

5077

File ref no; BIR/OOFY/LIS/2008/0017

Residential Property Tribunal Service

Midland Rent Assessment Panel

Leasehold Valuation Tribunal

Decision of the Leasehold Valuation Tribunal on an application for the Determination of Liability to Pay and Reasonableness of Service Charges under Section 27a of the Landlord and Tenant Act 1985 for the years 2007 and 2008 and an application under section 20C for an order preventing the Respondent from recovering costs incurred in connection with the proceedings before the Tribunal

Applicants: Mr S Atkar, Mrs J Aspden & Mr P Duncombe

Respondent: Kewmoor Limited

Properties: Flats 39, 40 & 42 Regents Court Derby Street
Nottingham NG1 5FF

Tribunal: D. B. Power (Chairman)
Mr N G M Elliott
Mrs K Bentley

Appearances: For the Applicants: Mr S Atkar

For the Respondents: Mr R Kellaway of Kewmoor Ltd
Ms K Levine of Highstar Limited

Date of Hearing : 11th June 2010

Decision

Background

1. These are the reasons for the decision on an application made to the Leasehold Valuation Tribunal ("the Tribunal") on an application made by Mr S Atkar and others ("the Applicants"), leaseholders of 3 flats in Regent Court Derby Street Nottingham ("the Property"), under the provisions of the Landlord and Tenant Act 1985 ("the Act") for a determination of liability to pay and reasonableness of service charges demanded by Kewmoor Limited ("the Respondent") who is the head leaseholder of Regent Court. The Application also seeks an order preventing the Respondent from recovering costs incurred in connection with the proceedings before the Tribunal
2. The original application in this matter was dated 24th December 2008 but could not be dealt with as it was incomplete, with information required from both parties. Directions were issued in May 2009 which neither party complied with in full, so, in order to achieve progress, a pre-trial review was convened on 18th November 2009 following which Directions were issued setting out details of what documents were to be provided, by whom and when. The parties had agreed that no oral hearing was necessary and the Tribunal was to make a determination based upon the written submissions of the parties. Again there was no compliance with the further directions as a result of which the Tribunal called for an oral hearing with yet further directions to bring the matter to a conclusion.
3. It had been established at the pre-trial review that, although the original application named Kudos Homes Limited as the landlord, the head leasehold interest had been transferred to Kewmoor Limited in November 2007 and that Highstar Limited were now responsible for undertaking the management of the Property on behalf of Kewmoor Limited
4. In correspondence following the pre-trial review, the Respondent had conceded the following;
 - a. As they were unable to produce any accounts or invoices for the year ended 31st December 2007, no service charges were payable by the Applicants for that year.
 - b. Refurbishment of the common areas had been carried out during the year ended 31st December 2008 at a cost of £16479 but it was accepted that this work had been done without the consultation required under the provisions of Section 20 of the Act and were therefore irrecoverable from the Applicants.
5. The Tribunal did not inspect the Property

The Hearing

1. An oral hearing was held 11th June 2010 at the offices of the Tribunal at which Mr Atkar, one of the Applicants, attended only on his own behalf, Mr R Kellaway of Kewmoor Limited, the Respondent and Ms Karole Levine from Highstar Ltd. The other Applicants did not attend and were not represented.
2. Although late, by a statement dated 8th June 2010, Mr Atkar had eventually set out details of the aspects of the service charge for the year ended 31st December 2008 which he disputed and this formed the basis of his representations at the hearing. The Respondent replied either through Ms

Levine or Mr Kellaway. The submissions and replies under each heading are detailed in the following paragraphs

- a. Electricity. Mr Atkar claimed the documents provided lacked clarity, there may be some replication and it is not evident that they refer to the common parts of the subject property. The Respondent pointed out the documents all identified the supply was in respect of the landlord's supply and the dates covered by each statement from Eon were clearly shown. Mr Atkar said he did not fully understand the information and asked the Tribunal to decide if the claim was properly made.
- b. Under maintenance, a charge of £423 for flats 19, 21 and 23. The Respondent confirmed this charge had been reversed and this was evident from the Nominal Departmental analysis provided.
- c. Cost of removing abandoned furniture at £65 should not be charged to the service charge account. The Respondent stated that the source of the abandoned furniture could not be identified and the cost was properly incurred.
- d. £258.50 charged for exchanging sealed units was, in the opinion of the Applicant, referring to glass which is the responsibility of the leaseholder not therefore part of the service charge. After consideration, the Respondent agreed this item should not have been included.
- e. Maintenance charges – lighting, CCTV and access control. Periods charged are outside the service charge year and the invoices are non specific, vague and excessive. The Respondent pointed out that only the proportion of cost incurred for the service charge year had been included as there was a credit for any amount falling outside this period. All the maintenance charges were on an annual basis and were the result of 3 estimates, the lowest cost having been accepted.
- f. Keyholder service. Mr Atkar had taken these costs to be in respect of Flat 8 but it was pointed out by the Respondent that this was in respect of the whole block. Mr Atkar agreed and withdrew his challenge for this item.
- g. Maintenance charges generally. The Applicant considered that the invoices were non specific, lacking in detail and excessive. Particularly, the invoice for £908 was challenged. The Respondent confirmed that each invoice showed the relevant details. The invoice for £908 was a summary of several invoices which followed in the bundle and these were individually reviewed. The Respondent confirmed that several invoices for leaks in water pipes were in respect of communal facilities and were correctly charged as was a charge for easing a window in Flat 13 as this related to the frame, not the glazing. However, changing a water feed in Flat 9 at £52.88, the changing of a shower in Flat 23, at £196.23, a fridge socket in the same flat at £111.63, 'washer holes' £105.75, installing a washer driers in Flat 28 £41.13, sale boards, £88.13 were all withdrawn as not chargeable to the service charge. The new lock related to the communal bin store.
- h. Cleaning. Mr Atkar stated that the invoices gave insufficient detail, did not confirm they referred to the common parts and in his opinion were excessive. The Respondent confirmed the invoices stated they referred to the communal areas of the subject property and, like the other maintenance contracts, were let annually after obtaining 3 tenders. There had been no complaints regarding the standard of cleaning and Mr Atkar, who had not visited the Property for some time, had heard from others confirming this.
- i. Management Fees. The Applicant rejected the charge completely on the grounds that there was no breakdown of the service provided and the cost incurred. The method of calculation at a fixed amount per flat

was unacceptable and excessive. The Respondent made representation that in his experience, most agents made a charge for management based on a rate per unit and it was not unusual for this to be at a level of £200 per unit or more. Highstar Limited provided a high level of service at what was considered to be a competitive rate. In response to questions from the Tribunal, the Respondent agreed that the items included in the service charge for company secretary fees at £450, telephone, £65.80 and postage and stationery at £28 should form part of the management charge calculated on a cost per unit basis.

- j. Electronic access system. There was discussion regarding this item whereby Mr Atkar claimed that there had been no electronic access system when he purchased his unit but the Respondent confirmed it had been in place for a considerable time and he had not installed it.
3. In relation to the application to the Tribunal for an order under Section 20C, the Applicant requested the Tribunal make the order as the Respondent had conceded a number of items and there was full justification for his having made the Section 27A application. It had not been brought improperly and there was substance to his arguments. In reply, the Respondent represented that there had been considerable work involved in responding to the Application, it had been necessary to employ accountants to provide copies of documents and it was intended to make a charge to the service charge to cover the costs incurred in connection with the proceedings before the Tribunal.

The Law

4. Section 27A of the Landlord and Tenant Act 1985 lays down the jurisdiction of the Tribunal and the relevant clause (1) is set out as follows:

S27A 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.

Section 19 of the same Act limits the amount of service charge payable to that which is reasonable in the following clause:

S19 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 provisions 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.

Section 20C provides:

S20C Limitation of service charge: costs of proceedings.

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before... a leasehold valuation tribunal, ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2)

(3) The...tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

The lease

5. The Tribunal has been provided with a copy of the lease dated 6th November 2003 between Kudos Homes Limited (the Lessor) and Stephen Anthony Isaacs (the Lessee) in respect of Flat 39 and it has been assumed that this is a typical lease which applies to all the subject flats which are the subject of this Application. Paragraph 5 of the lease sets out the responsibility of the lessor for the maintenance of the Block and the provision of services thereto. Schedule 4 provides for the means by which the service charge is to be calculated and recovery of the relevant proportion from the lessees.
6. There was no plan attached to the copy lease but evidence was given by the Respondent, to which the Applicant did not disagree, that 'the Block' as referred to comprises the whole of the refurbished property lying between Derby Road, Derby Street, Wollaton Road and the western side of the Strathdon Hotel. The service charge relates to all the residential units within that area.
7. The Applicant has not challenged the right of the Respondent to levy a service charge under the provisions of the lease. The Tribunal has ensured the service charge certificate has been properly signed off in accordance with the lease terms.

Determination

8. The Tribunal has carefully considered the representations of both parties, both written and verbal and has reached a decision on all the matters unresolved at the hearing.
9. The Tribunal accepts that the invoices for the electricity charges are in order, although missing details of the consumption in respect of three of the quarters, each showing they are in respect of the landlord's supply and show no overlap between the dates given.
10. The cost of removing abandoned furniture has been properly included as an expenditure under paragraph 5.7 of the lease as being necessary for the proper maintenance of the Block.
11. The contracts for maintenance charges have been properly incurred as being in respect of facilities serving the common parts and have been the subject of competitive tendering and have been reasonably incurred.
12. The dispute relating to various invoices under the heading of 'repairs' had been resolved during the hearing and the Tribunal accepts the explanations for the items which the Respondent has not withdrawn.
13. The cleaning contract was clear and relevant to the common parts of the subject property and has been the subject of competitive tendering. The Tribunal finds this cost has been properly incurred and is reasonable.
14. Whilst Mr Atkar did not accept the method of calculating the management charge not the amount thereof, charging a rate per unit of accommodation is an established approach within the property management industry and the

Tribunal finds this is acceptable. As to the quantum, there was no evidence to the contrary provided by the Applicant but, in the experience of the Tribunal, the cost applied is at the upper end of what might be considered normal for a property of this size and complexity in this locality.

15. The Tribunal has no reason to believe that the electronic access system was not installed prior to the service charge year in question.
16. One of the complaints made by the Applicant was that some of the invoices for the costs incurred appeared incomplete in the information provided relating to location and nature of the work undertaken. The Tribunal agrees there could be better clarity for the benefit of all parties.
17. As to the Application under Section 20C of the Act, the Tribunal finds that there has been considerable merit in the case put forward by the Respondent as a result of which there have been material amendments to the service charges for the years in question. Whilst this may have resulted in considerable work for the Respondent, this would not have happened if the service charge had been reasonably calculated in the first place. Accordingly, the Tribunal orders that, even if the lease provides for the recovery of such charges, no landlord's costs incurred in connection with the proceedings before the Tribunal shall be recovered from the Applicants by way of the service charge

Decision

18. The Tribunal finds that no service charge for the year ended 31st December 2007 is recoverable from the Applicants as the Respondent has conceded that it has been unable to comply with the requirements of the lease and the statutory obligations for the provision of accounts.
19. With regard to the service charge for the year ended 31st December 2008, The following items shall not be recoverable either by virtue of concession by the Respondent or the decision of the Tribunal:

a	Repairs and maintenance	
	Replacement of sealed units	£258.50
	Changing shower unit Flat 23	£196.23
	Fridge socket	£111.63
	Washer holes	£105.75
	Installation of washer/dryer	£41.13
	Sale board	£88.13
	Total	£801.37
b	Refurbishment of common areas	£16479
c	Printing, post and stationery	£28
d	Telephone	£66
e	Accountants remuneration	£450

20. The revised expenditure for that year shall therefore be as follows:

Establishment Costs		
Insurance	6995	
Electricity	4497	
Repairs and Maintenance	4742	
Cleaning	3908	
		20142
Administration Expenses		
Management Fees	8390	
Accountants Remuneration	650	
Bank Charges	15	
		9055
Total Expenses		29197

21. The Applicants shall pay their appropriate proportion of the total expenses to the Respondent in accordance with the terms of their leases.

22. An order is made under section 20C of the Act that no landlord's costs in connection with the proceedings before the Tribunal shall be recovered from the Applicants through the service charge.

Signed 
.....
(Chairman)
Dated **21 JUN 2010**
.....