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LON/00BD/LSC/2006/0017 & 0082

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTIONS 27A & 20C OF
THE LANDLORD AND TENANT ACT 1985, AS AMENDED.

Address Flats 1 & 3 Onslow House, Friars Stile Road, Richmond
TW10 6NJ

Applicants Mr Mark O'Brien Flat 3
Miss Eleanor O'Brien Flat 1

Respondents Gilfin Property Holdings PLC

Appearances Mr Iain Gilchrist For Respondent

The Tribunal Mrs T I Rabin JP
Mr D Huckle FRICS

Hearing: 12th April 2006

**FLATS 1 and 3 ONSLOW HOUSE FRIAR'S STILE ROAD RICHMOND
TW10 6NJ**

FACTS

1. The Tribunal was dealing with two applications under Section 27A(1) of the Landlord and Tenant Act 1985, as amended, ("the Act") which had been made by Ms Eleanor O'Brien of Flat 1 Onslow House Friars Stile Road Richmond TW106NJ and Mr Mark O'Brien of Flat 3 Onslow House aforesaid. The applications were for the Tribunal to determine their liability to pay the service charges and management fees levied by the Respondent Landlord, Gilfin Property Holdings Ltd for the service charge years 2005-6 in the case of Flat 1 and 2000 to date in the case of Flat 3. The service charges and management fees related to Onslow House aforesaid ("the Building").
2. A copy of the lease of Flat 3 Onslow House has been produced to the Tribunal. It was assumed that the lease for Flat 1 was similar to that for Flat 3. The Applicants' obligations in relation to the payment of the service charge are set out in Clause 1, the Sixth Schedule Clause 1 and the Tenth and Eleventh Schedules of the Lease and the Respondent's obligations in relation to the provision of services are set out in Clause 3 and the Eighth and Ninth Schedules of the Lease.
3. Directions were made in the case of both applications which provided that the issues to be determined in the case of Flat 1 were the standard of works undertaken by the Respondent during the service charge years 2005/2006 and in the case of Flat 3, following directions, the provision of cleaning and maintenance services to the Building and the garden, the management services and the failure of the Respondent to apply the service charge payments to the items specified in service charge years 2004/2005. The Tribunal directed that the matter be allocated to the paper track but the Respondent requested a hearing and it is this hearing which is before the Tribunal today.

HEARING

4. The hearing took place on 12th April 2006 at 10 Alfred Place London WC1E 7LR. Neither of the Applicants attended, although written submissions were made. The Respondent was represented by Mr I Gilchrist of the managing agents, Gilchrist and Co, who were located in Fife. They had undertaken management of the Building since 2000.

5. The Tribunal did not inspect the Property but the Applicants provided some photographs and Mr Gilchrist described the Property which consisted of four shops with four flats above. There is a yard at the side of the Property with a run of garages on the other side of it which are not used by the leaseholders of the flats in the Building. There are balconies on the first floor level, giving access to the flats, each of which has an upper floor.
6. The Applicants' complaints are contained in their application forms and in letters addressed to the Tribunal. Their complaints can be summarised as follows:
 - (a) Whether they should have been charged for works undertaken to the four shops on the ground floor.
 - (b) The painting of the internal common parts is poor
 - (c) There is damp on the wall in the entrance and a leak which has been repaired with tape.
 - (d) No maintenance of the common parts is undertaken
 - (e) The commercial yard at the rear is in a bad state with rotten doors on the garages and weeds growing all around.
 - (f) There were weeds on the first floor level balcony
 - (g) Vagrants congregate in the yard adjoining the Property and there has been no effective entrance barrier erected.

THE LAW

7. The Tribunal's jurisdiction is set out in Section 27A (1) of the Act as follows:-
 - (1) Where an amount is alleged to be payable by way of service charge an application can be made to a Leasehold Valuation Tribunal for a determination whether or not any amount is payable and, if so, 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 payment has been made

EVIDENCE AND DECISION

8. Mr Gilchrist stated that Mark O'Brien had failed to supply evidence of his ownership of Flat 3 which, according to the Respondent's records, was in the name of Peter and Blandina O'Brien. He asked that the application by Mark O'Brien be dismissed. The Tribunal noted that under the provisions of the Leasehold Valuation (Procedure) (England) Regulations 2003 there is no requirement in the definition of "the

applicant" in Regulation 2 which requires an application to be made by a tenant. The Tribunal will therefore accept that the application by Mark O'Brien will stand. He has requested that the service charges are looked at from 2000 but has provided no evidence to support his complaints other than in the most general terms and has confirmed that he has only been a tenant since 2004. Mr Gilchrist has provided details of service charge demands for 2003/4 in respect of which there has been no application and no service charge demands or estimates have been served for the service charge year 2006. Accordingly the Tribunal can only consider the service charges for service charge years 2004/5.

9. Mr Gilchrist accepted that the photographs produced by the Applicants showed that there was damp in the main entrance hall. This had been caused by a cracked concrete gutter above, which had been temporarily repaired with mineral tape. This had stopped the leak but staining to walls and ceiling caused by the water ingress was still apparent. This work was undertaken on 19th October 2005 and it is intended to undertake a more permanent repair next year.. He did not agree that the Property was neglected – a major refurbishment of the Property had been undertaken in 2000/2001 when the roof was repaired and the common parts redecorated. The Building has been largely maintenance free since then. An asbestos survey under the Control of Asbestos at Work Regulations 2002 had been carried out and the Building found safe, with requisite notices erected.
10. There is a yard at the side of the Property which is lit for security at night. This is not used by the lessees of the flats in the Building other than for access to the dustbins which are just within the yard. The surface of the yard is poor and will be dealt with by the Respondents in 2006/7. Cleaning of the yard used to be contracted out but since mid-2004 one of the shop lessees has undertaken the task for no charge. Weed treatment of the yard is still contracted out. There is a run of garages which are used by the lessees of the shops and other people but not the lessees of the flats. There have been requests for an effective barrier to be erected at the end of the yard to stop vagrants using it as a place to drink. Mr Gilchrist stated that if the Respondent was put in funds, the barrier would be erected.
11. The communal patio at first floor level was shown on one of the photographs produced. This, together with associated gutters and trellises, were treated for weeds on a regular basis and the individual lessees were responsible for keeping the area in front of their flat tidy and there is no service charge item for cleaning the common parts. The yard is treated for weeds annually at the same time as the patio. The gutters and trellis have to be accessed by the use of a ladder and the costs for undertaking that part of the weed treatment would consequently be more expensive.

12. Mr Gilchrist stated that the Applicants were not asked to pay interim service charges. Building insurance is payable annually in April and is invoiced separately. Although the Lease provides for an on-account payment this has never been demanded and the Respondent bears the cost which is then passed onto the individual lessees at the end of the year.
13. Mr Gilchrist produced service charge accounts for the period 25th June 2004 to 24th June 2005. This included management charges of £685, electricity of £68.87 and external repairs of £997.13, made up as to £80 for the repair of the security lights in the yard serving the shops and the flats, £82.13 for repair of the gates and £150 for cleaning the rear area. These charges related to the four shops and the four flats. Each of the shops was charged one eighth of the repair costs and management fee and the flats were also charged one eighth of the repair costs and one quarter of the electricity, which related to the common parts in the building.
14. The Tribunal considered the terms of the Lease before making a decision on the service charge levels. The Lease clearly described the Property in the First Schedule as the building but excluding the yard and the garages at the rear. The Tribunal concluded that as the yard and garages were excluded from the Lease the Applicants had no obligation to contribute towards the costs of maintaining the yard and garages and, equally, had no rights over them or any right to require the Respondent to undertake any work pursuant to the terms of the Lease.
15. The Tenth Schedule to the Lease provides that the maintenance year shall run from 31st December in every year but that the landlord may select any other twelve month period (Clause 3). There is provision in Clause 4 for an estimate to be prepared for the landlord to demand a sum on account of the estimated service charges. Clause 5 provides for certified accounts to be prepared at the end of each year. These requirements have not been observed by the Respondent but the Tribunal considers that the provision for an estimate is to enable the landlord to require on account payments to be made. This has never been the practice in the instant case and there is no detriment to the Applicants by the failure of the Respondent to adhere strictly to the requirements of the Lease. The service charge contributions are based upon rateable values which are no longer freely used. The current method of apportionment has been accepted by all the tenants thus far, even though it may not be strictly within the terms of the Lease.
16. Dealing with the complaints made by the Applicants, the Tribunal finds as follows:
 - (a) Whether they should have been charged for work undertaken for the shops

The Tribunal finds that the Respondent has no power to make any charge for work undertaken to the shops. For the service charge year in question the costs attributable to the shops are the cleaning of the rear yard and gate cannot be charged to the Applicants as the yard and gate do not fall within the repairing obligations in the flat Lease.

However, the cost of repairing security lights which serve the flats and the Building are chargeable to the Applicants and the Tribunal considers that the cost is reasonable and payable. The proportion charged to the Applicants is a reasonable proportion and falls within the apportionment provided for in the Tenth Schedule.

(b) The internal painting is poor

No invoices were provided for the painting by the Applicants and there were no charges for painting in the accounts provided. The Tribunal cannot consider this.

(c) There is damp on the wall of the common parts.

No invoices or report from a surveyor were provided by the applicants nor was any report from an expert. Mr Gilchrist explained that the cause of the dampness had been treated and that it was proposed that the area would be decorated in the next year and permanent repairs undertaken to the gutter but that no estimates had been obtained. The Tribunal cannot consider this any further.

(d) No maintenance of the common parts

The Applicants did not provide any evidence, other than photographs which were undated and unidentified. The Tribunal could not consider this.

(e) The commercial yard is in a poor state

The commercial yard does not form part of the obligations of the Respondent under the Lease. The Tribunal could not consider this further.

(f) There are weeds on the first floor balcony

The Applicants did not produce any evidence other than photographs which were undated and unidentified. Mr Gilchrist has explained that there is an annual weed clearance and in the absence of any other evidence the Tribunal cannot consider this

(g) Vagrants congregate in the yard

Please see comment under 16(e) above

17. The Tribunal also considered the invoices for the service charge year in question not dealt with above. The management fee of £81.25 per annum per unit was reasonable and payable. The electricity account for the common parts was reasonable and payable.

DECISION

18. The Tribunal determines that the electricity and management charges of the service charge year in question are reasonable and payable forthwith. The charges for repairing the lights are reasonable and payable forthwith. The charges levied for repairing the rear gate and for cleaning the rear are not properly charged and are disallowed.

Section 20C of the Act

19. The Applicants made an application for an order under Section 20C of the Act to the effect that the costs of these proceedings are not proper costs to be included in the service charges. The Lease allows for these costs to be charged and the Tribunal is not going to make such an order.

CHAIRMAN


T I RABIN JP

DATED:

4 May 2006