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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL
SOUTHERN PANEL

Case Reference: CHI/29UN/LIS/2012/0063

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT ACT 1985 AND UNDER SECTION 24 OF THE LANDLORD AND TENANT ACT 1987

Applicant: MR R CULLEN
MS S ASHTON
MRS P CRAMPTON
MR P BURGESS

Respondent: THREE KEYS PROPERTIES LIMITED

Property: 12 ROYAL ROAD, RAMSGATE, KENT CT11 9LE

Date of Hearing 11TH February 2013

Appearances
Applicant

MR R CULLEN
MRS L SMITH for Ms S Ashton

Respondent

MRS BAGLEY
MR BAGLEY

Leasehold Valuation Tribunal

Mr D. R. Whitney LLB(Hons)
Mr R. Athow FRICS MIRPM
Mr T. J. Wakelin

INTRODUCTION

1. The Applicants are the leaseholders of 12 Royal Road, Ramsgate CT11 9LE ("the Property"). The Respondent is the owner of the freehold of the Property and undertakes the management of the building. The Applicants had made two applications and also in respect of Mr Cullen an application had been transferred by the County Court. The Applicants were looking to challenge certain aspects of the service charge for the years 2000, 2003, 2006 and 2009-2012 inclusive. The Applicants were also seeking the appointment of a manager.

THE LAW

2. The relevant law is contained in sections 27A and 19 of the Landlord and Tenant Act 1985 and section 24 of the Landlord and Tenant Act 1987. The relevant sections are set out below:

Section 27A Liability to pay service charges: jurisdiction

(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.

(4)No application 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 to have agreed or admitted any matter by reason only of having made any payment.

(6)An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination— .

(a)in a particular manner, or .

(b)on particular evidence, .

of any question which may be the subject of an application under subsection (1) or (3).

(7)The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

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 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 24 Appointment of manager by the court..

(1)A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies— .

(a)such functions in connection with the management of the premises, or .

(b)such functions of a receiver, .

or both, as the tribunal thinks fit.

(2)A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely— .

(a)where the tribunal is satisfied— .

(i)that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and .

(iii)that it is just and convenient to make the order in all the circumstances of the case; .

(ab)where the tribunal is satisfied— .

(i)that unreasonable service charges have been made, or are proposed or likely to be made, and .

(ii)that it is just and convenient to make the order in all the circumstances of the case; .

(ac)where the tribunal is satisfied— .

(i)that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the M1Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and .

(ii)that it is just and convenient to make the order in all the circumstances of the case; or] .

(b)where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made. .

(2ZA)In this section "relevant person" means a person— .

(a)on whom a notice has been served under section 22, or .

(b)in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.

(2A)For the purposes of subsection (2)(ab) a service charge shall be taken to be unreasonable— .

(a)if the amount is unreasonable having regard to the items for which it is payable, .

(b)if the items for which it is payable are of an unnecessarily high standard, or .

(c)if the items for which it is payable are of an insufficient standard with the result that additional service charges are or may be incurred. .

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(3)The premises in respect of which an order is made under this section may, if the tribunal thinks fit, be either more or less extensive than the premises specified in the application on which the order is made. .

(4)An order under this section may make provision with respect to— .

(a)such matters relating to the exercise by the manager of his functions under the order, and .

(b)such incidental or ancillary matters, .

as the tribunal thinks fit; and, on any subsequent application made for the purpose by the manager, the tribunal may give him directions with respect to any such matters.

(5)Without prejudice to the generality of subsection (4), an order under this section may provide— .

(a)for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager; .

(b)for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment; .

(c)for remuneration to be paid to the manager by any relevant person , or by the tenants of the premises in respect of which the order is made or by all or any of those persons; .

(d)for the manager's functions to be exercisable by him (subject to subsection (9)) either during a specified period or without limit of time. .

(6)Any such order may be granted subject to such conditions as the tribunal thinks fit, and in particular its operation may be suspended on terms fixed by the tribunal .

(7)In a case where an application for an order under this section was preceded by the service of a notice under section 22, the tribunal may, if it thinks fit, make such an order notwithstanding— .

(a)that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or .

(b)that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3). .

(8)The Land Charges Act 1972 and the Land Registration Act 1925 shall apply in relation to an order made under this section as they apply in relation to an order appointing a receiver or sequestrator of land. .

(9)A leasehold valuation tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the M5Land Charges Act 1972 or the M6Land Registration Act 1925, the tribunal may by order direct that the entry shall be cancelled. .

(9A) the court shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied— .

(a)that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and .

(b)that it is just and convenient in all the circumstances of the case to vary or discharge the order.

(10)An order made under this section shall not be discharged by a leasehold valuation tribunal by reason only that, by virtue of section 21(3), the premises in respect of which the order was made have ceased to be premises to which this Part applies. .

(11)References in this to the management of any premises include references to the repair, maintenance or insurance of those premises.

INSPECTION

3. The Tribunal inspected the Property on the morning of the hearing. It was a mid-terrace house which had been converted into flats. The external elevations to the front and rear were plainly in need of redecoration and repairs. To the rear of the property was a dilapidated fire escape in need of repair. Various other external items of repair were pointed out as well as works of repair particularly to the basement which had been undertaken by various leaseholders. The Tribunal inspected the internal common parts and which were in a poor state although again the Tribunal was advised that works had been undertaken by various leaseholders.

HEARING

4. At the outset of the hearing Mrs Bagley on behalf of the Respondents conceded that it would be "just and convenient" for a manager to be appointed. She candidly accepted that the Respondents had not been managing the building although she did not accept that the proposed manager, Mr G Houghton, was an appropriate person to be appointed.
5. The Tribunal highlighted that they did not have jurisdiction in respect of the ground rents claimed against Mr Cullen and this would be for the County Court to determine.

6. The Parties agreed that in principle the items being challenged were as set out in the Respondent's reply dated 10th January 2013 and set out at pages 3 and 4. It was agreed that we would deal with each type of item in turn.

BUILDINGS INSURANCE

7. This was challenged for the years 2009-2012. The Applicants contended that the premium claimed was unreasonably high. In particular they asserted that the policy overvalues the building and placed reliance on the earlier Tribunal decision in case reference CHI/29UN/LIS/2009/0060. The Applicants accepted we were not bound by this decision but suggested we should adopt the same as to do otherwise would be to re-invent the wheel.
8. Mr Cullen in particular asserted that property prices in the area had fallen rather than risen and whilst he accepted that build costs were different it was his submission that building costs had not risen in Thanet as it was a poor part of the country and builders were desperate for work.
9. Mr Cullen indicated he would accept £300 per annum per leaseholder plus indexation for each leaseholder. Mrs Smith suggested that a total cost of £500-600 per annum would be reasonable.
10. The Respondents highlighted that they had not attended the previous hearing. The previous Tribunal had accepted their valuation of build costs but had not added VAT as was recommended as part of that valuation. They had not challenged the decision as decided commercially this was not worthwhile. The Respondents relied upon this valuation to which they had added VAT and in future years had then index linked the valuation. The Respondents submitted this was a reasonable methodology for calculating the value of the property for insurance purposes.
11. Mrs Bagley explained that she had during this period changed broker to try and ensure she received the best service and quotes. She explained that the respondents often do not know whether flats are being owner occupied, let or empty. Each year the Brokers put the policy to the market. They have remained with AVIVA for continuity of claims management. The advice the Respondent had received was to re-assess the rebuilding cost approximately every five years and to carry out indexation in-between.

INTERNAL AND EXTERNAL REPAIRS

12. Mr Cullen conceded that the cost of repairing the fire escape in 2000 was reasonable in the sum of £457.93.
13. Mr Cullen further conceded the charge for 2003 in the sum of £700.
14. The cost of electrical works in 2006 in the sum of £240 was challenged.
15. The Applicants denied that any works had been undertaken and even if works had been undertaken the price charged was excessive and any works undertaken had not been completed to a reasonable standard. The Applicants contended that the tradesman who attended was not a properly qualified electrician and the advice he provided to leave the lights on all the time the Applicants contended was wrong.
16. Further the Applicants denied that they had changed any switches and the Respondents should have used someone more local. Mr Cullen invited the Tribunal to award nothing and

Mrs Smith contended that she would not pay more than £130 for a full day of an electrician's time from her experience.

17. The Respondents contended that they had tried to use local contractors but had been unable to contact any of the contractors Mr Cullen suggested. She had used Mr Gwinett who had undertaken other works on the Respondents portfolio. The Respondents pointed out that the quotation Mr Cullen had obtained was for £211.50. As far as the Respondents were concerned the contractor attended and did the work for which he was paid. They submit this was reasonable.

MANAGEMENT CHARGES

18. The Applicants again relied upon the earlier Tribunal decision already referred to. The Applicants contend that the Respondents have done little and any charge should be minimal to cover what work they have done although it was accepted that they should be paid something.
19. The Applicants also took issue that it appeared an offer to accept a reduced amount had been made to one leaseholder (Ms Ashton) and this was felt to be unfair.
20. The Applicants contended that a reasonable fee for each year would be £50 per annum save for 2009 when the Applicants accepted that they had commissioned a survey but even still felt 50% of the amount claimed would be reasonable. Mr Cullen asserted that Mrs Bagley on behalf of the Respondents had previously said that they had abandoned the building and Mrs Smith highlighted that Mrs Bagley at the start of the hearing had conceded that the management of the building had broken down in conceding that the appointment of a manager would be "just and convenient".
21. Mrs Bagley for the Respondent disputed that she had ever said that the Respondent had abandoned the building. Certainly management had been difficult. The Respondents however charged a fee based on what work they had undertaken in each year. The Respondents contend that all costs have been challenged by the Applicants and the Respondents have had to deal with lengthy correspondence from Mr Cullen. It was agreed that works were required and the Respondent wanted to do major works but any attempt to undertake works was not accepted by the leaseholders. The Respondents referred to the lease and the fact that it refers to the fee scale of an accountant for calculating the fee payable. It was submitted that the fees are very reasonable when compared to this.
22. With regards to the offer to Ms Ashton it was simply an offer that if she paid a slightly reduced amount that would be accepted in full and final settlement of her service charge arrears. It was a commercial decision by the Respondent.

COUNTY COURT CLAIM

23. The claim transferred from the County Court only involved Mr Cullen. This claim included certain additional items not already dealt with. The Tribunal explained to the parties that they did not have jurisdiction in respect of ground rent recovery and if the parties could not agree then this would need to be dealt with by the County Court once the matter was returned to them.

24. The Tribunal also noted that the claim included what was referred to as "Administration Charge (to include interest under section 69 of the County Courts Act 1984)" and County Court fee. Both of these are elements outside the jurisdiction of the Tribunal and would be for the court to determine.
25. This left an earlier county court fee of £65 and administration charge dated 22.07.2011 of £15. Both of these sums were waived by the Respondents .

APPOINTMENT OF A MANAGER

26. All parties accepted that it would be appropriate to appoint a manager. The Applicants proposed a Mr Geoff Houghton of Gableson Property Services Limited. Details of his company and proposed appointment were found at page 414 to 422 of the Respondents bundle.
27. The Tribunal highlighted to Mr Houghton that if the Tribunal was satisfied they would appoint him personally and not his company. The Tribunal explained he would need to have an individual policy of indemnity insurance as he would have personal liability. At this point the Tribunal adjourned for 15 minutes to allow Mr Houghton to consider matters.
28. When the hearing resumed Mr Houghton withdrew as he had not understood that any appointment would be personal to him.
29. No other manager was proposed at the hearing by the Applicants.

SECTION 20C COSTS

30. The Respondents indicated that they would be seeking their costs under the service charge not least of which being the two trips they had made to the area firstly for the PTR and secondly for the hearing today. The Respondents submitted that they had approached this hearing in a conciliatory manner. A lot of time had been spent preparing for the hearing and Mrs Bagley suggested there was a clash of personalities.
31. The Applicants were seeking an Order under section 20C. Mr Cullen submitted that the Respondent should not be entitled to recover their costs. He submitted that it was correct that the Applicants had made an application particularly given no works had been undertaken to the property since 2006. The services supplied by the Respondent were not of a satisfactory standard.
32. Mr Cullen adopted these submissions in respect of his application for an order that the Respondent do reimburse to him the fees paid.
33. Mrs Smith further submitted that the panel had seen with its own eyes the lack of management by the Respondents. She submitted that she would expect them to visit the property if they were managing adequately.

DECISION

34. The Tribunal finds that it cannot appoint a manager on this occasion as no manager was proposed. The Tribunal reminds the parties that it is open to them to reach agreement as to appoint of a local manager if they wish. What is plain is that all parties seem to agree the

property requires work which is likely to cost a fairly substantial amount and the parties would be well advised to work together to achieve this.

35. With regards to the various items left for the Tribunal to determine the Tribunal finds as follows:

INSURANCE

The Tribunal accepts that the Insurance claimed for each of the years in dispute (2009-2013) is reasonable. The Tribunal accepts that the Respondents obtained a valuation for the cost of re-building dated 19 May 2008 (page 292-294 of the Respondents bundle). This determined that the base sum should be £560,000 however the Tribunal notes that at page 293 this makes clear VAT has been excluded and that VAT should be added to this figure. In subsequent years the Respondents had index linked this figure to come up with the Building Value for insurance purposes. The Tribunal accepts this is a reasonable methodology for the Respondents to adopt. The Tribunal note that no alternative like for like quotations have been provided.

MANAGEMENT CHARGES

The Tribunal noted the evidence it had heard and the inspection undertaken. The Tribunal considered the management charges overall and noted that the respondent explained that they based the charge with regards to the work undertaken.

The Tribunal determines that the charges for the years 2000, 2003, 2006 and 2009 are reasonable. In the Tribunals opinion the amounts claimed are relatively modest given the number of units in the building and reasonable for the work undertaken in the respective years.

With regards to the year 2010 and 2011 the Tribunal accepts that the charge of for the building is reasonable. The Tribunal notes that attempts were made to undertake major works although these did not move further forward.

For the years 2012 and 2013 the Tribunal limits the management charge to £500 per annum in total. The Tribunal has limited these years as it is clear that the Respondents have only arranged insurance in these years and not been pro-actively managing the block .

ELECTRICAL WORKS 2006

The Respondent looked to recover £240. The Tribunal has regard to the evidence that only limited work was undertaken. It is clear that very limited work was undertaken and a written report was prepared. The Tribunal is satisfied that a cost has been incurred but believes the charge made is unreasonable. The Tribunal considers that £100 would be a reasonable charge, bearing in mind the limited extent of the work.

36. With regards to the claim under section 20c and reimbursement of fees the Tribunal declines to make an order. It appears from the evidence that clearly the parties have fallen out. The Respondents have struggled to obtain the co-operation of the leaseholders to undertake major works predominantly as certain leaseholders have been concerned as to their ability to pay for such works. As a result works have not been undertaken. It is noted that the Respondents conceded that it would be "just and convenient" for a manager to be appointed although ultimately no manager could be appointed under this current application. The Tribunal remind the parties that it would be for the Respondent to demonstrate that the lease allows recovery of any costs they seek to charge and that such costs may be subject to challenge as to the reasonableness of the same.

SIGNED
David R. Whitney

Lawyer Chair

12th March 2013