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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference; LVT/0001/04/14 Lavender Grove

In the Matter of: 155 Lavender Grove, Cardiff, CF11 3SZ

In the Matter of an Application under Section 27A of the Landlord and Tenant Act 1985
AND in the matter of an Application under Section 20C of the Landlord and Tenant Act 1985

TRIBUNAL	David Foulds (chair) Roger Baynham FRICS
APPLICANT	Mrs Ilhem Najeh
RESPONDENT	The County Council of the City and County of Cardiff
RESPONDENT REPRESENTATIVE	Richard Grigg (Solicitor)
Date of Hearing	18th June 2014

DECISION

1. The Tribunal will make its determination in respect of Block, Communal and Estate Repairs costs once the pending appeal in the case of Phillips v Francis 2012 EWHC 3650 (Ch) has been decided.
2. In respect of all other service charge costs the subject of this Application, no amounts are currently due and payable by the Applicant as the Respondent has not complied with section 47 and section 48 Landlord and Tenant Act 1985 (see "Payability" below)
3. No order under section 20(c) Landlord and Tenant Act 1985

REASONS

<u>The Application</u>

The Applicant made an Application direct to the Tribunal dated 1st January 2014. The Application seeks a determination as to the payability of all the charges demanded by the Respondent by way of maintenance charges for the year "2013/2014". Whilst the Application listed cleaning, repairs, electric and management fee as four named items of expenditure on which a determination was sought, subsequent correspondence from the Applicant to the Tribunal (letter dated as received 12 May 2014) makes it clear every item of cost was in dispute.

By reference to the "service charge bill" dated 1st April 2013 the "estimated" (save for Block Insurance which was stated to be an actual and not estimated costs) items in dispute were therefore as follows:

Cleaning/Caretaking £190.12
Communal Maintenance £33.47
Block Repairs £375.46
Communal Repairs £285.89
Estate Repairs £73.01
Grounds Maintenance £49.89
Block Insurance £140.47
Communal Electric £40.82
Management Fee £163.00

Inspection

The Property is located in a purpose built block of 8 flats over three floors. The Applicant is the only owner occupier with the other residents being tenants of the Respondent.

The flats are accessible on the front elevation by a single entrance door leading into a communal hallway with stairway access to all floors.

The entrance hallway on the ground floor also has a rear access onto a rear patio "drying area".

The flats have the benefit of the use of "sheds" (storage units) accessible from the front of the block in an alleyway on the ground floor located to the right of the front entrance to the block. A metal security gate has been installed at the front of the alleyway with residents being provided with keys for access.

The property is a maisonette on the second and third floors. The accommodation on the second floor comprises an entrance hall, a living room with a small balcony and a kitchen. The stairs from the hall lead to a landing, 2 double bedrooms and a bathroom.

There were signs of damp penetration within the property itself in the far corner of the living room on the second floor and in the same area of the bedroom immediately above on the third floor. This was not however the subject of the Application before the Tribunal.

The paint in the communal area outside the entrance to the flat was peeling and in need of redecoration. The general standard of cleaning and upkeep was borderline reasonable but gave an impression of only cursory cleaning of a limited duration taking place. The communal windows were intact and generally clean albeit again only to a basic standard of cleanliness.

At the inspection the Tribunal paid particular regard to the "vent covers" that were the subject of a charge for Block repairs (dated 8 February 2013 on the Respondents schedule of work supplied to the Tribunal). The Respondent was not able to point out with any precision what vent covers were the subject of this charge and was asked to make further enquiry.

Hearing

The Applicant attended in person and was assisted in presenting her case by her partner Mr Belal.

The Respondent was represented by Mr Grigg (solicitor) and there were two witnesses namely Ellen Curtis (service manager) and Neil Eegham (property manager).

At the start of the proceedings the Tribunal clarified with the agreement of all present that the 2013/2014 estimated charges were not in fact estimated charges as that is normally understood. Estimated costs are normally budgeted for where a lease allows for an on account charge at the start or at some point during a service charge year and before actual costs are known.

The lease (dated 18th March 1990) of the Property does not in fact allow for in advance on account charges to be demanded. It provides for the lessees proportion of expenses "incurred" to be demanded.

The 2013/2014 demand is not a demand for the forthcoming year (1st April 2013 – 31st March 2014) but in fact a demand for the year just concluded namely 1st April 2012 – 31st March 2013.

The Respondent confirmed that the reason that the costs were referred to "estimated" was that the year end had only just occurred and the final actual costs (save for insurance) had not been confirmed. The amounts demanded were in fact estimates of actual costs for the year 2012/2013. This is borne out by the fact that the "estimates" were later reconciled with actual costs and the Tribunal had before it a Schedule ("the Schedule") provided by the Respondent showing the final actual costs for the year 2012/2013.

The Tribunal took an informal approach and went through each heading of expenditure in turn and gave each party the opportunity of making representations upon it.

Repairs (Block, Communal and Estate)

The Applicant's complaint was a general one namely that there was no information or evidence to warrant the cost of the repairs. The Applicant further complained that she should have been consulted and had been advised that the lack of consultation should reduce or negate her liability to pay.

The Tribunal went through the Schedule of costs. The Respondent stated that it was no longer seeking payment from the Applicant in the amount of £250 in respect of the works on the "vents" (dated 8th February 2013).

The Applicant stated she was unaware until recently being given a key to the gate leading to the sheds that she had access to and use of a shed. The Applicant accepted that the lease entitled her to access and use of a shed and the costs of maintenance were a valid service charge item of expenditure.

The Applicant raised no other specific items of complaint save for lack of consultation that will be covered later in this determination.

Due to the manner in which the costs are demanded Block repairs as demanded are less than the actual costs, Communal repairs as demanded are significantly in excess of actual costs and Estate costs are slightly in excess of actual costs.

The lease only allows for costs actually incurred to be payable. The decision of the Tribunal is limited to the amounts demanded.

The Tribunal finds that the costs as demanded for Block, Communal and Estate repairs are £5,385.33 less the £2,000.00 in respect of the work on the vents making a sub total of £3,385.33. Of this amount the Applicant's percentage contribution demanded by the Respondent is £423.16. For the reasons given below under the heading "Consultation" the Tribunal makes no determination as to payability in respect of this sum at present.

Cleaning/Caretaking

The Applicant complained that the communal areas were not cleaned properly and stated she had made previous complaints to the Respondent about this. On being questioned by the Tribunal the Respondent stated cleaning took place fortnightly for a period of 1/1 ½ hours. Spills were cleaned up, floors mopped, windows cleaned. This was the cleaning carried out as a matter of course with any additional requirements for which the Respondent had been put on notice also being carried out. The Respondent said it carried out a 20% post inspection rate and employed a number of supervisors for this purpose. It also employed mobile caretakers albeit their duties were more in ensuring compliance with health and safety which could include cleaning issues. The Applicant stated the cleaners only opened the front and rear doors to air the property and did a quick mop of the floor but little else and were only actively engaged in cleaning for 10 minutes or so on each visit.

The Tribunal was of the view that whilst cleaning was not of the highest standard there was clearly some cleaning taking place and the relatively low charge to the Applicant for this was not unreasonable.

The Tribunal determines that on balance the costs of cleaning are reasonable.

Communal Maintenance

The Tribunal went through the Schedule with the parties and the Applicant raised no particular complaints in respect of this heading of expenditure. The Tribunal was satisfied that the costs were reasonable.

The actual costs are in excess to the amount demanded. The Tribunal is limited to the amount demanded and therefore determines that the sum of £23.52 is reasonable.

Grounds Maintenance

The Tribunal asked the Respondent to clarify what this charge was for and was informed it was in respect of upkeep of the bins area, the drying area to the rear and the grass area at the front. Reference to the Schedule showed however that four out of six items of expenditure were garden maintenance.

The Tribunal asked the Respondent to refer it to the lease clause under which grounds maintenance was a payable item of maintenance cost. The Tribunal was referred to Third Schedule Clause 12. It is however a pre-condition of that clause that any services in respect of which costs are claimed were "enjoyed under or by virtue of the secure tenancy." The Respondent provided no evidence to satisfy this condition. The Tribunal is satisfied that the costs to maintain the pathway and steps are allowable under Third Schedule Clause 4 but that the costs of garden maintenance are not allowable.

The Tribunal determines that a charge to the Applicant of 79 pence is reasonable in respect of the Applicant's liability to pay towards maintaining the drying area and footpath but that the remaining charge of £49.10 is not payable as it is not an allowable service charge expense under the lease.

Building Insurance

The Respondent confirmed that the cost of insurance had "recently" been re-tendered and prior to that was tendered some 5 years ago resulting in a 3 year contract with the ability to extend 2 years. The Respondent did not know the claims

history. The cost was calculated by an insurance valuation of the Block and this valuation being used to calculate the percentage contribution to the Respondent's entire block policy, on all its blocks, insurance premium cost. After the hearing and by way of further directions the Tribunal asked the Respondent for clarification whether consultation had taken place as the contract for insurance was stated to exceed 1 year at a cost to the Applicant exceeding £100.00. The Tribunal is satisfied on the evidence produced in reply to the directions by the Respondent that the insurance agreement is a long term agreement and that statutory consultation had taken place. The Tribunal is further satisfied that the block insurance charge is reasonable.

Communal Electricity

The Applicant raised no complaint at the hearing in respect of this cost item. The Tribunal was satisfied the costs as per the Schedule were reasonable. As the actual cost however were less than the demanded costs, the Tribunal determines that only the actual cost of £39.54 is reasonable.

Management Fee

The Applicant's complaint was that the Respondent had failed to deal with her concerns and complaints and that the Property and the Block in which it was located were not being managed properly.

Upon being questioned by the Tribunal the Respondent stated the actual management cost per leaseholder was £228.00. This calculation was based on the Respondent's entire block stock of housing and only 72% of actual cost was demanded from the Applicant. Upon further questioning the Respondent confirmed that no account was actually taken of the Property/Block in question and its management requirements.

The Tribunal notes the Applicant's concerns over the management of her complaints. In the wider context however of the management of the Property and Block in general and the provision of services to it the Tribunal determines that the management fee of £163 is a reasonable charge.

Payability

Summary of Rights:

Regulation 3 of the Service Charges (Summary of Rights and Obligations and Transitional Provision) (Wales) Regulations 2007 requires a summary of rights to accompany a demand for payment. The Tribunal was shown such a statement in Welsh and was satisfied that this requirement had been complied with. The Applicant disputed receipt of the 1st April 2013 demand and in consequence any such accompanying notice. The Tribunal was satisfied after hearing evidence from the Respondent that the demand and accompanying notice had been sent out first class post on/around 1st April 2013 and that in any event it had by the time of this determination been received by the Applicant.

Section 47 and Section 48 Landlord and Tenant Act 1987:

Section 47 LTA 1987 provides that service charges are not payable unless the demand includes the name and address of the landlord and if that address is not in in England and Wales, an address for service in England and Wales.

Section 48 LTA 1987 provides that a landlord must give the tenant an address in England and Wales at which notices may be served.

The Tribunal questioned the Respondent where the required information was to be found on the demand 1st April 2013 or other documentation. The Tribunal was referred to a document entitled "Annual Service Charge Estimate for Works and Services carried out in 2012/2013" and the contact details provided.

The Landlord as recorded at H M Land Registry is "The County Council of the City and County of Cardiff". As a matter of evidence the landlord is not stated to be such on any documentation seen by the Tribunal and there is no reference to an address at which notices can be served on the landlord.
The Tribunal therefore determines that subject to compliance with these provisions (as allowed for within the said sections) no amounts are currently payable by the Applicant.

Consultation
Section 20c Landlord and Tenant Act 1985 requires a consultation exercise to be entered into with leaseholders who are liable to contribute towards the costs of major works and where the liability of any leaseholder liable to so contribute exceeds £250.00 and in default of such consultation each leaseholder's contributions to the major works is limited to a current ceiling of £250.00

As the law currently stands (Phillips v Francis 2012 EWHC 3650 (Ch)) the correct procedure is to combine all major work costs in any given financial year when deciding if the £250.00 trigger for consultation has been received. This authority is however subject to an appeal.

Even allowing for the withdrawal of the £250 charge for vents (8th February 2013) the total costs of repairs (Block, Communal and Estate) exceeds a £250 contribution by the Applicant (quite apart from any other leaseholder liable to contribute). The Respondent accepted no consultation had taken place on any relevant works and has taken the position understood by it to be correct prior to the decision in Phillips v Francis of limiting the contribution to £250 per set of works where consultation had not taken place. Applying Phillips v Francis however the total repairs costs (for major works) for the financial year would be limited to £250 and not just the individual set of works in question.

The Tribunal invited representations from the parties on the postponement of a determination in respect of repairs until after the hearing of the appeal. The Respondent represented it would prefer to wait for the appeal so to avoid the possible need to appeal this determination whereas the Applicant asked for a determination now.

The Tribunal is of the view that it is in the interests of justice and being mindful of the cost consequences, that a determination in respect of repair costs is adjourned pending the hearing of the Phillips v Francis appeal. Once that decision is known the Tribunal will consider further directions before disposing of this issue.

Sec 20 (c)
On being questioned by the Tribunal the Respondent confirmed it did not intend adding the costs of these proceedings to the service charge costs and therefore the Tribunal determines not to make an Order under sec 20 (c).

Dated this 6th day of August 2014

D M Fowler

CHAIRMAN