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Residential Property TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 SECTION 27A

Flat 3, 3 Belsize Park, London NW3 4ET

Ref: LON/00AG/LSC/2010/0422

Mr Richard Carroll and Ms Catherine Rodgers — **Applicants**

No. 3 Belsize Park RTM Limited — **Respondent**

Date of hearing: 4 November 2010

Tribunal: Mr M Martynski (Solicitor)
Mr H Geddes JP RIBA MRTPI
Mrs L West JP MBA

Appearances: Mr L Golstein (Applicants' solicitor)
Ms C Rodgers (Applicant)
Mr G Reid (partner of Ms Longhurst)
Ms L Longhurst (Leaseholder of flat 2 and member of Respondent company)
Ms A Erlich (Leaseholder of flat 1 and member of Respondent company)

DECISION

Decision summary

1. The following service charges are not payable by the Applicants by virtue of section 20B Landlord and Tenant Act 1985:-

2007/8
Insurance premium £97.10
Accountancy fee £125.00

2008/9
Cleaning/gardening £285.00
Insurance premium £170.61
Emergency call out £244.25
Chestertons £470.00
Urang £609.55

2. The £15.00 annual return fee incurred in the 08/09 service charge year is not payable by the Applicants.

3. Management fees for the year 09/10 are payable by the Applicants (gross sum £1175.00 – Applicant's share £235).

4. A reserve fund of £1000.00 (gross per year) is reasonable and the appropriate share of that sum is payable by the Applicants.

5. The Tribunal makes an order under section 20C Landlord and Tenant Act 1985 that none of the costs incurred, or to be incurred, by the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

6. The Respondent must reimburse the Applicants in the sum of £350.00 being the fees paid to the Tribunal by them in pursuing their application.

Background

7. The building in question is a semi-detached Victorian villa with raised basement, raised ground floor, first and second floors. The building has been converted into three flats.

8. The Applicants are the leaseholders of flat 3 which is a maisonette on the two upper floors. They acquired their interest in September 1998.

9. The Respondent company (incorporated in January 2007) acquired the freehold of the building on 28 August 2007. The Respondent company's members and directors comprise the leaseholders of the other two flats in the building. Although the Respondent company has 'RTM' in its title, it has not obtained the statutory Right to Manage, it has no need to do so as it holds the freehold interest of the building.

10. The Applicants' lease does not provide for any set service charge year nor does it require accounts to be drawn up or reconciliations of leaseholders' service charge contributions. Under the terms of the lease the landlord may demand sums on account of expenditure and towards a reserve fund. The Applicants are liable to contribute twenty per cent towards service charge expenditure for the building.

11. The Applicants' application as set out in their statement of case can be put into three broad categories as follows:-

a. A challenge as to the reasonableness and/or payability of specific service charges
b. An application for a declaration as to the 'correct' period for the service charge year
c. An account of the monies expended by the Respondent and paid by the Applicants with an associated declaration as to that account.

The issues and the Tribunal's decisions - *The reasonableness and payability of specific service charges*

Section 20B Landlord and Tenant Act 1985

12. A number of specific charges were challenged by the Applicants on the technical ground that, within 18 months of them being incurred, the Applicants had not been informed - in writing that they had been incurred nor had any demand for those charges been made of them. Accordingly, the provisions of section 20B of the Landlord and Tenant Act[1] apply and these charges are not now payable by the Applicants. The charges in question are set out in the table below.

Service charge and amount	Date incurred	Date demanded
Additional insurance premium - £97.10	Earlier than April 2008	11 August 2010
Accountancy fee - £125 plus VAT	Earlier than April 2008	11 August 2010
Cleaning/Gardening - £285	Pre – 28 February 2009	11 August 2010
Insurance - £170.61	1st February 2009	11 August 2010
Emergency call out - £244.25	27 September 2008	11 August 2010
Agent's fee (Chestertons) - £470.00	September 2008	11 August 2010
Agent's fee (Urang) - £609.55	Before 28 February 2009	11 August 2010

13. It was agreed by the Respondent that in the 18 months prior to 11 August 2010 there had been no written notification (whether by way of demand or otherwise) to the Applicants regarding the incurring of these particular charges in compliance with section 20B. The Respondent relied on the fact that there had been at least one demand for payment on account of (unspecified) service charges within the relevant time and argued that this demand satisfied the requirements of the section.

14. The Tribunal finds that none of the above charges are payable by the Applicants pursuant to section 20B. As to the Respondent's argument regarding the demands for payments on account, these have been simply general demands for unspecified expenditure; such demands do not comply with section 20B.

Additional insurance premium - £170.61

15. Further comment needs to be made concerning the insurance premium of £170.61 charged directly to the Applicant for the year 08/09. The Respondent worked out the proportion of increased building's insurance premium that was due as a result of the Applicants' extension of their property. That proportion, amounting to £170.61 was charged directly to the Applicants.

[1] See the wording of the section set out immediately following this decision

there is something of a historical tangle to be dealt with. The Tribunal is aware from its own experience of these matters that in fact, although larger blocks are more complicated to manage, there are economies of scale so far as management fees are concerned. The fact that there are many more flats means that with each flat paying a relatively modest fee, the actual gross fee received by the agent is commensurate with the complexity of the job. Managing a small house can take up a lot of time in relation to the fee obtained. Many agents will be reluctant to take on small houses like this for a fee of less than £1,000 per year.

23. Overall, it could not be said that the management fee is so high as to be unreasonable. It may well be significantly higher than in recent years, but that does not make it unreasonable.

Reserve contribution – (09/10) - £1,000

24. The Applicant made the point that there appeared to be no medium or long term maintenance plan for the building and in the absence of that it was difficult to see where the figure of £1,000 had come from.

25. The Tribunal considers however that the demand is reasonable. There is a clear need to put money aside for future foreseeable maintenance and decoration (with or without a plan) in respect of any building. There is also a need to put money aside to cover the general vicissitudes of the life of a Victorian building that may not be foreseeable. Ideally there should be a plan and reasoning behind the amounts collected each year. In this case however, given what can be taken for granted in a building of this nature and age and given that there is no reserve fund of value at present, it would be impossible to say that the contribution demanded is unreasonable.

The service charge year

26. As the lease did not contain any provision as to a service charge year, the Tribunal was of the view that, in respect of the Applicants' application for a declaration as to the 'correct' year, it had no jurisdiction to declare the period of any such year. However, by the time of the final hearing the issue had become academic as accounts were being prepared on the basis of a year running April to April and all parties were content with that period.

An account of monies paid and expended

27. It was the Applicants' case that they had paid monies to the Respondent that had not been properly accounted for and that there was no proper and full account of the expenditure made by the Respondent (although the only real example of such expenditure that the Applicants were able to give was the expenditure in relation to recent major works that had not been included in the service charge accounts recently produced – they had not been included because the finances in respect of these major works had been agreed).

28. The Tribunal was of the view that, in respect of the Applicants' claim for an account and declaration of monies paid and received, it had no jurisdiction. That is a matter for litigation in the courts. The Tribunal could do no more than that which is set out in section 27A Landlord and Tenant Act 1985. However, by the time of the final hearing the Applicant did not wish to pursue the matter further so long as the Tribunal made clear, which it now does, that, in this decision, all

it has done is to rule on the reasonableness and payability of the specific service charges set out above.

Costs and fees

Costs incurred in the application by the Respondent

29. The Tribunal considers that the Applicants have been largely successful in their application and given the Tribunal's findings in this case, it is appropriate for the Tribunal to make an order under section 20C Landlord and Tenant Act that none of the costs incurred, or to be incurred, by the Respondent in connection with these proceedings before the Tribunal are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

Fees

30. For the reason given above, the Tribunal orders that the Respondent reimburse to the Applicants the fees of £350.00 that they have paid to the Tribunal in pursuing this application.

Mark Martynski

Mark Martynski
Tribunal Chairman
10 November 2010

Relevant law referred to in this decision

20B Limitation of service charges: time limit on making demands

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.