11891

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/OOCA/LCS/2015/0029** **MAN/OOCA/LCS/2015/0063**
Property	:	**The Knowles, 2 Blundellsands Road West, L23 6AB and The Lawns, 32 Burbo Bank Road South, Blundellsands, Liverpool L23 6AD**
Applicants	:	**Various (see Appendix 1)**
Representative	:	**T Brian Phillips MRICS**
Respondent	:	**Trinity (Estates) Property Management Limited**
Representative	:	**Mr P. Sweeney of Counsel**
Type of Application	:	**Application under section 27A (and 19) of the Landlord and Tenant Act 1985 and section 20C**
Tribunal Members	:	**Mr G. C. Freeman** **Mr K. K. Kasambara MRICS Expert Valuer Member**
Date of Decision	:	**3 November 2015**

DECISION

DECISION

The service charge for the Property for the periods covered by the Application is reasonable save for the following:-

The amount due for the year ended 31st March 2008 is reduced by the sum of £215.42 in respect of an expense incorrectly debited to the account.

The sum of £450.00 (of a total sum of £900.00) incurred for a Fire Risk Assessment for the same period was unreasonably incurred.

For the remaining periods the amounts payable in respect of Fire Risk Assessments were unreasonably incurred to the extent that the expense was incurred in any period of less that of two years.

No order is made under Section 20C of the Landlord and Tenant Act 1985.

Background

1. By an application received by the Tribunal on 23rd February 2015 various leaseholders at the Knowles applied to the Tribunal for a determination of the liability to pay and the reasonableness of service charges for the Property for the period ended 31st March 2007 and the years ended 31st March 2008 to 31st March 2014 inclusive. In an unsigned and undated application, received on 18th June 2015, Colin Burrows of Flat 5 the Lawns made a similar application. Mr Phillips signed and dated the application at the hearing on his behalf. On the 24th July 2015 the Tribunal directed that both applications be heard together.

2. The Tribunal issued Directions on 24th July 2015, following which the parties provided written statements of case, responses and witness statements setting out the issues for consideration by the Tribunal. Helpfully, the parties narrowed down the issues by means of what is known as a Scott Schedule, which identified which items were in dispute, and provided for the respective comments on those items from each party. During the hearing agreement was reached over many of the items. Those that remained are the subject of this decision.

3. The Property, which was inspected by the Tribunal on the morning of the first hearing, consists of a development of two blocks of 23 flats and 11 townhouses known as "Mariners Quay", in a pleasant residential suburb of Liverpool, close to the river Mersey. The larger block, known as "The Knowles" comprises 15 flats on two floors with two penthouse apartments on the third floor. There is a lift and undercroft car parking. The Lawns is situated on the corner of Blundellsands Road West and Burbo Bank Road South. It consists of six flats on two floors. Each flat has an open car parking space, access to which is gained from Burbo Bank Road South. Between the two blocks are situated the townhouses. Access to these and the Knowles is from a communal entrance on Blundellsnads Road West. The townhouses which are held on long leases are not obliged to contribute to the service charge except as described as follows. The owners were therefore not parties to the application.

4. On 30th September 2010 Knowles Blundellsands RTM Co Limited assumed the management responsibilities in the leases from the Respondent relating to the Knowles.

5. On 31st March 2011 The Lawns RTM Co Limited assumed the management responsibilities in the leases from the Respondent relating to the Lawns.

The Leases

6. A specimen copy of the lease for Flat 15 The Knowles was produced. It is dated 20th April 2007 and is made between Persimmon Homes Limited of the first part, Helga Mary Moran of the second part and the Respondent of the third part. It created the term of 125 years from 1st January 2004.

7. It was not disputed

   7.1 that the leases of all the flats are in similar form and all provide for the payment of a service charge to cover the provision of services to be provided by the Respondent which include the heads of charge in dispute.
   7.2 service charges have been demanded in accordance with the provisions of the leases
   7.3 that the proportions payable in respect of each flat are correct.

8. The service charge is divided into three elements: first, an Estate Charge which covers the maintenance of the external common parts of the development, for example, landscaping, maintenance of roads, paths and lighting. The town houses contribute to this charge. Second, all flat owners contribute to a Block Charge which covers the communal cleaning repair and maintenance of both blocks. Third, the owners of flats in The Knowles pay a "Block A Additional Services" charge which covers the repair and maintenance of the undercroft car parking and lift in The Knowles.

9. Since the RTM companies have taken over the management of the respective blocks, the Respondent has been responsible only for the services covered by the Estate Charge.

The Applicants' case

10. Aside from points relating to specific items of expenditure the Applicant argued the following:-

10.1 contractors used to effect repairs were not local and this added to the expenditure incurred by reason of extra travelling time and the expense of travel.

10.2 management charges were excessive when compared to the industry "norm". They should be reduced by a "global" sum of between 15% and 20%.

10.3 the cost of repairs during the period immediately following completion was excessive taking into account that a new development should not require repair. Any such repairs should be the subject of a defects liability period by the developer who should pay for the repairs.

The Respondent's case

11. The Respondent relied on the decision in *Forcelux Ltd v Sweetman and another* [2001] 2EGLR 173. This case decided that the question for the Tribunal to determine was not whether the expenditure was the cheapest or reasonable, but whether it was "reasonably incurred". In answering that question two distinct matters had to be considered. First the evidence, and from that, whether the landlord's actions were appropriate and properly effected in accordance with the lease. Second, whether the amount charged was reasonable in the light of that evidence.

12. In relation to the specific points at paragraph 8 above the Respondent stated:-

12.1 the Applicants had produced no evidence that the use of the contractors was unreasonably incurred and particularly that the work could have been carried out more cheaply by local contractors.

12.2 the Applicants had produced no evidence to justify a reduction in the management charges which were calculated on a per unit basis.

12.3 in view of the time elapsed it was now impossible to establish in most cases the reason for the repair.

The Law

13. The Law is set out in Appendix 2 and at paragraph 9.

14. The Tribunal has to apply a three stage test to the matter referred to it under section 27A:-

14.1 Are the service charges recoverable under the terms of the Lease? This depends on common principles of construction, and interpretation of the Lease.

14.2 Are the service charges reasonably incurred and/or for services of a reasonable standard under section 19 of the Act?

14.3 Are there other statutory limitations on recoverability, for example consultation requirements of the Landlord and Tenant Act 1985 as amended?

Discussion: the Tribunal's findings

15. It was not disputed that the Applicants were aware of their liability to pay service charge and that there were no limitations on recovery, for example, by a failure to consult with the Applicants on contracts which ran for a period in excess of twelve months or repairs which exceeded the statutory limit. The Tribunal therefore considered the reasonableness of the individual heads of charge still in dispute as follows:-

Landscaping

16. The Tribunal preferred the Respondent's argument in the Scott Schedule about the frequency and work carried out by the contractor. They noted that no evidence was produced that the same work could have been carried out at a cheaper cost. Some of the costs were incurred some time ago, (especially in respect of the years 2007 to 2012) and no evidence of any objection to the cost having been produced prior to the application, the Tribunal considered that these expenses had been reasonably incurred.

Arboriculturist Costs

17. The Tribunal noted that after adjustments the final amount was £225 not £343 as alleged by the Applicants. The Tribunal accepted the explanation for incurring the costs. If the Applicants consider that this expense should be borne by the developer, they should take this up with the developer. The liability for payment by a third party is not within the Tribunal's jurisdiction. The Tribunal considered that these expenses had been reasonably incurred.

Private Roadway Maintenance

18. The Applicants argued that, this being a new development, no items of maintenance should have been required and such items should have been the subject of a defects liability period by the developer. The Respondent argued that the costs incurred were for litter picking and weeding which were ongoing costs. For the reasons stated in paragraphs 16 and 17 above, the Tribunal consider that these expenses have been reasonably incurred.

Surveyor Fees

19. These were incurred in respect of annual Fire Risk Assessments for the Property. The Respondent argued that an annual assessment was necessary, but conceded that a charge of £900 in 2008 was excessive, representing as it did, two years' charges. The Tribunal agreed with the Applicants' argument that an annual assessment is excessive. An assessment every two years is reasonable.

Collection Fees

20. The Lease provides that these costs are recoverable by way of the service charge. The Tribunal decided that the sum of £27 was reasonably incurred.

Health & Safety Fees

21. The same comments as are noted at paragraph 19 above apply to these expenses.

Debt Collection Costs

22. The same comments as are noted at paragraph 20 above apply to these expenses. The Tribunal decided that these were reasonably incurred.

Electricity

23. The parties agreed that these expenses were reasonably incurred.

General Repairs and Maintenance – Blocks

24. The Applicants conceded that the amounts of the disputed items were incorrectly shown in the Scott Schedule. The Applicants claimed that these expenses should be borne by the developer. In this respect the Tribunal refer to paragraphs 16, 17 and 18 above. For the reasons set out therein, the Tribunal considered the expenses were reasonably incurred. The Tribunal further noted that a payment of £4026.73 had been negotiated with the developer in 2009 to cover costs which should have been borne by them. In view of the time elapsed since the payment, no further details of the payment could be provided.

General Repairs and Maintenance – Estate Charge

25. The Applicants raised the same arguments as set out in paragraphs 18 and 24 above. For the same reasons as are set out in paragraphs 16, 17 and 18 the Tribunal decided that the expenses had been reasonably incurred.

Insurance

26. The Applicants concede that this expense had been reasonably incurred.

Management Fees

27. The parties agreed that the basis of charging on a "per unit" basis was the correct method to be adopted. The Applicants argued that the fee actually charged was excessive, and should be reduced by a figure of between 15% and 20%, but failed to produce any evidence to support this contention. In the absence of such evidence the Tribunal considered that it did not have sufficient evidence to make a finding in favour of the Applicants. Thus the Tribunal considered that the management fee had been reasonably incurred.

VAT borne – Estate Charge

28 The objection to this item is not whether the expense has been incurred but how it is presented in the accounts. The amount is not disputed. The Tribunal therefore considered this reasonably incurred.

Redecoration Fund and Block Sinking Fund

29. The Applicants did not pursue these items. The Tribunal noted that the leases provide for a sinking fund to be set up. No evidence being produced that this is unreasonable, the Tribunal considered that this had been reasonably incurred.

Invoice wrongly debited to the Accounts

30. The Respondent conceded that an invoice dated 28th June 2007 in the sum of £215.42 related to another development and had been incorrectly debited to the service charge account for the period ended 31st March 2008.

Section 20C Application

31. Some leases allow a landlord to recover costs incurred in connection with proceedings before the First-tier Tribunal (Lands Chamber) as part of the service charge. The Applicants have made an application under s20C of the Act to disallow the costs incurred by the Respondent of the application in calculating service charge payable for the Property, subject, of course, to such costs being properly recoverable under the provisions of the Lease.

32. The Tribunal noted that the application had been largely unsuccessful. They considered that there were no circumstances which suggested that it was reasonable to make an order. The Tribunal therefore declined to make an order under the section.

Appendix 1

List of Applicants

Name	Address
Gillian Solomon	1 The Knowles
Gary Rutherford and Helen Rutherford	3 The Knowles
Linda Muldoon	4 The Knowles
David Martin	5 The Knowles
Lucy Elizabeth Cottle	6 The Knowles
Gary Rutherford and Helen Rutherford	7 The Knowles
Alan Keith	8 The Knowles
Joyce Johnston	10 The Knowles
Mr McMullan	11 The Knowles
Mr McDonough	12 The Knowles
Ian Birmingham	14 The Knowles
John Doyle	16 The Knowles
George Voustinas	17 The Knowles
Sandra Johnston	18 The Knowles
Colin Burrows	5 The Lawns

Appendix 2

The Law

Section 18 of the Landlord and Tenant Act 1985 ("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, improvements 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 or later period.

Section 19 provides that

(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.

Section 27A provides that

(1) an application may be made to the appropriate 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 date at or by which it is payable, and

(d) the manner in which it is payable.

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

(3) ....

(4) No application under subsection (1)...may be made in respect of a matter which –

(a) has been agreed by the tenant.....

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

No guidance is given in the 1985 Act as to the meaning of the words "reasonably incurred". Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.

In *Veena v S A Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

Section 20C of the 1985 Act provides

(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 or the First-tier Tribunal (Property Chamber) 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 the county court

(b) in the case of proceedings before a First-tier Tribunal (Property Chamber) to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded to any First-tier Tribunal (Property Chamber)

(c) ....

(d)....

(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.

(4)