

8859



FIRST-TIER TRIBUNAL PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/45UD/LIS/2013/0066

Property : 94 St Agnes Place, Chichester, West Sussex
PO19 7TU

Applicant : Mrs C Williamson (the Tenant)

Representative : Mr H Williamson

Respondent : Fairhold Artemis Limited (the Landlord)

Representative : ---

Type of Applications: (1) Application for determination as to reasonableness of service charges pursuant to Sections 19 and 27A Landlord and Tenant Act 1985

(2) Application for determination as to liability to pay and reasonableness of variable administration charges pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002

Tribunal Members : Judge P.J. Barber Chairman
Mr P.D. Turner-Powell FRICS Valuer Member

Date and venue of Hearing : 23rd August 2013 Tribunal Offices, 1st Floor, Midland House, 1 Market Avenue, Chichester. West Sussex PO19 1JU

Date of Decision: 13th September 2013

DECISION

Decision

- (1) The Tribunal determines in accordance with the provisions of Sections 19 and 27A Landlord and Tenant Act 1985 (“the 1985 Act”) that the following amounts for window cleaning included in service charges for the Property in the following years are not reasonable and are not payable by the Applicant :-

2009

£29.77

2010

£59.54

- (2) In regard to the application in respect of costs made by the Applicant pursuant to Section 20C of the 1985 Act, the Tribunal determines that none of the costs of the Respondent shall be taken into account in determining the amount of any service charges payable by the Applicant.
- (3) The Respondent shall in accordance with Rule 13(2) of The Tribunal Procedures (First-tier Tribunal)(Property Chamber Rules 2013) reimburse to the Applicant the fee paid by the Applicant for issuing the proceedings in this matter in the sum of £200.00

Reasons

INTRODUCTION

1. These are two applications each dated 22nd May 2013 made (1) pursuant to Sections 27A and 19 of the Landlord and Tenant Act 1985 (“the 1985 Act”) for determination of the reasonable service charges payable by the Applicant to the Respondent; and (2) pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) for determination of the reasonable administration charges payable by the Applicant to the Respondent. The applications address issues arising over the period 2008 to date.
2. The claim relates to service and administration charges in respect of 94 St Agnes Place, Chichester, West Sussex PO19 7TU (“the Flat”). The Flat is a three bedroom flat in a purpose built block. Directions were issued by the Tribunal on 22nd May 2013, inter alia requiring the Respondent to serve a statement of case in response to the issues raised in the application, together with an indexed and paginated bundle of all the documents upon which the Respondent seeks to rely in support of its case and further requiring the Applicant then to serve a statement of case in reply, together with a similar bundle.
3. St Agnes Place was constructed in or about 2004/05 and the Flat was demised by a Lease dated 29th March 2005 (“the Lease”). The concerns of the Applicant were various and as listed at numbered paragraphs 1-9 in the “Details of Claims” appended to the applications.

4. Warwick Estates Property Management Limited ("Warwick Estates") is the current managing agent, having been appointed in or about May 2011; prior to that Whiteheads had managed the development since about 2008; before that Countrywide had been the managing agents.

INSPECTION

5. The Tribunal's inspection took place in the presence only of Mr Williamson, being the Applicant's husband and representative. The Respondent did not attend nor did it send any representative.
6. The Flat forms part of a development comprising five blocks constructed by Berkeley Homes; there is some social rented housing included, but the private part of the development consists of 94 flats. The Tribunal noted a number of ground level up-lights adjacent to trees within the development; it also noted that the planted areas included some gaps, apparently where dead shrubs had been removed. The Tribunal further inspected a water pump located within a brick built cycle store, as well as signs of exterior water staining to a brick built bin store. The Flat is located within Block D.

THE LAW

7. Section 19(1) of the 1985 Act provides that :
"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."*
8. Sub-Sections 27A (1), (2) and (3) of the 1985 Act provide that :
"(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 cost, 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.

9. "Service Charges" are defined in Section 18 of the 1985 Act as follows

(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, 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

18(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" includes 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.

Paragraph 2 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 provides as follows :

"A variable administration charge is payable only to the extent that the amount of the charge is reasonable"

HEARING & REPRESENTATIONS

10. The hearing was attended by the Applicant and Mr Williamson; the Respondent neither attended nor was it represented. The Tribunal further noted the failure by the Respondent to comply with the directions issued in the matter, by not serving any statement of case or bundle of documents in support.
11. The Tribunal sought initial clarification on a number of points including as to whether any matters had been agreed between the parties following an exchange of certain correspondence between them shortly before the hearing. Mr Williamson indicated that settlement had been reached, but only on certain aspects arising from the application. Accordingly the Tribunal invited Mr Williamson to address it on each of the nine issues or elements of claim included in the "Details of Claims".
12. Mr Williamson made the following submissions to the Tribunal :

Details of Claims

(1) Incorrect Invoices

Mr Williamson advised that there had been certain historic errors made in service charge invoices, dating back to the time when Countrywide had been the managing agent. These errors had resulted in overcharging in a sum of £220.94; however Mr Williamson confirmed that as a result of the recent correspondence, the dispute in this regard has been settled such that the Respondent has agreed to provide a credit against future service charges in the above amount.

(2) Window Cleaning

Mr Williamson submitted that over a four month period in 2009, no window cleaning had been provided to the Flat; similarly in respect of an eight month period in 2010. Mr Williamson said he had calculated that the elements of service charges levied for window cleaning respectively for the above periods were £29.77 and £59.54. Mr Williamson said that Warwick Estates had been unable to confirm or deny the claim since it pre-dated their appointment as managing agents.

(3) Application of specific percentages in estimated demands

Mr Williamson considered that the managing agents should, when issuing demands for service charges on account, or on an estimated basis, calculate such estimated demands by reference to the percentages as defined in the Lease. The Tribunal made reference to the definitions in the Lease of the Interim Estate Maintenance Charge; the Interim Building Maintenance Charge and the Interim Management Charge – which each specify a sum to be paid on account “as the Management Company whose managing agents or accountants from time to time shall specify at its or their discretion to be a fair and reasonable sum.”

(4) Year End Adjustments for 2010 & 2011

Mr Williamson said that figures had now been provided but he was concerned that Warwick Estates were actually undercharging in relation to water consumption, by dividing the amounts incurred among all 15 flats in Block D, rather than just between the 5 flats which actually benefit.

2010

Mr Williamson suggested that the water charges for Block D of £509.78 should be deducted from the total charges of £22,054.10 thus producing a figure of £21,544.32, which multiplied by the Lessee's Share of the Building Maintenance Fund being 3.8961% results in £839.39. To this, should be added one-fifth of the water charges of £509.78 being £101.96, producing an increased, corrected contribution by the Flat to the Building Maintenance Fund for 2010 of £941.35, rather than £859.25 (£22,054.10 x 3.8961%).

2011

Mr Williamson made a similar suggestion as for 2010 above. The resultant figures for Block D and the Flat for 2011 are : £20,822.97 - £426.64 = £20,396.33 x 3.8961% = £794.66. Adding to £794.66, one fifth of the water charges of £426.64 = £85.33 – produces an increased, corrected contribution by the Flat to the Building Maintenance Fund for 2011 of £879.99, rather than £811.28 (£20,822.97 x 3.8961%).

The above calculations respectively would result in adjusted service charge liability for the Flat of an additional £82.10 for 2010, and £68.71 for 2011.

(5) Estimated demands should expressly relate to the budget

Mr Williamson took the view that the managing agents should when issuing demands for service charges on account, expressly refer to the corresponding figures in the budget.

(6) Water Meters

Mr Williamson submitted that since the upper flats in Block D which have a pumped water supply, all have individual water metres installed, the managing agents should apportion and calculate the water charges to each flat by reference to individual meter readings rather than carrying out an approximate sub-division of charges. Apparently the managing agents had declined to do this as they said the additional administrative time involved would be disproportionate and uneconomic.

(7) Administration Fee

Mr Williamson said that only one £30.00 administration charge had been demanded; however he added that as in the case of the incorrect invoices as at (1) above, the dispute in this regard has been settled and the Respondent has agreed to provide a credit in the sum of £30.00.

(8) Costs

Mr Williamson said that in addition to the application for an order under Section 20C in respect of any of the Respondent's costs in these proceedings, he also sought compensation from the Respondent in regard to the £200.00 application fee which the Applicant had incurred, together with copying charges of £152.60 and special delivery charges of £14.52. Mr Williamson submitted that it had been necessary to bring the application and in his view the Applicant should be reimbursed for any out of pocket expenditure incurred.

(9) Failures to Repair

The Applicant further complained regarding a number of instances where Mr Williamson alleged that the Respondent had failed to repair carry out works; these included emergency lift telephones, roof leaks, leaking water main by the bin store, failed tree lights and dead shrubs not being replaced.

CONSIDERATION

14. The Tribunal have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of the parties.
15. In regard to numbered paragraphs (1) and (7) the Tribunal notes that terms for settlement have been agreed between the parties and accordingly makes no determination. In regard to the window cleaning issue at (2) and given the inability of Warwick Estates to confirm or deny the position the Tribunal determines that the amounts for window cleaning included in the service charges to the Flat of £29.77 for 2009 and £59.54 for 2010 are unreasonable and not payable by the Applicant. In relation to (3) the Tribunal is of the view that the Lease does not in any event require the specific percentages to be applied in relation to on account demands. As regards (4) the Tribunal notes that the Lease contains no specific or express provisions as regards the calculations to apply in regard to the costs of water supply to the Flat. In these circumstances the Tribunal considers that the broad division of costs being applied is reasonable and in the absence of any express provision in the Lease,

concludes that there is no contractual authority or basis for determining that the water supply charges apportioned to the Flat and payable by the Applicant, should be increased. Accordingly the Tribunal is satisfied that the present method of apportionment complies with any such requirements of the Lease and we therefore make no determination. In regard to (5) the Tribunal is of the view that the Lease does not require the specific percentages to be related to figures in the budget. The budget exists and is a tool for day to day management and accounting purposes only, and is not referred to in the Lease. In regard to (6) the Tribunal notes that the Lease does not require measurement of consumption by reference to water meters.

16. With regard to (8) the Tribunal notes the lack of response by the Respondent to directions and failure to attend either the inspection or hearing either itself, or by its managing agent. In these circumstances the Tribunal afforded the Respondent opportunity after the hearing, to make any representations in regard to the Applicant's claim for costs, in writing. The Tribunal has taken into account the letter by way of response received from Warwick Estates dated 2nd September 2013 which, inter alia, stated that "both parties in this matter have been in the process of agreeing a settlement outside of a full Tribunal Hearing" and further that "Mrs Williamson has been difficult to deal with... (and) she refused to withdraw the application". The letter further indicated that it would have cost a great deal of money to hire an agent or solicitor to act on the Respondent's behalf, but offered no clear explanation as to why neither the Respondent, nor Warwick Estates had seen fit to comply with directions, submit any statement of case or attend the inspection and hearing. In those circumstances the Tribunal determines that under section 20C of the 1985 Act, it is just and equitable in the circumstances that none of the Respondent's costs in connection with these proceedings shall be taken into account in determining service charges payable by the Applicant. In relation to the application made by the Applicant for her out of pocket expenses in bringing the application to be met by the Respondent, the Tribunal considers it would be equitable and appropriate in the circumstances to order that the Respondent shall reimburse to the Applicant the fee of £200.00 paid by the Applicant in this matter, pursuant to Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
17. In regard to (9) the Tribunal only has jurisdiction in relation to the applications made, to determine reasonableness of service charges and administration charges, and is not in a position to make any determination in relation to matters or work which the Respondent is alleged to have failed to carry out.
18. We made our decisions accordingly.

Judge P J Barber (Chairman)

A member of the Tribunal appointed by the Lord Chancellor

Appeals :

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.