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HM Courts & Tribunals Service

LEASEHOLD VALUATION TRIBUNAL
Case no. CAM/00KF/LSC/2012/0133

Property	:	**25c Grand Parade, Leigh-on-Sea, Essex SS9 1DX**
Applicant	:	**Jeffery Gregory**
Respondent	:	**Ground Rents (Regis) Ltd**
Date of application	:	**9th October 2012**
Type of Application	:	**To determine reasonableness and payability of service charges and administration charges**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **Roland Thomas MRICS** **David Cox**
Date and venue of hearing	:	**15th April 2013** **The Court House, 80 Victoria Avenue, Southend-on-Sea, Essex SS2 6EU**

DECISION

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1. The Tribunal determines the claims set out in the application form as follows:-

Date	Description	Amount (£)	Decision (£)
2010	audit fee	36.00	not reasonable
"	health and safety	148.83	not reasonable
"	management fees	137.08	reasonable
2011	general repairs	50.00	reasonable
"	audit fee	50.00	unreasonable
"	management fees	210.00	105 is reasonable
2012	general repairs	50.00	reasonable
"	audit fee	50.00	unreasonable
"	management fees	210.00	reasonable
"	administration charge	120.00	unreasonable
"	administration charge	150.00	unreasonable

This means that a total amount of £552.08 is found to be reasonable and payable from the amounts stated above.

2. The Tribunal makes an order pursuant to Section 20C of the **Landlord and Tenant Act 1985** ("The 1985 Act") preventing the Respondent from claiming its costs of representation before this Tribunal as part of any future service charge.

Reasons

Introduction

3. This application is by the long leaseholder of the property for the Tribunal to determine the reasonableness and payability of service charges and administration charges claimed for years 2010, 2011 and 2012 as set out above.

4. In terms of the claims set out in the decision above, the general allegations in the application are (a) that an audit is not required, (b) no health and safety report has ever been produced, (c) no repairs have ever been carried out by the Respondent or its predecessor, (d) management fees are excessive for such a small property involving little management and (e) the administration fees are not justified.

5. As is mentioned in the application form and the Respondent's evidence, there has been the complication that ownership of the freehold as well as the managing agent have changed in this period and this may have added to the Applicant's perception of injustice. The Applicant also states, in his written evidence, that ground rent collection and insurance are dealt with by another agent, namely Pier Management, and this was not denied at the hearing.

6. In the statement filed by the Respondent's witness, Louise Vidgeon, she replies to the allegations in the following way:-

   (a) There is no external audit, as such. The fees are that of the managing agent for preparing the accounts because that is not within the management fee.
   (b) This is not a health and safety fee but a fee for a Stock Condition Survey. It was incorrectly described. It is for insurance purposes and to alert the landlord of any defect. A copy of the invoice and the report are produced.
   (c) As to the allegation about the repairs, the witness produces spreadsheets and demands for money on account and says 'we deem that this figure is a just charge for this period based on the previous year's expenditure'.
   (d) It is asserted that the management fees are those charged to the landlord as part of an agreement with them. It is said that they follow the 'Residential Property Guide (RICS)' and an extract is enclosed. This appears to be an extract from the Service Charge Residential Management Code which is the RICS code of practice as approved by the Secretary of State under Section 87 of the **Leasehold Reform, Housing and Urban Development Act 1993** ("the Code"). Oddly, there is no attempt to actually justify the amount of the management fees.
   (e) The administration charges are deemed to be justified as part of the preparatory work for forfeiture because the Applicant had not paid his service charges. It is asserted that the level of fee is reasonable 'as it takes into account the administrative, staff, postage and other costs incurred in chasing late payment'.

The Inspection

7. The members of the Tribunal inspected the property on the morning of the hearing in the presence of the Applicant, Mrs. Vidgeon and others. The weather was fine and dry. The property is an early 20th century property converted into 3 flats, one of which is a converted loft space. It is of partially rendered brick construction with decorative brick quoins. The original slate pitched roof has been replaced with a composite imitation slate roof although the front appears more recent than the back. There is a flat roofed dormer at the rear where the facia appears to be rotting. The pointing at the top of the chimney stacks at the rear is in poor condition.

8. The condition of the property appears to be reasonable for both its age and the fact that it is high on a cliff facing the Thames Estuary which has salt water and makes property more susceptible to weathering. The Tribunal members were able to go into the first floor flat and they went to the rear door from which there is a fire escape with wooden treads leading down to the garden. At least one of the treads was clearly rotting away and neither the Tribunal members nor anyone else present was prepared to walk onto these stairs. This is a serious health hazard.

9. The members of the Tribunal also obtained access to the lane at the rear from which one can reach a garage in the back garden and the rear of the building. It became clear from the photographs in the report that the person who inspected the property for the purpose of the condition report had inspected the rear of the wrong building which is one of the allegations made by the Applicant.

The Lease

10. The bundle contained no fewer than 3 copies of the lease which is dated 20th June 1997 and is for a term of 199 years from the 25th December 1994 with a rising ground rent. Clause 2(13) and Part II of the 4th Schedule of the lease is a covenant by the lessee to "*...contribute and pay on demand (including in advance if reasonably demanded)...*" one third of the cost of the landlord dealing with its obligations as set out in the 3rd Schedule.

11. As is usual in a long lease, the landlord has to keep the structure in repair, insure the building and do all the other things set out in the 3rd Schedule.

12. As to fees, the landlord is able to recover "*The fees of the Landlord and or any managing agents appointed to manage the Building for the collection of the rents of the flats demised in the Building and the Service Charge from all the occupiers of the Building and for the general management thereof...*" plus VAT.

13. In addition the landlord is entitled to recover any costs incurred in contemplation of forfeiture. The service charge regime in the lease is perfunctory. There is no mention of when service charges are payable and there is no mention of a service charge account which has to be audited.

The Law

14. 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'.

15. 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.

16. Section 20C of the 1985 Act enables the Tribunal to make an order preventing a landlord from recovering its costs of representation before the Tribunal as part of any future service charge.

17. Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") provides for the same conditions and jurisdiction with regard to administration charges which are defined as including payments demanded in addition to rent "*...in respect of a failure by the tenant to make a payment by the due date to the landlord...*".

The Hearing

18. The hearing was attended by those who were at the inspection including Mr. Guymer, the lessee of the first floor flat. Mr. Bellamy from the current managing agents, Gateway, was also present. Mrs. Vidgeon represented the Respondent although Countrywide only managed the property for about 18 months of the relevant period. The history is that Marden were the agents until 31st December 2010 when Countrywide took over. Gateway took over from them on 1st August 2012. The freehold title was transferred to the Respondent on the 15th June 2010.

19. The position as to the accounts was clarified. A very brief undated account for the period up to 24th December 2010 is at page 101 in the bundle. This consists of 3 lines as stated above in the decision save that the balance due is £321.92 as opposed to the £321.04 in the demand which is at page 103. The budget for the half year ending 24th June 2011 is at page 127. However, half this period is covered by the 2010 accounts. The budget for the year ending 24th June 2012 is at page 131.

20. Mr. Bellamy, for Gateway, said that final accounts up to the time when a Right to Manage company took over had been prepared and were presently with the freeholder for approval. The Tribunal bears this in mind when making its decisions on the various issues and attempts to provide assistance to the parties to avoid any further application.

21. Both parties then gave their evidence on the issues and the evidence and representations are included in the conclusions below.

Conclusions

22. Paragraph 2.4 in part 2 of the Code sets out what a managing agent should normally do for and include within its agreed annual fee. This includes collecting ground rent and the service charge, instructing a solicitor or debt recovery agent,

preparing service charge statements, producing annual spending estimates, administering building and other insurance, visiting the property to check its condition, and dealing reasonably with enquiries from tenants. This section is well known to Countrywide as it is included within the hearing bundle at pages 124 and 125.

23. The **'audit' fees** are not for any sort of independent audit. These are for simply preparing the service charge accounts. They are not going to be complex in view of the lack of activity on the part of the managing agents. This is a cost which should clearly be included within the annual management fee.

24. The **'health and safety'** item is something which greatly troubled the Tribunal. The first issue was its purpose. The end of year account referred to it as 'health and safety'. Mrs. Vidgeon's written statement acknowledged that this was an error but the said that it was a condition survey and for insurance purposes. At the hearing she acknowledged a further error because it was not for insurance purposes. It was only a Stock Condition Survey which is, in fact, what the invoice from Morgan Sloane says at page 107.

25. The second issue is the date of the report (4th May 2011) compared with the date of the invoice (5th November 2010) which was bound to, and did, raise suspicion in the minds of the lessees. The third issue is the quality of the report. The invoice says that it was for 4 flats whereas there are only 3. The rear of the wrong building was assessed which means that no mention is made of the only really serious issues relating to the condition of the building i.e. the rotting facia, the rotting external staircase and the poor pointing to the chimney stacks.

26. The lessees also feel that as the property was decorated inside and out in 2009/10, the then landlord would have known the condition of the property and this report was therefore being obtained by the new freeholder for its own purposes. After all, a Section 20 consultation took place which meant that the whole property would have had to be assessed by the then managing agents. In those circumstances, why should the lessees pay for this new report?

27. The members of the Tribunal are inclined to agree with the lessees' assessment of the situation. They are also concerned to note that the only serious item mentioned is some interior ceiling tiles in the common parts which are polystyrene and therefore a fire hazard. Nothing has been done to rectify this, which tends to corroborate the view that this was just a report (inaccurate, as it assessed the rear of the wrong building) to give the new freehold owner some idea of what it had bought. In those circumstances, and as the report was of no real value in terms of property management, the Tribunal does not see why the lessees should pay for it.

28. The **budget** item for **repairs** is just an estimate and is reasonable for that purpose despite the first figure only covering half a year i.e. between 24th December 2010 and 24th June 2011.

29. As far as the **management fees** are concerned, the picture is complicated by the 2 changes in managing agent over the 3 years. The average annual fixed fee

per unit for a professional managing agent in the Southend area is about £150-£200 plus VAT. This is within the Tribunal members very considerable knowledge and experience. For that figure the tasks set out in the Code would be undertaken. In this case, the managing agent does not have to collect ground rent or have anything to do with insurance, which is usually fairly time consuming.

30. Mrs. Vidgeon said that the fee would 'normally' include a visit to the property 4 times a year. On being pressed she could not say that this had definitely happened in this case and neither could she produce any documentary evidence of such visits having taken place. The Tribunal does not believe that they have taken place over the relevant period. Otherwise, the glaring error in the condition report i.e. inspecting the rear of the wrong building, would have been picked up. Also, the dangerous condition of the rear staircase would have been noted. The rotting is very obvious even to the casual observer, let alone a professional managing agent.

31. Thus, the Tribunal concludes that the management fee for the year ending 2010 is reasonable in the sum of £137.08 per flat. It finds that £210 per annum including VAT is a reasonable budget figure which means that the budget for the first 6 months should be £105 and then £210 for the next year. Having said that, when it comes to calculating the actual figure, the Tribunal's view is that a reasonable managing agent's fee for this property and for the amount of work actually done for the relevant period, is a figure of £150 plus VAT per flat per annum to include the preparation of service charge accounts.

32. The last issue is the claim for variable **administration charges**. Amongst the items in the Code to be included in the fixed fee are the collection of service charges from the lessees and the instruction of either solicitors or debt recovery agents. As Mrs. Vidgeon also said in her evidence, the fixed fee also includes dealing with telephone calls, e-mails and correspondence with lessees. This is also in the Code. In fact her written statement is ambiguous because she says, at paragraph 31, that "*I can advise that the administration charges are not incurred in the first instance, and attach herewith, marked 'LV18' copy letters dated 02/05/2012 and 16/05/2012 chasing for payment of the sums outstanding. As no payment was forthcoming the administration fees were incurred*".

33. One interpretation of this is that nothing was charged for these letters but as no payment was made thereafter, the charges were imposed. However, on looking at this correspondence, it appears clear that the first letter attracted the first charge of £120 and the second attracted £150.

34. It is interesting to note the contents of a letter from the Applicant to someone on behalf of the Respondent dated 15th June 2012 i.e. after both these letters, where it is clear that the Applicant is making a payment under protest and he adds that he is still unclear about how the figure for the year ending 24th December 2010 is made up and goes on "*I presume accounts have been prepared for this period? I would like to see what the amount of £321.04 represents...*". As is said above, the demand for payment dated 26th April 2012 asks for £321.04 whereas the undated statement of account details the amounts claimed totalling £321.92. It

is this Tribunal's conclusion that when the Applicant wrote his letter of the 15th June, he had not seen the account at page 101, in which case the demand was premature anyway.

35. The Tribunal concludes that a reasonable managing agent would consider that taking some steps to chase unpaid service charges comes within the fixed fee. A reasonable amount of chasing would be, perhaps, 2 steps i.e. either 2 letters or a letter and a telephone call. If the landlord was not then prepared to instruct the agent to place the matter in the hands of a solicitor or debt collection agency, then a figure of £25 per letter or telephone call plus VAT would be reasonable.

36. In this case, the Tribunal concludes that no administration charge is reasonable or payable. As to costs, as the Respondent has not succeeded on most of the points raised, the Tribunal considers it just and equitable for an order to be made under Section 20C of the 1985 Act. The Tribunal does not order the return of the fees paid, firstly because there is no application for their return and secondly because it could be said to have been a little premature to make this application. The Right to Manage Company has just taken over management and the final accounts have still to be served. If the final accounts had been reasonable, there would have been no need for any application.

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Bruce Edgington
President
17th April 2013