

9285



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : BIR/00CN/LIS/2013/0008

Property : Flat 1 Highfield Court, 22 Highfield Road, Moseley,
Birmingham B13 9HN

Applicant : Highfield Court (Moseley) Limited

Representative : Metro PM

Respondents : Ms Livia Micu

Type of Application : In the matter of the Application for a
determination under sections 19 and 27A of the
Landlord and Tenant Act 1985 (“the Application”)

Tribunal Members : V Ward F.R.I.C.S (Chairman)
: J Dove

**Date and Venue of
Hearing** : None

Date of Decision : 12 August 2013

DECISION

1. The Decision recorded in this document was made by the First-tier Tribunal (Property Chamber) rather than the Leasehold Valuation Tribunal, to which the application had been made, because by virtue of The Transfer of Tribunals Function Order (2013 No 1036) ('the Transfer Order') the functions of Leasehold Valuation Tribunals were, on 1st July 2013, transferred to the First-tier Tribunal (Property Chamber). By virtue of the transitional provisions, applications to Leasehold Valuation Tribunals in respect of which a decision had not been issued before the 1st July 2013, automatically became proceedings before the First-tier Tribunal (Property Chamber). The Transfer Order also amended the relevant legislation under which Leasehold Valuation Tribunals were referred to by substituting the words 'First-tier Tribunal' for 'Leasehold Valuation Tribunal' within the relevant parts of the legislation. The extracts from the legislation applicable to the present applications that appear below incorporate the changes made by the Transfer Order. In this Decision the expression 'the Tribunal' means the First-tier Tribunal (Property Chamber).
2. This is an Application under sections 19 and 27A of the Landlord and Tenant Act 1985 ("the Act") which requires the Tribunal to determine as to whether the service charges demanded by the Respondent are payable and the amounts which are reasonably payable, in respect of Flat 1 Highfield Court, 22 Highfield Road, Moseley, Birmingham B13 9HN ("the Property") for the service charge years ending 31 December 2012 and 31 December 2013.
3. By directions issued by a procedural Chairman on 8 April 2013, the Tribunal directed that the Application be dealt with on the basis of written submissions as neither party requested an oral hearing. Written representations were received from the Applicant and the Respondent and these were copied to either side. Subsequent to the inspection, the Tribunal requested further information from the Applicant.

Background

4. The Applicant holds the freehold interest in the property known as Highfield Court whilst the Respondent, Livia Micu, is the lessee of Flat 1 and holds the residue of a 999 year term from 29 September 1963 granted by a lease ("the Lease") dated 27 May 1964 originally made between Avon Securities Limited as lessor and Nora Gilroy Bevan as lessee. The Applicant is represented by Metro PM, Chartered Surveyors and Property managers of Harborne Birmingham ("Metro PM").
5. An application was made to the Tribunal in respect of Highfield Court in December 2006 (BIR/00CN/LVL/2006/001) under Section 35 of the Landlord and Tenant Act 1987 for an order that the leases of the property forming Highfield Court be amended and for additional orders. The application was made on the basis that the Lease did not make adequate provision for repair maintenance and insurance of the building nor adequate provision for the calculation or recovery of the service charge. By an order dated 23 April 2007 the leases of the property were duly amended.

A further application was made to the Tribunal in respect of the Property in December 2011 (BIR/00CN/LIS/2011/0053) for a determination under Section 27A (and 19) of the Landlord and Tenant Act 1985 ("the Act") of the liability to pay and for reasonableness of a service charge levied in the years 2008, 2009, 2010, 2011 and 2012. The Tribunal at that time did not make a determination in respect of 2012.

Inspection

6. On 27 June 2013 the Tribunal inspected the property. Present at the inspection were Matthew Arnold ("Mr Arnold") and Adam Barzey ("Mr Barzey") both of Metro PM, and the Respondent.

Highfield Court comprises a development of six flats arranged over three storeys with two flats per floor.

The Tribunal found that Flat 1 was a ground floor flat which comprised the following accommodation:

Hall
Kitchen
Two Reception Rooms
Two Bedrooms
Bathroom with Shower, separate WC

The Tribunal were advised that all flats now benefit from gas central heating although originally heating was via an electric under floor system. To the rear of the site is a separate garage block.

The Submissions of the Parties.

7. The Applicant in their submissions provided accounts for the year ended 31 December 2012 and copies of service charge demands for 2013 service charge year. This was accompanied by supporting financial information.
8. The Respondent stated within her submissions that she has not refused to accept the Tribunal's previous determination in respect of service charges and further has not refused to pay them.
9. In respect of the service charge year 2012 the Respondent found the following items of service charge unexplained and not justified. These are as follows:
 - a) Repairs in the sum of £1598.61.
 - b) The charge incurred by Metro PM in the management of insurance claims in the sum of £2,611.80.
 - c) Electricity bills.
 - d) A window repair at of £150.
10. In respect of the service charge year 2013:

- a) The Respondent feels that the service charge for this year is high and that a charge of approximately £1,000 per year would be more reasonable and consequently a budget of £6,000 per year for the development should be more than adequate particularly on the basis that only limited services are being provided.
- b) The Respondent would like the Applicant to provide evidence of why its company's secretarial fees and accountancy fees are so high considering the development only comprises six flats.
- c) The Respondent also considers that the director's liability insurance should be covered by Metro PM.

The Law

11. The Act provides:

Section 19 Limitation of service charges: reasonableness

- 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 provisions 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 of subsequent charges or otherwise.

12. Section 27A Liability to pay service charges: Jurisdiction

- 1) An Applications 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 Applications 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 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.

- 4) No Applications under subsection (1) or (3) may be made in respect of a matter which –
 - a) has been agreed or admitted by the tenant;
 - b) has been, or is to be referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party;
 - c) has been the subject of determination by a court, or
 - d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.
- 5) But the tenant is not to be taken as having agreed or admitted any matter by reason only of having made a payment.

Subsections (6) and (7) are not relevant to these Applications.

13. **Section 20c Limitation of service charges: costs of proceedings**

- 1) A tenant may make an Application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before....a leasehold valuation tribunal....are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or person specified in the Applications.

Determination

- 14. Having considered the provisions of the Lease, and also the modifications made by the Tribunal's decision in 2007, there is an obligation on the Lessee to pay a service charge. The scope and basis for charging the service charge are laid out in the modifications of the Lease as determined by the Tribunal.
- 15. The Tribunal considered the accounts for the service charge year ending 31 December 2012 and noticed that they were audited by Arundales Chartered Accountants. The accounts indicated that the total service charge payable in respect of the Property was £1,693.32. The Tribunal notes the Respondent's contention that the cost of the service charge is high, however in the absence of any direct evidence the Tribunal did not agree with this allegation.
- 16. With reference to repairs amounted to £1,598.61, at the inspection, Mr Barzey outlined some of the works that have been carried out on site which included internal redecoration and in the recent past, a new driveway, replacement tile cladding, tree surgery and replacement boundary walls in addition to a host of minor repairs.
- 17. Mr Barzey re-emphasised comments in connection with the 2011 Application that the development was in fact "recovering" from a significant period of neglect and the non-payment of service charges by some leaseholders (including the Respondent) on a development of only six units made the

improvement of the development difficult. The Tribunal did not consider the expenditure on repairs including the window repair unreasonable.

18. The Respondent indicated that she considered the level of fees in respect of company's secretarial works and also the cost of directors' liability insurance which collectively amount to £562.87 to be excessive and additionally she felt the latter should be the responsibility of Metro PM. In the Tribunal's opinion it is appropriate that directors' liability insurance is held by the directors of the management company (not Metro PM – who are simply the managing agents), and this when combined with an amount for fulfilling the role of company secretary makes the total reasonable.
19. The Respondent considered the supervision fees relating to the management of insurance claims specified in the accounts as £2,611.80 as excessive. The Tribunal requested further information in respect of these costs from Metro PM. Metro PM advised that the fees arose as a result of specifying, tendering, supervising and managing roof refurbishment works as part of an insurance claim from June 2012. Continuing they said that the total value of the contract was £17,340.49 plus VAT and their fee was calculated on the basis of 12.5% of the final contract value. On the basis that Metro PM were involved in specifying and tendering works as well as monitoring the onsite works the Tribunal considered this cost reasonable.
20. In the absence of any specific evidence, the Tribunal cannot deem the electricity charge unreasonable as it would seem to be comparable with the charge for other developments of this type and size.
21. The Applicant has requested a determination of the Tribunal in connection with the proposed service charge for the current service charge year, ending December 2013. The Tribunal cannot give a determination in respect of specific costs until the formal accounts have been prepared, however the Applicant advises that the budgeted charge of £1,550 per annum has been based on its recent experiences of the development and the service charge forecast/planned maintenance schedule covering the service charge year 2008 – 2016. In view of this and also the Tribunal's inspection of the development it considers that a charge at this level is not unreasonable as a budget estimate in order to bring the property into what would be considered a usual standard. The Respondent will of course have the opportunity of making an application in respect of any of the specific costs incurred during the service charge year.

Summary

22. The Tribunal considers that the service charge for the year ending December 2012 in the sum of £1,693.32 is reasonable.
23. The Tribunal considers that the service charge demanded on account for the service charge year ending December 2013 in the sum of £1,550.00 is also reasonable.
24. In its submissions the Applicant indicates that it intends to recover their

costs in making this Application via the service charge as the lease provides for such charges to be recovered. The Respondent has not made a Section 20c application. However, if one were to be made in respect of the issues detailed within this Determination, the Tribunal would not be minded to grant such an order as the Applicant has been entirely successful in the proceedings. The Applicant must consider the financial and physical wellbeing of the development as a whole and as this Application has been made in order to recover outstanding service charge funds, which have been found to be both reasonable and recoverable, the Tribunal considers the Applicant justified in making the same.

25. In reaching their determination the Tribunal has had regard to the evidence and submissions of the parties, the relevant law and their own knowledge and experience as an expert Tribunal but not any special or secret knowledge.
26. If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision which is given below (regulation 52 (2) of The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rule 2013) stating the grounds upon which it is intended to rely on in the appeal.

Vernon Ward – Chairman

Date of Release

SEP 2010