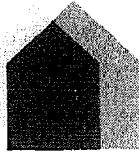


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Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL for the

LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985, as amended, Sections 27A & 20C

Ref :LON/00AP/LSC/2009/0686

Property: Flats A, B & C, 60 Hampden Road, London N8 OHT

**Applicants: Morgan Woods (Flat A)
Ben Godfrey (Flat B)
David Moreland (Flat C)**

**Respondents: Phyllis Trading Limited through their managing agents
Salter Rex**

Date of hearing: 10 June 2010

Leasehold Valuation

**Tribunal: Mrs S O'Sullivan
Mr I Thompson BSc FRICS
Mrs R Turner JP**

Procedural Background

1. By an application received on 28 October 2010 the Applicants sought a determination under sections 27A and 20c of the Landlord and Tenant Act 1985 (the "Act"). The application related to the reasonableness of the service charges and information provided in respect of the service charge years 2005/06 to 2008/09 and estimated service charges for the service charge year 2009/10. The application related to Flats B and C 60 Hampden Road London N8 OHT for all of the periods in question and in relation to Flat A for 2008 onwards, Mr Woods only having acquired Flat A in 2008.
2. A pre trial review was held on 17 November 2009 following which directions were made and a hearing date set for 18 February 2010. This hearing was adjourned at the request for the parties and the hearing of this matter took place on 10 June 2010.

The Law

3. Section 18 (1) of the Act provides that for the purposes of the relevant parts of the 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 or 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.
4. Section 19 (1) of the 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 reasonably 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.
5. Section 19 (2) of the Act provides that where a service charge is payable before the relevant costs have been incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or otherwise.

6. Section 27A (1) of the Act provides that 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
7. Section 27A (3) of the Act provides that an application may be made to a leasehold valuation tribunal for a decision 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 costs, 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.

Inspection

8. The Tribunal inspected the property at 10am on the morning of 10 June 2010. 60 Hampden Road is a three storey mid terraced period house, converted into three self contained flats. The property is of typical construction for its era and location: pitched slated roof, solid brick walls with a two storey bay to the front elevation and single and double storey additions to the rear. It has replacement upvc windows to the ground and second floors and original wooden sash windows to the first floor.
9. It has a small front garden which is concreted with a bin area. The exterior is in poor condition with flaking and missing paintwork to stone and timber surfaces and areas of rotten timber, particularly to window cills. The Tribunal also noted a broken rainwater pipe to the front bay window, lengths of redundant loose wiring and damaged render to the front boundary wall brick pier.
10. The interior common parts were seen to be shabby with bare lightbulbs. Some damage was seen to internal plaster from external leaks.

11. The Tribunal also inspected the interior of Flat B on the first floor. The internal plastering was damaged under the kitchen and bedroom windows and within the hallway from external leaks.

The Hearing

12. The hearing of this matter took place on 10 June 2010. The Applicants were represented by Mr Godfrey, the lessee of Flat B. The Respondent was represented by Mr Preko of Salter Rex, the managing agents.
13. The Tribunal was provided with a copy of the lease in relation to Flat B and was informed that leases of Flats A and C are in similar form. Under each lease each lessee is obliged to pay a one third share of the service charge.
14. The Tribunal was informed by Mr Preko that Slater Rex had taken over management of the property on or around 20 November 2005 and the accounts had been prepared on the basis of the information provided by the previous managing agents. The Tribunal heard that the information provided had been difficult to decipher in parts.
15. The Applicants had prepared a bundle for use at the hearing. This did not contain the service charge demands and these were requested by the Tribunal together with copies of the Health & Safety reports and were provided by Salter Rex further to directions made by the Tribunal after the hearing.
16. The Tribunal then went on to consider the service charge items in dispute. As the accounts were basic the Tribunal considered the service charges on an item by item basis rather than a year by year basis. A summary of the evidence heard and the Tribunal's decision is set out below. This decision contains only a summary of the most salient evidence, the full evidence before the Tribunal being contained in the bundle in the parties' possession.

2005

17. The total expenditure shown for 2005 was £2,697.40, each lessee's proportion being £899.13. Mr Preko confirmed that to his knowledge no service charge demands had been served in respect of these sums and no notice under section 20B of the Act. Accordingly Mr Preko conceded that these sums were irrecoverable and the sums would be credited back to the lessees.

Credit of £2497 and £5,896.83 in 2006

18. In relation to the service charges for 2006 the Tribunal noted in the accounts that the sum of £2497.40 appears which Mr Preko said represented a credit from Crabtrees, the previous managing agents. The Tribunal heard that it had taken some time to ascertain to whom this sum should be credited and it had therefore been held in a reserve fund. The Tribunal understands that this sum represents monies held on account from the lessees. Mr Preko confirmed that this amount had been credited back to the lessees in 2009/10.
19. In the ledgers supplied by Mr Preko at the hearing the Tribunal also saw a further credit received from Crabtrees of £5,896.93. The Tribunal was informed that this sum has now been credited back to the lessees. The Tribunal was informed that the following sums had been credited to the lessees in January/February 2010 as follows:
- Flat A - £569.98
- Flat B - £1218.49
- Flat C - £5468.00
20. The amounts credited from Crabtrees relate to periods which are not before the Tribunal and thus the Tribunal makes no determination in respect of these sums. However the Tribunal would expect the managing agents to properly account for these sums in the end of year accounts and to write to the lessees and explain the basis upon which these sums were now being apportioned. The Tribunal found it far from satisfactory that the managing agents had taken such a considerable period of time in which to reconcile the amounts from Crabtrees.

2006 – 2008

Accountancy

21. Accountancy fees were not challenged for the period before the Tribunal. The fees ranged from £160 in 2006 to £165 in 2008. The Tribunal considered the costs themselves as reasonable and payable in full.

Insurance

22. The sums of £1,374.70, £1,328.39 and £1,341.67 appeared in the accounts in respect of insurance for the years 2006-2008 respectively. The sums claimed for insurance for each of the years was challenged by the Applicants as being simply excessive. No alternative quotations had been obtained although reference was made to telephone quotations being obtained a few years ago which ranged from £700 - £900.
23. Mr Preko submitted that the insurance was reasonable as it equated to charge per unit of £458 for 2006 and had not increased dramatically over the period.
24. The Tribunal considered the sums claimed for insurance. The Applicants failed to provide any good alternative quotation evidence upon which the Tribunal could rely. The landlord was fulfilling its obligation to insure in accordance with the terms of the leases. Having regard to its own experience and expert knowledge the Tribunal considered that the insurance premium fell within the range of reasonable premiums for a property of this type and allowed the premiums in full for the periods in issue.

Management Fees

25. Management fees were charged as follows

2006 - £220 plus Vat per unit

2007 - £225 plus Vat per unit

2008 - £230 plus Vat per unit

26. The Applicants challenged the management fees on the basis that the management provided was very poor, in particular they considered that the property was not being managed in accordance with the provisions of the leases. Mr Godfrey pointed to the fact that there was a broken section of pipework to the front of the property which they had reported but which remained in disrepair. The Applicants were concerned that exterior works were required to the property and that the managing agents were taking no steps to remedy the disrepair.
27. On behalf of the Respondent Mr Preko submitted that the managing agents had faced an uphill struggle since they had taken over management of the property in 2005 and had been trying to reconcile the accounts and the payments made by the lessees. The Tribunal heard that Salter Rex carried out 2 inspections each year but had yet to prepare a specification for the works. It was submitted that the management fee covered all

standard management services including the processing of any insurance claims, the service of service charge demands and the preparation of a budget, chasing any arrears and arranging for accounts to be audited and arranging for Health & Safety inspections.

28. The Tribunal heard from Mr Preko that that the management fees were in fact the barest minimum that they would charge.
29. The Tribunal was satisfied that the management fees charged fell within a reasonable range of management fees and were reasonable in principle. However the Tribunal had seen evidence of extremely poor accounting by the managing agents with the sums received from the previous managing agents not having been properly accounted for. In addition there was clearly no planned maintenance despite the managing agent's evidence that they inspected the property twice each year. To reflect the poor management which had been provided over this period the Tribunal determined that there should be a 50% reduction to the management charges for each of the years 2006-2008.

Health & safety

30. The sums of £352.50 and £417.13 were claimed in respect of health and safety inspections for the years 2007 and 2008 respectively. These costs were challenged by the Applicants on the basis that they had never seen a Health & Safety certificate and they were not convinced an inspection had ever taken place. In relation to the Health & safety inspection in 2007 Mr Preko confirmed it had been carried out by Quantum Risk Management and that no major problems had been highlighted. In relation to the 2008 report it was explained that this related to an asbestos survey that was required. As no asbestos was found there would be no necessity for any further asbestos inspections.
31. After the hearing the Tribunal made provisions for the supply of these reports which were forwarded to the Tribunal in due course. The Tribunal was satisfied that both inspections took place and that it was reasonable to commission these inspections. It noted that the Health Safety & Fire Survey recommended a review in 2008. In the circumstances the costs of both inspections and reports was allowed in full.

2009 & 2010 Budget

32. The following sums were allowed for the budget for 2009
 - The sum of £1,500 demanded for insurance was allowed in full on the same basis as above
 - Accountancy fees were allowed at £175
 - Provision of £450 for a health & safety inspection is allowed

- Management fees were allowed at £250 plus Vat per unit which should be reduced by 50% to reflect the poor management

33. The following sums were allowed for the budget for 2010

- The sum of £1,409 demanded for insurance was allowed in full on the same basis as above
- The sum of £460 for professional fees was disallowed as Mr Preko could not explain what this was in respect of
- Accountancy fees were allowed at £175
- Management fees were allowed at £250 plus Vat per unit without any reduction
- No provision should be allowed for a reserve fund as there is no provision in the lease entitling such collection

Costs applications

34. Mr Preko confirmed that there would be no legal costs passed through the service charge. As the Tribunal had an application under section 20C before it, it therefore determined that an order should be made under section 20C.

35. The Applicants also made an application for reimbursement of the application and hearing fees paid in the sums of £350 and £150 respectively. This was opposed by Mr Preko as he submitted that the managing agents had worked hard to try and resolve historical problems and had tried to "*make good any damage done*". In view of the Tribunal's findings it considered it appropriate to order reimbursement of these fees paid by Mr Godfrey and the sum of £500 should be paid to him within fourteen days of the date of this decision.

Chairman: Sonya O'Sullivan

Date: 20 July 2010