health and safety. Mrs Johnson said such issue should not have arisen, had the Respondent properly maintained the communal gardens in accordance with the requirements of the leases.

12. In closing, Mrs Johnson submitted that the lessees should not be charged any of the Respondent`s costs in connection with the proceedings since the Applicants had been forced to take action, given that they consider the Respondent to be unfit to manage the property and has made unreasonable service charges and failed to request charges in the correct legal manner, thus causing much anguish and concern to the lessees, as well as denying them access to the communal gardens over an extended period of years. Accordingly Mrs Johnson asked the Tribunal to determine, pursuant to Section 20C of the 1985 Act, that none of the Respondent`s costs be included in service charges.

CONSIDERATION

13. The Tribunal have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of the parties.

14. The Tribunal notes that the annual charges for insurance, as well as the cumulative £168.83 for communal electricity and similarly, cumulative £937.48 for works to the drains are all agreed. The Tribunal determines that there are no provisions in the leases allowing for rental charges for visitors, animals or the shed, and that accordingly none of the charges in any of the years in those respects are reasonable or payable. The charge of £60.00 for

repainting a fence in 2006/07 was duplicative and unnecessary and is not reasonable. The Tribunal further determines that there is no provision in the leases allowing the Respondent to charge for her own management activity, and in any event the amounts are excessive and unreasonable, given the poor state of the communal gardens and the Respondent`s failure to allow access by the lessees, in conformance with the rights granted in this respect in their leases. The item for signage in 2009/10 in a sum of £19.38 is unreasonable and not allowed, given the confusion caused as a result of it. Charges for plants and garden items in the years concerned are also determined as unreasonable by the Tribunal, given the wholly overgrown state of the garden visible on inspection and which Mrs Johnson had said, had subsisted for a number of years. Similarly the "fine" of £90.00 imposed in 2012/13 for putting out bird food and £250.00 costs for replacing communal property are unreasonable and not allowed and/or are not supported by clear invoices. In respect of Flat 10, the items of £30.00 for removing paint and £282.00 in relation to a personal tv aerial, whether or not justifiable, are personal charges to the lessee of Flat 10 in any event, and should not be included or form part of service charges for the Block generally.

15. The Tribunal accepts the evidence offered by the Applicants to the effect that no summary of tenant rights and obligations had been included in respect of service charge demands for any of the years in question and accordingly the lessees are entitled to withhold payment of such charges arising after 1st October 2007 when the statutory requirements in this regard, under Section 21B of the 1985 Act came into force. It follows in the view of the Tribunal, that in so far as service charges have not been properly demanded, none of the claims made for interest in regard to alleged late payment or otherwise are valid or enforceable.

16. In regard to Section 20C the Tribunal accepts that it has been entirely necessary for the Applicants to make the application and consequently determines that none of the Respondent`s costs in connection with these proceedings may be included in service charges to the Applicants.

17. We made our decisions accordingly.

Judge P J Barber

Appeals :

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.