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HM COURTS & TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL
of the
NORTHERN RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985
SECTION 27A

PROPERTY	**1, Chestnut Rise, Burnley BB11 2BA**	
Applicant:	Darren Gent	
Respondent:	Chestnut Rise Management Company Ltd	
The Tribunal:	Chairman:	Mr J R Rimmer BA, LLM
	Valuer Member:	Mr M G A Hope BSc, FRICS
	Lay member	Mrs N Ali BEng
Date of Decision:	20th June 2012 after a determination without a hearing	

Order **The Tribunal determines that the service charges payable by the Applicant for the years to 31st March 2012 and to 31st March 2013 in respect of which he has sought a determination by the tribunal are those calculated in accordance with paragraphs 13 to 18 herein.**

The Applicant is also entitled to recover from the Respondent the application fee of £70 he has incurred.

A. Application.

1 The Applicant applies under Section 27A of the Landlord and Tenant Act 1985 for a determination that the service charge for the year to 31st March 2012 and the budgeted service charge for the year to 31st March 2013 have been, or will be, reasonably incurred and payable by the Applicant to the Respondent. In the application the Applicant refers to 3 specific aspects of the service charges; the amounts in question being for gardening and ground maintenance, management and the costs of a retaining wall.

B Background

2 The Respondent is the company with responsibility for the management of the services provided to the small residential development known as Chestnut Rise, situated just off Manchester Road Burnley. The development consists of a mixture of terraced or semi-detached houses, 28 in number, and a block of 4 flats. The Applicant is the owner of 1, Chestnut Rise, one of the houses, on a long lease for

999 years from 1st April 1919 at a peppercorn rent. The Respondent has recently sub-contracted its responsibilities to DJC Property Management Limited, of 87-89, Park Lane, Hornchurch, Essex and they in turn have been assisted in these proceedings by SLC, Solicitors, of Shrewsbury.

3 There have been previous proceedings before a Leasehold Valuation Tribunal and the determination of that Tribunal was provided to this one and it is of assistance to draw from that determination the details of the lease relating to service charge provision. It was of some concern to the Tribunal, however, that the determinations of the Tribunal were referred to by the Respondents as recommendations! They are ultimately enforceable in the County Court.

4 Firstly in clause 2 of the lease is a covenant by the lessee to observe and perform the obligations set out in the Sixth Schedule of the lease. Paragraph 9 of that Schedule then requires a contribution of 3.125% of the cost of the provision of the services referred to in the Seventh Schedule of the lease.

5 The Seventh Schedule contains the obligations of a landlord or management company which they undertake but the cost of which they then recover from the occupiers including:

- Payment of outgoings and other necessary work to enable the management company to carry out its obligations
- Insurance
- Repair and maintenance of common areas with particular reference to the retaining wall for the embankment (to the road below the development)
- Cleaning of common parts, including window cleaning
- Gardening and landscaping of common areas
- Employing necessary staff and contractors to assist in service provision
- Keeping and auditing appropriate accounts and providing an appropriate certificate, within 2 months of the end of the service charge year, of the appropriate amount payable.

C. Inspection

6 On the morning of 18th April 2012 the Tribunal inspected Chestnut Rise and the grounds appurtenant to it. The development is approached from Manchester Road, which leads into Burnley Town Centre. Its immediate situation is urban, comprising nineteenth century housing, together with a number of light industrial units. The town centre is within walking distance and may also be accessed by car or public transport. Chestnut Rise consists of a number of terraced, or quasi-terraced homes, relatively small in size, and a two-storey block of 4 flats. Some properties have direct access to the roadways but others are approachable by pathways only. They do not appear to have garages but ample parking spaces are nearby. The external roadways, paths, verges and larger grassed and shrubbed areas appear to be well maintained although the extent of recent groundwork highlights less well groomed areas which are adjacent. There appear to be no relevant matters of disrepair and this would be entirely consistent with the nature of the development. There is however ongoing concern as to the state of an extensive retaining wall which prevents landslip to the roadway below and thereafter into a cutting through which runs the Preston to Leeds railway line. This has been repaired in places recently by the local highway authority at considerable cost. The Tribunal noted with some concern that future work will be likely, again at some cost as pointing and drainage

problems were evidenced in sections of wall which had not undergone that recent repair. It appeared to the Tribunal that the roadway in the development itself had been adopted and Street lighting provided by the local authority.

D. The evidence

7 Unfortunately before the date set for the inspection and the subsequent determination of the Tribunal there was some slippage in the timetable for the response to the initial case provided by the Applicant and the Applicant sought further time to consider what was now being said. The Tribunal considered this appropriate and provided further directions to the parties as to the future conduct of the proceedings. Although further submissions were received by the tribunal no request was received for a hearing and the tribunal was able to continue with its determination on the papers alone.

8 In the application Mr Gent made out a simple case. His view was that the Respondent had taken nothing into account from what had been determined by the previous Tribunal. His annual charge had been reduced by only £3.00 and he wished those items referred to in paragraph 1 (above) to be the subject of a determination by this Tribunal. Subsequent correspondence with the Tribunal Office clarified the Applicant's concerns as taking into account 6 heads of account in the service charge

- Fortnightly ground maintenance
- Repairs and maintenance fund
- Insurance cover for the retaining wall
- Management fees
- Audit and accountancy fees
- Bank charges.

9 There followed an extensive exchange of opinions and submissions from both parties upon the reasonableness or otherwise of the charges and within the respondent's submissions were a significant number of invoices and accounts relating to the cost of the services provided. The full extent of those submissions need not be set out here but the Tribunal took them fully into account when coming to its determination. The Tribunal is however concerned as to the difficulties that there appear to be in relation to satisfactory communication between the Applicant and the Respondent which may be exacerbating difficulties in their relationship. The Tribunal is sure that the communication of information from the Respondent has improved from the time of the last Tribunal but if there are continuing difficulties so far as the Applicant is concerned it is possible that these may only be overcome satisfactorily by using recorded delivery post to ensure that receipt is confirmed.

10 It is probably most useful to consider the concerns of the Applicant in the order in which they have been set out in Paragraph 7 above and determine in respect of each of those heads of account the extent to which the costs are reasonable.

E Tribunal's Conclusions and Reasons

11 S18 Landlord and Tenant Act 1985 defines "service charge" and "relevant costs" that can be included in such a charge. Those charges that are the subject of this application appear to be within the definition. However Section 19 of the Act states that the relevant costs to be taken into account as comprising the service charge can only be taken into account to the extent that they are reasonably incurred and

that the work is of a reasonable standard. The way in which the Tribunal is to assess that issue of reasonableness is assisted by Section 27A of the Act.

12 The law relating to that jurisdiction found in Section 27A Landlord and Tenant Act 1985 is as follows

(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

and the application may cover the costs incurred in providing the service etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services(subsections 2 and 3).

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

13 <u>Gardening and ground maintenance</u>

The Respondent has supplied the invoices relevant to the latest costs incurred. The Tribunal is satisfied that these are indeed costs which have been paid. The Tribunal is also satisfied that work has been done to maintain the grounds to a satisfactory standard. The only concerns that the Tribunal has with regard to quality is in relation to the communal parking spaces and the minor accumulation of detritus and weed growth. The Tribunal is however concerned as to the cost incurred in relation to what work is necessary to maintain a reasonable standard. The communal grounds are not extensive and much of it is embankment and managed undergrowth. What remains are largely grassed or surfaced areas. The extensive experience of the Tribunal suggests that this could be maintained at a cost sufficiently below what is currently incurred for these costs to be unreasonable. The Tribunal would assess an annual amount of £1750.00 for each year as reasonable.

14 <u>Repairs and maintenance fund.</u>

This amount (£300.00 a year) is reasonable for what might be expected in relation to the roadways, pathways and fences that are responsibility of the Respondent.

15 <u>Insurance cover for the retaining wall</u>

The Tribunal would have preferred to see some evidence of this cover being obtained after quotations were sought for its provision but it is satisfied that it is likely to be reasonable given the parameters within which such cover is likely to be obtained and the specific risks that need to be covered. The Tribunal is entirely satisfied that the retaining wall presents a serious financial risk to both to the Respondent and ultimately to the leaseholders and even if no liability should ultimately arise under the policy significant repair costs will be incurred in the future, as they have been in the past and in respect of which recovery at a reasonable rate (£250.00 per leaseholder, per year) is sought to be maintained. It may well be that the sinking fund will allow for estimates to be obtained in due course for a managed programme of continuing maintenance without recourse to the high cost of local authority intervention. It is of concern to the tribunal that all leaseholders may not appreciate the problem that the wall might be in the future and prudent investigation now may prevent future difficulties.

16 Management fees

The Tribunal is concerned as to these. They comprise more than one half of the total costs. It was noted by the last Tribunal that the development is not one with significant common parts, or common machinery, (often the case where there are blocks of flats, security fencing, gated access, entryphone systems, or similar items requiring greater management input). The amount being sought is £180.00 per unit, net of VAT, The Tribunal is of the view that an amount of £60.00 per unit, per year, net of VAT, is the most that may be justified for a development such as Chestnut Rise. The Tribunal understands that costs are incurred and management input required in recovering arrears but two issues troubled the Tribunal. Firstly the contention that the Applicant is out of step with other leaseholders who have less concern over the service charges: They are presumably paying. Secondly it appears from the documents submitted by the parties that the Applicant is being pursued for an amount outstanding before the intervention of the last Tribunal which that Tribunal subsequently reduced for the year to 31st March 2011 (see paragraph 18 thereof and compare this with "exhibit 4", dated 8th November 2011, attached to the Respondent's statement of case dated 22nd February 2012). The Tribunal does not believe that this evidences good management.

17 Audit and accountancy fees

The Tribunal takes a not dissimilar view. The total service charges, even as they currently stand, amount to a little over £10,000.00. there are eight heads of account, including accountancy, and VAT. This does not justify an accountant's fee of 5% of the total costs. An amount of £320.00, plus VAT is substituted.

18 Bank charges

These are considered to be a reasonable amount and reasonably incurred. They are an inevitable consequence of modern life and the Tribunal also notes that there are no other sundry expenses claimed. It wonders if postage has been included under this head.

19 The Tribunal notes that no order has been sought by the Applicant under Section 20C Landlord and Tenant Act 1985 so no order of that nature is presently made. The Applicant is however entitled to recover from the Respondent the application fee of £70 that he has incurred.

J R RIMMER

Chairman