RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference; LVT/0018/08/15 – Galleon Way

In the Matter of: 228 Galleon Way, Butetown, Cardiff, CF10 4JE

In the Matter of an Application under Section 27A of the Landlord and Tenant Act 1985

TRIBUNAL David Foulds (Solicitor)(Legal Chairman)
John Singleton MRICS (Surveyor Member)
Juliet Playfair (Lay Member)

APPLICANT Ms Jeanette Kahar

RESPONDENT Cardiff Community Housing Association Limited

RESPONDENT REPRESENTATIVE: Sian Jones (Solicitor)

Date of Hearing 3rd November 2015

Date of Decision

DECISION

In respect of all "service charge" costs the subject of this Application, no amounts are currently due and payable by the Applicant.

REASONS

1. The Application

The Applicant made an Application direct to the Tribunal, undated but received by the Tribunal on 12th August 2015. It was agreed at the start of the hearing that the Application was being considered as an Application as to the payability of all the charges demanded by the Respondent by way of "service charges" for the current year 1st April 2014 – 31st March 2015.

The Applicant was unaware of the individual items of costs comprised within the service charge she paid until the Respondent broke down the costs in the witness statement of Nicola Jayne Evans dated 10th September 2015. The hearing proceeded on the basis that each individual item of cost, namely administration (£1.52), cleaning (£5.44), communal repairs (£0.42), contracts (£0.95), depreciation (£1.16), electricity (£2.05) and ground maintenance (£1.38) was in dispute.

2. Inspection

The Property is located in a purpose built block of 47 flats over 7 floors.

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

The entrance hallway on the ground floor also has a rear access into the ground floor car park with a capacity of approximately 25 cars.

The Property is a one bedroom flat on the 5th floor. The accommodation comprises an entrance hall, a living room with a kitchen area within the same room, double bedroom, bathroom with w/c and wash basin and a small cupboard off the hallway.

The Applicant clearly takes pride in her Property and it was in good order and condition.

The Block itself was also well maintained with no visible signs of poor maintenance or mismanagement.

3. Hearing

The Applicant attended in person and represented herself.

The Respondent was represented by Ms Sian Jones (solicitor) and there were two witnesses for the Respondent namely Nicola Jayne Evans (Management Accountant) and Mr Henry William Simms (Project Manager).

As stated above, it was agreed at the start of the hearing that the Application was being considered by the Tribunal and both parties as an Application as to the payability of all the charges demanded by the Respondent by way of "service charges" for the year 1st April 2014 – 31st March 2015.

The Tribunal first addressed issues arising from the Tenancy Agreement dated 20th July 2006 which was assigned to the Applicant by means of an Assignment dated 21st July 2014

4. The Tenancy

The Tribunal observed that Clause 1 (i) of the Agreement provided for the Tenant to pay weekly payments including a "service charge" of £14.60.

Clause 1 (v) provides for a change in the amount of the service charge by the Respondent giving the Tenant not less than 4 week's notice.

An issue arises however in respect of Clause 1 (iii) which states "The Association shall provide the following services in connection with the Premises, for which

the Tenant shall pay a Service Charge:" However the space left thereafter for completion of details of the services is blank.

5. The questions faced by the Tribunal therefore were

1) Is there any agreement at all under which the Applicant agrees to pay a "service charge" ? If yes,
2) What services were the subject of the service charge and in respect of which the Tribunal could make a determination of payability?

6. The Tribunal put the above issues to the Respondent and on its behalf Ms Jones made the following representations.

a) The Respondent was entitled to be paid £14.60 as there was express agreement to this in the original Agreement.
b) Alternatively, the Respondent was entitled to be paid a reasonable sum for the services provided, such services to be determined as at the date the original Agreement was signed.
c) Alternatively, there was a contract through the conduct of the parties to date in the provision of the services by the Respondent and the payment for them by the Applicant
d) Alternatively the Applicant should pay for the services she asked for.

7. Ms Jones referred the Tribunal to the fact that a list of services was annexed to the Assignment entitled "Appendix 1" (page 13 of the bundle). She agreed however that there was no reference to the Appendix in the Assignment itself and in any event the document was an agreement between the Tenants and not the Respondent and therefore could not be the basis of a contract in itself between the parties for the tenant to pay for the services referred to in the Appendix. Ms Jones in reply urged the Tribunal to consider the presence of the Appendix as "filling in the gaps" and "extrinsic evidence" of an agreement by the tenant to pay for the specific services listed in the Appendix.

8. For the Applicant's part, on being questioned by the Tribunal she said she could not recall the Appendix and all she was told by an officer of the Respondent at the time of the assignment was that there would be a service charge payable. She stated she was never told exactly what services the service charge was in respect of.

9. The Tribunal determines that the exclusion of a description of services in Clause 1 (iii) is fatal to the Respondent's case and renders no service charge being payable. Its reasoning is as follows.

a) <u>Conduct alone:</u>
The past conduct of the parties alone (i.e. if one was to exclude any consideration of the written Agreement and its assignment) cannot be said to form the basis of a contract. It is evident that at no time did the Applicant

know what services were the subject of the service charge and she cannot therefore be said to have agreed to pay for those services.

b) Conduct to "fill in the gap" in the services in Clause 1 (iii):
The same applies as conduct alone. Even if the conduct of the Respondent was evidential of the services actually being supplied, it does not follow from her payment that the Applicant agreed to pay for those services. Indeed the whole subject matter before the Tribunal is her challenge to certain of those services.

c) Appendix to the Assignment:
Leaving to one side the fact that the Applicant cannot recall this document and there is no reference to it in the Assignment, the document itself is just a general list of a large number of widely worded services and there is no evidence of any intention by both parties to incorporate those services as the description of services forming the basis of the service charge.

d) What is the extent of the agreement therefore in respect of service charges?
The only agreement of sufficient certainty is that the original Tenant agreed to pay a service charge of £14.60. When assigned, the Applicant through the assignment, agreed to pay a service charge for services described in the agreement. It cannot be said she agreed to pay £14.60 at that time as clearly time had moved on and the service charge would have been the subject of a number of subsequent adjustments.

The question is whether the core agreement to pay a service charge is sufficient detail of agreement to enable the Tribunal to fill in the gaps i.e. is this a case of "whatever can be made certain, is certain". The Tribunal accepts that the Respondent has provided services that the Applicant has benefited from over a period of time and the Tribunal should look to see if it can find that there is an agreement to pay for those particular services. The difficulty for the Tribunal is that in order to do so it would have to decide what services would be normal and customary in tenancies of this nature so that it can imply an agreement by the Applicant to pay for them. In the particular facts of this case however the Tribunal feels that it cannot write the tenancy for the parties where they omitted to include an essential description of the services. It is not the Tribunal's function to decide what services it would be customary for a Housing Association tenant to pay for. In light of this, as the description of services therefore remains blank, it follows that no payment is due by the Applicant.

The Tribunal felt it may be of assistance if, having heard evidence on the reasonableness of the charges, it gave an indication of their reasonableness. Even though the Tribunal has decided no costs are payable based on the contractual issues arising above, should the parties resolve those issues it may assist them to have the benefit of the Tribunal's view on the amount of the costs charged. In that context only the Tribunal observed as follows.

e) Administration costs:
The Tribunal found these costs to be reasonable. The total costs equate to a charge for the block of £3,714 per year which is a reasonable charge to administer and manage a block of 47 flats and a ground floor car park and small refuse area with a small communal grassed area with some trees on it. The Respondent confirmed this was only a limited contribution to the actual administration costs.

f) Cleaning:
The Tribunal found these costs to be reasonable. The total costs equate to £13,295 per year. It is noted the actual combined cleaning and window cleaning costs for the previous year were £16,463.00. The Respondent confirmed the contract had been subject to tender and this was the cheapest quote. The block was in a clean condition on inspection and the Respondent confirmed that window cleaning (communal windows) took place monthly and cleaning took place weekly with 2 cleaners in attendance. The time taken to read individual electricity meters is also included in this charge. Whilst the Tribunal heard and accepted the Applicant's evidence that the Respondent did not take the bins from the refuse area to the road this did not lead to the overall cost as being unreasonable.

g) Communal repairs:
The Tribunal requested and has had sight of the previous years service charge accounts on which these costs were estimated at a total charge for the block of £1,026.58. The Tribunal notes that the accounts show £0 for communal repairs and maintenance and on that basis, with the Respondents evidence being that these charges are based on the previous year's expenditure, the Tribunal finds these costs to be unreasonable.

h) Contracts:
The Respondent confirmed these costs were estimated and based on the previous year's charges. When questioned by the Tribunal why the costs would be estimated if they are based on contracts in place the Respondent stated the estimate was to make allowance for renewal/change of contracts during the year. The Tribunal has looked at the previous year's actual charges and finds as follows:

(i) Lifts – estimated £1,500 – Accounts £628.23 – the Tribunal therefore finds that a demand of £0.26 per week would be reasonable.
(ii) T V Aerials – estimated £220.60 – no charge in the accounts for the previous year so full amount unreasonable.
(iii) Fire Alarm – estimated £260 – accounts £615.82 therefore reasonable - the Tribunal therefore finds that a demand of £0.25 per week would be reasonable.
(iv) CCTV – estimated £100 – accounts £477 therefore reasonable - the Tribunal therefore finds that a demand of £0.20 per week would be reasonable.

(v) Door entry – estimated £250 – no charge in the accounts for the previous year so full amount unreasonable.

If all the actual contract charges are aggregated to estimate the current year then a total £0.71 per week would have been considered reasonable.

i) Electricity:
The total charge for the block equates to £5,010.20. The Tribunal notes the previous year's actual costs were £7,052.35 and the Tribunal finds these costs to be reasonable.

j) Grounds Maintenance:
The total costs equate to £3,372.72 per year. The Respondent confirmed the gardening took place fortnightly over summer (March – October) and one visit over the other months. The contract had been put to tender and this was the cheapest quote. Tribunal noted the previous year's actual charges were less namely £2,298.01 but on balance the Tribunal considered the charge to be reasonable.

k) Depreciation:
The Tribunal questioned the Respondent as to the correct nature of this charge. After hearing evidence the Tribunal was satisfied that it had not been properly described and would be better referred to as a "reserve charge" to replace the lift when this became necessary.

10) Quite apart from the contractual issues concerning individual items of cost being recoverable as already dealt with in this decision, it is noted there is no reference to any clause in the Agreement allowing a reserve to be charged and even if, contrary to the view of this Tribunal, other items of cost could be implied, the absence of clause specifically allowing for a reserve fund would in the Tribunal view disallow this charge in any event. On the charge itself the Tribunal makes no observation on reasonableness as it does not have the evidence to do so and in light of its other findings has not requested it.

11) As a general comment it appears that the service charges are estimated year on year but there is no evidence that there has been a balancing adjustment in any year. If the Tribunal's decision on the payability of the service charge were different, the Tribunal would have required sight of past year's service charge demands and annual reconciliations in order to properly rule on reasonableness.

Dated this 27th day of November 2015

D M Fowler

CHAIRMAN