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**HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : 31 Glen Eldon Road
Lytham St Annes
Lancashire
FY8 2AX

Applicant : Glen Eldon Management Limited

Respondents : Mr M B Bentley and Mr G Langley

Case number : MAN/30UF/LSC/2011/0117

Date of Application : 4 November 2011

Type of Application : Application for a determination of
liability to pay and reasonableness
of service charges

The Tribunal : P J Mulvenna LLB DMA (chairman)
Mr J Rostron, MRICS
Mrs H Clayton

Date of decision : 2 August 2012

ORDER

1. That the service charges demanded by the Applicant in respect of the Property for the years ended 31 December 2010 and 31 December 2011 and the year ending 31 December 2012 are not payable by the Respondents.
2. That an order be made under section 20C of the Landlord and Tenant Act 1985 that the costs incurred, or to be incurred, by the Applicant in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents.

INTRODUCTION

1. By an application dated 4 November 2011, the Applicant applied for the determination of the reasonableness and recoverability of the service charges sought to be recovered from the Respondents for the years ended 31 December 2010 and 31 December 2011 and the year ending 31 December 2012.
2. The Applicant is the management company of the Property which is held by the Respondents, as the tenants of flats at the Property, for terms of 975 years from 1 August 1896 (less the last three days) under identical leases. The Tribunal has been provided with a copy of the lease in respect of Flat 3 at the Property dated 11 August 2000 and made between (1) Rushcliffe Properties Limited and (2) Tara Yardley ('the Lease'). References hereafter to the Lease are to be construed as references to respective leases for each flat.

THE PROPERTY

3. The Property is a three storey semi-detached house divided into three self-contained flats. The Property is situated in a predominantly residential area within reasonable walking distance of Lytham St Annes town centre and with reasonable access to local facilities and amenities and to public transport.

THE INSPECTION

4. The Tribunal inspected the common parts of the Development externally and internally on the morning of 2 August 2012. The Applicant was represented by Mr J H Ashworth. The second Respondent, Mr G Langley, was present.

PROCEEDINGS

5. Directions were issued by Mr L Bennett, procedural chairman, on 17 January 2012. The parties had complied with the Directions.
6. The substantive hearing of the application was held on 2 August 2012 at Prudential House, Topping Street, Blackpool. At the substantive hearing, the persons mentioned in paragraph 4 above were present.

THE LAW

7. The material statutory provisions in this case are as follows.

(i) The 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' include 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 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.

Section 21B(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in respect of the demand.

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... (c) the amount which is payable'.

Section 27A (3) provides that an application may also be made 'if costs were incurred.'

(ii) The Commonhold and Leasehold Reform Act, Schedule 11, Paragraph 5 provides for applications to be made to a leasehold valuation tribunal for a determination whether an administration 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.

8. The Service Charges (Summary of Rights and Obligations) (England) Regulations 2007 have been made pursuant to the power contained in Section 21B(2) of the Landlord and Tenant Act 1985.

THE LEASE

9. The Lease contains provisions in the Fifth Schedule for the contribution by the Respondents to the costs, charges, etc. incurred by the landlord in the provision of the services specified in the Fourth Schedule the Lease. The parties have raised no issues as to the construction of the provisions of the Lease or their applicability to the services provided or claimed to have been provided.

THE EVIDENCE AND THE TRIBUNAL'S CONCLUSIONS WITH REASONS

10. At the hearing, the Tribunal heard oral evidence and submissions from Mr Ashworth on behalf of the Applicant and from the second Respondent. The Tribunal also had before them the documentary evidence and submissions provided by the parties.
11. The Tribunal have considered the issues on the whole of the written evidence and the oral and written submissions now before them, have had regard to their own inspection and, applying their own expertise and experience, have reached the following conclusions on the issues before them.
12. The service charge demands for the years in question do not comply with Section 21B(1) of the Landlord and Tenant Act 1985 or The Service Charges (Summary of Rights and Obligations) (England) Regulations 2007. The Respondents may, therefore, withhold payment in accordance with Section 21B(3) of the Landlord and

Tenant Act 1985. The service charges in question are not, therefore, payable by the Respondents. The Tribunal has, nonetheless, considered the reasonableness of the service charges.

13. Although the Applicant has claimed that 'The charges levied to each apartment owner are based on the actual cost of maintaining the building in a reasonable manner and one that ensures that all reasonable costs are borne (sic) by the Management Company', no details of any expenditure has been provided and there is no relevant documentation in support of, or explanations for, expenditure having been incurred, save in respect of electricity and insurance costs.
14. The Respondents have challenged the reasonableness of the services. In particular, the second Respondent claimed that there had been no routine repair and maintenance undertaken during the six years in which he had occupied his flat at the Property. He also challenged the apportionment of the cost of insurance, but not the reasonableness of the premium.
15. The Tribunal's inspection revealed evidence which supported the second Respondent's allegations of inaction. The property was in a poor state of decoration, both internally and externally; the banister rail on the stairs leading to the second Respondent's flat was dislodged from the wall; the hall, landing and stairs carpet was poorly maintained and badly stained; lights were not working (there appeared to be a combination of failed light bulbs and broken switches); no grounds maintenance had been carried out; and, most seriously, the roof was in urgent need of repair.
16. The overall impression was one of neglect and poor management. The apparent long-standing nature of some aspects of disrepair give rise to the prospect of escalating deterioration with an attendant increase in remedial costs if action is not taken soon.
17. Mr Ashworth, in giving evidence to the Tribunal, said that he did not consider that there was a duty to inspect the Property but that repairs should be carried out in response to complaints or information from tenants. That discloses a complete lack of understanding as to the manager's role. There must be proactive management with inspections undertaken as necessary and with a frequency informed by experience gained during the course of the inspection process. It is of concern to the Tribunal that there is no mechanism for assessing the condition of the Property and taking remedial action to discharge the lessor's obligations both under the Lease and pursuant to statute.
18. Against this background of inadequate and ineffective management, the Tribunal is not satisfied on the evidence that the service charges are reasonable. The charges for maintenance do not reflect work undertaken - in fact, Mr Ashworth confirmed that none had been done - it would be manifestly unreasonable to levy a management charge when, patently, there has been no management undertaken in connection with the services which should have been provided. The sinking fund provision would normally be considered to be reasonable and prudent, but it is clear from Mr Ashworth's evidence that it would not be used for the stated purpose, it would be set against unrecovered demands. That would be unreasonable. The only elements of the service charges which might be found to be reasonable are the electricity and insurance charges, in respect of which the Applicant has produced evidence of actual cost, but they are not payable because of non-compliance with the statutory and regulatory requirements.

19. Whilst finding that the service charges are not payable, the Tribunal is conscious that repairs and maintenance works are necessary. The Tribunal is aware that the denial of funds might give rise to a cash flow problem which might cause further deterioration to the Property which would not be in the parties' interests. In these circumstances, it would appear to be appropriate for the Applicant to adopt a more positive approach to management and to prepare proposals to carry out essential repairs and maintenance, to consult as necessary on such issues with the Respondents and agree a level of advance payments to fund the works. There might be inherent difficulties in pursuing that course as it appears that at least one, and possibly two, of the tenants are not resident in the Property but sublet in contravention of the Lease. The failure to address this problem is a contributory factor in the present unsatisfactory state of affairs and further evidence of ineffective management. Alternatively, the Respondents might wish to make an application (as suggested by the Applicant in his email of 29 March 2012) pursuant to Part II of the Landlord and Tenant Act 1987 for the appointment of a manager. These are not matters which can be dealt with by this Tribunal which has jurisdiction only to address the matters contained in the application before them. On the basis of the evidence, the application cannot succeed.
20. The Tribunal find that the service charges generally for the years 31 December 2010 and 31 December 2011 and the year ending 31 December 2012 are unreasonable and not payable by the Respondents.

COSTS

21. The Tribunal has power to award costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which provides:
- '(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
- (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
- (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.'
22. The Tribunal did not consider that any of the prescribed circumstances arose in this particular case and concluded that it would not be appropriate to award costs to either party.

23. Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 provides:

‘(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).’

24. The Tribunal has reviewed all the evidence in this case and has determined that it would not be appropriate to make an order for reimbursement in the circumstances of this case.

25. The Tribunal has considered whether or not an order should be made under section 20C of the Landlord and Tenant Act 1985 that the costs incurred, or to be incurred, by the Applicant in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants. The Tribunal has found that here is no merit in the application because of inactivity by the Applicant in respect of matters for which charges have been sought. The Tribunal has decided in these circumstances that it would be reasonable or proportionate to make an order.

P J Mulvenna, Chairman

6 August 2012