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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/00/MR/LIS/2014/0071**
Property	:	**46 The Vicarage, Rudmore Court, Simpson Road, Portsmouth PO2 8EH**
Applicant	:	**Mr. G. H. Dooley**
Representative	:	**Mr. G. H. Dooley** **Mr. Warburton (McKenzie Friend)**
Respondent	:	**Rudmore Court RTM Company Limited**
Representative	:	**Mr P. Dack FRICS (Company Secretary)** **Mr. Turnbull (Director)**
Type of Application	:	**Section 27A the Landlord & Tenant Act 1985**
Tribunal Members	:	**Judge D. R. Whitney** **Mr. P. Turner-Powell FRICS**
Date and venue of Hearing	:	**20th April 2015** **Chichester Magistrates Court**
Date of Decision	:	**10th May 2015**

DECISION

BACKGROUND

1. This application was made by Mr Graham Dooley, the owner of the leasehold flat known as 46 Rudmore Court, Simpson Road, Portsmouth, Hampshire ("the Flat").

2. The Flat is one of 46 flats within what is known as Rudmore Court ("the Building"). The Building is a conversion of a Vicarage and Church into various flats. The Applicant is the original leaseholder under a lease of the Flat dated 12th October 2011 of the Flat which is in the Vicarage.

3. The Respondent is a right to manage company which acquired the statutory right to manage from the freeholder towards the end of 2011, but effectively from 2012. The Applicant objects to various service charges levied and directions were made by the tribunal dated 1st December 2014 confirming that the service charges for the years 2012,2013 and 2014 were to be determined.

4. The tribunal at the hearing gave its determination on a preliminary point, that being, that the Applicant and Respondent are bound by the terms of the lease and to that end the Applicant was required to contribute one forty fifth of the expenses incurred for the whole Building which included the Church and the Vicarage. The tribunal's reasons are set out below.

THE LAW

5. The relevant section for this application are sections 19 and 27A of the Landlord and Tenant Act 1987 which are annexed hereto marked A.

THE LEASE

6. A copy of the lease dated 12 October 2011 was produced to the tribunal. This lease was between the freeholder and the Applicant. The lease provided that the Applicant was responsible for paying one forty fifth of the expenses relating to the Building and the Estate. The definitions and plans forming part of the lease (colour copies of which were provided to the tribunal at the hearing) confirmed that the Building included both the Vicarage and the Church collectively. Clause 5 of the lease sets out the Landlords covenants.

7. References to clauses within this decision are by way of references to the lease dated 12 October 20111 in respect of the Flat granted to the Applicant.

INSPECTION

8. Immediately prior to the hearing the tribunal inspected the Building in the presence of the Applicant and his McKenzie Friend, Mr Warburton, and Mr Dack the company secretary and managing agent of the Respondent.

9. The Building is a converted church and vicarage close to Rudmore Roundabout and the ferry terminal in Portsmouth. The main entrance to the Building was via the Church. This entrance way was covered by CCTV.

10. The Vicarage in which the subject flat was situated was to the Eastern side. The Applicant highlighted the garage which was also demised to him under his lease.

11. The communal stairway and entrance halls to the Vicarage appeared to be in reasonable repair. The tribunal was shown a small laundry room on the lower ground floor of the Vicarage.

12. The Flat was in the eaves of the Vicarage. The tribunal was invited to view the roof of the Vicarage and the Church via Velux windows within the Flat. All the roofs appeared to be in reasonable condition with that on the Vicarage appearing to be older than that of the Church. Certain limited damp ingress was highlighted to the tribunal.

13. The tribunal then entered the Church via a passageway between the two buildings. This led on to the communal lounge and kitchenette area. Off this was another room which we were told was often used for coffee mornings and the like. All appeared to be well maintained and furnished. Adjacent to these was a small office area used by the manager. This then led on to a hallway where the tribunal was shown the lift which serves the Church.

14. Externally the tribunal viewed the gardens surrounding the Vicarage and Church. All seemed to be in good order. The building from an external view appeared to be in reasonable state of repair. The tribunal was advised that the windows, which were wooden, had been the subject of the major works consultation. Those on the northern elevation of the Church were in need of repair although these was not visible from a ground level inspection.

HEARING

15. The tribunal was provided with a hearing bundle together with a copy of the Flat lease with coloured plans which was returned to the Applicant at the conclusion of the hearing.

16. The tribunal agreed with the parties that they would initially hear submissions from the parties as to the Applicants contentions as to how the tribunal should determine matters as to the lease terms.

17. The Applicant accepted under the lease he was responsible for the payment of one forty fifth of the expenses. He explained that his lease had been granted sometime after other leases when the freeholder sold off a flat which had been used as staff accommodation and hence was at times referred to as the "Managers Flat".

18. The Applicant contends that it is unfair and not reasonable that he should have to contribute to costs which relate purely to the Church. The Applicant suggests that the Vicarage is a standalone building separate from the Church

and its leaseholders. As a result he suggests that the costs apportionment should be different so that he does not have to contribute to charges relating solely to the Church such as the lift.

19. The Applicant accepts that he is the original signatory to his lease. He contends however that any such apportionment should be reasonable and made reference to the RICS Service Charge Code.

20. For the Respondent, Mr Dack, relied upon section 2 of the Landlords Statement of Case. He suggests that the wording of the lease is clear. It requires the Applicant to contribute to all costs of the Building including those relating to the Church. Further Mr Dack suggests that under this application the tribunal has no jurisdiction to vary the terms of the lease.

21. At this point the tribunal adjourned. The parties were asked during the adjournment to discuss and agree what specific heads of expenditure were being challenged.

22. After the adjournment the tribunal gave its ruling as set out in paragraph 4 above. The tribunal requested that all further submissions be made on the basis of this submission. The tribunal reminded the parties as to its jurisdiction to determine the reasonableness and payability of the service charges. This was not a jurisdiction which under this application allowed it to vary or amend the lease terms.

23. The Applicant confirmed that the items in dispute were:
    - Lift
    - Electric/Utilities
    - Staff costs
    - Repairs

24. Mr Dooley contends for the lift he does not use this and so should not contribute. Further given there is no lift in the Vicarage he has no enjoyment of this facility.

25. Mr Dack relied upon clause 5(4)(A)(iii) at page 17 of the lease which, subject to the Applicants contribution, requires the Respondent to provide and maintain the same.

26. As for utilities Mr Dooley contends that the Vicarage subsidises the Church. The Vicarage has very little specific utility costs. By way of example the Vicarage has no gas and the only gas radiators are within the communal area of the Church. There are radiators on each floor of the Church in the communal areas and hallways.

27. He also takes issue that the tariff used is not the cheapest available. Further he contends the heat is on too frequently and given the communal lounge is used infrequently and at most by about 8 residents of the Church it is unreasonable to heat the same.

28. As for the telephone bills Mr Dooley does not understand what these are for. He sees no need for a telephone and further can't see any alternative quotes for the provision.

29. At this point the tribunal adjourned early for lunch. The tribunal reminded Mr Dooley of the effect of their earlier determination and what it's jurisdiction was in respect of this application.

30. After the adjournment Mr Dooley suggested that a better control of the lighting could be implemented to decrease electricity costs.

31. Mr Dack contends that the tariffs used are reasonable. He referred to Appendix 7 and the invoices from EDF energy showing electricity was on the standard tariff. Also to appendix 6 and explaining EDF and Swalec both supply electricity to ensure the best rates with the tariff based on consumption.

32. The bulk of the telephone charges Mr Dack explained was for the Careline emergency call out system provided to all residents including those in the Vicarage. He referred the tribunal to clause 5(4)(A)(ii) which specifically allowed for the recovery of this cost.

33. Mr Dack also explained that there was a BT line for the lift (for use in an emergency) and also a BT broadband line for the provision of WiFi.

34. The gas is supplied by British Gas and is simply to power the communal boiler for the provision of heating for communal areas.

35. In respect of staff costs Mr Dooley referred to their having been various wardens over the years. He had asked to see the employment contracts but had been refused. In his opinion the cost was not recoverable under the lease. Further he objects to paying a management fee and a warden. He feels the costs should be absorbed within the management fee.

36. Mr Dooley was of the view give that Careline is in place and Mr Dack's office is only a short way down the road no warden is required.

37. Mr Dack referred to page 6 of the lease and clause 3(2)(a) which specifically allows the recoverability of the cost of employing a managing agent. Clause 3(2)(b) then goes on to allow the recoverability of the costs of a warden.

38. Initially the warden in the relevant service charge years had been employed on a self-employed basis being paid an hourly rate of £10 per hour. Subsequently this person had been employed by the Respondent on a similar basis undertaking fixed hours on a Monday, Wednesday and Friday mornings with additional hours by agreement. His role included testing fire alarms and Careline. He was there to liaise with contractors and be a point of contact for residents. When he was employed this continued at the rate of £10 per hour

basic pay. Other hours were by way of agreement. Appendix 6 contained copies of time sheets.

39. Mr Dack confirmed that currently there was no warden and the Directors were considering whether or not a replacement would be appointed.

40. In respect of repairs Mr Dooley helpfully conceded that he had received the first stage notice and he made representations on the same. He contends that the windows are such that they can be repaired from the inside thereby saving scaffolding costs. He referred to a reduced quote he had obtained but this was not within the bundle.

41. With reference to the lift repairs in his opinion these were too high. He relied upon the report from Allianz dated 31 January 2014 and did not understand why there was a need to change lift insurer and have far more substantial works undertaken at a cost of £20,000 as recommended by ISE(UK) Limited who had provided a further report at tab 9 of the bundle.

42. Mr Dooley had no alternative quote, in his opinion it was not his job to do so. He simply relies on the Allianz report and feels the complete refurbishment undertaken was unreasonable.

43. Mr Dack relied on the Landlords statement of case at Tab E of the bundle and in particular paragraph 26 and onwards in respect of repairs and the major works.

44. For the major works professional advice had been taken from Martin Ralph Group as to the specification of works which was at tab 12 of the bundle. The Respondents had relied on the building surveyor's advice as to the scope of works and specification for the same. The Respondents have received various representations which the Respondents are considering prior to proceeding further with this project and are looking at other alternatives. These include considering use of a cherry picker and possibly a different contractor.

45. Mr Dack explained the Allianz report was a statutory report prepared by the insurer although they would not undertake works. As a result the further report was obtained as to what works were required. This recommended the refurbishment and would provide a one year guarantee. IN Mr Dack's opnion this was reasonable and to ensure that ISE inspect the lifts the insurance was changed to them. In addition there is an annual maintenance contract for the lifts general maintenance as well.

46. Mr Dooley confirmed he was seeking an order under section 20C. He relied on the fact that he had acted in person and paid nothing for his representations.

47. Mr Dack confirmed that the Respondent would be looking to recover his costs which would be charged at £75/hour plus VAT as a service charge. In his view the RTM had acted reasonably.

48. The tribunal confirmed this concluded the hearing and its written determination would be issued in due course. The tribunal reminded the parties if they were unclear as to their respective positions they should take independent legal advice.

DETERMINATION

49. In reaching its determination the tribunal had regard to all the documents supplied to it and the various submissions made by the parties and their representatives at the hearing.

50. The tribunal had much sympathy with Mr Dooley. Having inspected it is clear that the Vicarage could be regarded as a separate building. However the starting point is the lease. The tribunal is mindful that Mr Dooley is the original leaseholder and by his own admission had solicitors acting for him at the time of his purchase. Whilst Mr Dooley included much documentation as to the background of the development as a whole and the granting of his lease this was not of assistance to this tribunal. The reason, as explained to the Applicant, was that this tribunals powers are determined by statute. Under this application the starting point is to look at the lease. The terms of the Applicants lease are clear and readily understood. The definitions as to what costs the Applicant is required to contribute to are clearly defined in words and by reference to clear plans.

51. The tribunal determines that the Applicant is required to contribute towards all the costs incurred, whether they relate to the Vicarage or the Church. The Applicant is required under his lease to contribute one forty fifth of the expenses properly incurred by the Respondent in repairing and maintaining the Buildings (being the Church and the Vicarage) and the Estate as a whole.

52. The tribunal made this determination having regard to the terms of the lease. In particular we inspected the coloured plans attached to the original lease provided to the tribunal by Mr Dooley at the hearing. It was clear from these that the Building as defined in the lease and by the plans was the whole of the Church and the Vicarage without any differentiation. It was also clear that Mr Dooley was free to use the lifts, communal areas and the like within the Church if he so wished. The fact he did not choose to exercise his rights did not preclude him from so doing.

53. In this tribunals experience it is often the case (typically with reference to lifts) that not all parties use of the lift will be equal, but they may be required to contribute in a like manner. This is a fact in leasehold situations. This tribunal does not within this application have any jurisdiction to amend the lease terms and no proper authority was drawn to the tribunal's attention. Whilst Mr Dooley tried to suggest this tribunal can, in considering reasonableness, consider the lease terms and whether they achieve this end, with respect this tribunal does not agree. This tribunal considers itself bound by the terms of the lease and must give effect to them, notably where they are as clear and certain as in this case.

54. The tribunal determines the matters in dispute for the service charge years 2012, 2013 and 2014 as set out below.

55. The tribunal determines that the costs relating to the lift are reasonable. The lift and its associated costs are expressly recoverable under the terms of the lease. The tribunal finds that following on from the Allianz report it was reasonable to obtain a report as to costs and accepts that the repairs may have gone beyond those suggested by the insurance report. Beyond challenging the works in general as being too extensive no alternative quotes or proposals have been made. Typically lift repairs and maintenance are expensive but there is nothing in this instance that leads this tribunal to believe these costs are unreasonable.

56. As to the electric and utility costs having heard the explanation given by Mr Dack we determine these are reasonable. Mr Dack was able to explain the same and in particular the telephone bills which it appears relate to the provision of the Careline system. All of these costs are recoverable under the lease, expressly so in the case of the Careline service. It was clear that attempts are made to ensure the most economic rates are utilised and once again no alternative quotes were provided. Having reviewed the various invoices and the submissions received the tribunal is satisfied that these are all reasonable.

57. The next item is staff costs. It is perhaps unfortunate that more information was not provided within the bundle. Certainly there appears a lack of clarity on exactly what the employment terms are and the costs of the same given these were not disclosed. A more detailed analysis of the manager's role and duties would have assisted the tribunal and the parties together with a copy of the employment contract.

58. However it is clear that the lease allows the employment of a manager. The manager's role was limited (as provided in the limited hours he was contracted for) and given the nature of the development and its use not unreasonable. As to the wage the basic hourly rate did not appear to this tribunal unreasonable. Therefore with some reservations the tribunal allows these costs as claimed as being reasonable. We would hope however that the Respondent will bear in mind these comments in any future deliberations.

59. In respect of the repairs Mr Dooley in his statement dated 10th January 2015 (tab D of the bundle) conceded that he had received the consultation notice. Mr Dack explained the directors had received various observations and were now re-visiting these works. In so far as they relate to this application the tribunal determines that the costs are reasonable.

60. The tribunal was not taken to any demands and the like. Provided valid demands are served upon Mr Dooley requiring him to pay one forty fifth of the costs in accordance with the lease then the same have been reasonably incurred and are payable for the years 2012, 2013 and 2014.

61. Whilst, as the tribunal has stated, they have sympathy with Mr Dooley his application does appear to have been misguided. To that end the tribunal

does not make any order under Section 20C and the Respondent is at liberty to recover (providing the lease allows and upon which the tribunal makes no determination) the reasonable costs it has incurred in dealing with this application as a service charge expense.

Judge D. R . Whitney

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.

ANNEX A

Sections 27A, 19 and 20 of the Landlord and Tenant Act 1985

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.

20 Limitation of service charges: consultation requirements

(1)Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

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(a)complied with in relation to the works or agreement, or

(b)dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.