



Leasehold Valuation Tribunal
Case Ref: CAM/26UB/LSC/2011/0161

Property : Flat B, 271 Bridge Court, 271 High Street
Waltham Cross EN8 7AT

Applicant : Leach Pension Scheme Trustees Limited
Represented by : Williamson & Dace, Property
Consultants

Respondent : Ms Christine Elizabeth Sorce
Represented by : In Person and assisted by her father, Mr
Victor White

Date of Referral : 28 November 2011

Type of Application : To determine the amount of service
charges payable – Section 27A Landlord
and Tenant Act 1985 (the Act)

Date of Directions : 9 December 2011

Date of Hearing : 24 February 2012

Date of Decision : 28 February 2012

Tribunal : Mr John Hewitt Chairman
Mr Stephen Moll FRICS
Mr John Francis QPM

DECISION

Decision

1. The decision of the Tribunal is that we report to the court pursuant to the order made 18 November and drawn 24 November 2011 as follows:
 - 1.1 On 11 May 2011 the claimant issued a claim against the Respondent for the sum of £1,056.27 in respect of alleged ground rent and service charge arrears, plus statutory interest

pursuant to the County Courts Act 1984, plus a Court fee of £80 and Solicitor's costs £80.

- 1.2 In the event it became clear that there were no ground rent arrears at the time of issue of the claim.
- 1.3 On 26 April 2011 (and thus shortly prior to the claim being issued) the Respondent had made a payment of £200.00 to the Applicant's managing agents but the fact of this credit does not appear to have been transmitted to the solicitors who issued the claim, or if it was, it was not taken into account to reduce the sum claimed to £856.27.
- 1.4 The net claim of £856.27 comprised two items which were initially in dispute:

2008	£736.49	External repairs and redecorations
2010	£119.78	Car park repairs.
- 1.5 At the hearing before us the Respondent (Ms Sorce) accepted that the £119.78 Car park repairs item was payable by her.
- 1.6 We heard evidence on the dispute concerning the External repairs and redecorations item and we decided that the sum of £608.49 was payable in respect of that item. Our reasons are set out below.
- 1.7 Thus of the amount originally claimed there is a balance currently due and payable by Ms Sorce to the Applicant of £728.27.
- 1.8 We have no jurisdiction in respect of the claims to statutory interest, the court fee or the Solicitor's costs and these are matters for the judge to determine. We therefore transfer the file back to the court

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Background

2. Bridge Court is an early 1970's mixed use brick built block beneath a flat roof originally comprising a number of retail units on the ground floor, two commercial units on the first floor and seven self-contained maisonettes on the upper floors. Evidently the two first floor commercial units have been knocked into one and the current user is a snooker hall, the previous user having been a gymnasium.
3. There is a car park at the rear of the development with 23 spaces allocated amongst the respective residential lessees and the commercial tenants, some of whom have the benefit of several spaces.
4. Also at the rear of the development there is an external metal staircase which provides a means of escape in emergency from the upper floors down into the car park. The residential lessees and the first floor commercial tenant have the right to use the staircase.

5. The residential units are accessed via an entrance hall to the left of the development and then via stairways to the upper floors. There is a common open balcony at the rear of the development giving access to each of the maisonettes. At the front of the development each maisonette has a balcony for private use. The residential lessees have the right to use a bin store at ground floor level.
6. Aspects of the development are helpfully shown in photographs at [10-13] and a site plan is at [14].

The hearing

7. On the morning of and prior to the hearing we had the benefit of an inspection of the development in the company of Mr Peter Williamson of Williamson and Dace and Ms Sorce and her father, Mr Victor White. Both parties drew to our attention a number of physical features that were likely to feature in the evidence to be given to us at the hearing.
8. The hearing commenced at 11:00 and concluded at 13:00. Mr Williamson presented the case on behalf of the Applicant and Ms Sorce presented her case assisted by Mr White.

The Lease

9. We were told that the leases of the maisonettes were granted in common form. The lease of the subject flat, 217B Bridge Court, is at [16-27] and a helpful large scale and coloured lease plan is at [28].
10. The lease is dated 12 July 1977. It was granted by Swanfield Investments Limited, a company connected or associated with the Applicant.
11. The terms of the lease were not in issue. For present purposes the material provisions may be summarised as follows:
 - 11.1 The term granted was for 99 years from 25 December 1974.
 - 11.2 A ground rent of £30 pa is payable by two equal instalments in advance on 24 June and 25 December in each year.
 - 11.3 Subject to contribution to the costs incurred, the landlord is obliged to provide the services set out in the Fourth Schedule [27]. These may be summarised as being the repair of the common access way and rear car parking area, the lighting, cleansing, redecoration and repair of the common staircase and the common access balcony, and the maintenance and repair of the fire escape staircase and certain of the boundary fences.
 - 11.5 The tenant is obliged to contribute to the costs incurred by the landlord. The contribution is a 'due proportion'. In the event of a dispute the amount of the due proportion is to be determined by the landlord's surveyor.
 - 11.6 The service charge year is defined to commence on 25 December in each year. The tenant is obliged to make on account payments on 25 December and 24 June in each year.

By 25 March following each year end the landlord is to serve on the tenant a certified and audited statement of expenditure incurred by the landlord. Any balancing debit is payable on the next rent day following the giving of the certificate and audited statement. There is no express reference to how a balancing credit is to be dealt with.

- 11.7 The landlord is to insure the development and the tenant is to contribute a due proportion of the cost incurred. After the landlord has expended the premium the tenant's proportion may be demanded and it is payable by the tenant on the next following rent day.
- 11.8 The tenant is granted the exclusive right to use a designated car parking space but has the obligation to keep the surface of the space in good and substantial repair and condition and clean.
12. The provisions of the lease are broadly workable but it does contain some rather awkward and rather unusual provisions and it would probably be of mutual benefit to the landlord and the residential tenants if it were varied to a modern format.
13. Mr Williamson told us that his firm managed the whole of the development. There were in effect two service charge accounts, one for the residential part and one for the commercial part. Where necessary costs common to both were apportioned in an appropriate way to each of the service charge accounts. For example the 2010 Car park common parts re-surfacing costs were allocated as to 7/23rds to the residential account and as to 16/23rds to the commercial parts account.
14. Of the residential part the costs are apportioned equally amongst the seven residential lessees. This apportionment was not an issue.
15. It was common ground that for a number of years the landlord had provided very few services and had rather neglected the development, or certainly the residential part of it. No cleaning, grounds maintenance or other services were provided. Evidently some cleaning may have been undertaken by some residential lessees on an informal basis. Failure to keep the main entrance door secure led to graffiti and other undesirable, and probably unlawful, activities in the stairway and common parts.
16. A limited step change took place in or about 2002.

The issues

17. In May 2011 the Applicant commenced legal proceedings against Ms Sorce. The claim is summarised in paragraph 1 above.
18. Initially there were two issues for us to determine. The claims to:
- | | | |
|------|---------|------------------------------------|
| 2008 | £736.49 | External repairs and redecorations |
| 2010 | £119.78 | Car park repairs. |

19. As a result of the disclosure given in these proceedings and further explanations given by Mr Williamson at the hearing Ms Sorce felt able to withdraw her challenge to the claim of £119.78 in respect of Car park repairs.
20. As regards the External repairs and redecorations, Mr Williamson helpfully took us through the project step by step. The key papers are at [156-179]. Originally it was proposed to include internal common parts redecoration but this was dropped, possibly with a view to spreading the costs of works over a more manageable period.
21. Essentially the project comprised or was intended to comprise windows and timber work repair and repainting, external pointing and brickwork, steel fire escape stairs repairs, bin store cleansing and painting and external redecoration.
22. Mr Williamson took us through the section 20 consultation paperwork, to which no objections were raised. Two competitive tenders were submitted and the contract was awarded to Brush Strokes Limited whose priced tender starts at [160].
23. The works were completed in or about October 2008. Mr Williamson said that the contract was administered and supervised by his firm and the works were inspected from time to time.
24. In essence Ms Sorce had three complaints about the works:
 - 24.1 That the balcony rails had not been properly rubbed down and prepared prior to painting;
 - 24.2 That the raw brick work on the inside of the bin store had been painted with white emulsion; and
 - 24.3 The whole of the cost of works to the external steel fire escape had been allocated to the residential service charge account and no costs had been allocated to the first floor commercial tenant which had the right to use the fire escape and when occupied by the gymnasium it was used regularly as a means of access to and from the rear car park.
25. At the inspection Ms Sorce drew to our attention some blistering and some small areas of rust on the balcony railings. The specification whilst not entirely clear appeared to provide for the removal of rust by wire brushing or angle grinder and two coats of black Hammerite paint.
26. Mr Williamson had no first hand evidence on the point save that he submitted that the contract and the works were properly supervised by his firm and the work was undertaken to a satisfactory standard. He also observed the subject works were the first undertaken since the construction of the development and that sometimes with rust it is

necessary to have two or three applications in order to eradicate areas of accumulated rust.

27. We decided not to make any adjustment of this item. Whilst the preparation work might not have been quite as thorough as Ms Sorce would have preferred we noted what Mr Williamson had to say about the difficulties in eradicating rust at the first go. We noted at the site inspection that the railings had been painted with Hammerite paint. We drew on our accumulated experience and expertise in these matters and noted that such external works ought to be carried out every three years (indeed the lease so provides). The subject works were carried out more than three years ago and are now ready to be redone and so minor defects such as those we saw are to be expected.
28. Mr Williamson was unable to give us any convincing explanation as to why the brickwork inside of the bin store had been painted with white emulsion. He said that brickwork had not previously been painted and was untreated. He said that the bin store was very dirty and disgusting and in need of cleaning up.
29. We accept that cleaning and disinfecting the bin store was required. We were not persuaded that painting untreated brickwork with emulsion comes within the maintenance, cleansing and repairing provisions of the Fourth Schedule to the lease. We thus find that the cost of the painting of the bin store was outside the scope of the lease. If we were to be wrong about that we find that the cost was not reasonably incurred because painting the inside of the bin store served no useful purpose.
30. The priced specification shows that the total cost of the works to the bin store was £500 + professional fees + VAT. Inevitably we can but call on our accumulated expertise and take a broad brush approach. We find that one half of the cost was attributable to the painting. This together with professional fees at 12.5 % and VAT at 17.5% comes to £330 and Ms Sorce share of one seventh works out at £47. We have therefore adjusted Ms Sorce contribution by this sum.
31. Mr Williamson acknowledged that the whole of the costs of works to the external fire escape were allocated to the seven residential lessees. He accepted that the first floor commercial tenant had the right to use the fire escape. He did not challenge Ms Sorce' evidence that when the first floor was occupied by the gymnasium the fire escape was used regularly as a means to and from the gymnasium and the car park. Mr Williamson said that he had reviewed the first floor commercial lease and it seemed to him to be ambiguous as to whether or not the tenant was obliged through its service charge obligation to contribute to costs associated with the fire escape.
32. The subject residential lease imposes an obligation on the tenant to pay a 'due proportion' of service charge costs. It is to be expected that

the landlord will be fair and reasonable in apportioning costs between parties who share and have the use and benefit of common parts. We find that acting reasonably the landlord should not have apportioned the whole of the costs of works to the fire escape staircase to the residential part. It seems to us that it was the landlord's choice as to whether to absorb a share of the costs itself or pass them on in a clear and unambiguous provision in the commercial lease. Whether the commercial lease is or is not clear on contribution is a matter solely for the landlord and the first floor commercial tenant.

33. Again doing the best we can and applying a broad brush approach we find that a fair apportionment would be to divide the costs of the fire escape staircase works by eight so that 1/8th is attributed to each residential lessee and 1/8th attributable to the landlord/first floor commercial tenant.
34. The priced specification puts the costs of the subject works at £3,400 + professional fees + VAT. A 1/7th share amounts to £642.14 and a 1/8th share amounts to £561.18. We have therefore adjusted the contribution payable by Ms Sorce by £81.
35. For the sake of good order we should mention that Ms Sorce had become confused about her total contribution to the major works project. In the course of the consultation process she had been informed that her share was estimated to be £2,150. Later she received a demand for £1,738.29. Later still she received credit and substitute demand for £736.49. Mr Williamson explained that the project included windows and timber work repair and repainting works which were thought to be within the landlord's repairing obligations. Once the works had been completed and demands for contributions sent out, he came to realise that this was not so and that this aspect of the works was the responsibility of each residential lessee. His firm took the view they had erred and they should bear the cost of the works which were outside the landlord's obligation. In consequence the sum claimed from each residential lessee was reduced by just over £1,000 from £1,738.29 down to £736.49.
36. Mr Williamson took us through the paper trail showing how the figures had been arrived. No objection was taken by Ms Sorce, although she said that she found it confusing and difficult to understand.
37. We acknowledge that Mr Williamson's firm dealt with this matter in a fair, proper and responsible way and to its considerable cost. Nevertheless it did cause confusion and no doubt added to suspicion and wariness on the part of Ms Sorce and other lessees. It may be that there was a communication problem and it may be that Mr Williamson and his colleagues will wish to review their approach to communication with the residential lessees at Bridge Court.

Costs

38. Mr Williamson made an application for costs pursuant to paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. He considered it his duty to his client to do so. However he candidly accepted that he was unable to say that Ms Sorce had acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
39. The application was opposed.
40. We reject the application. An applicant for costs under paragraph 10 has the burden of proof to satisfy us that the person against whom an order is sought has acted in one of the ways mentioned in the paragraph and that such conduct has caused the applicant for costs to incur more costs than would otherwise have been the case. Mr Williamson was unable to discharge that burden of proof.

Law

41. Relevant law we have taken into account is set out in the Schedule to this Decision.

John Hewitt
Chairman
28 February 2012

The Schedule

The Relevant Law

Landlord and Tenant Act 1985

Section 18(1) of the Act provides that, for the purposes of relevant parts of the Act 'service charges' 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.

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 incurred on the provision of services or the carrying out of works, only if the services are of a reasonable standard;

and the amount payable shall be limited accordingly.

Section 19(2) of the Act provides that 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.

Section 27A 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.

Commonhold and Leasehold Reform Act 2002

Schedule 12

Paragraph 10 provides that a Leasehold Valuation Tribunal may determine that a party to proceedings shall pay the costs incurred by another party in circumstances where he has made an application which dismissed by virtue of paragraph 7 or he has, in the opinion of the Tribunal acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. The amount which a party may be ordered to pay is currently limited to £500.