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CAM/00MD/LSC/2011/0145



**HM Courts
& Tribunals
Service**

**Leasehold Valuation Tribunal
Case Number: CAM/00MD/LSC/2011/0145**

Property : Flats 1, 3, 4, 6, 8
33 Upton Park
Slough
Berkshire
SL1 2DA

Applicants : Melanie Torino (1)
Christopher Richardson (3)
Amre Aiad (4)
David McEvoy (6)
Anne Phillips (8)

Respondent : MintonCrest Limited

Date of Application : 26th October 2011

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 : 26th March 2012

Venue : Chamber 5
Slough County Court
The Law Courts
Windsor Road
Slough
Berks
SL1 2HE

Tribunal :

Joanne Oxlade : Lawyer Chairman
Helen C Bowers : Valuer Member

Persons Present: Anne Phillips (for Applicants)
Melanie Torino (for Applicants)

Dave Matika (Head of Property
Management at Remus, Managing
Agents for the Freeholder)
Philip Flynn (Property Manager at
Remus)

DECISION

For the reasons given below, we find that not all service charges incurred in the years 2009 and 2010 were reasonably incurred.

REASONS

Background

1. Melanie Torino, Christopher Richardson, Amre Aiad, David McEvoy, and Anne Phillips ("the applicants") are the lessees of the premises known respectively as Flats 1, 3, 4, 6, and 8, Windsor House, 33 Upton Park, Slough, SL1 2DA ("the premises").
2. Mintoncrest Limited ("the Respondent") is the lessor of the premises, and Remus Management Limited are appointed to act as the Managing Agents ("managing agents")
3. By application dated 26th October 2011 the applicants sought a determination of their liability to pay service charges for the years 2009 and 2010.
4. The applicants said that the case raised the same issues as raised in previous proceedings, CAM/00MD/LSC/2009/0021, and had asked that the costs be brought into line with the Tribunal's earlier finding, which request had not been met. In essence the applicants did not dispute that the managing agents had spent the funds claimed to have been spent, but had no information as to how the funds had been spent, and so were unable to say whether those sums were reasonable.
5. Accordingly, there is a dispute about what about is payable to the lessor.

Terms of the Lease

6. Attached to the application was a copy of the lease of flat 8, which we understand to be in identical terms to the other leases which are the subject of the application.
7. Materially, the lease provides that:

- (a) by clause 2 of the 5th Schedule of the lease the lessor shall “at all times keep in good and substantial repair and condition clean and decorated ... all parts of the building and any structures thereof as are not demised by the this lease... and in particular .. (a) ... the drains, gutters, downpipes” (“the repairing covenants”)
- (b) by clause 1 of the 5th Schedule of the lease the lessor shall “establish and apply the Maintenance Fund as provided by clause 9 of the 4th Schedule”
- (c) by clause 9 of the 4th Schedule of the lease the lessee shall pay to the lessor in each year and ending on 31st December 2009 a service charge which shall be paid by the lessor into a separate fund called the “Maintenance Fund” and will be applied in performance of or accumulated for future performance of the lessor’s covenants contained in the 5th Schedule
- (d) by clause 9(i) of the 4th Schedule of the lease the lessee must:
 - (i) on 30th September each year make a payment on account in the sum demanded by the lessor and certified by him as a reasonable estimate of the anticipated expenditure for the forthcoming year,
 - (ii) when demanded after 1st January and certified by the lessor and managing agents the lessee must pay the balance of 1/8th of the actual costs reasonably incurred by the lessor having performed his obligations together with a reasonable fee to a professions management agent together with a reasonable sum as required to accumulate a reserve fund for anticipated works”.

Procedure

8. On 19th December 2011 directions were made for the filing of evidence, and in accordance with the directions the applicants filed a bundle of documents on 16th March 2012.

Inspection of the Premises

9. Immediately prior to the hearing the Tribunal inspected the premises in the presence of all those who attended the hearing (aside from Melanie Torino).
10. Our inspection accorded with the description found in paragraphs 11, 12, and 13 of our earlier decision, save that on this occasion the paved area/terrace to the rear of the building (which lead from the fire escape) was not uneven, and there were no broken or cracked paving stones.

Hearing

11. Anne Phillips (flat 8) and Melanie Torino (flat 3) attended the hearing on behalf of the applicants and Dave Matika and Philip Flynn on behalf of the respondent.
12. At the outset Ms. Phillips confirmed that having seen the invoices provided, it was apparent that monies had been spent on the building, but as no narrative had been provided by the respondent, and no further information (over and above some minor works job sheets) available, the applicants could not concede that monies had been well-spent. She emphasised that the lessees were ready and willing to pay service charges provided the monies were spent wisely, and that they knew why the funds had been spent. Mr. Flynn had recently taken over a property manager, and was unable to provide very much more information for 2009 and 2010, other than that contained in the invoices and job sheets. He was prepared to make proper concessions, and was anxious to build good constructive relationships with the lessees.
13. Ms. Phillips statement of reply (page 89 - 91) of the bundle was used as the starting point, and we invited further comment from all persons present.
14. In the event, Mr. Flynn conceded many points on behalf of the respondent as follows:

2009

- (a) re-fit door to open outwards: £210, none reasonable
- (b) pump maintenance: £300 of £860.60 reasonable, £560.60 not reasonable
- (c) sewerage disposal: £3,231.50 none reasonable
- (d) gardening: £280 of £608 reasonable, £328 not reasonable
- (e) cleaning: £360 of £599.89 reasonable, £249.89 not reasonable
- (f) management fees: £940 of £1610 reasonable, £670 not reasonable

2010

- (g) management fees: £940 of £1692.00 reasonable, £752 not reasonable.

15. In light of the above concessions, Ms. Phillips made the following concessions on behalf of the applicants:

2009

- (a) fit emergency release panic bar: £187 reasonable,
- (b) pump maintenance: £300 of £860.60 reasonable,
- (c) gardening: £280 reasonable
- (d) cleaning: £360 reasonable

(e) management fees: £ 940 reasonable

2010

(f) management fees: £ 940 reasonable.

16. That left five items in dispute. In respect of each Mr. Flynn relied on the receipts and work orders, but as he was not involved in the management, could not add anything further. Ms. Phillips made the point that none of the works were done after consultation, the managing agents had not checked that it had been done at all (let alone checked the quality of the work), and the managing agents should be in a position to give a narrative.
17. At the end of the hearing we reserved our decision.

Jurisdiction

18. The LVT has jurisdiction over the matter by virtue of section 27A(1) of the 1985 Act, which provides as follows:

“An application may be made to the LVT for a determination whether a service charge 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) date at or by which it is payable, and
- (e) the manner in which it is payable”.

19. The following statutory provisions are also relevant to this dispute:

Section 19 of the 1985 Act, provides:

“Relevant costs should be taken into account in determining the amount of the service charge payable for period –

- (a) only to the extent that they are reasonably incurred and
- (b) where they are incurred on the provision of services of the carrying out of works, only if the service or the works are of a reasonable standard;

and the amount payable shall be limited accordingly”.

Findings

20. We make the following findings of fact not all service charges incurred in the years 2009 and 2010 were reasonably incurred.

Reasons

21. We give the following reasons for our findings of fact.
22. Both parties have made proper concessions in respect of most of the items, which we formally record.
23. In respect of the remaining items, we find that the sums spent were reasonably incurred and that the quality of the work was to a reasonable standard.
24. The first item (2009) relates to the *unblocking of a gutter and downpipe* along the top of the building above the communal area on 29th May 2009, then tested to ensure that it worked correctly. The invoice is at page 13 of the bundle and the works order is at page 8 of the supplementary bundle from which there is adequate evidence to be satisfied that the work was done. No further details are available, and it appears that no lessee was available to sign the job sheet - so it is not surprising that the need for the works are not within the knowledge of the lessees. It is apparent that there have been problems with blocked gutters and downpipes in the past. Good management would involve clearing gutters and downpipes twice a year. This visit appears to be reactive, and is indicative of the type of management that was in place at that time. In light of all we know about the problems with this building, and that the height of the building would suggest a two man job (one to go up the ladder and one to hold it) the sum spent on this does not seem unreasonable. Therefore, we find that the sum spent was reasonable.
25. The second item (2009) in dispute relates to re-fixing downpipe (flat 4) and unblocking guttering at (flat 7) on 17th November 2009. The invoice and the works order are at pages 13 and 14 of the supplementary bundle from which there is adequate evidence to be satisfied that the work was done. No further details are available, and it appears that no lessee was available to sign the job sheet - so it is not surprising that the need for the works are not within the knowledge of the lessees. The comments made at paragraph 24 are equally applicable here. For the same reasons we find that the sum spent was reasonable.
26. The third item (2009) relates to *relaying paving slabs* in January and September and 2009. The invoices are at pages 18 and 19 of the bundle, and a works order at page 18 of the supplementary bundle. The works order refers to relaying uneven paving slabs were they have sunken, and the invoice refers to an area adjoining a sunken drain. No further details are available. The Tribunal noted at the inspection in July 2009 that the paved/terraced area was uneven and some of the paving stones were cracked. At our inspection today, it was apparent that these could not be so described, from which we conclude that they have been replaced. It is possible that the works to this area were comprised in this invoice. It is not satisfactory that the respondent is not

in a position to provide an explanation. However, we find that this is the most likely explanation, and so find the sum spent reasonable.

27. The fourth item (2010) relates to the removal of a dead pigeon in May 2010. An invoice is at page 82 of the bundle, which refers to a "call out to remove a pigeon caught in netting: refix netting". In light of all we know about the problems with this building, and that the height of the building would suggest a two man job (one to go up the ladder and one to hold it) the sum spent on this does not seem unreasonable. Therefore, we find that the sum spent was reasonable.
28. The fifth item (2010) relates to electricity charges, the invoices for which relate to pages 83-86, from which it will be apparent that the bills paid are all estimates. Good management suggests that there should be a reading twice a year, with an assessment done to see if a cheaper supplier can be found. Clearly that has not been done. Paying estimates (as opposed to bills based on actual readings) does not increase unit costs, but can make costs uneven. The lack of good management is reflected in the reduced management charge. We consider that the sum demanded is reasonable.
29. We therefore find that the amounts payable are as set out in the fourth column of the attached Schedule, headed "sum found reasonable".

Conclusion

30. For the sake of clarity we should say that the decision binds only the parties to the proceedings, but we would expect that the effect of the decision would be extended to the non-participating flats.

~~Jo~~anne Oxlade

Chairman

26th March 2012

Schedule

Windsor House

Item	Year	Sum Claimed	Sum found reasonable	Difference
Unblock gutter and downpipe	2009	172.50	172.50	0
Refix downpipe	2009	138.00	138.00	0
Relay paving slabs	2009	489.49 28.00	489.49 28.00	0 0
Refit door to open outwards	2009	210	0	210
Fit emergency release bar	2009	187.00	187.00	0
Pump maintenance	2009	860.60	300	560.60
Sewerage Disposal	2009	3231.50	0	3231.50
Gardening	2009	608.00	280.00	328
cleaning	2009	599.89	360.00	239.89
Management fees	2009	1610	940.00	670
Management fees	2010	1692	940.00	752
Remove pigeon	2010	94.00	94.00	0
electricity	2010	232.08	232.08	0

