8304

HM Courts & Tribunals Service

Residential Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL (Eastern Region)

LANDLORD AND TENANT ACT 1985 Sections 27A and 20C ("the Act")

	CAM/22UD/LSC/2012/0071
Property:	**12 Baisley Gardens, Napier Street, Bletchley, Bucks MK2 2NE**
Applicant:	**Mrs D S Davis**
Respondent:	**Places for People's Homes Limited**
Date of Application:	**7th June 2012**
Date of Directions	
Tribunal Members:	**Mr Andrew Dutton – chair** **Miss M Krisko BSc (Est Man) FRICS**
Date of Determination:	**15th October 2012**

DECISION

The Tribunal determines that the application on behalf of Mrs Davis is dismissed for the reasons stated below.

The Tribunal makes an order under Section 20C for the reasons stated below.

REASONS

Background

1. This was an application made by Mrs Davis seeking a determination as to the liability to pay service charges in respect of the year 2012 for communal landscaping, lift maintenance and electricity. In her application the question she asked the Tribunal to determine is as follows: *"Please could you decide whether the above charges breach the 18 month rule for the recovery of service charges? Does the 18 month rule apply from when the costs were incurred or from the date of the invoice?"*

2. Directions were issued on 21st June requiring the matter to be dealt with by way of a paper determination. The cases of John-Paul v London Borough of Southwark [2011 UKUT178(LC)] and OM Property Management v Thomas Burr [2012 UKUT2(LC)] were put forward as providing potential assistance to the parties.

Statements of Case

3. The Respondent's statement of case to which Mrs Davis had the ability to reply was dated 11th July 2012 and contained a number of appendices (7) which included details of the communal landscaping, electricity and lift costs, an explanation as to how the accounts were prepared and the demands that were issued. In addition a letter was sent to the Respondents by the Tribunal on 23rd August and they replied on 10th September the contents of which had been noted by us.

4. Mrs Davis responded to the Respondent's statement of case suggesting that they had not addressed her complaint concerning the 18 month rule. Under the heading communal landscaping she stated that there appeared to be no deficits shown and the same applied to lift costs. Insofar as the electricity is concerned, she says that the first time she was aware of any deficit was in September 2009 and that this covered a period from the handover by the builders in March 2006 until October 2008 and that therefore a large part of the build was incurred more than 18 months before she was made aware of it. She did not make the same comments concerning communal landscaping and lift costs.

5. It appears that the development is a block of 31 flats of which 27 are let on long leases and 4 on assured tenancies. The schedules provided to us dealt with the costs to the 27 flats and the figures shown on each schedule

for landscaping, lift maintenance and electricity were carried forward to the actual accounts which also included in the bundle, rather than the actual costs incurred for the estate.

6. It appears that the accounting practice for the Respondents was to carry over the year on year balance to the following year and to recover that by way of increased service payments to the residents in the following year who pay on a monthly basis. It seems, however, that this was altered for the year 2012/2014 when the intention was to recover the deficit in one go.

The Lease

7. The lease is for a term of 125 years from 1st January 2006 with a peppercorn ground rent. The service charges are recoverable as provided for in the lease together also with a payment towards the insurance premium. The landlord's covenants are contained at clause 4 of the lease and include the usual repairing and redecorating provisions. Clause 6 deals with the service charge provisions and provides at clause 6.4 that the service charge shall consist of the sum being the estimated expenditure by the surveyor and an amount towards the reserve fund. Under clause 6.6 the following wording is to be found: *"As soon as practicable after the end of each calendar year the landlord shall determine and certify the amount by which the estimate referred in clause 6.4.1 shall have exceeded or fallen short of the actual expenditure in the account year and shall supply the leaseholder with a copy of the certificate and the leaseholder shall be allowed or as the case may be shall pay forthwith upon receipt of the certificate the specified proportion of the excess or the deficiency."*

8. The bundle contained audited accounts for the years ending 31st March 2008 onwards and we note that in that year there appeared to be no cost claimed in respect of electricity. The cost in respect of landscaping and lifts were consistent with the schedule setting out the payments made by the Respondent during that year. In the year ended 31st March 2009 there is a substantial sum of some £10,539 representing communal electricity. Under the notes for explanation the following is said: *"Communal item power presents the cost of electricity used for lighting the common areas of the estate by Eon (this does not cover your personal lighting). The bill for usage backdated to March 2006 was received in this financial year. This has been apportioned to each property based on the original sale of completion date. Any costs of the bill relating to the period prior to the original purchase of your property have been paid for by People for Places. An accrual of £404.23 has been made for outstanding bill from February to March 2009."*

9. The bundle before us contained the electricity bill for that period and it is dated 11th October 2008 in the sum of £11,383.06. It appears from the reverse that this ran from a previous meter reading on 24th March 2006 through to an estimated reading on 11th October 2008. The account has a date stamp received on 15th October 2008.

The Law

10. The law applicable to the considerations before us is set out on the attached appendix.

Findings

11. It seems to us that there is no evidence to show that any of the charges in relation to landscaping or the lift were incurred 18 months before they were demanded of Mrs Davis. Indeed in her statement of case responding to the Respondent's statement she does not allege that. She says that there appears to have been no deficit in relation to communal landscaping or lift costs, contrary to her application and that the actual costs have appeared in the final accounts on each occasion. They are clearly within 18 months of any of those costs being incurred and in our findings therefore there can be no suggestion on the documentation before us that insofar as communal landscaping or lifts costs the provisions of Section 20B apply. Accordingly those sums are payable.

12. Insofar as the communal electricity is concerned it does seem clear that this covers a period from 2006 through to 2008. The figure claimed appears in the accounts ending March 2009. The question therefore to be considered is when are costs incurred. In the directions reference was made to the Upper Tribunal cases of John-Paul v London Borough of Southwark reference LRX/133/2009 and OM Property Management v Thomas Burr LRX/64/2011.

13. In this latter case, which is similar to the position in which Mrs Davis finds herself, the question of the payment of a gas bill which was presented late to the landlord was considered. At paragraph 24 of his judgement His Honour Judge Mole QC said this: *"The cost of the gas was not "incurred" at least until Total presented the bill in November 2007. It was included in the service charge demanded in April 2008 well within the time limit set by Section 20B."*

14. In this case it seems to us on the information that we have before us that the invoice was not received by the Respondents until October of 2008. However, the figure appears in the accounts for the year ending March 2009 when a demand is also sent for payment of the sums show. In those circumstances therefore we find, that in relation to the electricity, the costs was not incurred at least until the bill was presented to the Respondents which was within 18 months of the demand being made of Mrs Davis. In those circumstances therefore we find that there is no evidence before us that the demand was made 18 months after costs had been incurred and we must therefore dismiss Mrs Davis's claim.

15. Insofar as the recovery of the costs of the proceedings is concerned it seems to us that it would be appropriate to disallow the Respondents to recover these costs as a service charge. Although the lease would appear to allow the recovery (see paragraph 6.5.3) there is no indication in the

Respondent's statement of case that a claim for costs is to be pursued. Our reason for making an order under section 20C, which we believe to be just and equitable is as follows. The lease refers to the costs incurred in relation to the Building, which is defined as 12 Baisley Gardens, of which Mrs Davis's flat forms part. It seems to us that the preparation of the accounts on the basis that they only show the costs associated with 27 long lease flats, and not the expenses attributable to the AST lettings, does not give the full and complete picture to the leaseholders. The total costs incurred in providing services to the building should be shown and it would seem that Mrs Davis would pay 1/31st. We do not suggest that there was any intention to misled.

Chairman _____

A A Dutton

Date: 15th October 2012

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this 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.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) 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 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 or subsequent charges or otherwise.

Section 27A

(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 -
(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.

(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 -
(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.

(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 to have agreed or admitted any matter by reason only of having made any payment.

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
- (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.