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**FIRST – TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **BIR/37UD/LIS/2012/0035**

Property : **15 Riddles Court Watnall Nottingham NG16
1LB**

Applicants : **Mr Dean Kirk**

Representative : **In person**

Respondent : **OM Management No 2 Limited**

Representative : **Ms Misbah Khan**

Type of Application : **Application for a determination of liability to
pay and reasonableness of service charges
pursuant to sections 27A and 19 of the
Landlord and Tenant Act 1985 and for an order
pursuant to section 20C of the Act that none of
the costs incurred by the Respondent in
connection with the proceedings be regarded
as relevant costs to be taken into account in
determining the amount of any service charge
payable by the Applicants**

Tribunal Members : **Mr R Healey (Chairman) & Mr V Ward FRICS**

**Date and venue of
Hearing** : **24 June 2013 at Nottingham Magistrates'
Court**

Date of Decision : **10 JUL 2013**

DECISION

Introduction

1. This is an application by Mr Dean Kirk ("the Applicant") for a determination of liability to pay and reasonableness of service charges to OM Property Management No2 Limited ("the Respondent") in respect of the financial years ending 31 December 2008, 31 December 2009 and 31 December 2010 relating to Apartment 15 Riddles Court Watnall Nottingham NG16 1LB ("the Property") and further that the Tribunal order that none of the Respondent's costs in connection with the proceedings are to be regarded as relevant costs taken into account in determining the service charge.
2. The leasehold interest in the Property is demised to the Applicant by an Underlease made between Chaworth Place Management Company Limited of the one part and the Applicant of the other part ("the Lease") whereby the leasehold estate in the Property is granted to the Applicant for a term of 150 years commencing on the 6 January 2004.
3. A pre-trial review was held on 25 June 2012 and Directions issued. The Applicant was informed by the Chairman that general allegations of deficiencies are of limited value and that specific detailed allegations of alleged deficiencies are required for the hearing. The Respondent produced inter alia invoices/receipts for each of the items of expenditure shown in the service charge statements/accounts for the relevant years. A Scott Schedule was prepared by the parties showing the items in dispute and was before the Tribunal.

Inspection

4. On 24 June 2013 the Tribunal Members attended at Riddles Court Watnall Nottingham ("the Building"). They were met by the Applicant, and also by representatives from the Respondent. With their assistance the Tribunal inspected the common parts, the internal courtyard and the external appearance of the Building generally when viewed from both the courtyard and the highway.
5. The Tribunal observed a defective repair to a boundary fence, a plastic strip deposited in the courtyard said to have been knocked from the entrance to the Building by a vehicle, vegetation in gutters, external window frames requiring cleaning, water leaking from gutters, external metal fence requiring repainting, damaged door to electricity meters with replacement lock of different type fixed in an alternative position, door to hallway requires cleaning, internal hallway not decorated, door to rear courtyard reveals lock replaced in alternative position and door requires cleaning.
6. Upon inspection it was not apparent to the Tribunal whether the issues observed were present during the service charge years 2008, 2009 and 2010.

The Law

7. The relevant law is contained in sections 19, 20C and 27A of the Landlord and Tenant Act 1985.

Hearing

8. Evidence of the state of disrepair or lack of maintenance of the Building was limited to the evidence of the Applicant and the financial documentation provided by the Respondent. There was no photographic evidence or written evidence, nor any independent witness evidence presented by the Applicant to the Tribunal.

9. The Tribunal heard evidence and/or submissions from the Applicant in respect of each of the items set out in the Scott Schedule. In reply Ms Khan referred to the documentary evidence before the Tribunal and made submissions. Some of the items in the Scott Schedule did not reveal a dispute. Other items that were originally in dispute were withdrawn by the Applicant following explanation being given by Ms Khan. The Tribunal heard evidence on the items remaining in dispute from the Applicant and submissions in response by Ms Khan.

Service charge year 2008

Landscape maintenance

10. Mr Dean Kirk submitted that the general quality of workmanship was inconsistent. There was very little grass cutting and on one occasion the grass was left to grow up to the windows. Evergreen bushes needed the occasional trim.

11. Ms Misbah Khan for the Respondent responded that there is no evidence before the Tribunal, there are no photographs and no evidence of complaints. She referred the Tribunal to the Contract for Gardening Services (132 in the bundle) and particularly to the provision for fortnightly visits in the summer and monthly in the winter.

12. The Tribunal considered the contract and determine that it makes satisfactory provision for gardening services. Mr Kirk was unable to give specific dates and times of failures by the gardening contractors. There is no evidence of written complaints nor any photographs before the Tribunal. There is no evidence from other leaseholders nor from any independent person. The Tribunal finds that the complaints are too general in nature and lack any supporting evidence and therefore determines the charge of £89.15 reasonable.

Cleaning common areas

13. Mr Kirk submits that minimal time was spent by the cleaners; little time was spent with a vacuum cleaner and the internal common parts were never cleaned dusted or polished.

14 Ms Khan refers the Tribunal to the Cleaning Contract (126 in the bundle). She submits there is no evidence in support of the Applicants' claim.

15. The Tribunal finds the Cleaning Contract reasonable. It finds the allegation general in nature without any specific incident. Again there is no evidence in support. The Tribunal determines the charge of £106.03 reasonable.

Sweeping

16. Mr Kirk submits that he has never seen any sweeping done in the courtyard. The car park is often cleaned by residents.

17. Ms Khan refers to the Contract for Sweeping (143 in the bundle) which sets out the duties of the contractor.

18. The Tribunal finds the Contract for Sweeping Contract reasonable. The Tribunal finds the allegations to be general in nature and lacking in evidence. The charges of £10.32 are determined reasonable.

Repairs and maintenance

19. Mr Kirk submits that he is unaware of any maintenance undertaken. He submits the internal door access security system and electricity meter doors were reported faulty but left for months until repaired. The subsequent repair is of poor quality and looks unsightly.

20. Ms Khan responds that the locks are a small proportion of the maintenance charge as evidenced by the accounts. She submits that the allegations are vague.

21. The Tribunal finds the workmanship to be of poor quality and determines that £45.00 be deducted from the contractors charges. The sum of £1.80 is therefore deducted from the service charge account.

Directors Insurance

22. The parties agree that the charge for directors insurance be removed. The Tribunal therefore determines the sum of £6.00 is deducted from the service charge account.

Admin/Management

23. The parties agree the correct figure charged to the accounts is £202.54. Mr Kirk challenges the charges. He submits that his account has not been managed in a professional and competent manner. His evidence is that he challenged the accounts with the Respondent but continued to get reminders regarding the outstanding service

charge. He accepts that the sum claimed is a proper amount if the management had been properly undertaken.

24. The Tribunal has already found defective workmanship and this has been dealt with by making a deduction from the contractors account. The Tribunal finds, on the evidence available, no other defects in the management and accordingly the charge is upheld.

Service charge year 2009

Landscape maintenance

25. Mr Kirk again submits that the general quality of workmanship was inconsistent. Evergreen bushes needed the occasional trim.

26. Ms Khan for the Respondent responds that there is no evidence before the Tribunal, there are no photographs and no evidence of complaints. She refers the Tribunal to the Contract for Gardening Services (132 in the bundle) and particularly to the provision for fortnightly visits in the summer and monthly in the winter.

27. The Tribunal considered the contract and determine that it makes satisfactory provision for landscape maintenance. There is no evidence of written complaints nor any photographic evidence before the Tribunal dealing with alleged failures by the landscaping contractors. Neither is there any evidence from other leaseholders nor from any independent person. The Tribunal finds that the complaints are too general in nature and lack any supporting evidence and therefore determine the charge of £87.40 reasonable.

Cleaning common areas

28. Mr Kirk submits that minimal time was spent by the cleaners; little time was spent with a vacuum cleaner and the internal common parts were never cleaned dusted or polished.

29. Ms Khan refers the Tribunal to the cleaning contract (126 in the bundle). She submits there is no evidence in support of the claim.

30. The Tribunal finds the Cleaning Contract reasonable. It finds the allegation general in nature without evidence of any specific incident. Again there is no supporting evidence. The Tribunal determines the charge of £103.22 reasonable.

Sweeping

31. Mr Kirk submits that any sweeping of the parking area by contractors was minimal and was undertaken by the residents themselves.

32. The Tribunal finds the Sweeping Contract (143 in the bundle) reasonable. The Tribunal finds the allegations to be unsupported. The charge of £11.04 is determined reasonable.

Repairs and maintenance

33. Mr Kirk is unaware of any maintenance being undertaken by contractors. He submits the internal door access security system and electricity meter doors were reported faulty but left for months until repaired. The subsequent repair was of poor quality and looked unsightly.

34. Ms Khan responds that the locks are a small proportion of the maintenance charge as evidenced by the accounts. She submits that the contractors accounts are to hand and the Applicant makes no challenge to them.

35. In the previous year the Tribunal found the workmanship relating to the locks to be of poor quality and made a deduction for it. There is no challenge to the remaining contractors' accounts and the charge of £38.59 is upheld.

Building Insurance premium

36. The premium is agreed by the parties at £107.07 instead of £110.57 as previously stated. The Tribunal determines the sum of £3.50 be deducted from the service charge.

Admin/Management

37. The parties agree the correct figure charged to the accounts is £223.01. inclusive of VAT. Mr Kirk challenges the amount of the charges. He submits that his account has not been managed in a professional and competent manner. His evidence is that he challenged the accounts but continued to get reminders. He accepts that the sum claimed would be a proper amount if the management had been properly undertaken.

38. Mr Kirk submits that the general upkeep of the property has been poor. In particular there was a loss of security for some months, failure of upkeep of décor in the internal common parts, exterior window frames not cleaned, vegetation in gutters, and failure to repair damaged archway and replace plastic strip and inadequate repair of a fence.

39. Ms Khan submits that money was limited. Attempts were made to repair the doors. A loss of security is not accepted. There is nothing to suggest that any of the defects existed in 2009. There is no photographic nor other evidence nor documented complaints before the Tribunal.

40. On a balance of probabilities the Tribunal finds the Applicant's complaints set out in para 39 to be proved. The Tribunal finds that the failure to manage may properly be reflected by a deduction of £22.30 from the management charges and so determines.

Value Added Tax

41. The Respondent acknowledges that VAT is included in the management charges and that no further addition is required. By consent it is determined that the sum of £10.81 be deleted from the accounts.

Service charge year 2010

Landscape maintenance

42. Mr Kirk submits that there was very little grass cutting, evergreen bushes needed trimming and weeding maintenance was required.

43. Ms Khan responds that there is no evidence before the Tribunal, there are no photographs and no evidence of complaints.

44. The Tribunal finds that the Applicant's evidence is unsupported and determines the charge of £97.30 reasonable.

Cleaning common areas

45. Mr Kirk submits that minimal time was spent by the cleaners; little time was spent with a vacuum cleaner and the internal common parts were never cleaned dusted or polished. He gave evidence that the power supply to the common parts was not available for some time and submitted that as a result no electrical equipment was used for cleaning the common parts.

46. Ms Khan offered to delete the November 2010 cleaning bill of £5.84 in its entirety.

47. The Tribunal finds the Cleaning Contract reasonable. It finds the Respondent's offer acceptable and determines a reduction of £5.84.

Repairs and maintenance

48. Mr Kirk observes that this cost heading has substantially increased since last year. He is unaware of any maintenance being undertaken by contractors. He refers again to the loss of security when locks were inoperative and to the poor workmanship evident on the electricity meter replacement locks.

49. Ms Khan responds that the locks are a small proportion of the maintenance charge as evidenced by the accounts. She submits that the contractors accounts are to hand and the Applicants make no challenge to them.

50. The Tribunal has previously found that there was some loss of security in the building and that the replacement locks on the doors show evidence of poor workmanship. This has been taken into consideration for the previous year and the Tribunal is not satisfied that the problem existed beyond the one year. The Tribunal notes that the Applicant does not challenge any individual accounts. The Tribunal therefore confirms the figure of £93.31 shown in the accounts.

Admin/Management Fees.

51. The Applicant accepts the charges under this cost heading as reasonable providing the service rendered is acceptable. The Applicant challenges the charges on the basis of the failure to manage. The Applicant says that he was unable to obtain clarification of the costs relating to maintenance and repairs.

52. Ms Khan responds by saying that there had been three meetings between the Applicant and the management company. The Applicant conceded that the meetings had taken place but that it was not possible to reach an agreement.

53. On the basis of the evidence before it the Tribunal is unable to find any defect in the management and the fee of £245.56 is upheld.

54. Ms Khan on behalf of the Respondent undertook that the costs incurred in connection with the proceedings would not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants and requested that on the basis of this undertaking no section 20C order be made.

Summary of the determination

55. On the basis of the findings set out above the following deductions are made in respect of each of the following service charge years –

55.1 2008 a deduction of £1.80.

55.2 2009 a deduction of £36.61.

55.3 2010 a deduction of £5.84.

56. On the basis of the Respondent's undertaking the Tribunal makes no section 20C order.

Roger Healey (Chairman)

10 JUL 2013

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