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**HM Courts
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LEASEHOLD VALUATION TRIBUNAL

Case Reference: CHI/29UM/LSC/2013/0012

Premises: Flat 1, Hedley Court, 54-56 East Street, Sittingbourne Kent, ME10 4RT

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A AND 20C LANDLORD AND TENANT ACT 2002 (the 'Act')

Applicant	Ground Rents (Regis) Limited (landlords)
Representation	Ms L. Vidgeon and Ms L. McGill (Countrywide Estate Management) with Mr D. Bland of Pier Management Limited (as an observer)
Respondent	Mr P and Mrs D. Hudson (joint leaseholders)
Representation	In person
Pre-trial review	None
Hearing date	13 May 2013
The Tribunal	Professor J. Driscoll, solicitor (Lawyer chair), Mr C. Harbridge FRICS and Mr P. Gammon MBE, BA

<p>The Decision Summarised</p>	<p>For the service charge period 2009 to 2010 the following costs were reasonably incurred and are recoverable in full from the leaseholders. These are the electricity costs, the other costs claimed and in respect of the management charges that costs of £150 are recoverable from the leaseholders.</p> <p>For the service charge period 2010 to 2011 the following costs were reasonably incurred and are recoverable in full from the leaseholders. These are the electricity costs and the other costs claimed. Management charges of £160 are also recoverable.</p> <p>For the service charge period 2011 to 2012 the following costs were reasonably incurred and are recoverable in full from the leaseholders. These are the electricity costs and the other costs claimed. Management charges of £165 are also recoverable.</p> <p>For the service charge period 2012 to 2013 the following costs were reasonably incurred and are recoverable in full from the leaseholders. These are the electricity costs and other charges claimed. Administration costs involved in the recovery of the unpaid charges of £150 are reasonable. Management charges of £170 are also recoverable.</p>
<p>Date of the decision</p>	<p>27 June 2013</p>

Introduction

1. This matter is being considered by this tribunal following an order of the Canterbury County Court dated 16 January 2013 transferring various claims for a determination of the reasonableness of the service charges. The determinations are to be made under section 27A of the Act. (Copies of the relevant statutory provisions are appended to this decision).
2. The details of the parties are as follows: the applicants are the owners of the freehold to a block of flats all which are let under long leases and they are the landlords under these leases. The building is known as Hedley Court. They appointed Countrywide Estate Management as their managing agents and the appointment took effect in December 2011. We will refer to them respectively as the 'landlords' and the 'managers' (Pier Management Limited, whose representative attended the hearing as an observer, have been appointed to collect the ground rents payable under the leases and to arrange the insurance for the block).
3. The respondents are the joint leaseholders of Flat 1 and they dispute certain service charges. (They also own another flat in the block which is not the subject of these proceedings but which will, no doubt, be affected by the outcome as will the other flats in the building). We will refer to them as the 'leaseholders'.
4. Under the original leases there was a third party called Hedley Court Residents Association Limited but this has been struck off the register at Companies House and it was dissolved on 15 March 2011.
5. The leaseholders, who reside in Whitstable in Kent, sublet both flats on assured shorthold tenancies. For Flat 1 (the subject premises in these proceedings) they receive a rent of £550 per calendar month. The other flat (Flat 3) commands a monthly rent of £575.
6. It is common ground that under the leases the landlords are responsible for the insurance, repair and maintenance of the block and its common parts and that they are entitled to recover their costs through service charges.

Our inspection

7. We inspected the flat on the morning of the hearing (13 May 2013) and we were accompanied by the leaseholders, the representatives of the landlords (listed at the beginning of this decision) and the tribunal's case officer. We were able to inspect the external structure of the block including the front and the rear of the building.
8. Hedley Court is a purpose designed and built detached block of nine self-contained flats, close to the centre of Sittingbourne, Kent. The building was constructed about seven years ago having a frontage and pedestrian access to East Street, and a frontage and vehicular access to Fairview Road. The building is of 2/3 storey design with external walls having facing brick and vertical tile-hung elevations, and roofs of pitched design, clad in plain concrete tiles, and incorporating dormer windows.
9. The building is designed around an inner communal courtyard, affording access to covered parking bays, a communal bin store and communal entrance halls (to flats Nos. 6 and 7), with staircases and landings to the remaining flats. There are two garages to the Fairview Road frontage which are integral to the building. Flats I is accessed exclusively from East Street and enjoys communal access over the pedestrian passage and courtyard to the bin store, and through to Fairview Road.
10. The tribunal inspected the external elevations from both frontages and from within the courtyard. Whilst some weathered paint-work was noted, the general standard of repair appears to be in a satisfactory order. The tribunal also inspected a communal staircase, which was also noted to be in satisfactory order.

The hearing

11. After the inspection the hearing took place later that day at the Medway Magistrates Court. Ms Vidgeon, the client liaison officer of the managers spoke on their behalf and her colleague Ms McGill a property manager working for the managers also gave evidence. The leaseholders represented themselves.
12. Ms Vidgeon told us that county court proceedings were instituted to recover unpaid service charges. As the leaseholders raised certain objections the court transferred the service charge claim to this tribunal for a determination. Under the leases the service charge period runs from 26 March to the 25 March in the year following. The disputed service charges relate to the periods 2009 to 2010, 2010 to 2011, 2011 to 2012 and 2012 to 2013.
13. She also told us that the amount claimed in the county court proceedings of £2,032.98 had been reduced by a payment made by the leaseholders of £500 so the arrears claimed now stood at the sum of £1,532.98.

14. The details of their claims are set out in the bundle of documents prepared for the hearing (228 pages in length) which included a copy of the lease, copies of various service charge demands, invoices and other documents.
15. Ms McGill outlined (based on her statement dated 8 April 2013) the landlord's case in the following way. For what she calls the '2010 Year End' service charge demands were made and she referred us to copies of these demands and various invoices and other documents. Three of the service charge items are challenged by the leaseholders; these are the costs of the electricity, the costs of replacing a set of keys for the common parts and the level of management fees.
16. She then turned to the '2011 Year End'. For this service charge period, the leaseholders have challenged the electricity costs, the costs of a health and safety report and the management fees. They had also challenged certain professional fees but she told us a charge for a stock condition survey had been made in error and all leaseholders are or will be credited for this.
17. Turning to the '2012 Year End' management fees are challenged by the leaseholders.
18. As to the costs of the electricity, we were told that there is a timing switch for the stair case lights. The company has produced invoices and receipts for these payments.
19. Ms McGill told us that she visits the premises four times each year. Her company manages several properties owned by the landlords and they are, therefore, their managing agents of choice.
20. As to the '2013 Year End', the accounts are not yet available.
21. She also told us that the leaseholders were challenging charges for bringing legal proceedings, which she describes as 'administration charges'. These are justified in her submission recoverable under the second schedule, Part III, clause (2) of the lease as the costs of incurred in forfeiture claims, which she argues, includes cases such as this where non-payment of service charges can lead to a forfeiture claim. The obtaining of a determination of service charges is in her view, a necessary step in seeking to forfeit a lease.
22. The leaseholders addressed us on their concerns. They recognise that electricity has to be used in the common parts but they question the high costs involved. As to the costs of the keys, he has been in touch with the previous agents who said that they retain the keys and would pass them over the managers. They agree though the level of the electricity charges for '2011 Year End'.
23. They agree that the landlords are entitled under the lease to appoint managing agents but they consider that their charges are far too high and higher than charges made by other agents.

24. Each of the parties made brief closing statements.

Reasons for our decisions

25. We deal with the electricity charges first. As the leaseholders told us that they now agree the charges for the Year End 2011 we have only to make determinations for the other periods in dispute. As the common parts need to be lit and the landlords have produced invoices and receipts for payment we do not think that the leaseholder's objections invalidate these costs. The landlords have no direct control over the costs charged or the actual use of the common parts. During the hearing the leaseholders raised additional issues on the electricity costs. They complained about the high usage of light bulbs and certain repairs. Those representing the landlords told us that some works needed to be carried out. As these particular objections had not been raised before the hearing we consider that it this made it difficult for the landlords to refute the complaints and that in consequence we decided not to consider this particular objection any further.
26. Accordingly, we determine that for the Year Ends 2010, 2012 and 2013 that these electricity costs were reasonably incurred and they are recoverable in full.
27. Turning to the management charges we agree with the leaseholders that the charges are on the high side. This is after all a recently built development where one would expect few practical problems. It is also a relatively small development to manage. We also accept in principle the leaseholder's point that as 'buy to let' investors they believe that these charges are higher than average and that this is based on their experience with their flats in other areas.
28. Whilst we accept that the landlords are entitled to appoint managing agents under the terms of the leases, and that they are also entitled to appoint agents of their choice, we consider that the level of charges is on the high side. Based on all of these points and also on our own knowledge and professional experience we consider that for the service charge periods in question fees based on £150 per unit for the year ending 2010, £160 per unit for the year ending 2011, £165 per unit for the year ending 2012 and £170 for the year ending £170 is a reasonable fee to recover.
29. We turn to the administration fees charged for seeking to recover the service charge arrears. Those representing the landlords told us that these are the charges incurred by their credit control section and they are based on fixed charges for notifying a leaseholder of any arrears or late payment, additional action and then, where necessary, the costs of using their solicitors to send a formal demand. Whilst we accept that in principle such costs can be reasonable, we consider that applying standard fees regardless of the size of the arrears is unreasonable. We determine legal costs of £150 are recoverable. (These figures are net of VAT).

30. As to the key and lock costs, based on our experience we consider that the sum of £30 is a reasonable charge to make.
31. On the issues relating to costs we note first that this is primarily a matter for the court. As the leaseholders fell into arrears the landlords had little choice but to bring proceedings to recover the unpaid charges. Once the leaseholders filed certain objections to the charges claimed in the court, the court inevitably decided to transfer issues relating to the reasonableness of the costs to this tribunal. As Ms Vidgeon told us that no charges for this hearing or the preparation for it will be included in future service charges it was not necessary to consider making an order under section 20C of the Act.
32. As a general comment we were perplexed by the landlord's use of an 'accrual system' when calculating the electricity costs. In future the landlord must only charge in one service charge year the actual costs for that period. The lease does not allow for an accrual system and using it only serves to cause confusion where a leaseholder is trying to check whether the service charges are accurate.
33. We direct that this matter is returned to the Court for further action and we recommend that in light of our determinations the parties endeavour to reach agreement over the payment of the outstanding charges.

James Driscoll (Lawyer Chair)

27 June 2013

Appendix (statutory references)

Landlord and Tenant Act 1985

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

- (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
- and the amount payable shall be limited accordingly.

Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

- (a) has been agreed or admitted by the Tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

(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 proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, 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.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

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.