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LEASEHOLD VALUATION TRIBUNAL

Property: Flat 4, Ivebridge House, 59 Market Street, Bradford, West Yorkshire BD1 1NE

Applicants: Papillon Properties UK Limited

Respondent: Jennifer Barclay

Case number : MAN/00CX/LIS/2012/0007

Date of Application: 1st March 2012

Type of Application: Landlord and Tenant Act 1985, section 27A
Application to determine service charges

The Tribunal : H Aziz LLB
J A Jacobs MRICS
M Simpson LLB

Date of decision: 10 September 2012

Present: The Applicant was represented by Mr and Mrs Heeley
The Respondent did not attend and was not represented.

Decision

- 1) The service charge amounts payable by the Respondent for 2011- 2012 are as set out in Schedule 1.

Reasons

1. By an application dated 1st March 2012 the Applicant applied to the Leasehold Valuation Tribunal for the determination of liability to pay and reasonableness of service charges for the period 2011-2012. The charges in question are described in the application form as "*the service charge, insurance, ground rent and extra service charge*". That application was made pursuant to section 27A and section 19 of the Landlord and Tenant Act 1985.
2. The Applicant alleges that despite repeated requests for payments, the Respondent has failed to pay or to respond to any correspondence served. Further, the applicant has asked for the matter to be fast tracked due to there being a shortage of funds to maintain the building.
3. The position is complicated by the fact that Applicant has not served service charge demands which accord strictly with the terms set out in the lease (see below). They were served as follows;
 - (a) On 10 April 2011 (invoice no 207) the Applicant served a service charge invoice for £284.30 for the period from 10.04.2011 to 09.07.2011.
 - (b) On 10th July 2011 the Applicant served a further service charge demand for £284.30 for the period from 10.7.2011 to 9.10.2011 (invoice no 226).
 - (c) On 21st July 2011 the Applicant served a demand for £137.41 relating to annual insurance (invoice no 245) covering for the period 21.07.2011 to 20.07.2012.
 - (d) On 26 September 2011, the Applicant served a further demand for £86.59 described as "*Extra to annual insurance*" (invoice no 245) covering for the period 21.07.2011

to 20.07.2012.

- (e) On 10th October 2011 the Applicant served a further service charge demand for £284.30 for the period from 10.10.2011 to 9.01.2012 (invoice no 285).
 - (f) On 10th November 2011 the Applicant served a further demand for £23.20 for the supply and installation of new carpets in reception area and lift (invoice no 304)
 - (g) On 10th January 2012 the Applicant served a further service charge demand for £284.30 for the period from 10.07.2011 to 09.04.2012 (invoice no 319).
 - (h) On 18th January 2012 the Applicant served a demand for £19.45 for the supply of a 1NO 1100 litres Waste Bin (invoice no 338).
 - (i) On 10th July 2012 the Applicant served a further service charge demand for £318.05 for the period from 10.07.2012 to 09.10.2012 (invoice no 387).
 - (j) Further reminder statements were sent on the 10th July 2011, 23rd August 2011, 24th November 2011, 10th January 2012, and 10th July 2012.
4. Directions were given without a hearing on 12th July 2012.
 5. The Applicant has served a bundle of documents prior to the hearing.
 6. The Respondent has not responded to any correspondence nor complied with any directions despite being sent a reminder on 13th August 2012 allowing for an extension until 20th August 2012.
 7. An inspection of the property took place on 10th September 2012 at 10am. The Applicant's representatives were present during the inspection.
 8. A hearing took place at Phoenix House, Rushton Avenue, Thornbury Bradford BD3 7BH. Attendance and representation was as set out above.

The Lease

9. The Tribunal was provided with a copy of the head lease made between CHI (Bradford) Limited (LANDLORD) and Yorparks Limited (TENANT) and IVEBRIDGE (BRADFORD) MANAGEMENT COMPANY LIMITED dated 19th December 2001.
10. The Tribunal was informed by the Applicant that the Respondent Miss Jennifer Barclay is the flat owner of the two bedrooomed property known as Flat 4, Ivebridge House, 59 Market Street, Bradford, West Yorkshire BD1 1NE. She had been making payments in accordance with her lease until about two years ago. The Tribunal saw no evidence to suggest otherwise.
11. Clause 7.1 of the lease provides that the leaseholder is to pay service charges equal to 1/15th as her contribution to the cost of services provided by the Applicant each accounting year (ending 31 December). The Lease allows the management company some discretion to vary this date. The payment dates are the 1st January and 1st July. The costs to which each leaseholder contributes are those costs which are estimated by the Applicant as expended from time to time and as may reasonably be required on account of anticipated expenditure on rates services repairs maintenance or insurance being and including expenditure described in Schedule 2, the contributions being due on demand.
12. The matters set out in Schedule 2 include:

“ in the performance and observance of covenants obligations and powers on the part of the Management Company and contained in Clause 8 of the this lease or with obligations relating to apartments or its occupation and imposed by operation of law”
13. Clause 8 contains the Lessors obligations, which include liability to;

8.2 maintain repair re-instate replace amend renew cleanse repaint redecorate and otherwise keep in good and tenantable condition the Common Parts...

8.3 As often as reasonably necessary to decorate the exterior of the Apartments and interior of the common parts previously decorated in a workmanlike manner and to keep the internal Common Parts cleaned heated and lighted to a standard which the Management Company may consider from time to time to be adequate

8.9 (a) To prepare and submit to the tenant as soon as convenient after the expiry of each accounting year of not more than twelve months commencing with the Accounting Year now a current written summary ("the statement") setting out the Service Charge in a way showing how it is or will be reflected in demands for the payment of the Service Charge and showing the money in hand. The Statement will be certified by a qualified accountant as being in his opinion a fair summary complying with the requirement and sufficiently supported by the accounts receipts and other documents produced to him.

(b) A surplus of payments of the Estimated Service Charge in Excess of the tenants Proportion shall be refunded or carried forward as the Management Agreement may think fit. A shortfall in payments shall be made good by the Tenant and be due on demand.

(c) Without prejudice to the generality of the Tenants covenants to pay the Service Charge on account of anticipated expenditure the Service Charge shall be deemed to include reasonable provision for the future in respect of:-

- (i) Periodically recurring items whether at regular or irregular intervals and
- (ii) The replacement or renewal of items the expenditure on which would

fall within the Service Charge

(d) The Management Company may set aside such sums of money (which shall be deemed items of expenditure incurred by the Management Company) as the Management Company may reasonably require by way of reasonable provision for future expenditure on complying with its obligations under this Lease.

The Law

14. Section 27A of the Landlord and Tenant Act 1985 provides:

“(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.”

15. Section 18 of the Act provides that “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 cost of management...”

16. Section 19 of the Act provides that:

“(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 provision 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.”

17. Section 21B(1) of the 1985 Act provides that “ a demand for payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges”. If this requirement is not complied with, “a tenant may withhold payment of a service charge which has been demanded”. Regulations setting out the contents of the required notice have been made (the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) Regulations (England) 2007.

The Property

18. The Tribunal inspected the property in the presence of Applicants representatives Mr and Mrs Heeley. The property is comprised within a block of residential flats above commercial units at ground floor level. It is one of a 15 flats within the building.
19. The property benefits from a door entry system with a lift in the entrance vestibule serving the residential flats. There were fire extinguishers on the floors that were inspected. There is to the rear of the block, a fire escape, to which new treads had been fitted over the last few years. There is a plant room at the top of the building and the basement contains individual meters for the flats. There is no heating to communal areas and the lighting system is controlled by a manual switch located on each floor.
20. The Tribunal noted that the general décor was adequate and in some places there were stains on the walls in the corridors. The carpet on the stairs and corridors was heavy duty, and in reasonable condition. The carpet to the entrance was newly fitted.

The Hearing

21. The Applicant was represented by Mr and Mrs Heeley who both gave oral evidence and helpfully produced additional invoices to support the application. The Respondent did not attend. The Tribunal were satisfied that she had been given appropriate notice of the proceedings and the hearing date and determined that the matter would proceed to be heard in her absence.
22. The Applicant informed the Tribunal that Miss Barclay was one of two owner occupiers in the building, the rest were owners who had purchased on a buy to let basis. According to their evidence, Miss Barclay had been paying all the services charges until two years ago when they were aware that she had encountered some personal problems. Over the last two years she had not made any payments or had any contact with them. Her post was being collected but it was not clear by whom.

They had made the application to the Tribunal to prompt her into making the service charge payments. Miss Heeley stated that Miss Barclay had not complained about any aspects of the service provided by the Applicant. She outlined the amount of work involved in maintaining such a building and the challenges they had faced which included non payment of the service charges.

23. The Applicant provided documents which did not adequately reflect the financial position in relation to the property. Mrs Heeley stated that the Applicant's account year ran from 1 July to the 30 June of the following year and the Applicant's actual accounts for the previous year became its budget for the following year.
24. The accounting period in the lease makes reference to the accounting year running until the 31st December (although this can be varied by the Management Company). The application form has asked for a determination covering the period April 11 – April 12. The Tribunal having heard the evidence from Mrs Heeley took the view that the determination would be made based on the Applicant's financial year which ran from July to June.
25. The applicant gave evidence to state that they had carried on the practise of the previous Management Company and accepted that they had not read the terms of the lease and so were not aware of its provisions. In particular, the Applicant confirmed that although an Audit fee was claimed as part of the Service Charge no certified accounts had been produced to the Tenants by the Applicant.
26. It is clear that whilst the applicant may have managed the property with the best of intentions, the lease governs the relationship between the parties and sets out their respective obligations. It is important that those managing the building were aware of what it is that they were legally obliged to do and for what items they were entitled to recover. Miss Heeley gave evidence to suggest that all invoices were collated and then split between the flats. This was done in order to save time and keep costs to a minimum. However, without being aware of the terms of the lease, it led to the Respondent being charged for items which she was not obliged to pay under the lease.

Service Charge demands

27. The Tribunal noted that the demand in the Applicants bundle did not contain a summary of the rights and obligations of tenants of dwellings in relation to service charges pursuant to Section 21B(1) of the 1985 Act. However, at the hearing Mrs Heeley confirmed that a summary had been served and provided the Tribunal with a copy. The Tribunal were satisfied therefore that Section 21B (1) of the 1985 Act had been complied with.

Cleaning

28. The Respondent hired external cleaners until problems were reported and has since then employed L H Cleaning run by Lewis Heeley, who is the son of Mr and Mrs Heeley. The annual cost was £3060 for the year 2011/12. Mrs Heeley informed the Tribunal that this involved cleaning for a couple of hours each week. It also included checking the fire exits, checking the building, vacuuming the common parts, undertaking a litter pick and checking for any rubbish in the communal areas. It also included cleaning the window sills once a month as well as the lift. Mr Heeley stated that there was a particular problem with individuals leaving rubbish in the communal areas rather than taking it to the rubbish bins provided.

29. However, the Tribunal took the view that the charges were on the high side taking into account the floor area and the standard of cleaning seen at the inspection. There were water stains and dirty marks on some of the walls in the common areas. The Tribunal finds that the standard of cleaning is not appropriate to the amount being charged to the leaseholders.

Lift Maintenance

30. The Tribunal was informed that there was a lift maintenance contract in place with an independent company, Orona Limited. The Tribunal noted that annual cost of the lift maintenance contract with Orona was reasonable. These costs have been allowed in full. The Tribunal was told that Heeley Services also provided some assistance with issues around the lift. This usually involved changing the light bulbs

and calling in repairs. Having considered the work undertaken the Tribunal took the view that such charges were high given the work required and disallowed certain charges except for works reasonably included within the sums allowed for repairs and maintenance (see below).

Repairs and Maintenance

31. The maintenance and repair work is provided by Heeley Maintenance Limited and Heeley Services. Mrs Heeley informed the Tribunal that this included weekly maintenance of around 1-2 hours per week. It also included a weekly testing of the fire alarm, inspecting the building, checking the lift and a quarterly check of the emergency lighting together with an annual three-hour drop test of the emergency lighting. It also included maintaining the flat roof by sweeping and clearing it of any weeds.
32. However, the Tribunal noted on the inspection that the décor was poor in some places. There were dead light bulbs in the foyer area, together with one light fitting hanging from the ceiling and here was a missing bulb from the entrance of the lift on the first floor. The flat roof did not appear to be swept recently and weeds were present. The Tribunal finds that the standard of maintenance is not appropriate to the amount being charged to the leaseholders and accordingly has reduced the amount being charged.
33. There is also a separate arrangement to maintain the fire equipment at the property with an external company. The property had a number of fire extinguishers located on each floor of the property and the Tribunal determined that the charge made in connection with this was reasonable.
34. Furthermore, on inspection the Tribunal noted that there was a new carpet fitted in the entrance of the property and decides that the charge claimed for £348 was reasonably incurred.

Management charges

35. The Tribunal noted that along with a management fee charged by the applicant on an annual basis, there was also separate mileage being charged for travel from the offices of the applicant to the building and administration charges. Mrs Heeley gave evidence that the mileage involved travel twice a week and the mileage rate was charged at 45 pence per mile for the first 10,000 miles which dropped to 25 pence per mile thereafter. Administration was charged at £100 per month. Mrs Heeley in her evidence stated that this included her time to attend to matters such as arranging the insurance. This time would vary per month and in some months she would work more hours.
36. The Tribunal therefore determines that a reduction in the management charge is appropriate for the year in question. There is not a large area to manage. The reduction is to a level appropriate to the standard of management provided, with an allowance being made for the fact that most properties have been purchased on a buy to let basis and the short term nature of the occupation of the tenants may lend themselves to some difficulties with the management.

Electricity

37. The Tribunal was provided at the hearing with invoices for the electricity consumed on the premises. On inspection the Tribunal noted that the light switches in the communal area were not automatic and would not turn off after a period of time. Additionally, there is no natural light to the first floor of the building.
38. These factors may explain the high charges. The Applicant in their evidence stated that this contract was to be renegotiated shortly. The Tribunal determined that, in the circumstances, the amount claimed was reasonably incurred.

Non payable items

39. The Tribunal determined that the administration charges, audit fee, informal payments to the sinking fund and payments to Bradford Council as part of the freeholder's obligations are not payable given the terms of the lease. The administration charges and payments to Bradford Council are also not covered by the terms of lease.
40. The Tribunal determined that the audit fee is not payable as the Applicant in their evidence confirmed that no certified accounts have been prepared in relation to Clause 8.9 of the lease. The Tribunal determined that whilst the lease allows for the recovery of such a charge, it is in relation to complying with Clause 8.9 and not for the Applicants costs of preparing their own accounts. The payments to Bradford Council are part of the freeholder's obligations. Clause 7.23 of the lease specifically excludes such payments from the tenant's obligations.
41. The Applicant is entitled to a request a sinking fund under the terms of the lease and claimed in evidence that such a payment was included in the other charges such as the maintenance charge. However, the Applicant cannot identify clearly how this was calculated, nor the amount accumulated to date as it is not kept in a separate account. The Tribunal determined that given it could not be identified nor had it been communicated to the tenants it would not be payable.
42. The Tribunal therefore determines that the service charge amounts payable by the Respondent for 2011- 2012 are as set out in Schedule 1.

H. Aziz

H Aziz
Chair
17th September 2012

Schedule 1 – Services Charges Payable for 2011-2012

Flat 4, Ivebridge House, 59 Market Street, Bradford, West Yorkshire BD1 1NE

Item	Total (£)	Proportion/Percentage	Amount payable by tenant (£)
Fire Maintenance	177	1/15 th	11.80
Management Fee	3000	1/15 th	200
Lift Maintenance	100.28	1/15 th	66.69
Electricity	3307.46	1/15 th	220.50
Cleaning	2600	1/15 th	173.33
Maintenance and Repair	3000	1/15 th	200
Carpet	348	1/15 th	23.20
Insurance	5577.47	3.81%	212.50
		Total Payable	1108.02