

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : **2 Hunt Close
Marlow Road
Stokenchurch
Bucks
HP14 3NY**

Applicant : **Gareth Owen**

Respondent : **A2 Dominion Housing Group Limited**

Case number : **CAM/11UF/LSC/2009/0130**

Date of Application : **12th November 2009**

Type of Application : **Application for a determination of
liability to pay a service charge,
pursuant to section 27A of the Landlord
and Tenant Act 1985**

Date of Hearing : **22nd March 2010**

Tribunal :

Mrs. J. Oxlade	Lawyer Chairman
Mrs. S. Redmond BSc Econ MRICS	Valuer Member
Mr. D. Wills ACIB	Non-legal Member

DECISION

For the reasons give below we

(a) find that the sums claimed for insurance, cleaning and gardening for the years 2006/2007, 2007/2008, 2008/2009 were not reasonable

(b) determine that the Lessor is prevented from adding to the service charge account the costs caused and occasioned by the proceedings

REASONS

Background

1. Mr. G. Owen, the Lessee of the property, made an application to challenge the reasonableness of service charges for the years ending 31st March 2007, 2008, 2009, and 2010 against the Lessor, A2 Dominion Housing Group Limited.
2. On 27th November Directions were made for the filing of evidence and the case was listed for hearing on 22nd March 2010.

Inspection

3. Prior to the hearing the Tribunal inspected the common parts and exterior of the premises in the presence of the Lessee, Mr Osman on behalf of the Lessor, and the Tribunal's case officer.
4. We observed that the premises are on the ground floor of a modern 2-storey "block" of 4 flats, in a terrace containing one other block. There were small gardens to the front, and larger gardens to the rear. The 4 flats shared a communal entrance hall, a staircase and a landing serving the first floor flats.
5. The Lessee invited us to consider the sizes of the communal hallway and gardens, and pointed out that the patios leading from the ground floor flats are all maintained by the Lessees.

Hearing

6. The Lessee attended the hearing unrepresented, and Mr. Osman (Assistant Director of Leasehold Services) and Mr. Mallows (Corporate Finance Director) appeared on behalf of the Lessor.
7. In preparation for the hearing and in accordance with the Directions the Applicant Lessee had prepared a comprehensive and useful bundle of documents. The Respondent did not comply with the Directions in their entirety, but did file a short statement relating to the tendering of insurance, and on 17th March 2010 a copy of the cleaning and gardening contract with Pinnacle Limited.
8. On the morning of the hearing the Respondent sought to adduce a further bundle of documents, all of which the Applicant had seen, albeit the end of year audited accounts for 2008/2009 had been provided a matter of days before the hearing. The Lessee did not object to the reliance on these documents.

*Oral Evidence**Mr Owen*

9. We heard oral evidence first from Mr. Owen. He said that he had twice followed the Lessor's appeals procedure when issued with estimated service charges, but the Lessor had not wished to enter into a discussion with him. He believed that the charges were not fair and this provided the impetus for the application. He had been offered combined buildings and contents insurance cover which was half the service charge demanded by the Lessor to insure the building alone. Two weeks after issuing the application the Lessor said that the insurance had been reduced from £233 to £92, which is a 60% reduction. Although the document filed in accordance with the Directions indicates that any alternative quotes obtained by the Respondent will be filed, these have not been filed. Mr Owen produced a quotation schedule obtained from a website, confused.com. The gardening agreement a copy of which was provided in the week preceding the hearing showed that it was not tailored to the needs of this particular block of flats, and many of the provisions (i.e. bulk waste removal/removal of graffiti) were not relevant to Hunt Court. He speculated that they were paying an average rather than an actual sum incurred. The amendments to the final accounts in 2009, clearly show that they have been overcharged for cleaning and gardening.
10. He was concerned by the escalation in service charges from £13 per month, to £36, then £81. Although he would expect a small leeway, there was a 50% under estimation, which was irresponsible. There were no specific problems, by way of repairs. In the year that he bought the lease under the staircasing provisions he was suddenly hit by a large bill of £500 which he had to pay on the day of completion, which came out of the blue.
11. Mr. Osman had attended the property, and admitted that the gardening was not up to standard: leaves were not collected, shrubs needed clipping back, paths were not swept. Since then things have been better. He calculated that they were paying in the region of £160 per hour for cleaning services, which was excessive. He himself had witnessed the cleaners taking 16/17 minutes from the time that they drive in, unload the equipment, have a cigarette, and do their work, after which they then load up. They do two blocks twice a month. One neighbour had made a mark in the dust some time ago before he went off on holiday, to test the cleaners, and this was shown to Mr Osman. They are also supposed to report defects, which they have not done. The cleaners do not clean the windows, which the residents do themselves. Since making the application the cleaners have come more regularly. He had obtained alternative quotes for fortnightly cleaning, and gardening service, the latter of which had public liability insurance.

12. As for costs, the Lessor should not be permitted to add any costs to the service charge account, because having failed to get a suitable response through the appeals procedure there was no other alternative but to issue proceedings. The other Lessees were anxious to have something done but could not afford to do so, and he would not wish them to be adversely affected by the application.
13. In answer to questions asked by Mr. Osman, he agreed that the cleaning rota did show that there were some weekly visits, but that it also showed that there were gaps in this. He himself had not gone to see the mark made in the dust by his neighbour.

Mr Osman

14. We heard evidence from Mr. Osman who said that the quotes obtained by the Lessee were in line with the actual sums charged to the service charge account for 2008/2009: for example in the year ending March 2009 the actual cleaning costs were £946.68 and gardening was £1,619.00, which were both similar to the quotes supplied by him. Although he may have been disappointed with the quality of it, and had pointed out a lack of care, the service provided was fair. The same could be said of the cleaning, and the neighbour was speaking about an area of dust on a newel post, which was clearly dusty.
15. The fluctuations in costs were because of inconsistent billing: in 2006/2007 the Lessor had billed for insurance, management, and auditing, but failed to bill anything for cleaning, electrics, water rates, and gardening, and so in fact the Lessee had been undercharged by around £300. The Lessor made an error in failing to claim it and so would not now be seeking to recover it against any of the Lessees. It arose due to coding issues. This error was then repeated in the forecasts used by the Lessor in estimating the next year's costs in 2007/2008, so there was an underestimate and so eventually recovery for under estimating. However, in 2008/2009 the error was picked up and so a proper estimate of costs was made – although in the actual service charge accounts they had again not properly claimed all of the electricity which must have been used (only about 25% of what was probably used); the water bill was on the light side, and again they would not seek to recover this. He had not produced a bill to support the expenditure of £515 for fire appliances, but would do so for the Lessees benefit, and stated that it related to safety lighting which had been assigned to the code for 'fire safety'. In 2009/2010 the insurance costs will be £92.46 (letter of 25th Jan, 7 of supplementary bundle).
16. On behalf of the Lessor Mr Osman said that they would not seek to charge to the service charge account the costs caused or occasioned by the proceedings.

17. Mr. Owen said that he was pleased to see that the actual cleaning costs for 20908/2009 were £946.68, which is a 60% difference. His problem is that he likes to be able to budget and the Lessor's way of working made this impossible.

Tribunal Questions

18. In answer to our questions Mr Osman said that A2 Dominion determine costs by "forecasting", relying on past "actuals" to forecast future expenditure. They also do spot checks to ensure that it is relevant to the specific property. This is done by individuals on the service charge team, not surveyors, as required by the lease (clause 8(4)(a)). He said that it was not just a question of getting a bill from a company and applying a blanket cost to a specific property. They do get a monthly bill from contractors and they try to divide it up proportionately. The estate manager will look at the contracts. Pinnacle probably deal with 50 properties for them. He supposed that there is a document which contained a formula as to how the total cost was to be apportioned, and on recalling a conversation that he had with a colleague, was sure that such a document must exist. He agreed that there was a communal electricity meter, and that a bill of £87 would reflect the costs of electricity for one quarter. He could not comment on insurance, but was sure that £116.24 was a sum actually spent on responsive repairs.

Mr. Mallows

19. We next heard from Mr. Mallows, who said that there had been a procurement process in 2006/2007 and which set insurance costs for the next 3 years. They had discovered from Lessees that in 2006 they were most concerned about the pricing of insurance, but later this changed in 2007 to concerns about the financial stability of the insurance company. The costs had reduced because the pricing was based on incorrect building values, and once adjusted the costs reduced. This was entirely independent of the application. In 2006 the insurance charge reduced to £88.00 + 5% IPT. Where ever they saw a mistake they would rectify it, and undertook that they would rectify this error for all Hunt Court Lessees.
20. At the end of the hearing we reserved our determination.

Jurisdiction

21. The jurisdiction of the Tribunal to consider the reasonableness and payability of service charges is as follows:

s27A of the 1985 Act provides that "an application may be made to a leasehold valuation tribunal ("LVT") for a determination whether a service charge is payable and, if it is, as to –

(c) the amount which is payable ...”.

Section 19(1) of the 1985 Act provides that “relevant cost shall be taken into account in determining the amount of the service charge payable for a period –

(a) only to the extent they are reasonably incurred, and

(b) where they occurred on the provision of services or the carrying out of works, only the services or works are reasonable standard; and

the amount payable shall be limited accordingly”.

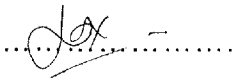
Discussion

22. Mr. Owen issued the application because he had been concerned about specific items (insurance, gardening, cleaning) and the lack of considered budgeting.
23. However, having heard evidence from both parties it was apparent that the areas of dispute had narrowed considerably: (a) the Lessor said that the insurance costs for the years ending 31st March 2007, 2008, 2009, and 2010 would be £92.46 p.a. for all of the flats in Hunt Court, which was close to the comparable quotes obtained by Mr Owen, who did not dispute that £92.46 was a reasonable annual charge for insurance, (b) the Lessors had not charged for cleaning and gardening in 2006/2007, and would not be doing so, (c) the Lessor said that they would not seek to recover the costs of the proceedings from the service charge account.
24. Further, although Mr Owen had disputed as unreasonable the *estimated* gardening and cleaning costs, he did not dispute that the *actual* sums charged in 2008/2009 – respectively £202.44 and £118.25 - were unreasonable. Indeed, the quotes obtained by him in preparation for the hearing, when calculated on the basis of 3 or 4 visits a month, were in line with the actual sums charged. Although there were some criticisms as to the quality of the cleaning and gardening services provided, these were not expressed as a constant dissatisfaction with the level of care taken. Having considered the evidence of both parties, and in light of the cleaning schedule – which shows a reasonably consistent pattern of visits either 3 or 4 times a month - we consider that for the nature of the service provided the actual sums charged in 2008/2009 for gardening and cleaning are reasonable. We heard no evidence to suggest that the tasks were any different in nature in earlier years or would be in later years, and so adjust the figures downwards for the year 2007/2008 to £200 and £110 respectively, and trust that in 2009/2010 (which financial year has not ended, and over which we cannot therefore yet make a decision) the costs will reflect this. For ease of reference the figures which we have assessed as reasonable for the Lessee to pay are set out at appendix A.

25. We were concerned that the Lessors had attended the hearing without having complied with most of the Directions. We did not consider as satisfactory the explanation that the documents needed were difficult to source, because the Directions were made more than 3 months ago.
26. We were also concerned that none of the invoices were available for inspection. Whilst it is to be expected that large Landlords will find it more efficient to use the same contractors on many (if not all of their properties), if the contractors do not apportion the costs between the properties, then the Lessors should show the basis on which he has done so. In this case the Lessor did not adduce any evidence as to exactly how the costs were apportioned between the Lessors respective properties.
26. We are also concerned that although the Lessee has followed A2Dominion's own appeals procedure, his points remained unresolved. We have accepted the evidence of Mr Mallows that the insurance costs were known in 2007. Any mistakes in not billing the proper cost of insurance should have been amended at an earlier stage - which would have saved the Lessee the time and trouble (and cost) of issuing proceedings.
27. Although we do not have the power to direct that the Lessor will ensure that the other Lessees in Hunt Court take the benefit of the concessions and decision made in this case, we anticipate that the Lessor will take swift action to rectify the service charges of all of the other flats in Hunt Court, rather than await receipt of a further application - which is entirely possible in light of the evidence of Mr Owen that other Lessees are discontent.

Conclusions

28. For the reasons given above we find that the sums claimed for insurance, cleaning and gardening for the years in question were not wholly reasonable. We find that the Lessee is liable to pay insurance of £92.46 for 2006/07, 2007/08 and 2008/2009, the costs of cleaning at £110 for 2007/2008, and £118.44 for the year 2008/2009, and gardening of £200 for 2007/2008 and £202.44 for 2008/2009.
29. Further is prevented from adding to the service charge account the costs caused and occasioned by the proceedings

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Joanne Oxlade

Chairman

23rd March 2010

