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**HM Courts
& Tribunals
Service**

Leasehold Valuation Tribunal

In the matter of S.20C (Limitation of Costs) and
27A (Service Charges) of the Landlord & Tenant Act 1985

DECISION AND REASONS

LVT Case Number: CHI/00ML/LIS/2012/0010

Brighton County Court
Claim Number 1BE02746

Property: Flat 2, 42 Brunswick Terrace,
HOVE
Sussex
BN3 1HA

Applicant: Ground Rents (Regisport) Ltd

Represented by: Mr J Butler assisted by Ms M Bessasa-Grant of
Countrywide Property Management
and Leasehold Legal Services (not present at hearing)

Respondent: Mr V D Zahra (in person assisted by Mr Deitz Flat 1))

Date of Inspection and Hearing: 08 June 2012

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Surveyor Chairman)
Mr N I Robinson FRICS (Surveyor Member)

Date of this Decision: 10 July 2012

DECISION

1. The amounts for various administration charges, recharged expenditure and professional fees in the claim of 31/03/10 - £187.28; 01/04/10 - £408.65; 28/06/10 - £29.38; 31/08/10- £146.88; 06/09/10 - £110.45; 24/09/10 - £117.50; 09/06/11 - £120; 13/07/11 - £150.00 and a further charge of £150.00, a total of £1,420.14, are not payable as no evidence was offered in support of the claim.

2. The cost of repairs for year 2009/10 is reduced to £5,393.48 the Applicants share being £325.23. The management fee for year 2009/10 is reduced to £4,000 the Applicants share being £241.20.
3. The total service charge for the year 2009/10 is adjusted to £15,067.79 the Applicant's share being 6.03% £908.59 resulting in the single "on account" charge in the claim of £408.65 being payable but the balancing charge is reduced to £91.29.
4. In addition the two "on account" charges for 2010/11 each of £459.00 are reasonable and payable.
5. In summary the claim determined by this Tribunal as reasonable and payable is £1,417.94. The matter is now returned to Brighton County Court.

REASONS

BACKGROUND

6. This case was transferred to the Tribunal by order of District Judge Pollard sitting at Brighton County dated 18 January 2012 in accordance with S.174 and paragraph 3 Schedule 12 Commonhold and Leasehold Reform Act 2002 (The 2002 Act). It is an application to be considered under S.27A of the 1985 Act for a Determination of service charges payable. The claim amounts to £2,516.26. At the Tribunal Hearing the Applicant also made an application under S.20C of the 1985 Act.

LAW

7. Section 27A of the Act provides that:
 - (1) An application may be made to a Leasehold Valuation Tribunal [or a transfer to it by the court] for a determination whether a service charge is payable and, if it is, as to –
 - a. the person to whom it is payable
 - b. the person by 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.

In order to interpret payability the Tribunal has also had regard to Sections.18 & 19 of the Act.

8. Section 18 provides that the expression “service charge” for these purposes 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 or insurance or the landlord’s costs of management, and*
- b. the whole or part of which varies or may vary according to relevant costs.”*

9. “Relevant costs” are the costs or estimated costs incurred or to be incurred by the landlord in connection with the matters for which the service charge is payable and the expression “costs” includes overheads.

10. Section 19 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.”*

11. Section 20C provides for a limitation of service charges relating to the costs of Tribunal proceedings. A tenant may make an application for the tribunal to order that any costs in connection with the Tribunal proceedings are not

to be regarded as relevant costs to be taken into account in determining the amount of any service charge.

LEASE

12. The Tribunal was provided with a copy of a lease dated 1 March 2004 between Bankway Properties Ltd (Lessor) and Hannah Bagley (Lessee). The lease relates to the property known as Flat 2 41 & 42 Brunswick Terrace HOVE and is for a term of 99 years from 25 December 2000, subject to the payment of fixed rising ground rents.
13. In addition to the ground rent, the tenant is required to pay a proportionate part, for this flat 6.03%, of the Maintenance Expenses, set out in the Fifth Schedule, in the manner set out in the Sixth Schedule.
14. The method for dealing with the service charge is that the amount is to be certified by the lessor's auditors, accountants or managing agent, as soon as possible after the end of the financial year. The certificates are to contain a summary of the expenses and outgoings.
15. The annual amount of service charge payable is calculated by reference to rateable value of the flat and, with every half yearly payment of ground rent, the lessee pays a sum in advance and on account of the service charge which the lessor or its agents shall specify.
16. The Maintenance Expenses can include not only those expenses and outgoings which have been actually disbursed but also such reasonable sum to provide a reserve fund to allow for reasonable anticipated future expenditure.
17. At the end of the financial year an account is produced and a certificate issued with a credit is given for the amounts paid and then an adjustment is made either to the lessor or to the lessee for any difference.
18. The Fifth Schedule Maintenance Expenses include the cost of insurance and the usual outgoings of maintaining and repairing, redecorating and

renewing the building, the cost of cleaning common areas, the fees of managing agent and other usual outgoings.

19. The Tribunal has had regard to the full lease document but has set out above the general principles that are relevant to the current application.

INSPECTION

20. Members of the Tribunal with the Applicant and representatives of the Respondent generally inspected the exterior of the building and the interior of Flat 2 prior to the hearing.
21. The Building comprises a corner Regency property converted into self contained flats. Most flats are approached from a common way and staircases at the side of the building. The subject flat is approached from an external area and steps leading directly from the street. Mr Zahra pointed out areas within his flat where damp-proofing had been undertaken at his own cost and leaks had occurred from flats above. Externally downpipes were identified that had overflowed.

THE HEARING

22. The Tribunal had regard to the written statements presented to it and the oral evidence of the parties presented at the Hearing.

The Applicant's Introduction

23. Mr Butler referred to the amount claimed in the Court proceedings of £2,516.26 and calculated this amount by reference to a summary of arrears at page 63 of his bundle at a total of £2,366.26 plus an additional £150 being a further administration charge for the collection of arrears.
24. The arrears summary items were addressed in turn.
25. The first entry of £187.28 was a balancing charge for the year ending September 2009. After some discussion Mr Butler offered no evidence in support of this charge.

26. The next item is £408.65 identified as a half year “on account” payment for the year ended September 2010 based on the budget at page 84 of his bundle. A further item of £178.12 is the balancing charge for that year based on the income and expenditure account at page 81 of the bundle. It is this year that forms the majority of the items for discussion in this case.
27. Two further “on account” payments each of £459.00 were listed in respect of the year to September 2011. This is based on a budget of £15,217 for the year, also shown at page 84 of the bundle.
28. The Remaining items listed as administration charges at £29.38, £146.88, £110.45, £120.00 and £150.00; and professional fees at £150.00 were discussed generally. Mr Butler offered no evidence to show where in the lease the landlord was able to recover charges of this type by way of the service charge. Mr Butler could not explain the final item of recharged expenditure at £117.50. Not any of these administration or professional charges were defended by Mr Butler as being payable.
29. The Tribunal then turned to the actual expenditure for the year ended 30 September 2010 in the total sum of £16,507.86 the Respondent’s share being £995.42 represented by two half yearly charges of £408.65 and a balancing charge of £178.12. Only one half year charge and the balancing charge fell within the claim under consideration.

Year ending 30 September 2010

30. Each item in the account was discussed in detail with Mr Butler producing copy invoices in his bundle in support of the figures. There were a few small unexplained discrepancies in the figures but these were not seriously pursued by the Respondent.
31. Mr Zahra considered that the accountant’s charge of £312.00 was unreasonably high. He is an accountant by profession and suggested £75 - £100 as a reasonable figure. Mr Butler relied on the invoices and didn’t consider the figure unreasonable.

32. The total cleaning cost is at £2,632.50 supported by invoices. Mr Butler thought that £40 per week, with other ad hoc charges, was not unreasonable. Mr Zahra's concern was that the outside areas leading to his flat had not been cleaned during the year in question. Mr Butler believed that this area should have been included but did not produce a specification for the cleaner. A new cleaner had been employed by the RTM company at £26.00 per week.
33. Some time was then spent discussing the lift insurance, door entry system, electricity charges, fire alarm maintenance and health and safety costs. Some of the differences in the figures could be explained by accruals and the Respondent was satisfied with the explanations given in respect of other issues.
34. The two remaining items were the main issues addressed by the Respondent.
35. Firstly the management fees. Much of Mr Zahra's comments in respect of the other items in the accounts criticised the Applicants failure to manage the property properly. Issues relating to cleaning, repairs and other matters would not have been a problem if there had been proper management. The RTM company is being charged £150.00 per unit. There have been a large number of complaints. Mr Butler believes that the charge at £175 - £190 per unit is a reasonable charge for a block of this type. He outlined the work carried out.
36. The Repairs and maintenance amount to £6,392.23 supported by invoices in the bundle. Mr Butler conceded that a particular item that had been included of £998.75 for repairs and decorations to Flat 4 would be reimbursed and not charged to the service charge. This amount should be removed from the claim. Other complaints by Mr Zahra related to delays in carrying out work, general management failings and other similar issues already addressed when considering management fees.

Year ending 30 September 2011

37. The charges for this year are two “on account” demands each for £459.00 based on a budget of £15,217 at page 84 of the bundle. The budget reflected the actual expenditure in the preceding year having made a downward adjustment in the likely cost of repairs and management fee. Mr Zahra expected to be able to challenge the actual costs as the end of year accounts and balancing charge had been issued. The Tribunal explained that it could not address anything other than the budgeted figures as the final balancing charge was not before the Tribunal. Mr Zahra could challenge the figures if he wished but not as part of the case under consideration.

Section 20C

38. Mr Butler indicated that he would not be making any charge to the service charge in respect of his costs for the proceedings before the Tribunal.

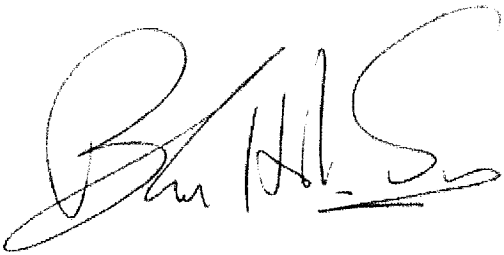
CONSIDERATION

39. Much of this case in respect of the total claim was agreed or no evidence was offered by the Applicant.
40. Dealing with the year ended September 2010 we considered the charge made for accountancy reasonable. There may be an opportunity to obtain a more competitive fee but the difference is likely to be minimal.
41. Turning now to the cost of cleaning we had evidence that it could now be undertaken for a lower amount but there were invoices to support the charges actually made during the year. The Tribunal makes no adjustment in respect of cleaning.
42. The Tribunal carefully considered the amount charged in respect of management fees. Countrywide’s charges did not fall outside the range of charges made by managing agents in this area. However the Tribunal was satisfied that the Respondent had not received a service that reflected a full

charge. The total management fee for the year to 30 September 2010 is limited to £4,000.

43. The Respondent had conceded a charge of £998.75 for repairs and once this deduction is made no further adjustment is required
44. The budget for year ending September 2011 is considered reasonable.

Dated 10 July 2012

A handwritten signature in black ink, appearing to read 'Brandon H R Simms', written in a cursive style.

Brandon H R Simms FRICS MCI Arb
Chairman