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HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00HN/LSC/2012/0059

Re : Flat 2, Charlton Grange, 14 Bradburne Road, Bournemouth, Dorset BH2 5ST

Applicant Long Term Reversions Ltd
c/o Leasehold Legal Services

Respondent Mr D R Symes

Date of Application 3 February 2012 (in Bournemouth and Poole County Court)

Date of Inspection 9 August 2012

Date of Hearing 9 August 2012

Venue Court No. 8 Bournemouth County Court, Deansleigh Road,
Bournemouth, Dorset BH7 7DS

Representing the parties The Applicant was represented by Ms Louise Vigeon, Mr Martin Palumbo & Mr Maxwell Green of Countrywide Managing Agents, on behalf of Long Term Reversions Limited.

The Respondent Mr D R Symes attended for the inspection but not for the hearing.

Members of the Leasehold Valuation Tribunal:

P Barber LL.B	Lawyer Chairman
T E Dickinson BSc FRICS	Valuer Member
J Mills	Lay Member

Date of Tribunal's Decision: 14 August 2012

Decision

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) that the service charges demanded are reasonable save for the following deductions to be made for management charges payable by the Respondent in each of the years concerned for the reasons mentioned below :

- i. 2006-2007 £8.95 deduction
- ii. 2007-2008 £18.80 deduction
- iii. 2008-2009 £25.81 deduction
- iv. 2009-2010 £25.43 deduction
- v. 2010-2011 £25.98 deduction

Accordingly the total sum of service charges due for the period 2006-2011 shall be reduced from £3,238.66 to £3,133.69

Reasons

Introduction

2. This was an application made by Long Term Reversions Limited (the Applicant), the freeholder of Charlton Grange 14 Bradburne Road Bournemouth Dorset ("the Building") in Bournemouth and Poole County Court on 3 February 2012 (Claim No. 2KH00635). It was transferred to the Leasehold Valuation Tribunal on 18 April 2012 by order of District Judge Hurley for determination as to whether the service charge claimed by the Applicant was reasonable and payable by the Respondent. Sums totalling £3,238.66 were referred to in the Particulars of Claim issued in the court proceedings in relation to the leasehold property of which the Respondent is the lessee – namely Flat 2, Charlton Grange, 14 Bradburne Road, Bournemouth, Dorset (the Property).
3. The Particulars of Claim referred to the following charges arising variously between 1 July 2006 and 3 March 2011 :

	£
Service Charges	2476.58
Reserve Fund Contribution Charges	250.00
Insurance Charges	301.70
Administration Charges	179.38
Legal Fees	13.00

4. The issue for determination by the tribunal is whether the service charges levied respectively for the service charge years ending 2007-2011 are reasonable and payable.
5. The Lease of the Property was made between Viscount Properties (Bournemouth) Limited (1) Charlton Management Limited (2) Martin Grant (3) on 9 April 1996 ("the Lease").
6. Countrywide Estate Management ("Countrywide") have been the managing agents since, or about October 2008; previously the Building was managed by RMG Wood Management ("RMG") although it transpired during the course of the hearing that RMG had apparently handed over very few, if any receipts vouchers and papers relating to the period of their management. Originally the Building was managed by Charlton Management Limited but that company was apparently dissolved in May 2010.

Inspection

7. The tribunal's inspection took place in the presence of Mr Palumbo and Mr Green, for the Applicant and the Respondent and his mother also attended. The purpose of the inspection was explained at the outset to the Respondent who said he is no longer living at the Property owing to difficulties he has experienced there. Mr Symes advised that that he was very unwell and able to attend the inspection only. Mr Symes added that he could not bring himself to enter the Property as it would upset him too much and aggravate his health difficulties; instead his mother allowed only a partial internal inspection of the conservatory, kitchen and living room, saying that the remaining bedroom and bathroom had just been sanitised and that it would upset her son too much if members of the tribunal were to enter those rooms and that she was also disturbed by such intrusion; accordingly no attempt was made to inspect further those other rooms.
8. The Building comprised a semi-detached house arranged on 4 floors, constructed of yellow face brick and it appeared to have been built in the late Victorian or early Edwardian period. The Building had at some stage been converted and is now arranged as 8 flats in total, over 4 floors. The Building is located on a corner plot; there were 4 parking spaces off the Bradburne Road side and a further 3 spaces approached from the western side boundary. The original conversion

created 7 flats; Flats 1 and 2 at lower ground level; Flats 3 & 4 at ground level; Flats 5 & 6 at First Floor level and Flat 7 on the second floor. Flats 1 & 2 have their own independent entrances; however access to Flats 3, 4, 5, 6 & 7 is obtained via the original front door to the Building, which leads to a shared entrance hall and staircase. The meter cupboard for the Property is located in the main ground floor entrance hall of the Building. A former garage structure at the rear of the Building, adjoining the Property, had been converted into what is now known as The Garden Flat, 14 Bradburne Road, in or about 2008/09. The front door of the Property was located on one side of a conservatory, which was of timber construction, leading into the kitchen and from which access to the living room was gained. It appeared that the bedroom and bathroom were accessed from the far side of the living room. Outside there was a limited grassed area which was very overgrown and there were signs of weeds and generally untended vegetation. Fir tree hedging on the side western boundary was very overgrown. At the rear of the Building, beyond the Garden Flat was a decking area, leading via some steps, to a small triangular shaped area of garden at a lower level, again in an overgrown state. A public footpath adjoined the rear boundary.

Hearing & representations

9. At the hearing Ms Louise Vigeon represented the Applicant assisted by Mr Martin Palumbo and Mr Maxwell Green. The Respondent had at the inspection very clearly indicated that he would not be attending the hearing although it had been explained to him that it would be in his interests to do so. Mr Symes had indicated nevertheless in his letter of 4 July 2012 that in his view, the major issue was the "destruction of my home" and ongoing dissatisfaction with the building work relating to conversion of The Garden Flat being the "principal reason for my non payment" and the "secretive profit" which he said had been made in the process. In his earlier letter of 19 June 2012 Mr Symes had also made it clear that the only charges he disputed were in respect of (a) cleaning (b) gardening and (c) management charges. On this basis and without the benefit of the Respondent's presence at the hearing, the tribunal accordingly took the view that there was no dispute in regard to any of the other heads of claim and the focus of the hearing was therefore in respect of cleaning, gardening and management charges for each of the service charge years ending in 2007-2011.
10. 2006-2007 : At this time Countrywide were not the managing agents and none of the supporting receipts could be produced. Ms Vigeon was unable to confirm categorically that the management services were being properly conducted, although she submitted that the figure of £147.33 including VAT per unit was not unreasonable. Paragraph 2(b)(v) in the 5th Schedule of the Lease requires the lessor to have a service charge statement prepared for each service charge year, and for it to be certified by a qualified accountant as being a fair summary. There was no evidence that any such certificate had been issued. Similarly Paragraph 7 in the 7th Schedule of the Lease requires every service charge statement to include a statement of the balance of the reserve fund, but no such reference was in evidence. In regard to gardening, there were no receipts available although it was submitted by Ms Vigeon that the charge of £59.92 equated to 3 hours per month and was not unreasonable. In regard to cleaning, Ms Vigeon accepted that Mr Symes would have only very limited occasion to use the main entrance hall at the front of the building, where all such cleaning occurred, given that Flat 2 has its own entrance at the rear of the Building. Possibly access for meter reading once a month or so, would be required. Paragraph 2 in the 6th Schedule of the Lease refers to the lessee "contributing a fair proportion of the cost of repairing, maintaining and cleaning any building, property or sewers, drains, pipes, wires and cables of which the benefit is shared..." Mr Palumbo said that the total service charge is divided as to 14.2857% for each of the 7 flats on the basis that The Garden Flat is not obliged to contribute. The Lease specifies 15%, but in practice 14.2857% is the proportion which is used by Countrywide. As regards the requirement to "contribute a fair proportion" of the cost of cleaning no further attempt is made in practice to sub-divide or reduce the contributions as between each of the flats in regard to actual levels of usage or benefit, but it was submitted that this is not unusual.

11. 2007-2008 : Once again no receipts could be produced given that Countrywide did not take over management until October 2008. The management charge was based on a slightly increased rate of £188.00 including VAT per unit. Again the accounts showed no references to the reserve fund as required by the Lease and there were discrepancies over the figures as shown respectively in the service charge accounts certified by an independent accountant, the service charge statement for Mr Symes` flat and Mr Palumbo`s witness statement. As regards gardening, the figure claimed was higher than in 2006-2007, but it was submitted that there had been more visits. The tribunal raised Mr Symes`s concern to the effect that no gardening had been carried out owing to conversion work on The Garden Flat, and similarly no, or limited cleaning. Ms Vigeon submitted that The Garden Flat lease was only varied on 30 January 2008 and conversion could not have commenced until after that date and such work had been thought to be "well under way" by early 2009. Given that The Garden Flat is located at the rear of the Building Ms Vigeon further submitted that gardening to only a limited part of the site would have been prevented or inhibited and as regards cleaning, this was of the hall stairs and landing – approached from the front elevation of the Building, well away from the Garden Flat, and as such would have continued in any event.
12. 2008-2009 : Countrywide had taken over management in October 2008 and accordingly some of the receipts and invoices for July to September 2008 were unavailable, but those for the periods thereafter were for the most part, produced. Ms Vigeon submitted that management work was being carried out. The tribunal asked about the disruption alleged by Mr Symes to have arisen during the course of conversion work to The Garden Flat; Ms Vigeon said that Mr Flynn of Countrywide had visited the site in or about January 2009, that the effects of the conversion did not affect all of the services and that Mr Symes was not complaining about alleged water ingress or roof removal issues at that time. The tribunal enquired whether Mr Palumbo had checked the building contractor responsible for conversion work to The Garden Flat; however Mr Palumbo was unable to verify the name of such contractor, nor was he able to confirm whether discussion had taken place about health and safety on site, CDM regulations compliance, or any other such matters. Mr Palumbo did say that his personal involvement with the Building did in fact only date from early 2012. The service charge accounts for this year omitted insurance but Ms Vigeon submitted that insurance and ground rent collection were handled at this time by Pier Management, not Countrywide. There was no statement of the Reserve Fund in the accounts and again there were discrepancies as between the figures in the accounts certified by the independent accountant, the service charge statement for Mr Symes` flat and the figures in Mr Palumbo`s witness statement. As regards gardening and cleaning, gardening costs were lower for this year although cleaning remained similar to the previous year.
13. 2009-2010 : There were significant reductions in gardening and cleaning activity in this year although the management charge remain much the same. Ms Vigeon submitted that this was due to the fact that more time was being spent for example, by the credit accounts team chasing of unpaid service charges. Insurance now appeared again in the service charges although buildings insurance was still being collected by Pier Management and Ms Vigeon was unable to identify clearly what the insurance sum referred to in the accounts related to. Money was generally running out by now as a result of non payment of service charge by some lessees and consequently less cleaning and gardening had occurred. Once again the service charge accounts made no reference to the Reserve Fund as required by the Lease. The tribunal pointed out that the Lease included power to borrow money but this appeared not to have been explored by Countrywide as a means of funding continued cleaning & gardening service provision at the Building.
14. 2010-2011 : The management charges were at a slightly higher level; Ms Vigeon submitted again that although a lot less gardening and cleaning was being carried out, the management tasks involved in chasing service charge arrears, were more extensive. A stock condition survey had

been carried out, but little information was available as this had been initiated direct by Long Term Reversions Ltd, not Countrywide. Accounting discrepancies were apparent again as between the service charge accounts certified by an independent accountant and the service charge statement for Mr Symes' flat. There was no statement as to the Reserve Fund in the service charge accounts and although the 6th Schedule of the Lease requires insurance to form part of the service charge, it was again being separately charged and accounted for.

Consideration

15. We, the Tribunal, have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions made.
16. We took account of the possibility that when Countrywide took over management in October 2008, the accounts may have been in a less than satisfactory state, but we are of the view that after 2-3 years, the picture of the accounts being presented could be expected to be clearer and more accurate – overcoming cash flow difficulties, which resulted in the gardens and common areas being in the less than excellent condition which we observed at the inspection. We considered that the management fees as claimed could be justified in the event of Countrywide being in a position to demonstrate that they had carried out their responsibilities in a wholly efficient manner and to a standard in full compliance with the requirements of the Lease. However in reality there was an evident falling short in respect of those standards, in each of the service charge years concerned. Consequently we determined that the proportion of the management charges to be borne by Mr Symes in each of the respective years should be reduced as follows :
- | | | | | | |
|-----------|-------|---|---------|---|------------------|
| 2006-2007 | 5% | x | £62.80 | = | £8.95 deduction |
| 2007-2008 | 12.5% | x | £131.60 | = | £18.80 deduction |
| 2008-2009 | 12.5% | x | £180.70 | = | £25.81 deduction |
| 2009-2010 | 12.5% | x | £177.98 | = | £25.43 deduction |
| 2010-2011 | 12.5% | x | £181.83 | = | £25.98 deduction |
17. With regards to gardening and cleaning, no invoices were produced for 2006-2007, but the amounts appeared not unreasonable and at this point the conversion of The Garden Flat had presumably not in any event commenced. For 2007-2008, the sums claimed were again not unreasonable, and in the absence of clear evidence to the contrary there was no basis for concluding categorically that the work had not been done. For 2008-2009, Countrywide expressly denied that the conversion work to The Garden Flat had resulted in gardening and cleaning not happening; the hourly rates, which appeared to include materials and plant, seemed not unreasonable. For 2009-2010, it was again denied, as Mr Symes had suggested in correspondence, that no work had been carried out, and similarly for 2010-2011. In the circumstances and on the evidence available we concluded that the charges for gardening and cleaning in each of the years concerned were reasonable.
18. Accordingly the tribunal finds that the service charges for each of the years in question are reasonable save that the deductions from the management fees referred to in paragraph 16 above shall apply.
19. We made our decisions accordingly.

[Signed] P Barber LL.B

Chairman

A member of the Tribunal
appointed by the Lord Chancellor