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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Case Ref : CAM/12UD/LSC/2010/0031

Peterborough County Court Case No 9QT57633

Property : Flat 1 Riverview, 3 North End, Wisbech, Cambridgeshire PE13 1PE

Application : For determination of payability of service charges for the periods ending 30th September 2006, 2007 & 2008 [LTA 1985, s.27A]

Applicant : Mr David L Housden, River View, 24 Waterside Gardens, March, Cambs PE15 8RW

Respondents : Mrs Marion J Phillips & Mr Derek P Winter, South Fen Farm, Sutton, Ely, Cambs CB6 2PA

DECISION

Following an inspection and paper determination

Tribunal : G K Sinclair (chairman), G J Dinwiddy FRICS & D S Reeve

Determination Friday 6th August 2010

Summary

1. This case concerns a landlord's attempts to recover both "interim" (or "advance") and "final" service charges from the leaseholders of Flat 1. As part of his claim Mr Housden also sought to recover charges for sending payment reminders. The two leaseholders objected to that, and to charges levied for his dealing with their queries about service charge matters. They sought to counter-charge him an equal amount for dealing with his correspondence, and to recover damages for loss of rent due to his alleged failure to deal with water damage to their flat. By order dated 22nd February 2010 the court transferred "the issue of service validity and amount to Leasehold Valuation Tribunal" (sic) and stayed the proceedings pending the outcome of the tribunal's determination.
2. This tribunal can therefore deal only with the payability of the service charges demanded by the landlord for the three years in question, pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended). The tenants' Counterclaim, if it is to be pursued, is a matter reserved to the County Court, which it can deal with upon a lifting of the stay.
3. In view of the over-complexity of the arguments and documents sought to be relied upon by the parties, their departure from the more fundamental issues at stake, and the fact that neither party is legally represented, the tribunal considered that a pre-trial review would assist in clarifying those matters essential to a proper determination of the case. A hearing therefore took place on Wednesday 19th May 2010. Mr Housden attended but, due to invalidity, neither Respondent did so. Neither were they represented. However,

they had been encouraged to submit written representations, and these were before the tribunal and the other party.

4. In the course of the pre-trial review the tribunal considered and referred Mr Housden to the provisions of the Third Schedule to the lease, dealing with the payment of each year's "interim" and "final" service charges, the requirements for presentation of the annual service costs and their certification by an accountant, and also to the provisions of the 1985 Act and of the more recent – but very relevant – Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007.
5. Thereafter Mr Housden duly arranged for an independent accountant to certify the service charge accounts for each year in question. This was done on 21st June 2010. He then, under cover of a letter dated 23rd June 2010, forwarded copies of the accounts to the Respondents together with the required services charges summary of tenants' rights. Previously, on 30th May 2010, he had sent them copies of the service charges summary of tenants' rights, the very similar notice for administration charges, and a notice to long leaseholders of rent due. That for administration charges was stated to be in respect of reminder and correspondence charges, levied at £15 for an e-mail reminder and £25 for one sent by post. Finally, on 1st July 2010, Mr Housden invoiced the Respondents for a further £183.25 for each year's certified accounts, being an "additional service charge amount arising from the certification of the accounts, all in accordance with the accounts certified for that year, and as already provided."
6. For the reasons which follow, having inspected the premises and considered the evidence placed before it (neither party having requested an oral hearing), and in answer to the specific questions posed by the parties, the tribunal determines that :
 - a. A reasonable service charge for the year 2006 is £1,507.33, and that payable by the Respondents is 25% of that amount, or £376.83
 - b. The amounts for 2007 are respectively £1,424.39 and £356.10
 - c. The amounts for 2008 are respectively £1,986.89 and £496.72
 - d. No administration charges are recoverable by the landlord under the lease
 - e. The windows are part of the "outside" of the building and their repair is properly a service charge item under Schedule 3 of the lease
 - f. The accounts not having been certified, and the required summaries of tenants' rights not having been served, no amounts were due and owing to the landlord at the date the court proceedings were issued, and no interest arises
 - g. The Respondents have not raised the issue of recoverability of landlord's costs under section 20C, but as the question of costs generally has been reserved to the court the tribunal declines to express a view.

Relevant lease provisions

7. By a lease dated 13th October 2006 the Applicant granted to the Respondents a lease of flat 1, on the ground floor¹ to the rear of the building known as Riverview, 3 North End, Wisbech, for a term of 99 years from 1st March 2006 at a premium of £57,000 and an annual ground rent of £250,² with a service charge contribution of one quarter of the

¹ Clause 2.3 incorrectly states that the flat is on the first floor

² Clause 2.1

service costs by way of further rent. The ground rent is payable every 1st March³ and the service charge in two tranches :

- a. An interim service charge instalment equivalent to the final service charge shown on the last service charge statement presented, payable on 1st March⁴; and
- b. A balancing payment in respect of the final service charge (being one quarter of the actual service costs for the year ending 30th September), payable within 14 days of receipt of a certified service charge statement showing any balance due.⁵

8. In view of the issues raised it is pertinent to note several other matters :

- a. The lease makes no provision for the recoverability of any administration charges whatever (save for landlord's costs in connection with the service of a section 146 notice – which these days are further constrained by the need to obtain a prior determination under section 168 of the Commonhold and Leasehold Reform Act 2002 that there has been a breach of covenant)
- b. It also makes no provision for the imposition by the landlord of any regulations, or a covenant by the tenant to comply with them
- c. By clause 3.6 the tenant covenants :
To keep in good repair all parts of the interior of the property, and all additions to it, which this lease does not make the landlord's responsibility
- d. Amongst the services to be provided by the landlord under clause 4.4, recorded in the 4th Schedule, are :
 1. Repairing the roof, outside, main structure and foundations of the building and all other parts of the building which are not the responsibility of the tenant
 4. Decorating the outside of the building once every five years
- e. By clauses 1.3 and 3.4 interest payable on any arrears is chargeable at 4% above the Barclays Bank base rate, from 14 days after the amount falls due for payment.

Material statutory provisions

9. The method of calculation and overall amount payable by tenants for works of repair and management costs by way of service charge are governed principally by the express terms of the lease, but always subject to the cap imposed by section 19 of the Landlord and Tenant Act 1985, which limits the recoverability of relevant costs :

- 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.

10. The amount payable may be determined by the tribunal under section 27A. This is the provision under which this application has been brought. Please note sub-sections (5) & (6), which provide that a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment, and that an agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement)⁶ is void in so far as it purports

³ Clause 3.1

⁴ Schedule 3, para 3

⁵ Schedule 3, para 4

⁶ Eg. provisions in a lease stating that the landlord's accountant's certificate shall be conclusive, or that any dispute shall be referred to arbitration

to provide for a determination in a particular manner or on particular evidence of any question which may be the subject of an application to the Tribunal under section 27A.

11. Since 1st October 2007 section 21B of the 1985 Act provides that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. The content of that summary is prescribed by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007.⁷ The document must contain the prescribed heading and text and must be legible in a typewritten or printed form of at least 10 point.⁸ If this is not complied with then a tenant may withhold payment of a service charge which has been demanded from him.

Inspection

12. The tribunal inspected the property at 09:30 on Friday 6th August 2010, a warm and sunny day. Also present was Mrs Anna Rogers, Mr Housden's daughter, whom he stated in his latest communication with the tribunal office currently manages his properties. The tenants were not present.
13. From the front, 3 North End is the third from the southern end of a terrace of six seemingly Georgian two-storey dwellings just to the west of the River Nene, near to the historic heart of the town. The buildings rise from south to north, but number 3 is still below street level and is approached by a pedestrian gateway and steps down into a small but neat and well-maintained front garden. There are two front windows to the left plus a communal front door on the right of the ground floor, with three windows on the floor above and three dormer windows in the attic space. The front door leads to a communal entrance lobby, with the door to flat 2 immediately on the left and stairs down to flat 1 to the rear. Stairs lead to flats 3 and 4; again, one at lower level to the rear and the higher one to the front. The minimal landlord's electricity account is explained by the presence of only two light bulbs in the hall and on the half-landing.
14. There is no direct internal access to the rear except through flat 1, which has its own rear door. Walking round to the rear, via Sandyland – a minor road leading solely to trading and light industrial premises, behind 1 North End is an irregularly shaped strip of land providing vehicular access along the back of each property in the terrace plus some parking spaces. This land, and its parking spaces, is owned by Mr Housden. The leases for Riverview give the tenants no rights over this land whatever, and parking is granted by the owner by means of a separate licence fee. There are two exceptions : a garage behind number 4 which has recently been sold, and a strip of land immediately behind the Respondents' flat at number 3. They have purchased the freehold to this strip from Mr Housden, no doubt with a vehicular right of way from the nearby street, but currently its paving slabs lie on a level about 100mm below the adjoining slabs on that side of the access strip. Without raising the level of this "patio" area just outside the rear door to the flat, or lowering part of Mr Housden's land, or creating a ramp between the two levels, it is not currently possible for the Respondents to make vehicular use of this land.

⁷ SI 2007/1257

⁸ *Op cit*, reg 3

15. A further problem is that the purchaser of the garage has recently installed on Mr Housden's land, but also in front of the Respondents' "patio" strip, a bright yellow metal parking bollard. This presumably is intended to ensure that no-one parks in front of the garage door, so that the owner's vehicle can get in and out. Amongst the service costs is an item for a parking bollard. It is not this one, but some time ago – according to Mrs Rogers – a bollard had been placed by Mr Housden at the Sandylands road end, to discourage illegal parking. After the bollard had been damaged it was removed.
16. The rear of Riverview is totally different from the front. The building has a modern, red brick, three storey rear extension with stained softwood casement windows, all under a fore-and-aft ridged roof. This rear extension does not extend the full width of the building, creating an L-shape, with a small triangle of land between the side wall of the rear extension and the end of the Respondents' "patio" strip, on the long arm of the triangle, and the rear wall of the main building as the short arm. The boundary wall with the rear yard or garden of number 2 comprises the hypotenuse. The tribunal observed the following matters at the rear of the building which require attention :
- a. Of the four extractor fan outlets at the rear of the building three lack covers
 - b. A manhole cover situate in the triangle area is rusted through and dangerous if stepped on
 - c. The external cill to the large rear window to flat 1 shows signs of rot
 - d. Some wiring fixed to the rear side wall at first floor level is hanging loose
 - e. The cover to a light fitting just outside the rear entrance to flat 1 hangs loose, kept in place only by a holding screw, and allowing ingress of rainwater.

Discussion and findings

17. The tribunal considered the material put before it for its paper determination. This included very little by way of original receipts or invoices, but the tribunal found the certified accounts and Mr Housden's accompanying spreadsheets in section C of the bundle, at document [C5, App 5], to be most useful. It also noted the accountant's invoices for certifying the accounts [C8, Apps 10–12], each at £300 plus VAT, Mr Housden's invoice for the management time incurred in dealing with the certification of accounts [C9, App 9] and the "customer report" or statement of account sent to the Respondents [C10, App 13]. This latter document, showing a balance allegedly due at the date of issue of the court proceedings, includes a series of items described as "finance charge" and others shown as "correspondence charge".
18. Also in section C in the bundle are minutes of a meeting held by Mr Housden with some of the tenants (but not the Respondents) on Friday 19th June 2009, where at page 4 he actually says that the leaseholders are responsible for window repairs; and the responses and corrections from some of them. Particularly relevant are the observations on the merits of the contract for the painting of the front and rear windows [C12, App 15], including an e-mail from the contractor, T Callaby [C4, App 2].
19. The amounts claimed and those determined as payable appear in the schedule annexed to this decision. By way of explanation, the tribunal identifies a number of items which it strikes down or which require adjustment.
20. The amount for minor repairs in 2006 (£161.25) includes entry controls for the car park

at the rear of the property and a sign on the car park "no rubbish to be left here". The car park has nothing to do with this property and Mr Housden's expenditure upon it is a cost to be set off against his parking licence income. The allowable amount is reduced to £88.25

21. Administration fees claimed comprise a standard fee of £640 (£160 per unit) for 2006 and £700 (£175 per unit), a 17.5% "mark up" to cover costs of materials taken out of store and tools and materials supplied to contractors, and management time spent in dealing with the accounts. In the tribunal's determination:
- a. Accepted management practice endorsed by the RICS *Service Charge Residential Management Code* ("the *Blue Book*"), approved by the Secretary of State under the terms of section 87 of the Leasehold Reform, Housing & Urban Development Act 1993, provides for a standard annual fee for basic management tasks and a menu with prices for exceptional items. Collection of ground rent and service charges, chasing payment, conducting periodic inspections, answering normal tenant queries and the delivery of service charge invoices, receipts, etc to the accountants are all tasks within the standard annual fee
 - b. The charge for management time spent in connection with certification of the service charge accounts is therefore disallowed
 - c. In principle, a landlord or agent carrying out the usual tasks involved in managing a small number of flats such as this would expect to charge around £200 per unit for a competent job
 - d. A general mark up which is unsupported by documentation is unacceptable, and not a transparent means of doing business. This item is disallowed in full.
 - e. The tribunal shall return to the issue of appropriate management fees later in this decision.
22. Management time spent in arranging for a fire officer to attend the property (10 items shown in the 2008 accounts) is not recoverable. This is a standard item, and a simple task which would not justify a charge-out rate of £75 per hour. The common parts are tiny.
23. The cost for painting the windows was quoted by the contractor in his e-mail as £770 plus the cost of hiring a long ladder. In Mr Housden's spreadsheet for 2008 the cost of painting the front and rear windows together add up to £770, but there is no charge for a ladder. Instead, the service costs include "paint exterior materials", including brush cleaner. The tribunal is puzzled why such materials are not included within the painter's original quotation. The overall cost would, however, be reasonable for the work undertaken but for the fact that the windows were already in such a state that they should have been repaired before this work was done.
24. The landlord's obligation to repair includes the "outside" as well as the "main structure". In *Ball v Plummer*⁹ the landlord of a public house covenanted to do "outside repairs", which the court held included the windows, as they were "part of the skin of the house".

⁹ (1879) 23 SJ 656, cited in *Dowding & Reynolds: Dilapidations: The Modern Law and Practice* (4th ed), at 7-37

More recently, in *Holdings & Barnes v Hill House Hammond Ltd*,¹⁰ the then Neuberger J said that “the outside of the windows or doors are not part of the ‘structure’, however they are undoubtedly part of the ‘exterior’”.

25. By his failure to understand that the windows were part of the “outside” of the building both for purposes of repair and decoration the landlord has incurred costs which will only have to be repeated soon, when repairs to rotten timbers have been undertaken. There is already evidence that the work done in 2008 has had to be repeated by a tenant in the following year, and the tribunal noted a rotten cill to the Respondents’ principal window at the rear. Can the decorator be criticised? He was doing as he was asked, but the tribunal did note that poor preparation may have led to areas of flaking paint on the rear soffit and fascia, and smaller patches elsewhere. In view of all the above the amount recoverable by the landlord under the service charge is reduced by 50% to a more reasonable £452.22.
26. In each set of certified accounts the accountant records the accountancy fee in the sum of £300, to which is added VAT. The tribunal is slightly surprised at the level of charge, especially where the number of invoices is modest and the accountant was being asked to do all three years at once. However, in the tribunal’s experience these rates can vary, and it presumes that Mr Housden shopped around in the locality. The tribunal does not disturb the amount claimed. However, it is surprised to note that Mr Housden chose on 1st July 2010 to invoice the Respondents for a further sum of £183.25 for each year in question. The tribunal does not know to what this relates, and there is no invoice other than that from Mr Housden to justify it. This figure does not equal 25% of the additional management time claimed for preparation of the accounts (already disallowed), nor 25% of the accountant’s invoice. If the item concerns any of the years in question then it is disallowed in full.
27. There remains only a determination of the management or administration fee payable to the landlord, reflecting the quality of his performance of that task. The starting point, as stated in paragraph 20 c above, is £200 per unit per annum, or £800. The tribunal can only form a judgment based on its recent inspection, the documentation before it, and Mr Housden’s own comments at the PTR. The picture which emerges is of an amateur landlord of residential properties who does not really know what he is doing. This is not a case of a managing agent lumbered with awkward lease provisions. With respect to this building Mr Housden himself granted the leases, so he could dictate their terms. Despite that :
 - a. He failed to understand the need to have the service charge accounts certified by an accountant each year, or the difference between certification and audit. On this mistaken basis, and with no supporting evidence, he dissuaded tenants from having proper accounts prepared by telling them that this would cost over £1,000 per year
 - b. He failed to appreciate that the lease contains no provision entitling the landlord to charge administration fees, yet openly seeks to charge tenants £15 for sending an e-mail and £25 for a letter. According to the Respondents he was also seeking to charge for reading or answering correspondence from them, and as recently as 30th May 2010 he was serving on them a “customer report” [C10, App 13]

¹⁰ [2000] L&TR 428

- which includes numerous unexplained entries marked "finance charge"
- c. He sought unilaterally to impose regulations for the building, notwithstanding that the lease makes no such provision
 - d. He claimed a general mark up on expenditure of 17.5%, allegedly for materials released from store, without documentary proof, authorisation by the lease, or other justification
 - e. He was unaware of the need to serve a summary of the rights and obligations of tenants of dwellings in relation to service charges with respect to every demand made since 1st October 2007, and that unless one were served no service charge was payable (and hence there were no arrears)
 - f. He sought to recover expenditure in respect of his own access land at the rear of the property, which does not form part of the service costs for this building
 - g. He failed to carry out routine maintenance to the exterior, including repairs to the windows. As a result service charge expenditure on external decoration has been wasted
 - h. He routinely overcharged for his management time; the claimed cost always being the largest single item, and almost equalling all other expenditure.
28. For the above reasons the tribunal considers that the standard of past management fell well below that which a residential tenant should expect, and it reduces the suggested £200 per unit by half. For each year the sum of £400 only shall be allowed.

Remittance to the court, and costs

29. Having determined the questions asked of it, all further matters which may remain in dispute (including any Counterclaim) are remitted to the Peterborough County Court. The Respondents have not specifically raised the issue of limiting the recovery of the landlord's costs as part of any future service charge, under section 20C. That, and the more general question of liability for the costs and fees incurred in court proceedings seeking recovery of sums which the tribunal has determined to be excessive – and which the Respondents were lawfully entitled to withhold – are reserved to the court.

Dated 9th August 2010



Graham K Sinclair – Chairman
for the Leasehold Valuation Tribunal

SCHEDULE

AMOUNTS DETERMINED TO BE PAYABLE

Item	Claimed			Payable		
	2006	2007	2008	2006	2007	2008
Utilities – elec	7.45	7.62	5.53	7.45	7.62	5.53
<i>General repairs :</i>						
Minor repairs	161.25	45.00	282.97	88.25	45.00	282.97
Grounds maint	196.00	133.00	104.77	196.00	133.00	104.77
Exterior painting	0.00	0.00	1198.08	0.00	0.00	452.22
Insurance	463.13	486.27	388.90	463.13	486.27	388.90
Administration fees	1131.07	1198.08	1553.91	400.00	400.00	400.00
Accountant's fees	352.50	352.50	352.50	352.50	352.50	352.50
Totals	2311.40	2222.47	3886.66	1507.33	1424.39	1986.89
Each 25% share	577.85	555.62	971.67	376.83	356.10	496.72