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HM COURTS & TRIBUNALS SERVICE
MIDLAND LEASEHOLD VALUATION TRIBUNAL
DECISION

LANDLORD AND TENANT ACT 1985
SECTIONS 19 & 27 A

| | |
|--------------------------|---|
| Applicant | The Riverside Group |
| Respondents | Miss A Gardner and Miss L Slow |
| Properties | Flat 1 210 Sandhills Avenue (Miss A Gardner) and Flat 3 212 Sandhills Avenue (Miss L Slow) Hamilton Leicester LE5 1PL |
| Date of application | 18 August 2011 |
| Members of the Committee | V Ward BSc Hons FRICS R Healey LLB Lawyer |
| Date of determination | 15 March 2012 |

Application

- 1 On 18 August 2011, the Applicant, The Riverside Group applied to the Leasehold Valuation Tribunal ("the Tribunal") under Sections 19 and 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination of the apportionment of costs of items as defined by the lease as "communal facilities" and those as "building facilities" relating to a liability to pay and for reasonableness of a service charge levied in the years 2007, 2008, 2009, 2010 and 2011 by the Respondents, Miss A Gardner in respect of Flat 1 210 Sandhills Avenue Hamilton Leicester LE5 1PL and Miss L Slow in respect of Flat 3 212 Sandhills Avenue Hamilton Leicester LE5 1PL.
- 2 At a Pre-trial review held on 2 December 2011 the Tribunal directed that the application be dealt with on the basis of written representations without an oral hearing unless either or both parties requested the same. No such request was made.
- 3 The cost headings and the years in question were as follows:

| | |
|------|--|
| 2007 | Light & Power Window Cleaning Cleaning Day to Day Repairs |
| 2008 | Light & Power |

| | |
|------|---|
| | Cleaning Gardening Day to Day Repairs (Not Flat 1 210 Sandhills) Fire Alarm Maintenance |
| 2009 | Light & Power Cleaning Gardening Day to Day Repairs Fire Alarm Maintenance |
| 2010 | Cleaning Gardening Emergency Lighting/Smoke Detector Maintenance Communal Lighting |
| 2011 | Cleaning Gardening Window Cleaning Emergency Lighting Electricity Day to Day Repairs |

The Tribunal was simply asked to determine whether the above costs fell under the definition of “communal facilities” or “building facilities”

- 4 The Respondent in respect of Flat 3 212 Sandhills Avenue, Miss Slow indicated that she had general concerns over services provided and the management of the development particularly the following:

Budgeting
Window Cleaning
Gardening/Planting
Provision for Redecoration

- 5 Written representations were received from the Applicant and Miss Slow but not Miss Gardner. These were copied as appropriate.

Inspection

- 6 The Tribunal inspected the communal external areas relating to the properties on 15 March 2012 and found that the development comprises two blocks each of 6 flats sharing communal car parking and amenity areas, and communal bin and bike stores.
- 7 Present at the inspection were Matthew Penny (Scheme Finance Officer) and Alison Knight (Senior Delivery Officer) on behalf of the Applicant and Miss Laura Slow Respondent in respect of Flat 3 212 Sandhills Avenue. The Respondent in respect of Flat 1 210 Sandhills Avenue, Miss Gardner, was not represented.

Background

- 8 The Applicant, by way of one of its subsidiaries (Riverside Housing Association Limited) is the freehold proprietor of the properties in which the Respondents hold under leases for a term of 125 years from 5 July 2007 on a shared ownership basis.
- 9 The Applicant performs the management function in respect of the development.

The Applicant's Submission

- 10 The Applicant provided the following information in order to assist the Tribunal's determination:
 - a Audited service charge accounts including estimates and copy invoices. The year end accounts for 31 March 2007 were not included in the bundle due to the fact that the Applicant discovered upon investigation that residents did not move into the scheme until the year ending 31 March 2008. Therefore the costs were irrelevant for this determination.
 - b A list of the services currently provided on site and details relating to the contracts relating to the same.
 - c A coloured lease plan
 - d A Scott Schedule, see attached

The Respondent's Submission

- 11 The Respondent, Miss Slow provided information in the form of a Scott Schedule, see attached.

Scott Schedules

- 12 As per the Directions, Miss Slow highlighted her concerns in the Schedule which was then forwarded to the Applicant for their comments. The Applicant did not annotate Miss Slow's schedule but rather produced their own. Both schedules are attached.

The Law

- 13 The Act provides:

19 Limitation of service charges: reasonableness

Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –
only to the extent that they are reasonably incurred, and
where they are incurred on the provisions 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.

(2) Where a service charge is payable before the relevant costs are 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 of subsequent charges or otherwise.

14 27A Liability to pay service charges: Jurisdiction

(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 –
the person by whom it is payable,
the person to whom it is payable,
the amount which is payable,
the date at or by which it is payable, and
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 costs, and if it would, as to –
the person by whom it is payable,
the person to whom it is payable,
the amount which is payable,
the date at or by which it is payable, and
the manner in which it is payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which –

- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken as having agreed or admitted any matter by reason only of having made a payment.

Subsections (6) and (7) are not relevant to this Application.

Determination

15 Having considered the provisions of the Lease, the Tribunal noted the following within the Particulars to the lease:

Service Provision is defined as 1/6th in respect of the Building and 1/12th in respect of the communal facilities.

The Building is defined as either 210 Sandhills Avenue or 212 Sandhills Avenue appropriate to the particular lease. Each building has 6 flats which equates to the proportions outlined in the Service Provision – stated above.

Development is described as:

“The land and building situate at 210/212 Sandhills Avenue Leicester LE5 1PL...”

- 16 A description of Communal Facilities is found in clause 1.2.2 of the lease as:
- “interior communal parts of any building within the Development and any garden and parking areas appurtenant to it.....”
- 17 The Landlord covenants within clause 5.3.1 to maintain all parts of the Development which are not the responsibility of the leaseholder. It follows that the landlord has an obligation to maintain the bike and bin stores as these are not the responsibility of the leaseholder and are not included within the definition of communal facilities
- 18 Clause 5.3.1 makes the landlord responsible for “all other parts of the Development which are not the responsibility of the leaseholder”. As 12 flats form the development it is just and equitable that such expenses be shared equally between them i.e. 1/12th. The communal facilities are similarly charged at 1/12th.
- 19 It appears therefore that the liability for the actual maintenance of each Building is 1/6th but the communal facilities are 1/12th and the other matters within the Development which are not the responsibility of each leaseholder are 1/12th.
- 20 The Landlord can claim this expenditure under clause 7.5.1 being reasonably incurred in the performance of 5.3.1.
- 21 In respect of the issues raised by Miss Slow which are identified in the Scott Schedule the Tribunal has determined as follows:
- a Budgeting. The method of budgeting as employed by the Applicant is what the Tribunal would consider usual and reasonable for this form of development. The charges quoted by Miss Slow would not in the context of the subject development in the opinion of the Tribunal provide a reasonable level of services and be sufficient to meet the obligations within the lease.
 - b Window Cleaning. The leaseholder covenants to keep the windows clean (where possible) – clause 3.3.2. The Applicant states that they included the window cleaning in the service charge program as they did not consider that the occupiers were complying with the obligation above and further with the exception of Miss Slow no leaseholder objected to the provision of this service when canvassed. In the opinion of the Tribunal the provision of the service by the Applicant appears reasonable.
 - c Gardening. Upon their inspection of the Development, the Tribunal found many of the borders appear to have been untended for a significant period and as stated by Miss Slow, shrubs and bushes have died although it is accepted that the harsh winter of 2010/11 may have been partially responsible. Overall the Tribunal considers that Miss Slow was justified in her complaints in this regard and therefore orders that 50% of the cost of the gardening as apportioned to the Respondent’s properties be re-credited to the respective service charge accounts.
 - d Redecoration/Cyclical Repairs. The Applicant states that a fund for cyclical painting and maintenance was established on the basis of the redecoration of the communal parts of the development on a five yearly cycle and based on an initial budget as determined by an external consultant of £6000 plus VAT. However in 2011 a reappraisal of the fund indicated that the initial appraisal was inadequate and would lead to a shortfall. This error was compounded by the inadvertent refund of an amount collected during the 2008/9 financial year. Accordingly the contributions

were adjusted. Miss Slow criticizes the budgeting and the substantial adjustments that were made. The Applicant has accepted that errors were made and accordingly has offered that 10% of the management fee for the year 2008/9 be refunded. The Tribunal considers this reasonable and directs that it be done.

- e Management fees builders. The Tribunal believes that these fees actually relate to area estate charges appertaining to the infrastructure and amenity areas in the vicinity of the subject development. These charges are levied by the managing agents RMG on behalf of the estate management company – Mulberry Gardens (Hamilton) Management Company Ltd and Greenbelt in respect of the amenity areas. The Applicant pays the charges levied by these companies but then recharges them to the individual leaseholders. This does not seem unreasonable as the leaseholder is responsible for paying a proportion of these charges either directly or indirectly. The Applicant would have little control over these charges unless they (or the Respondents) were to make a separate application to the Tribunal for a determination in respect of those charges. Otherwise these charges must be accepted.
- f Management Fees. These charges appear to be those made by the Applicant for managing the development. The charges which equate to £185.40 per property are within the range considered reasonable to the Tribunal.
- g Cleaning Contract. At the time of the Tribunal's inspection the common areas appeared to be clean and generally in good order. The Applicant states that the increase in cleaning charges is largely due to the provision of the carpet cleaning and further that an element of the cost will be refunded. Whilst the Tribunal acknowledges Miss Slow's concerns that the charges have risen, the reason behind the Applicant's decision to increase the charges appears reasonable particularly since the cost before the refund equates to approximately £72.12 per flat per annum.



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DATE 10 APR 2012