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Ref: MAN/00CG/LSC/2010/0024

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985, SECTION 27A

In the matter of

Flat 1, 33A Thornsett Road, Sheffield S7 1NB

Applicant: Mrs Kathryn Stone

Respondent: PAS Property Services Ltd.

Inspection and Hearing: July 5, 2010

Appearances:

Mrs Kathryn Stone

Mr Pennington for the respondent

Tribunal: Prof. Caroline Hunter

Mr Roy Wormald

Mrs Margaret Oates

Summary Decision

1. We reject Mr Pennington's contention for the respondent landlord that Mrs Stone cannot make an application in relation to the years 2006 and 2007 because she has already agreed or admitted the service charges. We conclude that the reasonable sums payable by Mrs Stone for each of the years in question is:

- 2006: £378.23
- 2007: £358.26
- 2008: £376.10
- 2009: £601.41

In addition we find that Mrs Stone owes £122.40 by way of interest on arrears from 2007. We conclude that in relation to the charges for 2008 and 2009 no sums are due and owing because of a failure to comply with the Landlord and Tenant Act 1985 by the respondent. Accordingly £471.88 is due and owing immediately and £977.51 will be due and owing once there has been compliance with s.21B.

Background

2. 33A Thornsett Road is a small block of four flats built in the mid 1980s over two floors. Each flat has its own entrance so that there are no internal common parts. There is a shared garden and parking area. The property is surrounded by mature trees, mostly within the plots of the adjoining properties. Each flat is let on a 200 year term from March 25, 1985.

3. Flat 1 is a ground floor flat, purchased by the applicant Mrs Stone in 2006. She currently sublets the flat. She has not paid any of the service charge demands levied on her since 2007. In March 2010 she applied for a determination under the Landlord and Tenant Act 1985 ("the 1985 Act"), s.27A as to whether the service charges she had paid or was to pay for the years 2006 – 2009 were payable and if so the amounts which were payable.

The lease

4. The lease provides for the lessee to pay appropriate fraction of the "service rent". The fraction is specified at one quarter. The service rent is the costs of providing the services set out in the Fourth Schedule to the lease. These comprise the usual matters one would expect to find. At paragraph 14 of the Schedule it is provided that: "So long as the Lessor does not employ managing agents he shall be entitled to add the sum of Fifteen per cent. to any of the above items for administration expenses."

5. An estimated payment for the year's service rent is to be made on March 25 and September 29 (clause 2(ii)). By clause 2(iii) the balancing between the estimated service charges and the actual expenditure is to be carried out every three years. In practice this occurs on an annual basis. Mrs Stone made no objection to this, and indeed it would be necessary to carry this out annually in order for the respondent to be able to recover the service charges within the 18 month period set out in s.20B of the 1985 Act.

The issues

6. Mrs Stone's complaints went to some of the charges e.g. as to the maintenance and gardening provided, as to the inability to contact the respondents and their general conduct which went to their management costs and in relation to other charges added to her bill. There was a particular issue as to the external painting which had been carried out during 2009

7. For the respondents Mr Pennington provided accounts and demands for payment for the relevant years. The Tribunal had great difficulty in reconciling the accounts which were provided with the sums demanded and at the hearing sought clarity as to every amount being charged. For each year there were entries under each of the following headings:

- Buildings Insurance
- Gardening services
- Gutter cleaning
- Managing agents charges and expenses, including postages, telephone and other expenses

In addition in 2006 there were charges for building repairs and maintenance and in 2009 for painting and decoration to the exterior. There was also an on-going charge of £120 which seemed to have been added to the bills in relation to notification of a change of owner and mortgage.

8. We shall consider each of these items in turn. One further issue was raised by the Tribunal during the hearing, which we must also consider, that is compliance with s.21B of the 1985 Act. Before we do so, we must address Mr Pennington's argument that Mrs Stone could not raise any arguments in relation to the service charges for 2006 and 2007 as she had, by a letter of 11 November 2008, agreed to the amounts. She would thus be precluded under s.27A(4) of the 1985 Act from "making an application in respect of a matter which (a) has been agreed or admitted by the tenant". The Tribunal considered Mrs Stone's letter. It raises a number of on-going concerns about the service charges and makes an offer of settlement (which is less than the demands being made). The offer is said to be open for seven days. The offer was not accepted. In our view this does not amount to the matters being "agreed or accepted by the tenant." Accordingly we conclude that it is open to the Tribunal to consider the service charges for 2006 and 2007.

Buildings insurance

9. In none of the years in question did the amount charged to Mrs Stone amount to one quarter of the annual charge for insurance shown in the invoices from the insurance company. Mr Pennington for the respondent explained that the insurance was paid monthly and that this increased the charge. (The monthly instalments were shown on the invoices). However, this sum still did not equate to that charged. Mr Pennington explained that he also added to the insurance sums the costs of being registered for regulation by the Financial Services Authority. This sum he said was in the region of £1500-£1800 per annum. He said that he apportioned it across all the properties he was providing insurance for. No evidence of this sum was produced, nor could Mr Pennington tell us how many properties he owned or managed. In the Tribunal's experience this is not a cost which they have ever encountered being separately charged to leaseholders. In our view it is not a reasonable

cost to be borne by the leaseholders, but is in fact a cost of management, which should be included in the 15% which Mr Pennington is entitled to charge. We have accordingly deducted the sum from each of the years in question.

Gardening services

10. Gardening services are contracted to JA Bird, a reputable Sheffield gardening firm. Again the paper work provided by Mr Pennington made it very difficult to ascertain the exact charges and how these married to the invoices from JA Bird. Mr Pennington in his written evidence had provided one of the monthly invoices for each year stating that those for other months were all identical. At the hearing it transpired that in fact the monthly invoices varied. Mr Pennington was able to provide the amounts for each month, which then tallied with amounts being charged. Mr Pennington also supplied a specification of the services provided.

11. In 2006 the quarter share for flat 1 for the gardening services was £179.53. This sum has varied slightly over the following years, both upwards and downwards, but remains very similar. Mrs Stone complained about the regularity of the gardening services provided. Our inspection of the premises revealed the garden to be tidily maintained, although the evidence from Mrs Stone and her tenant who attended the inspection and the hearing, was that the tenant was responsible for much of the planting in the garden. It was accordingly difficult for the Tribunal to be clear how much of the state of the garden was attributable to the services provided and how much to the work of the tenant.

12. Having considered the specification and the amounts charged, the Tribunal considered that although on the high side, the charges for the garden maintenance were not unreasonable. We would suggest that in order to ensure that they remain reasonable that it would be advisable for Mr Pennington to test the market from time to time.

Gutter cleaning

13. Regular invoices for gutter cleaning were included in the evidence supplied by Mr Pennington. Given the mature trees around the property it is clearly advisable to have at least an annual clean of the gutters after the major leaf fall. Again, however, the invoices did not correspond with the amounts being charged. Mr Pennington explained that this was because in addition there was a charge for his own "odd-job man" to go and clear the gullies at the bottom of the drain pipes. This he said was charged at a "notional cost" of £20. This was added to the bills in each year.

14. We find that the sums for gutter clearing are reasonable. Further although there was little evidence before us as to the costs incurred in relation to the gully clearance, we are prepared to allow this sum as we have no basis for concluding that the cost was not incurred.

Management charges

15. We have set out above the provision in the lease for management charges. The amounts charged in the years 2006-2008 are well in excess of 15%. For 2009, because of the additional painting costs, they are in fact less than 15%. It is difficult for us to establish how the sums were arrived at. In particular they seem to include the £50 plus VAT paid to the accountant each year to certify the accounts – which is clearly a separately chargeable sum and not part of the management costs. We will set out below the amounts that we conclude are due and owing. For the years 2006-2008 we have calculated the sums at 15%. For 2009 as Mr Pennington has chosen to charge a lesser sum, it is this sum that we have included.

Buildings maintenance in 2006

16. The quarter share for buildings maintenance in 2006 was £12.50. There were no receipts or explanation of the sum in the written documentation. Mr Pennington explained this again related to his “odd-job man” attending the property to check the guttering and lead flashing on the porch entrance at the front of the block. As with the gutter cleaning we would allow this sum.

17. We would suggest given the difficulties for the leaseholders in understanding the accounts and what these sums relate to, that in future any sums spent on such attendances (whether gutter cleaning or other small maintenance jobs) should be specifically set out in the accounts separately from any amounts for which contractors are used and itemised to some degree. This will help avoid any disputes as to whether they are reasonable.

Painting and decorating in 2009

18. The lease provides for the external fabric of the building to be painted by the freeholder every four years (clause 6(f)). There seems to have been some dispute as to whether Mrs Stone’s windows could be painted either because of their state of repair or because of her non-payment of service charges. In the event, however, they were painted along with the other external parts of the premises. The total cost of the painting job was £820. Mrs Stone did not object to this sum, but seemed concerned that there could be a further charge because of something said to her by another leaseholder. Mr Pennington confirmed that this was the full charge. In the view of the Tribunal it was reasonable.

Other charges added

19. In addition to the arrears of service charges Mr Pennington was also seeking to recover from Mrs Stone charges of £120 relating to her initial change of ownership and taking out of a mortgage in 2006. Under clause 4(f) of the lease a payment of £10 is due for every transfer of legal charge to be registered with the freeholder. Whether this initial registration and payment of fee took place and how the charge has subsequently risen to £120 were not matters over which the Tribunal considered they had jurisdiction. Nor indeed was there sufficient evidence before the Tribunal to resolve the matter should we have had jurisdiction. We suggest that the matter can only be resolved by Mrs Stone contacting her conveyancing solicitor.

Section 21B

20. The Landlord and Tenant Act 1985, s.21B requires, by subs. (1), 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 details of what is required in the summary are contained in regulations (the Service Charges (Summary of Rights and Obligations etc) Regulations 2007 (SI 2007/1257)). These require by regulation 3 that the summary is provided in a "typewritten or printed form of at least 10 point". The section continues:

"(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it."

21. Mr Pennington admitted at the hearing that he was unaware of the provision, which came into force in England on October 1, 2007. Thus in relation to all demands which he has sent since that date, the sums are not lawfully due from Mrs Stone. Once a proper demand has been sent they will be due. This affects the interest which Mr Pennington is claiming in relation to the arrears. The lease provides (clause 9) for interest at 12% per annum to be added to any sums due under the lease. At the moment the total interest being claimed amounts to £219.08. It is not clear as to what sums this relates as there are also some arrears of ground rent in addition to the other charge of £120 being levied. (Although not a matter over which the Tribunal has jurisdiction we would also point out that any demands for ground rent must comply with section 166 of the Commonhold and Leasehold Reform Act 2002, and the Landlord and Tenant (Notice of Rent) (England) Regulations 2004.)

22. Both Mrs Stone and Mr Pennington agreed that the service charges for 2006 had been fully paid. This only leaves the interim charges for 2007 as unpaid and lawfully due (as they were served before s.21B came into force). We calculate that the interest payable in relation to this is £122.40 to the date of the hearing.

Sums due

23. Given the findings set out above we conclude that the following sums may be reasonably charged for the years 2006-2009. The interim charge for 2007 (£340) was in fact more than we conclude is due and owing for 2007, so as this sum was covered by the interim invoices we conclude that it is due and owing now. In relation to the charges for 2008 and 2009, no sums are due and owing until a notice is served in accordance with s.21B of the 1985 Act.

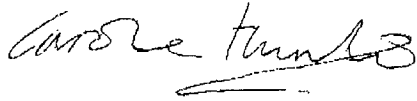
2006:

Buildings insurance:	£109.68
Gardening services:	£179.53
Gutter cleaning:	£ 12.50
Building repairs and maintenance	£ 12.50
Accountancy:	£ 14.69

Sub – Total	£328.90
15% management fee	£ 49.33
Total:	£378.23
2007	
Buildings insurance:	£112.77
Gardening services:	£177.82
Gutter cleaning:	£ 6.25
Accountancy:	£ 14.69
Sub – Total	£311.53
15% management fee	£ 46.73
Total:	£358.26
2008:	
Buildings insurance:	£116.82
Gardening services:	£183.34
Gutter cleaning:	£ 12.50
Accountancy:	£ 14.38
Sub – Total	£327.04
15% management fee	£ 49.06
Total:	£376.10
2009:	
Buildings insurance:	£127.71
Gardening services:	£179.76
Gutter cleaning:	£ 6.25
Painting and decorating	£ 205.00
Accountancy:	£ 14.69
Sub – Total	£533.41
Management fee (as charged)	£ 68.00
Total:	£601.41

24. This gives a total for all service charges over the four years of £1714.00. Of this £387.01 was paid for 2006, leaving a sum of £1326.99 to which a further sum of £122.40 is due by way of interest charges (see para. 22, above). This gives a total of £1449.39. Of this sum, £977.51 relates to the years 2008/2009 and is not due and owing because no s.21B notice has been

served. This leaves £471.88 due and owing immediately and the remainder to be paid when a valid s.21B notice has been served.

A handwritten signature in black ink, appearing to read "Caroline Hunter". The signature is written in a cursive style with a long horizontal stroke at the end.

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Professor Caroline Hunter
Chairman

July 14, 2010