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HM Courts
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Service

LEASEHOLD VALUATION TRIBUNAL
Case no. CAM/00KG/LSC/2012/0056

Property : 16 Garner Court,
Dunlop Road,
Tilbury,
Essex RM18 7BG

Applicant : Freehold Managers (Nominees) Ltd.

Respondent : Ibrahim Mohammed Jalloh

Date of transfer from
Basildon County Court : 16th February 2012

Type of Application : To determine reasonableness and
payability of service charges and administration
fees

The Tribunal : Bruce Edgington (lawyer chair)
Roland Thomas MRICS
Peter Tunley

Date and venue of
hearing : 14th September 2012, Park Inn Thurrock,
High Road, North Stifford, Grays RM16 5UE
Essex SS2 6EU

DECISION

1. The Tribunal finds that in respect of the amount claimed by the Applicant from the Defendant in the Basildon County Court under case no. 1BQ00687, none of the amounts claimed for service charges or administration charges are reasonable or payable.
2. This Tribunal has no jurisdiction to consider ground rent issues.
3. This matter is now transferred back to the Basildon County Court under case no. 1BQ00687 to enable either party to apply for any further order dealing with any other matter not covered by this decision including enforcement, if appropriate.

Reasons

Introduction

4. On or about the 26th October 2011 a county court claim form was issued by the Applicant claiming £666.58 in service charges plus ground rent from the Respondent. It was issued under Part 8 CPR whereas it appears to be clearly a

Part 7 matter and presumably has been re-allocated to Part 7. The Respondent filed a defence and a hearing was fixed for the 27th February 2012. By an Order made on the 16th February 2012 by Deputy District Judge Smart, the questions as to whether the service charges and administration fees claimed were payable and/or reasonable were transferred to this Tribunal.

5. On the 17th January 2012, the Respondent filed a defence which said, in summary:-
- (a) There is a lack of cleaning staff
 - (b) Internal decoration is overdue
 - (c) New security door locks inadequate
 - (d) Broken back gate/fence
 - (e) Poor gardening and general maintenance
 - (f) Lack of repair to car park gate
 - (g) Unattended leaks
 - (h) Unattended graffiti
 - (i) Communal lights on 24 hours a day without either sensors or time switches which has lead to excessive electricity charges
 - (j) Inadequate lighting to car park
6. Much of this defence amounts to allegations of breach of contract involving claims for damages and/or specific performance, which are not matters within the jurisdiction of this Tribunal. As will be seen, this Tribunal can only deal with the issue as whether service charges or administration fees are reasonably incurred. There seems to be no argument that if they have been reasonably incurred, they would be payable under the terms of the lease.
7. After the case was transferred to this Tribunal, procedural directions were issued timetabling the case to a hearing on the 23rd July 2012. The Applicant was ordered to file a statement by 25th May attaching the service charge demands referred to in the county court claim form and to set out its justification in law and principle for the service charges bearing in mind the comments from the Respondent in his defence. This was to ensure that the members of the Tribunal had all the issues before them when they visited the property before the hearing.
8. Just before the hearing, the Respondent contacted the Tribunal office to say that he was ill and he asked for an adjournment as he was unable to attend. There was no objection to this by the Applicant and the hearing was adjourned until 14th September. As the Applicant had not complied with the previous directions order, the Tribunal made another directions order on the 23rd July which included the following order:-

*"The Applicant shall, by 4.00 pm on 6th August 2012 file (4 copies) and serve a written statement setting out exactly how it calculates the claim for £666.58 in service charges attaching copy invoices in support. Such statement must also answer the allegations made by the Respondent in his defence to the County Court Claim. **IN DEFAULT** the Tribunal will be unable to determine which service charges are reasonable*

and payable and it is likely to infer that the allegations made by the Respondent are true."

9. That direction was not complied with. On the day before the hearing i.e. on the 13th September 2012, the Respondent contacted the Tribunal office to say that he would not be attending the hearing and his brother would be attending in his stead.

The Inspection

10. The members of the Tribunal inspected the property in the presence of the Respondent's brother, Abdul Aziz Jalloh, Nives Dalby (no. 67), Ade Adekunle (no. 38) and Christina Day from the managing agent Mainstay.
11. It was a bright sunny morning. The development was built about 10 years ago and consists of a terrace of blocks of 8 flats each over 4 storeys and a separate smaller terrace of 2 blocks of 6 flats each over 3 storeys. There appear to be some 68 flats in the development. The members of the Tribunal walked around the grounds which consisted of a large car park, some grass areas with beds of shrubs and areas for rubbish bins. 2 of the common areas inside were seen where stair cases go to the upper floors. The stairs were carpeted and reasonably clean despite some engrained dirty marks but the walls were marked and in need of decoration.
12. The development is close to the centre of Tilbury which is a small town adjacent to docks. Many of the shops in the high street had metal shutters covering the doors and windows. Both the town and the development had the look of being neglected and unkempt.
13. One of the walls of Garner Court had some graffiti on it. The grass areas did not appear to the members of the Tribunal to have been mown for some time. Large parts of the grass did not need mowing anyway because the grass had been put onto what appeared to be earth over hard core or pebbles which were showing through and mostly devoid of anything that could really be described as grass. The beds of shrubs looked neglected and there were weeds.
14. The Tribunal was concerned to see many tripping hazards such as metal drains standing proud of the grassed areas and holes. At one end of the car park close to an area which was not level and had a large pool of water from rainfall the night before, there were several of what appeared to be large kerb stones just lying around. If, as is alleged, the lighting of this area is poor, all of these things would appear to be dangerous. As there are expenses in previous years' accounts for money spent on health and safety assessments, one is puzzled as to how these things are there. The drain covers appeared to have been like that for years.
15. Someone had put their washing out to dry on one of the shrubs.

The Lease

16. The Tribunal was shown a copy of the original lease. It is dated 4th October 2004 and is for a term of 99 years from the 1st January 2004 with an increasing ground rent.

17. There are the usual covenants on the part of the landlord to maintain the common parts and structure of the property and to insure it and the Respondent is liable to pay 1.4053% of the total estate charges. As no issue is raised in the defence about the payability of any item of service charge or administration fee, these reasons will not repeat the relevant provisions in the lease.

The Law

18. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.

19. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. A Leasehold Valuation Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.

20. Paragraph 1 of Schedule 11 ("the Schedule") of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") defines an administration charge as being:-

"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable...for or in connection with the grant of approvals under his lease, or applications for such approvals...or in connection with a breach (or alleged breach) of a covenant or condition in his lease."

21. Paragraph 2 of the Schedule, which applies to amounts payable after 30th September 2003, then says:-

"a variable administration charge is payable only to the extent that the amount of the charge is reasonable"

22. Paragraph 5 of the Schedule provides that an application may be made to this Tribunal for a determination as to whether an administration charge is payable which includes, by definition, a determination as to whether it is reasonable.

The Hearing

23. The hearing was attended by those who had attended the inspection. The Tribunal first asked Ms. Day whether she had the statements ordered or the supporting documents. She did not. The bundle of documents which had been filed for the earlier hearing just contained copies of the title documents, the pleadings in the court case, annual accounts and correspondence. The statement of arrears referred to in the Particulars of Claim did not appear to be there.

24. At pages 37 and 38 in the bundle is a list of credits and debits with a total of £666.58 i.e. the amount of the claim for service charges and administration charges. However, descriptions of each entry are minimal and it is impossible to see what most of the debits and credits are supposed to represent. Certainly

there is insufficient information to enable the Tribunal to determine what particular service and administration charges are being claimed so that it could begin its task of assessing whether they were reasonable or payable.

25. The Tribunal chair explained the difficulty to those present at the hearing. Ms. Day explained that she had no more information than was in the bundle. She said that she started managing this property in November 2011. She very fairly conceded that it was in a bit of a mess when she arrived. She sat in her car in the car park at the time and saw the cleaner go into one door and come out very quickly. It was obvious to Ms. Day that the cleaner could not have cleaned 3 staircases and 4 landings in that time and she took the cleaner to task.
26. It was clear that Ms. Day was doing her best to help the Tribunal and, to her credit, the leaseholders at the hearing said that she was trying to turn things around. She certainly seems to be making every effort to get the caring leaseholders on her 'side'. However, she did point out that one of her main problems was that other leaseholders or, probably, sub-tenants, were not as caring and caused constant problems.
27. When the various allegations made by the Respondent were put to her, she had some difficulty in defending the position, partly because she had only been managing this building for less than a year. However, it was clear that matters such as the lighting, internal decoration, lack of security, graffiti and poor gardening etc. were still the subject of complaint.
28. She pointed out that when she started, the service charge account was in a great deal of trouble because people were not paying. She said that she was turning this around which meant that there would be more money to spend. When it was put to her that people may have stopped paying for a good reason, she understood the point being made although it obviously made her job difficult. She also said that they could not put in a security gate for the car park to stop fly tipping because there is a right of way across the car park. The Tribunal asked her to look into this because the Land Registry entries and the copy lease seen by the Tribunal did not mention any right of way for outsiders. If there were a public right of way, at least the bin areas could be made more secure which may avoid some of the problem of fly tipping.

Conclusions

29. The Respondent's position is unclear. He has said in his defence that he is "*not refusing to pay but withholding it until all outstanding issues are resolved*". He then goes on to say "*the claimant (sic) action and cost are totally unreasonable*". This is followed by a statement that the administration fees i.e. the costs incurred for non payment of service charges are disproportionate to the service charges themselves. There is no criticism of the amount of the service charge itself if the services were being provided.
30. However, the task given to this Tribunal has simply been impossible to perform. Without knowing how the claim is actually made up, it is impossible to say what part of the claim is reasonable and payable. This is entirely the fault of the Applicant which must, therefore, suffer the consequences. None of the claim can be assessed as being reasonable or payable.

For the Court's assistance

31. Once this case is back with the court, the Applicant may well try to re-instate the case and request that there is a hearing before a District Judge. In order to assist the court, the Tribunal did question the Applicant's representative on the entries in the last service charge accounts at page 170 in the bundle, so that it could try to make some assessment as to whether the service charges set out are reasonable or not. This is the statement of service charge expenditure for the year ending 31st December 2011. Following the inspection of the site and the questioning of those at the hearing, the Tribunal's conclusions are as follows.

32. The Tribunal decided that the entries under the headings **Management and administration** and **Contribution to reserves** were reasonable and payable. As to the items under the other heading **Maintenance costs**, the Tribunal's conclusions under the various subheadings are as follows. Unfortunately, Ms. Day was not managing the site for most of the period in question and there was therefore little 'evidence' from the Applicant on the points:-

Communal cleaning – the claim is for £5,304 which, if the job was done properly, would be a reasonable figure. There are allegations that it was not done properly and one such instance was actually witnessed by Ms. Day and referred to in her evidence as set out above. A substantial discount would appear to be appropriate.

Window cleaning – the claim is for £1,040. Again, if the job were done properly, this would be a reasonable figure. There are complaints that it is not done properly with Mr. Adekunle saying that the windows had only been cleaned once in the last year i.e. in March 2012. Once again, a discount would appear to be appropriate.

Gardening – the claim is for £3,900 or about £75 per week which is excessive. One issue raised by Ms. Day was that many people allowed dogs to defecate on the grass and this has to be cleared up. The Tribunal estimated that ½ a day a week would be enough to clear this up, mow the grass and keep the shrubs maintained from April to October with less in the winter months. The Tribunal's view is that this could be done within a budget of £1,500 per annum.

Communal electricity – this claim is for £3,446 which is substantially less than in some previous years. The lessees do not dispute this figure as such but say that it should be less for the reasons stated in the defence. The internal lights are on 24 hours a day whereas they could be on timed/sensor switches which would save money. Ms. Dalby told the Tribunal that the necessary equipment is fitted but it just needs setting up and activating properly. However, the problem is that the lessees want better lighting in the car park. The Tribunal agree that timed/sensor switches do save money. Last year, if that had happened, the communal electricity could have been as low as £2,000. However, with better lighting in the car park, a true and reasonable cost would be £3,000 per annum.

Day to day maintenance – this is the item which really puzzled the Tribunal. It is a claim for £15,108 i.e. about £290 per week following a budget of £6,000. When asked what this was for, Ms. Day said that it was for replacing light bulbs,

sorting out trip hazards and reacting to calls from residents. With all the other claims and, in particular, a management fee, the Tribunal simply could not see any justification for any figure under this heading at all.

Pest control – the claim is for £1,512. The Tribunal did notice some traps at the site but this figure seemed to them to be very high. No-one at the hearing suggested that there was a particular infestation which needs a great deal of attention. A fair and reasonable figure for this work would be 4 visits to the site per year at £60 i.e. a gross figure of £240.

Refuse removal – the claim for £1,866 for the emptying of all the bins seemed to be reasonable.

Out of hours fees – this is a claim for £330 and no-one was able to say what it was for. Assessed at nil.

Door entry system – the claim is for £543 which would be reasonable for a maintenance contract. However, there is a dispute about whether the system installed in 2011 is the correct one which is, of course, a different issue.

TV and satellite maintenance – a claim for £366 which would appear to be reasonable

Emergency services – again, there seemed to be no justification for this claim which is assessed at nil.

Buildings insurance – the claim is for £16,082 or just over £235 per flat. This seemed to the Tribunal to be a very high figure. In dealing with insurance, a Tribunal would normally want to see the claims record, alternative quotes and details of any commission paid to intervening agents. This Tribunal had none of this information and is therefore reluctant to interfere.

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33. It is hoped that both the court and the parties will be assisted by having this information and assessment.

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Bruce Edgington
Chair
17th September 2012