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**HM Courts
& Tribunals
Service**

**Leasehold Valuation Tribunal
Case Number: CAM/00MD/LSC/2011/0151
& 52**

Property : Flats 3 and 6,
19 Upton Park,
Slough,
Berks,
SL1 2DA

Applicant : Longmint Limited

Respondents : Ms. Maureen Susan Carter (flat 3)
Mr. John Peter Mills (flat 6)

Date of Transfer : 1st November 2011

Type of Application : Applications for a determination of
liability to pay a service charge,
pursuant to section 27A of the Landlord
and Tenant Act 1985

Date of Hearing : 13th February 2012

Venue of Hearing : The Holiday Inn Express Slough
Mill Street
Slough
Berks

Tribunal :

Mrs. J. Oxlade	Lawyer Chairman
Mr. D. Banfield FRICS	Surveyor Member
Mr. A. Kapur	Non-Legal Member

Attendees

Applicant

Ms. Fisher (Solicitor)
Ms. Harding (Legal Representative)

Respondents

Ms. Maureen Susan Carter (flat 3)
Mr. John Peter Mills (flat 6)

DECISION

For the reasons given below, the Tribunal finds that:

- (a) the service charges incurred in the service years 2009, 2010, and 2011 are not reasonable or payable as demanded,
- (b) service charges demanded in accordance with paragraphs 26 to 37 of these reasons are reasonable and payable,
- (c) the Applicant shall not add to the Respondent's service charge account any sum by way of legal costs incurred by the Applicant in respect of the proceedings before the LVT,
- (d) the case is transferred back to the County Court.

REASONS

Background

1. The Applicant is the Freeholder of 19 Upton Park, a Victorian house divided into 6 flats on 4 floors. The Respondents are the Lessees of flats 3 and 6, respectively a first floor and basement flat.
2. The lease imposes obligations on:
 - (a) the Lessor to maintain, repair, and keep clean, decorate and well-tend the building and lands, and
 - (b) the Lessees to pay to the Lessor:
 - (i) by 30th September each year, estimated service charges demanded before that date, for the forthcoming year (commencing on 1st January), and,
 - (ii) a balancing payment equivalent to 1/8th of the actual costs certified by the Lessor or Managing Agents, and which may include a sum for reserves for anticipated works.
3. In July 2011 the Lessor issued proceedings in the Brighton County Court against the Lessees, to recover arrears of service charges: in Ms. Carter's case for the years 2009, 2010, and 2011, and in Mr. Mills' case for 2010 and 2011. The claim included a demand for interest.
4. In reply to the claim, the Lessees both complained of poor service by the Managing Agents, that no maintenance has been done by the Managing Agents, and that safety concerns raised by the Fire Service in 2007 had not received attention.
5. The cases were transferred to Slough County Court, and then to the LVT to determine the reasonableness and payability of service charges.

Jurisdiction

6. The jurisdiction of the Tribunal to consider the reasonableness and payability of service charges is as follows:

s27A of the 1985 Act provides that "an application may be made to a leasehold valuation tribunal ("LVT") for a determination whether a service charge is payable and, if it is, as to –

(c) the amount which is payable ...".

Section 19(1) of the 1985 Act provides that "relevant cost shall be taken into account in determining the amount of the service charge payable for a period –

(a) only to the extent they are reasonably incurred, and

(b) where they occurred on the provision of services or the carrying out of works, only the services or works are reasonable standard; and

the amount payable shall be limited accordingly".

7. The jurisdiction of the Tribunal to consider making an order that the Lessor's costs shall not be added to the service charge account, derives from section 20C of the 1985 Act, which provides that:

"(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 the proceedings before a Court or a Residential Property Tribunal or LVT .. 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 Court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances".

Inspection

8. On the morning of the hearing, we inspected the premises in the presence of the parties, which we found to be in fair condition internally and externally. The Tribunal particularly noted the following: there was only one smoke alarm at the top of the house; the wiring for a smoke alarm on the ground floor was in place, but there was no alarm unit present; a damp patch on the wall next to the entrance to the top flat, with wallpaper peeling away; peeling paint on the ceiling of the hallway outside the top floor flat and on the arch on the ground floor; bundles of wires on the floor by the front door. Externally, we noted the size of the front garden and that it appeared to be well kempt, and the size and condition of land to the rear of the premises.

Hearing

9. The hearing was attended by legal representatives for the Applicant, but no one from the managing agent attended. We were told that the Managing Agents did not consider that it was cost-effective for them to do so.
10. At the outset the Tribunal clarified with Ms. Fisher whether she had additional documents: namely, sets of accounts and /or evidence of total annual expenditure for any of the years in dispute; copies of the other leases in the building; copies of the service charge demands; copies of the Managing Agents' contract(s). None of these documents were in her possession, and when enquiries were made to see if they could be obtained by the end of the hearing, she was advised that the Managing Agents could not access their computers. In short, the Applicant relied on the statement dated 6th January 2012 at page 46-54 of the bundle, and documents filed in support.
11. The Tribunal sought to clarify further matters with Ms. Fisher: she was unable to say why the sums demanded from each Lessee (set out at pages 9 and 37 of the bundle) for insurance exceeded 1/8th of the total annual costs; she could not say that this apparent error in applying the correct fraction was not also applied to all other costs; she could not explain how it appeared to be the case that on a rough calculation the annual expenditure was £3000 - yet the Lessees were each receiving demands exceeding £800 (which considerably exceeded the 1/8th of costs). Ms. Fisher was not aware that any cyclical maintenance was planned, which could have accounted for setting aside the excess to form a reserve. Further, she did not know what the Managing Agents intended to do now that they were aware (through these proceedings) of the Fire Service report compiled in 2007, nor when they intended to do a Fire and Safety assessment. She agreed that she would raise this with her clients with a view to getting something done within the next month.
12. The Tribunal invited the parties to comment on each cost which had been derived from the documents provided by the Applicant, which comments we set out below.

Insurance

13. Ms. Fisher said that she did not know what the insurance costs were in 2009, but they were £1101.88 in 2010 and £1139.06 in 2011, made up of the main cover, plus separate terrorism cover. The rebuild value had not been re-considered for six years. She did not know why the fraction charged to the Lessees exceeded the 1/8th as provided in the lease, nor why it was that the insurance costs was demanded as a separate item to the other costs, nor why it was demanded on or before 30th September each year, as provided in the lease.

14. Aside from questioning the fractions which they had been asked to pay, neither Lessee disputed the reasonableness of the costs.

Gardening

15. Ms. Fisher said that the gardening costs were not known for 2009, but they were £274 for 2010 and £264 for 2011, and relied on the invoices contained in the bundle. The problem for 2009 was that the gardener had not submitted his invoices. He charges £15 per visit, which seems good value for what he does, bearing in mind that he uses his own equipment and takes away cuttings. She was unable to say why it was that he was instructed not to manage the land behind the house.
16. The Lessees said that the gardener looks after the front garden which is a relatively small bed, and that he comes and trims the bushes, which takes 10 minutes. He sometimes, but not always, takes the cuttings away with him. The gardener said that he had been given specific instructions not to touch the land at the back. At the behest of Mr. Mills (whose flat was next to the land, and overlooked it), and at a cost to Mr. Mills, the gardener did attend to it.

Minor Repairs

17. Ms. Fisher said that there was £93.41 spent in 2011 to clear up an overflow of sewerage.
18. The Lessees said that there was a backup of sewerage in 19A, and the bill appeared to have been attributed to their service charge account rather than 19A - perhaps because the Agents managed both properties.

Electricity

19. Electrical costs were £42.42 for 2009, £41.68 for 2010, and £94.93 for 2011, the first two being estimated readings and the latter being an actual reading.
20. The Lessees said that the costs appeared reasonable, and that actual readings were dependant on the company having access to the hallway to read the meters, which depended on someone being in.

Accountancy

21. Ms. Fisher said that the estimated accountancy fees of £350 plus vat were higher than previous actual costs because of the change over in Managing Agents. The accounts for the 3 years were with the Accountants, and she was unable to say why it was that these had not been produced, save to say that the accounts were left in a mess by the previous Agents.

22. The Lessees said that they had no experience of what reasonable costs should be.

Managing Agents Fees

23. Ms. Fisher did not have a copy of the Managing Agents contract, and so was unable to say precisely what the Managing Agents were contracted to do, but assumed that their functions were as follows: to arrange insurance, prepare accounts, demand service charges, instruct Solicitors, respond to leaseholders' enquiries, liaise with contractors, arrange for works to be done. She could not say how often the premises were inspected, when they were last inspected, whether a health and safety assessment was to be undertaken, and could not explain why accounts had not been prepared for the years since the current Agents had taken over. She said that they had inherited things from the previous Agents in a poor state, and so it took time to sort things out. The proper approach to dealing with Mr. Mills' management of the rear garden was to reduce the Managing Agents fees.
24. Mr. Mills and Mrs. Carter said that it had been a consistent cause of disagreement that the Managing Agents took no active role in managing the premises. Promises had been made at the time of the hand over to the current Agents, but the change of tone quickly evaporated. They were not aware that the Agents had ever inspected, and aside from some email correspondence at the beginning, had no contact at all. Both had given up contacting the Managing Agents, as queries went unanswered. There was no pro-activeness and little reactive management. They have no level of expectation that anything will be done, and so do it themselves. The car park at the rear is a case in point: the undergrowth grew to 5 foot or so, as the gardener said that he had specific instructions not to touch it, and did not attend to it until Mr. Mills commissioned the gardener to clear it, and paid him £125 to do so.

Costs

25. Ms. Fisher said that she had no instructions on whether or not the costs of the hearing would be added to the service charge account. The Lessees made no comments.

Findings

26. Having considered the evidence adduced and the submissions made the Tribunal makes the following findings.
27. As to *insurance costs* we find that the overall costs for insurance in 2010 and 2011 are reasonable, and that if insurance costs were in the region of £1050-1150 for 2009, then that would be reasonable.

28. We find that each Lessee is liable to pay only 1/8th of the insurance costs, as with all costs, and anticipate that the Lessor will recalculate the sum which can be properly demanded, and then notify the Lessees of the sums prior to any payment being demanded and prior to any hearing in the County Court.
29. As to *gardening*, the Tribunal finds that the sum charged for tending the front garden is reasonable. It is well kept, and the compactness of the growth suggests that this has been the case for quite some time. Monthly visits in the winter, and fortnightly visits in the growing season are reasonable. When factoring in the travel time, disposal time and costs of the cuttings, and use of own equipment, the costs are reasonable. We find that the Lessees should pay 1/8th each of these costs.
30. As to *minor repairs*, we accept the Lessees evidence that the backup of sewerage related to 19A, and so find that any costs associated with clearing up the spill should not be attributed to these premises. We find that the Lessees should not pay anything towards these costs.
31. As to *electricity*, there was no dispute about these sums, which in any event seem reasonable, and so the Lessees should each pay 1/8th of these costs.
32. As to *accountancy costs*, the Tribunal does not accept that it is reasonable for the Lessees to wait over 2 years for year end accounts for the year ending on 31st December 2009, or over a year for the year end accounts ending on 31st December 2010 and the explanation given is not adequate. Nevertheless, if and when the accounts are finalised, the sums estimated are not unreasonable, but should be limited to the estimates given.
33. As to *Managing Agents fees*, the sums charged are at the lower end of what would be reasonable to charge in this location for this type of property for the services assumed by Ms Fisher to be provided by the Managing Agents. The Agents have arranged insurance, some gardening, gathered in service charges, and so are entitled to recover some fees for doing so. However, in reading the above reasons, it will be apparent that the Tribunal finds that the Managing Agents have fallen far short of providing a reasonable service. The failure to attend the hearing, to assist the Tribunal, when criticisms have been made, echoes Mr. Mills' description of an organisation who has failed to engage, and of whom Lessees expectations are low. We find that the Lessees evidence is credible and reliable, and indeed measured in tone, despite many years of poor management. We accept the evidence of Mr. Mills that he provided a copy of the Fire Brigade report on the premises in earlier proceedings, and so the Managing Agents are aware of it. It is not acceptable that the Agents have done nothing to action the recommendations, which are crucial to the health and safety of the Lessees and visitors. We trust that Ms. Fisher's indication

that she will ensure that this is attended to in the next month, will be honoured. There was not adequate explanation for why the Managing Agents have not instructed the gardener to attend to the land at the rear of the building, so leaving Mr. Mills to attend to this.

34. We do not find that the Managing Agents have made a fair estimate of future years annual costs, as required under the lease, and have demanded sums in excess of what is planned expenditure. If it were the case that funds were to be set aside for cyclical maintenance, with a detailed plan, then setting aside monies as a reserve fund, is permitted under the lease. However, there is no indication that this is so. This has implications for the ability to charge interest on the judgement sum, and no doubt the County Court if asked to consider making a costs order, may wish to consider these observations.
35. As indicated above, the service charge proportions demanded of the Lessees exceed that which can be recovered under the lease. It goes without saying that it is the Managing Agents responsibility to apply the correct fraction and demand the correct sum.
36. We have made observations above concerning the absence of information provided by the Managing Agents to the Tribunal, which we consider to be their fault, rather than Ms. Fisher, who did the best she could on the little information she was given.
37. Having considered the work that has been done by the Managing Agents, against what should have been done, we find that the Lessees should each pay 50% of 1/8th the Managing Agents annual fees. So, £66.18 in 2009, £64.25 in 2010, and £77.10 in 2011.
38. As to costs, in light of the above we do not find that it would be just and equitable for any of the Lessor's costs caused or occasioned by the proceedings before the Tribunal to be added to the service charge account. In the event that the Lessor seeks costs and or interest in the County Court on the judgement debt, the Lessees are invited to bring the Courts attention the decision, and in particular paragraphs 10, 11 and 33 to 37.
39. The case shall be transferred back to Slough County Court.

Joanne Oxlade

Chairman

18th February 2012