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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HH/LIS/2013/0040
Property	:	4 Dunmar House, Lower Woodfield Road, Torquay, Devon TQ1 2JY
Applicant	:	Mrs E Rivett
Representative	:	In Person
Respondent	:	Dunmar House Management Company Limited
Representative	:	Ms L Vango, Mr D and Mrs Pebworth and Mr D Stocks
Type of Application	:	Section 27A and 20C of the Landlord and Tenant Act 1985 (Liability to pay service charges) Tenants application for the determination of reasonableness of service charges for the year 2012/2013.
Tribunal Members	:	Judge A Cresswell (Chairman) Mr T Dickinson BSc FRICS
Date and venue of Hearing	:	28 August 2013 at Torquay
Date of Decision	:	3 September 2013

DECISION

The Application

1. On 20 March 2013, Mrs E Rivett, the owner of the leasehold interest in Flat 4, made an application to the Leasehold Valuation Tribunal for the determination of the reasonableness of the service charge costs claimed by the landlord, the Respondent, for the year ended 31 November 2012 (as subsequently clarified by her Statement of Case). During the course of the hearing, the Applicant withdrew a number of her complaints and this Decision deals only with those issues which remained outstanding at the conclusion of the hearing.

Inspection and Description of Property

2. The Tribunal inspected the property on 28 August 2013 at 1000. Present at that time were Mrs Rivett, Mr J Crisp (a family friend) and Mr D Stocks of Crown Property Management. The property in question consists of a Victorian villa converted into 6 flats with small grounds and a car park. In Flat 4, there was evidence of on-going penetrating dampness to the chimney breast on the northern side of the living room and kitchen and minor areas of damp were noted in patches to parts of the northern walls of the bedroom and en-suite bathroom. The Tribunal members also noted dampness and perished/off-key plaster to the ceiling and wall above steps in the entrance hall. There was evidence of drying out, with one small area of residual damp, in the hall.

Summary Decision

3. This case arises out of the tenant's application, made on 20 March 2013, for the determination of liability to pay service charges for the year to 31 November 2012. Under Sections 19 and 27A of the Landlord and Tenant Act 1985 (as amended) service charges are payable only if they are reasonably incurred. The Tribunal has determined that, subject only to limited exceptions, the landlord has demonstrated that the charges in question were reasonably incurred, and so for the most part those charges are payable by the applicant, as is more fully detailed below.

4. The Tribunal allows the tenant's application under Section 20c of the Landlord and Tenant Act 1985, thus precluding the landlord from recovering its costs in relation to the application by way of service charge.

Directions

5. Directions were issued on 19 June 2013. These directions provided for the matter to be heard at an oral hearing.

6. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. It was, in particular, provided that the applicant should detail **all elements of Service Charge demands upon which she seeks a determination, failing which the Respondent is entitled to conclude that there is no issue in respect of any items not identified as requiring a determination by the Tribunal.**

7. This determination is made in the light of the documentation submitted in response to those directions and the evidence and oral submissions given at the hearing.

The Law

8. The relevant law is set out in sections 18, 19 and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.

9. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

10. The relevant law is set out below:

Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

18 Meaning of "service charge" and "relevant costs"

(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 or 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.

(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.

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.

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 postdispute 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.

Ownership and Management

11. The Respondent is the freeholder. All 6 tenants are shareholders in the respondent company. The property is managed for the Respondent by Crown Property Management.

The Lease

12. Mrs Rivett holds Flat 4 under the terms of a lease dated 4 August 2000, which was made between D A Jones and A B A Jones as lessor and J I Lynch and V Lynch as lessee.

13. **Buildings Insurance**

The Applicant was primarily concerned that over a period of 7 years some £8,000 had been paid out in insurance claims and yet on Christmas Eve 2012, when she had concerns about electrical short-circuiting arising from the damp in her hallway, she had had herself to pay £50 for remedial work to be completed.

The Respondent argued that the insurance premium itself was a reasonable figure, particularly in light of a claim having been made in 2009 following a water leak. The Respondent told the Tribunal that the insurance premium arose from a

competitive exercise via Residentsline which had involved a valuation of the building in the sum of £679,344 using the Buildings Cost Information Service.

The Tribunal noted that the lease required comprehensive insurance for the building. The valuation of the building appeared to be a reasonable valuation. The premium payable of £1452.32 appeared to be a reasonable premium having regard to the valuation of the building and the recourse by the Respondent to competitive quotation and the Respondent had correctly calculated the Applicant's share of the premium at £188.22, i.e. a share of 12.96% in accordance with her lease. The Tribunal finds that the Applicant's share of the insurance premium is reasonable and payable by her.

The Applicant was concerned about delays in making watertight the building and the consequent continued state of dampness within her flat. She told the Tribunal that this had resulted in her being unable to live in her flat for a period of a year. The history of this issue appeared to be that water ingress had first been established in June 2011, following which remedial works had been attempted. By early 2012 it was apparent that those remedial works had not been successful, and the Respondent had embarked upon further investigation and further works which were completed by the end of 2012/beginning of 2013. The Applicant believed that the issue was still not remedied and further investigations have been conducted very recently with a view to establishing whether yet further works are required. The Tribunal can well understand the Applicant's frustration, but also accepted that the Respondent is more than willing to undertake further works, should they be required, following the recent investigations. There is, however, a tension here and a "Catch 22" situation; the Applicant has become so frustrated that she has not paid outstanding service charge demands which, in turn, reduces the ability of the Respondent to address the issue of water ingress and the management of the building more generally.

The Applicant has challenged a discrete number of service charge elements, which this Decision seeks to resolve, with the corollary that all other elements of service charge demands to date are accepted by her and which the Tribunal, accordingly, finds are payable by her.

The issue of water ingress and the ability of the Applicant to enjoy her flat were themes common to a number of the items of service charge disputed at this hearing. The Tribunal has given detail of that issue under the heading of Building Insurance

so as to make a proper record and will not, for the sake of succinctness, repeat the detail further in this Decision.

14. **Management Fee**

The Applicant did not believe that the building was being managed properly by Crown Property Management, such that her £93.31 share of the cost was excessive. The Applicant's view was driven by her concern about the continued issue of dampness within her flat. She conceded that the cost was reasonable if the building was better managed.

The Respondent argued that a figure of £1.79 per week per flat is a very reasonable figure, when compared with many agents within ARMA claiming a minimum of £1000 per annum per building. Crown Property Management fees have not increased since 2005 and the fee covered service charge budgeting and demands, managing monies in and out, banking and accountancy services, chasing arrears, arrangement of insurance, utilities, gardening etc and response to ad hoc maintenance issues and problems, site inspections, health and safety requirement and facilitating the annual AGM.

The Tribunal finds that the management fee is a reasonable fee for the services provided, particularly when compared with fees charged by other agents within the town for similar properties, and accordingly is payable by the Applicant. However, the Tribunal noted that there is no proper formalised management agreement between the Respondent and Crown Property Management and would suggest that one should be agreed so that all paying parties can see what is to be delivered and can measure the costs involved against actual delivery.

15. **Accountancy Charge**

The Applicant was concerned that there did not appear to have been an audit and that she had not seen the receipt for the sum charged for accountancy.

The Respondent explained that by reason of bulk purchasing power, Crown Property Management had secured a very reasonable deal from an accountancy firm, such that the production of company accounts and the service charge statement cost £306.25 including VAT.

The Tribunal noted that the lease did not require a formal audit and that there was authority for recovery of accountancy charges. The Tribunal also was able to examine the accounts produced by the accountancy firm and concluded that the

sums charged were not unreasonable given the nature of the work involved and were payable by the Applicant.

16. **Gardening**

The Applicant believed that the cost to her of £115.60 was excessive given the size of the gardens at the property.

The Respondent argued that maintenance was required under the lease and that the gardener in question visited each month and weeded, cut back trees, removed larger bushes and removed rubble. The sum charged was not subject to VAT.

The Tribunal noted actual expenditure of £562 which meant that the Applicant's 12.96% share equated to £72.84 and found that this was a reasonable sum and payable by her having regard to the size of the garden and the nature of the work involved.

17. **Communal Cleaning**

The Applicant believed that the cost to her of £46.66 was excessive given the size of the communal area at the property.

The Respondent explained that the work related to hoovering and dusting and cleaning of skirting boards and communal ledges and surfaces and amounted to £30 per month.

The Tribunal noted actual expenditure of £270 over a 9-month period (there being a 3-month hiatus caused by a flood in Flat 5) which meant that the Applicant's 12.96% share equated to £34.99 and found that this was a reasonable sum and payable by her having regard to the size of the communal area and the nature of the work involved.

18. **Bulk Bins**

The Applicant believed that she should not have to bear the cost of £12.44 as she already paid Council Tax and could expect her bins to be emptied by the Council for no further charge.

The Respondent explained that, about 10 years ago, the tenants of the property had sought to address with the neighbouring property the proliferation of bins at the properties. The solution was an agreement with the Council to hire a large bin for general waste. The cost of £96 per annum for the hire of the bin from the Council was some 30% lower than charges made by private contractors. It was

explained that without the bulk bin, there would be a requirement for space for 12 wheelie bins at the property.

The Tribunal accepted that the arrangement reached was one which was covered by the provisions of the lease and was a sensible solution to a symptom of the division of a large house into a premises of multiple occupation. The Tribunal finds that it was reasonable to act in the way described and that the charge, being below commercial rates, is reasonable and payable by the Applicant.

General

19. The Tribunal can only deal with the issues before it and recognises that the Applicant will remain properly concerned about her inability to use her flat as a home until the issue of water ingress is finally resolved. It also recognises that the Respondent requires funds properly payable to it so as to be able to manage the building.

20. There are facilities in this property for issues to be discussed at meetings of the respondent company, of which all tenants are shareholders, and AGM, when goodwill should lead to a resolution of outstanding issues. The Tribunal recognises that the Applicant has been immobilised until recently with a particularly nasty injury and that she may have more time now to immerse herself in the joint management of the property, which may remove some of her natural concerns.

21. The Tribunal wishes to clarify two further issues. All items of Service Charge not challenged in these proceedings by the Applicant are payable by her, having regard to the directions made at the Pre Trial Review. The sums considered by the Tribunal led it to reassess two items of expenditure, the gardening and cleaning, but this was without prejudice, as the Tribunal made clear at the hearing, to the necessary reconciliation at year end in respect of other items where the actual expenditure had been above the estimates already included in the Service Charge statement for the year in question.

Section 20c Application

22. The Applicant has made an application under Section 20C Landlord and Tenant Act 1985 in respect of the Respondent's costs incurred in these proceedings. The relevant law is detailed below:

Section 20C Landlord and Tenant Act 1985: Limitation of service charges: 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.

(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.

23. The Respondent indicated that there was no intention to seek to charge its costs through the service charge and on that basis was content for the Tribunal to make an order allowing the application under Section 20c of the Landlord and Tenant Act 1985. The Tribunal makes the order on that basis. It directs that the landlord's costs in relation to this application are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge for the current or any future year.

A Cresswell (Judge)

APPEAL

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.