5535

Ref: MAN/00CZ/LSC/2010/0083 MAN/00CZ/LVA/2010/0001

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985, SECTIONS 19 and 27A
LEASEHOLD REFORM ACT 2002, SCHEDULE 11, PARAGRAPHS 3 and 5

In the matter of

27 Sprinkwell Mill, 1 Bradford Road, Dewsbury WF13 2DS

Applicants: Sprinkwell Mill Management Company Ltd.

Respondents: Mr Aithsham Cheema

Inspection and Hearing: November 25, 2010

Appearances:
Mr C. Barnes of Counsel and Mr G McGinty of Watson Property Management for the applicants
The respondent did not appear and was not represented

Tribunal: Prof. Caroline Hunter
Mr Roy Wormald
Mr Alan Robertson

Summary decision

1. The Tribunal finds that the service charges for the years 2008 and 2009 were reasonable and that the estimated service charges for 2010 are reasonable. We find that the administration charges claimed by the applicants are reasonable. Accordingly we determine that the sums claimed for the service charges for those years and by way of administration charges are owed by Mr Cheema to the applicants. We refuse any order for costs.

Background

2. The applicants are the owners of Sprinkwell Mill. The mill was converted in around about 2000 into 99 residential flats which were let on 999 year leases from July 1, 2002. From the register of title it would appear that the respondent Mr Cheema completed the purchase of the lease of apartment 27 in January 2006. As Mr Cheema has not taken any part in these proceedings we do not have many details about his ownership but it would appear that he purchased the flat on a buy to let basis with the intention of sub-letting it.

3. The lease is in a common form and provides for payment of service charges on an estimated basis in January and July of each year, with a balancing credit or debit at the end of the year. Mr Cheema initially met the demands for service charges from the applicants and at the beginning of 2008 his account was in credit. However since 2008 payments for the service charges have been erratic to say the least. In January 2010 the applicants issued proceedings in the county court for recovery of arrears of service charges and administration charges. The claim was for £2453.58. In a defence to those proceedings dated 18 February 2010 Mr Cheema admitted that he owed £1335.40 but disputed some £468.88 of the administration charges. (Given the discrepancy between the amount claimed and the amounts admitted and disputed, it is not clear whether Mr Cheema also disputed any further amounts).

4. Given that the administration charges were disputed, the county court proceedings were stayed (apparently on the suggestion of the applicants) in order for an application to be made to this Tribunal for a decision that both the service charges and the administration charges were reasonable. Those applications were made on 27 July 2010.

The premises

5. The Tribunal inspected the premises. Sprinkwell Mill is a Victorian Mill which, as mentioned above, has been converted into 99 flats. It is situated in the centre of Dewsbury adjacent to the station. It has six floors, including the basement car park. There is a lift and also a small gym and sauna provided for the use of the residents. Such a large building has some considerable area of common parts including landings and staircases, as well as the gym and sauna which have to be maintained and cleaned. CCTV is provided to monitor the entrance ways. Some very pleasant features of its industrial heritage have been retained in the common parts. Our inspection indicated a building that was clean and well-managed. Mr McGinty who manages the premises on a day to day basis for the managing agents indicated the amount of work he and the resident directors of the applicants put in to managing the property.

The issues

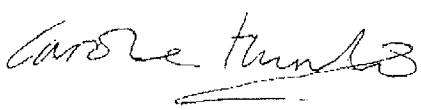
6. We had before us a Scott Schedule setting out the amounts estimated and charged by way of service charges for the years 2008, 2009 and an estimate for 2010. Given that Mr Cheema has not taken issue with any of these charges, and given that none of the amounts seemed to the Tribunal unreasonable in the light of the provision of services and standards maintained we find that all these sums are reasonable. In accordance with s.27A of the Landlord and Tenant Act we determine that all the sums claimed by the applicants for service charges for those years are payable by Mr Cheema.

7. We were also provided with a Scott Schedule of the administration charges which had been levied against Mr Cheema. In relation to one of the charges to which he had objected (the fact that his mortgagor had been contacted twice) the applicants had made a credit. We had before us an explanation of the other charges which had been made. We found that these charges were all reasonable. In accordance with para. 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 we determine that all the sums claimed by the applicants by way of administration charges are payable by Mr Cheema.

Costs

8. Mr Barnes made an application under para. 10 to Schedule 12 to the Commonhold and Leasehold Reform Act 2002 for the applicants' costs to be paid by Mr Cheema. Para. 10(2)(b) provides for a costs order to be made where one party has "in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings." Mr Cheema has failed to respond to these proceedings. That clearly cannot be seen as frivolous, vexation, abusive or disruptive. The question therefore before the Tribunal was whether his actions (or rather inactions) amounted to behaving "otherwise unreasonably". Mr Barnes submitted that he behaved unreasonably in not clarifying his position. If he had done so a large part of this application would not needed to have been heard. In our view the notion of what is unreasonable has to be taken in the context of the paragraph as a whole. Simple failure to respond to proceedings does not in our view amount to behaving "otherwise unreasonably".

9. We understand the concern of the applicants that they may be forced, should they wish to recover the costs of these proceedings as an administration charge in accordance with the lease, into a further round of applications. However, there is no procedure in relation to administration charges under which we can make a ruling equivalent to s.20C of the Landlord and Tenant Act 1985 as to whether the costs of the proceedings are recoverable as an administration charge. At this stage all we can say is that it is our opinion that the proceedings were reasonably brought, but we can make no comment as to the reasonableness of any costs of the proceedings as these were not before us.



Prof. Caroline Hunter December 15, 2010