



DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

LANDLORD & TENANT ACT 1985 – SECTION 27A and SECTION 20C &
COMMONHOLD & LEASEHOLD REFORM ACT 2002 – SCHEDULE 11

Ref: LON/00BA/LSC/2012/0302

Property: Flat 6, 23 Chestnut Road, Raynes Park, London,
SW20 8ED

Applicant: Ms M Rodrigues

**Appearances for
the Applicant:** In person

Respondent: Waterglen Limited

Appearances for Ms L Vidgeon of Countrywide Estate
Management Ltd

the Respondent: Mr P Fadrowski of Countrywide Estate
Management Ltd

Date of Hearing: 10th September 2012

Tribunal: Mrs H C Bowers (Chairman),
Mr S F Mason BSc FRICS FCIArb
Mrs L Walter

REASONS

Introduction

1) Two applications were received from the Applicant; both were dated 28th April 2012. The first application was for the determination of the reasonableness of service charges pursuant to section 27A of the Landlord and Tenant Act 1985 (the 1985 Act). The years in dispute were 2006 to 2010. The second application was for a determination of liability to pay administration charges pursuant to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) in respect of a total sum of £411.23. Included in both these applications was an application for an order limiting the recovery of the cost of the proceedings through future service charges, pursuant to section 20C of the 1985 Act.

2) An oral pre trial review was held and Directions were issued on 29th May 2012.

The Lease

3.) The Applicant is the leaseholder of Flat 6, 23 Chestnut Road (the subject property). The Respondent holds the reversionary interest in 23, Chestnut Road (the subject development).

4.) The Tribunal was provided with a copy of a lease of Flat 6, 23 Chestnut Road that was dated 11th April 1989. The original parties to the lease were Trenvale Limited and Mark Andrew Cook Construction Limited as Lessor and Anthony John Oliver and Justine Marie Knowles as Lessee. The lease is from 29th September 1988 and is for a term of 99 years.

5.) Under the lease the Demised Premises, Building and the Retained Property are all defined.

6.) The "maintenance year" is defined as the 12 month period ending 31st December each year. The "maintenance contribution" means "*a sum equal to such percentage proportion of the aggregate annual maintenance provision for the whole building (computed in accordance with provisions of Part 1 of the Fourth Schedule hereto)*". The "maintenance contribution" is defined as "*a sum equal to such percentage proportion of the aggregate annual maintenance provision for the whole of the Building (computed in accordance with the provisions of Part 1 of the Fourth Schedule)*".

7.) Clause 4 of the lease sets out the lessee's obligations to pay the Maintenance Contributions. The Fourth Schedule sets out the computation of

the annual maintenance provision and also details the expenses incurred by the lessor which are to be reimbursed by the Maintenance Contribution.

Inspection

8.) The Tribunal did not consider that it was necessary to make an inspection of the property. Therefore this matter was considered on the basis of the papers submitted to the Tribunal and for the evidence and submissions made at the hearing. We understand from the parties that the development is a conversion of a Victorian house comprising a total of 6 flats with car parking and landscaped gardens.

The Law

9.) Section 18 of the 1985 Act provides:

- “(1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent-*
- (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and*
 - (b) the whole or part of which varies or may vary according to the relevant costs*
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters for which the service charge is payable.*
- (3) for this purpose*
- (a) costs includes overheads and*
 - (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period”*

“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 provision 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.

- (2) *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"*

10.) Schedule 11 of the Commonhold and Leasehold Reform Act 2002 provides:

"1 (1) In this Part of the Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly –

- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,*

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by a tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(3) In this Part of this Schedule "Variable administration charges" means an administration charge payable by a tenant which is neither –

a. Specified in his lease, nor

b. Calculated in accordance with a formula specified in his lease.

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

5 (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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."

11.) Section 20C, Limitation of service charges: costs of proceedings states:

(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 Lands 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)

(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.

(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.

Hearing and Representations

12.) This matter was set down for a hearing at 10.00 am on Monday 10th September 2012 at 10, Alfred Place, London, WC1E 7LR.

13.) Two bundles were prepared which included each party's statement of case and including supporting documentation. These documents together with the submissions at the hearing were considered by the Tribunal. A brief summary of each case is detailed in the following paragraphs.

14.) A Scott Schedule was prepared by the parties and we used this to assist us as to what items remained in dispute. This document was on page 10.36 of the Respondent's bundle and we will refer to this document in respect of the points raised by the parties.

Issues:

2006 Item 1 - General Repairs and Maintenance - £558.12

15.) Ms Rodrigues explained that there had been no invoices and that it was impossible to state if these sums had been paid or were reasonable. The Tribunal were shown photographs that were dated 14th January 2007 and it was commented that given the condition of the property it was difficult to see how the money had been spent. In response Mrs Vidgeon stated that Countrywide were not the managing agents at the time. It is assumed that the previous agent would have carried out the same process as Countrywide and therefore the invoices would have been checked when the years end accounts were prepared.

16.) The Tribunal determine that the sum of £558.12 is payable. The accounts for this period have been certified and this suggests that there has been some auditing process. Although we have no information as to what the work involved, we have no evidence to indicate that the work did not take place. The level of expenditure is a level that could be anticipated for annual repairs of a property of this type.

Item 2 - £66.22 – Sundries

17.) Ms Rodrigues stated that there was no explanation of what this sum related to. Mrs Vidgeon was unable to clarify the details relating to this item,

but stated that as the sum is on the accounts some analysis would have taken place.

18.) The Tribunal determine that the sum of £66.22 is payable for the same reason as set out in paragraph 15 above.

Item 3 - £1,025 – Management Fees

19.) The Applicant explained that she considered the sum excessive given the level of management. We were shown copies of correspondence that supported the contention that there was minimal management of the property. In response to the question as what would be a reasonable level of fees, Ms Rodrigues stated that a sum of £450 to £600 plus VAT would have been reasonable if a good management service had been provided, but considers in the circumstances that a fee of £50 per unit - £300 overall would have been reasonable. For the services that would have been provided it would not involved a heavy time commitment. Mrs Vidgeon stated that it was not disputed that there was a manager in place at the time. The Tribunal were shown an extract of a Countrywide management agreement indicating the level of service they would supply. It was acknowledged that there was a lot of correspondence and there appeared to be some funding problems. However, services had been provided and a management fee should be payable.

20.) The Tribunal consider that a management fee of £1,025 would have been a reasonable fee in 2006 for a good level of management service. However, we are concerned about the level of service that was provided and this was demonstrated in the contemporaneous correspondence that was produced. Accordingly, the Tribunal consider that a reasonable management fee for the period would have been £75 per unit plus VAT (total - £450 plus VAT; £528.75 including VAT).

Item 4 – Professional Fees - £357.20

21.) Ms Rodrigues stated that there were no invoices and therefore it was not possible to state to what the sum related. Mrs Vidgeon explained that the sum may have arisen from a condition report or other professional activities.

22.) The Tribunal determine that the sum of £357.20 is payable for the same reasons as set out in paragraph 15.

2007 Item 5 - General Repairs and Maintenance - £229.12

23.) This item is included in the accounts for the year ending 2007. The same arguments were exercised by the Applicant and the Respondent as stated in paragraph 14 above.

24.) The Tribunal determines that the sum of £229.12 is payable for the same reasons as set out in paragraph 15.

Item 6 – Management Fees - £1,025

25.) Ms Rodrigues is seeking a figure of £50 per unit plus VAT due to the continuing poor service during this period. We were shown correspondence indicating a lack of service and in particular a letter from Dunlop Haywards Residential dated 22nd October 2007 acknowledging the previous poor service. Mrs Vidgeon re-stated her earlier submissions and that the Respondent would have appointed agents who complied with the standards of the RICS code of practice.

26.) The Tribunal determines a management fee of £528.75 including VAT, is payable for this period, for the same reasons as set out in paragraph 19 above.

2008 Item 7 – Gardening - £1,281.54

27.) Countrywide had taken over management of the property on 1st August 2008. Accounts were prepared by Countrywide and reviewed by N.R. Pulver & Co, Chartered Accountants and acknowledged that there had been some accruals from the earlier period. An examination of the papers revealed that from the sum of £1,281.54, the figure of £1,157.40 related to the insurance premium that had been mis-allocated. This left a figure of £124.14, which Ms Rodrigues still disputed, as there was no invoice to record what work had been done.

28.) The sum relating to the gardening work of £124.14 is payable. Whilst there was no invoice, there was no evidence before the Tribunal that this work had not been carried out, nor to an unsatisfactory standard. During the lunch break the parties were invited to consider and agree the insurance premium. There seemed to be no clear agreement as to the reconciliation of this item. It is clear from the summary of invoices on page 10-54, that the insurance premium of £1,157.40 was mis-allocated. From the invoices on pages 6-27 it appears that the insurance premium was recovered separately Ms Rodrigues. However, page 5,48 the service charge statement for this relevant year shows the insurance included in the gardening charges. It appears to the Tribunal that there was some double charging. Accordingly, the total sum payable for this heading, should be limited to £124.14.

Item 8 – General repairs and Maintenance - £552.26

29.) The figure of £552.26 was made up from work carried out by CityPower for £250 plus VAT, this item was not disputed by Ms Rodrigues. The disputed items related to two invoices from DES Locks for a total sum of £258.51. There had been long standing problems with the doors and the locks and

inaction from the managing agents to resolve the problems. It was confirmed that someone did attend.

30.) The Tribunal determines that the total sum of £552.26 for general repairs and maintenance is payable. In respect of the two disputed sums for the locks, it would appear that there are two distinct dates for the sums and could relate to an initial attendance and then follow up activities. However, this is purely speculative. In essence we have not been provided with the evidence to indicate that the work was not carried out or to a sufficient standard.

Item 9 – Health and Safety Survey - £393.63

31.) This item had been misallocated and was not a health and safety survey and related to repair of a leaking pipe as shown at page 10-54 of the bundle. There is no evidence before the Tribunal that this sum was not incurred and is therefore allowed and is payable.

Item 10 – Management Fees - £1,257.51

32.) Again the Applicant was seeking a substantial reduction to £50 plus VAT per unit. The Tribunal were satisfied that the management service provided had improved and have determined that £95 plus VAT per unit to give a total cost of £669.75.

2009 Item 11 – Insurance Valuation - £862.50

33.) This item was agreed between the parties. The sum of £862.50 is payable.

Item 12 – Electricity - £250

34.) Ms Rodrigues was concerned about the level of the electricity bills. The parties were invited to sort this aspect out over the lunch adjournment. However, it is clear no specific progress was made on this aspect. The Tribunal note that the nature of electricity bills is that they can be based on estimated readings in some years and then a reconciliation occurs with credits and debits being passed onto future years. Accordingly, it is impossible to identify when electrical charges were actually incurred. There is no specific evidence before the Tribunal that the electrical costs are unreasonable and it is therefore satisfied that the sum of £250 is reasonable.

Item 13 – General Repairs and Maintenance - £2,289.65

35.) From the total amount, the sum disputed by Ms Rodrigues was £1,489.25 for electrical work. None of the tenants had been aware that the electrical work was about to be carried out. Photographs were provided to the Tribunal to show the standard of workmanship. From correspondence it was shown that the previous agent had been unaware of the work. Another invoice

that was disputed was in relation to work carried out by S Holloway Building Contractors for the sum of £202.40. The invoice specified that the work related to the investigation and re-fitting of roof tiles. Ms Rodrigues stated she had not observed the workmen at the property and that the problem had not been resolved. The work was re-done by the RTM company in June 2011. Ms Rodrigues also stated that in respect of invoices from Independent Security Limited for £97.75 in May 2009 and then for £161 in July 2009, the second visit was due to the poor workmanship of the first engineer. The Applicant's father had been at the premises when the second set of works had been carried out and had been informed that there second visit was required due to poor level of service on the first visit. Mrs Vidgeon stated that the details on the invoice did not explain the cause of the problem.

36.) The photographs produced by the Applicant shows electrical works that appear to have been carried out to a poor standard. There are surface, mounted conduits and there is a poor finished standard. Given this evidence we are satisfied that the work was not carried out to a reasonable standard and accordingly we make a deduction to £750 plus VAT. This figure is based on the sum of £150 plus VAT for periodic inspection work, but reducing the remainder to £600 plus VAT – giving a total of £862.50. The Tribunal makes no deduction in respect of the re-fixing of roof tiles. The sum is relatively small and there is no evidence before the Tribunal that no work was carried out. Likewise, in respect of the door entry system, we have no specific evidence that there was any duplication of the work and no deduction is made in respect of this sum. The total sum payable under this heading is £1,662.90.

Item 14 – Health and Safety Survey - £230

37.) This item is no longer disputed. The sum of £230 is payable.

Item 15 – Out of Hours Emergency Service - £75.90

38.) This item is no longer disputed and the sum is payable.

Item 16 – Management Fees - £1,629.18

39.) The budget figure was £690 for the relevant period. The Tribunal was shown the invoices that related to this period. The Applicant stated that the issues regarding the quality of management was the same for the previous years, but the sums charged were higher. It was acknowledged that there was an improved communication from Countrywide and that aspects such as the Health and Safety Survey had been carried out, but no works were actually progressed. The Applicant contends that a management fee of £50 plus VAT per unit would still be appropriate. Mrs Vidgeon stated that there had been an improved level of service. This is indicated by the increased expenditure showing that activities were underway to improve the development. Ms

Rodrigues suggested that there may have been an increase in activity, but this was not well managed.

40.) It appears to the Tribunal that there was an improvement in the management service that was provided, but there are some indications that the service was not to the level it should have been. In these circumstances we consider that whilst an appropriate management fee would be £175 per unit plus VAT, in this year we consider that a slightly lower rate of £150 per unit plus VAT should have been charged. Accordingly, the management fee is determined at £1,035, inclusive of VAT.

Administration Charges - £411.33

41.) These items are no longer in dispute and it has been agreed that these sums will be credited back to Ms Rodrigues.

Section 20C

42.) There was a successful Right to Manage application in October 2010. In these circumstances, the Respondent will not be in a position to seek their costs in relation to the current applications via future service charges. Accordingly, it is not necessary for this Tribunal to make any determination in respect of an application for an order under the provisions of section 20C of the 1985 Act.

Reimbursement of Application and Hearing Fees - £350

43.) Ms Rodrigues explained that she had incurred costs of £350 in bringing this application (being £200 for the application fees and £150 for the hearing fee). She considered that she had no option but to bring the application and that as a result a number of items have been credited back to her. Mrs Vidgeon opposed this application on the basis that the disputed expenditure was reasonable.

44.) We consider that from the evidence supplied, the Applicant has experienced frustration in trying to seek clarity and answers from the Respondent. The Applicant has been successful in a few areas and has reached a settlement with the Respondent on some aspects. Such a position would not have been reached without the making of the current applications. In those circumstances we consider that it is appropriate that the Respondent reimburses the Applicant the sum of £350 in respect of the application and hearing fees.

Summary

	Claimed	LVT Decision	Difference
Management Fees 2006	£1,025	£528.75	£496.25
Management Fees 2007	£1,025	£528.75	£496.25
Gardening	£1,281.54	£124.14	£1,157.40
Management Fees 2008	£1,257.51	£669.75	£587.76
General Repairs & Maintenance	£2,289.65	£1,662.90	£626.75
Management Fees 2009	£1,629.18	£1,035.00	£594.18
Total	£8,507.88	£4,549.29	£3,958.59

45.) The total reduction in the service charges from our findings detailed above is £3,958.59. Ms Rodrigues share based on her 16.67% contribution is £659.90 and this sum should be re-imbursed to her. In addition the administration fees of £411.33 should be re-imbursed to the Applicant. The fees of £350 are to be reimbursed by the Respondent to the Applicant.

46.) We trust that this decision will help the parties to clarify what sums are owed. We are concerned, that we cannot carry out a forensic audit of the accounts and examine each payment, especially when pages 1-04 includes items in service charge years beyond our consideration.

.....
Helen C Bowers (Chairman)

26th October 2012.