

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0008/06/15

In the matter of premises situated at Maes Ffynon, Ruthin, LL15 1LX

And in the matter of an Application under sections 19 and 27A of the Landlord and Tenant Act 1985

Applicant: Mr. Barry Luke and Others

Respondent: Tapestart Limited T/A The Compton Group

Tribunal: Mr. Andrew Grant
Mr. Tom Daulby
Mr. David Jones

Upon hearing Mr. Barry Luke for the Applicants and Ms. Jean Jones , Mr. Chris Evans and Mr. James McCarry for the Respondents.

Decision

The service charge payable to the respondent for the period ended the 31.10.2015 be reduced to £1220.00 consisting of £300 for Audit Fees , £200 for Gardening charges and £720 for Management fees. The £1000 reserve fund fee is disallowed completely. The sum to be paid by each tenant for the period ended 31st October 2015 is reduced to £67.78.

Reasons

1. By way of an Application dated the 7th June 2015 the Applicants sought an order pursuant to sections 19 and 27A of the Landlord and tenant Act 1985 ("the Act") that the service charge demand sent by the Respondents for the period 1st May 2015 to the 31st October 2015 was unreasonable.
2. Directions were issued on the 28th June 2016 and the matter was listed for hearing on the 23rd May 2017.

The Inspection

3. Maes Ffynon is a private residential estate located within quarter of a mile from the centre of the Historic market town of Ruthin, located in the vale of Clwyd. Access to the estate is gained from Mwrog Street, which is a section of the A494.
4. All of the roads and pathways within the estate have been adopted by the Local Authority.
5. The Cul de sac consists of a mixture of 18 houses and apartments which appear to have been developed in the mid 1980's.
6. There is a communal area which has been laid with flagstones, has seating and which has various shrubs and bushes growing around the outside which appeared to have been recently tended.
7. There were various parking areas which were situated within the development all of which appeared to be in satisfactory repair and condition.
8. There were also several grassy areas situated within the development which appeared well tended. The area at the entrance to the development was believed to belong to the Respondents but the actual ownership was unclear to the parties.

The Lease

9. The Applicants bundle contained a copy of the lease relating to flat 10. The Tribunal were informed that all leases were in identical terms. The lease in question was dated the 6th March 1984 and was granted for a period of 99 years commencing on the 1st November 1983 ("the lease").
10. By virtue of clause 2 of the lease the Lessee covenanted with the Lessor that "the Lessee will at all times during the said term perform and observe the provisions and stipulations set forth in the Fourth Schedule hereto"
11. By virtue of clause 2 of the Fourth Schedule the Lessee agreed "to pay and discharge all rates, taxes, assessments, charges, duties and other outgoings whatsoever (whether parliamentary parochial or any other kind) which now are or during the said term shall be assessed or charged on or payable in respect of the demised premises or any part thereof or upon the Lessor, the Lessee or other Occupier in respect thereof."
12. By virtue of clause 8 of the Fourth Schedule the Lessee agreed "to pay the following shares of the monies actually expended by the Landlord from time to time on all or any part of the works matters and obligations specified in the following clauses of the Fifth Schedule hereto : - (i) 100% of the monies expended from time to time on the Access way (under clauses 5(a) and 5(d) thereof); and (ii) 50% of the monies

expended from time to time on the paths (under clauses 5(a) and 5(d) thereof; and (iii) 50 % of the monies expended from time to time on the drying area and bin area (under clauses 5(b) and 5 (d) thereof and (iv) 1/18th of the monies expended from time to time on the amenity area (under clauses 5(b) and 5 (d) thereof; and (v) 1/18th of the monies expended from time to time under clauses 5(e) and 5 (f) and (vi) a fair proportion of the monies expended from time to time under clause 4 thereof.

13. By virtue of clause 5 of the Fifth Schedule of the Lease the Lessor agreed to (a) surface with proper materials as are respectively appropriate the Access Way(if any) and the paths and the Drying Area and the Bin Area and to maintain the same in reasonable repair; (b) to maintain until adoption by appropriate authority (whether as to the whole or part thereof) the Amenity Area in a reasonable state of tidiness;(c) To maintain until adoption by the appropriate authority the Estate road ;(d) to pay all rates and other outgoings (if any) payable in respect of the Access Way , the Paths , the Drying Area and Bin Area and Amenity Areas and (f) to pay the reasonable charges of any managing agents employed by the Lessor in respect of the Development.

The Hearing – Preliminary Issues

14. At the beginning of the hearing the Tribunal noted that the name of the Respondent as it appeared on the Application form was incorrect as it did not correctly identify the Freehold owner of the development. Accordingly, the Tribunal directed that the title of the Respondent to the proceedings should be amended to “Tapestart Limited T/A The Compton Group “.
15. The Tribunal further noted that although the Application sought a determination of the Service Charge Demand for the period ended the 31st October 2015, in subsequent correspondence to the Tribunal the Applicants seemed to also be seeking a determination of the Service Charge demand for the year ended 31st October 2016 and the Insurance charge for the period 1st January 2017 to the 31st December 2017.
16. The Tribunal noted that as regards the 2016 Service Charge demand, there was no detail or paperwork on the issues in the paperwork before the Tribunal. The Tribunal asked the Applicants if they had the paperwork available and Mr. Luke (on behalf of the Applicants) stated that they did not have the information with them.
17. Because the Applicant was now also seeking a determination on matters that were outside of the initial Application, the Tribunal invited the respondents to comment on whether it would be prepared for the Tribunal to deal with these new elements.
18. The Respondents indicated that they objected to the Service Charge demand for the year ended 2016 being determined because reference was not in the initial

Application and they had not brought any paperwork relating to that matter with them to the hearing.

19. In light of the fact that the initial application only sought a determination on the Service Charge demand served for the year 2014 -2015, the lack of paperwork before the Tribunal and the Respondent's objection, the Tribunal decided that it would proceed to address the Service Charge demand for the year 2014 – 2015 only.
20. The Service Charge demand in issue came to a total sum of £2500 and consisted of the following elements - £300 – Audit fees , £ 200 – Gardening charges , £1000 Management charges and £ 1000 – charges to the Reserve fund.
21. The Tribunal dealt with each element in turn.

The Audit Fees - £300.00

22. Mr. Luke stated that the Applicants had no experience of these types of matters and in consequence would leave the Tribunal to decide if the fee charged was reasonable or not. He had not obtained any alternative quotations.
23. Ms. Jones stated that the Respondent is a large company and uses its commercial size to achieve best value on the services which it purchases. It uses large firms that deal with all of its portfolio and in consequence the price is lower than if one asked for a "one off" job. She stated that such a job on a "one off " basis would cost in the region of £700.
24. Following questions from the Tribunal, Ms. Jones stated that the Respondent tenders their contracts regularly every 18 months or so and that the charges are based upon the number of units on a particular development. She said that the charge can be negotiated up if the matter was more complex.
25. Having heard the evidence the Tribunal decided that the charge was reasonable in the circumstances.

The Gardening Charges - £200.00

26. Mr. Luke submitted that in recent meetings with Ms. Jones the tenants had been informed that the communal areas were going to be chemically sprayed to kill weeds because they (the Respondent) had the right to do so under the Lease. He said that they completely ignored the fact that the work did not need doing because, as with the communal garden area, the site as a whole was regularly maintained by the Tenants themselves.

27. Mr. Luke also addressed the Tribunal on recent correspondence passing between the parties concerning the level of involvement required of the Managing agent on site. He challenged Ms. Jones to confirm who had recently requested that work be carried out on site because all tenants had denied contacting her.
28. He submitted that not only was the work unnecessary but it was also unreasonable as regards the cost.
29. Ms. Jones responded by saying that in 2015 this was a new development to them as it had been acquired by the Respondent in February 2015. She stated that it takes time to understand how a development operates and to get to understand what the tenants want.
30. She stated that they initially inspect a site to see what is required and they then inspect quarterly. If works are required they appoint contractors to carry out the work. She submitted in her view that at the time she was satisfied that gardening needed to be done hence the appointment of the contractors. She conceded that with the passage of time and as her understanding of the development grew it may not be appropriate to carry out the gardening works going forward.
31. Mr. Luke then added that he thought that the Respondent was making a profit from the appointment of contractors by paying them less than the invoice passed on to the Tenants. He said the contractors were paid one third of the invoice value.
32. Ms. Jones categorically denied such a suggestion. She stated that the Respondent paid the invoices which it received in full and did not make a profit as Mr. Luke had suggested.
33. The Tribunal asked Ms. Jones to confirm who was responsible for cutting the area of grass at the front of the development. She stated that the Respondent had made enquiries with the Local Authority but they had not received any definitive response on that point. She said that it was unclear who was responsible for maintaining the area. She said that if a contractor goes to site and the grass has already been cut they are informed by the contractor who does not then charge the Respondent.
34. The Tribunal asked if the Respondent has a broad policy as regards weed spraying which is applied to all of its developments. Ms. Jones stated that the management of each development was bespoke so there was no broad policy which was applied across the portfolio of developments.
35. Whilst the Tribunal appreciates the Applicants' arguments as regards the ongoing gardening costs, regard must be had to the fact that this demand was submitted in a period when the Respondent may not have been aware of the extent of the Tenants involvement in attending to the communal areas of the development.

36. The Tribunal has decided that on this occasion it was reasonable for the Respondent to appoint gardeners to maintain the area in question. It is also decided that the charge is reasonable.
37. However, this decision is specific to this demand as it was the first following the acquisition of the site by the Respondent. The Tribunal would find it difficult to see how ongoing gardening costs could be justified given the extent of involvement by the Tenants in both tending the communal garden area and the wider site itself. The Respondent may wish to consider this aspect more carefully in future years.

Management Charges - £1000

38. Ms. Jones confirmed that the Management charge was a fixed fee of £2000 per annum.
39. The Tribunal asked her how that fee was calculated. Ms. Jones replied that when a development is initially taken on, she inspects the site and takes a view on what the appropriate charge should be based upon geographical area, complexity and the time likely to be spent in managing the development.
40. The Tribunal asked if the figures were reached by reference to an hourly rate. Ms. Jones said that was not the case but her hourly rate in the office would be in the region of £30 per hour.
41. Mr. Luke submitted that the tenants had never seen her inspect the site and neither were they informed when site visits were to take place. He went on to submit that workmen were often not aware of what they had to do and on one occasion attempted to remove fencing which belonged to the owner of one of the houses on site.
42. The tribunal were not satisfied that the fixed fee was reasonable in the circumstances of the case. This is a small development with very little by way of communal areas thus management time would be minimal.
43. The Tribunal, using its expert knowledge and experience of the area in question, decided that the site would require 1 hour's management time a week throughout the year. Applying the rate of £30 per hour (which the Tribunal felt was reasonable) This equates to an annual Management charge of £1440.00. The demand in question was for a period of 6 months so the charge for the period is determined to be £720.00.

The Reserve Fund Fee - £1000.00

44. The Tribunal put to the Respondent the view that this charge was not recoverable as the lease did not require the Tenants to make payments on account of the Reserve Fund.

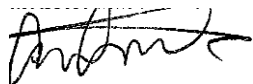
45. Ms. Jones conceded that was correct and that those tenants that had paid were entitled to a refund.

46. Mr. McCarry, on behalf of the Respondent, stated that guidance issued by The Association of Residential Managing Agents stated that it was good practice for Landlords to encourage their tenants to contribute towards a reserve fund. However, whilst acknowledging that in certain cases that may be correct, the Tribunal made the point again that the Tenant could not be forced to pay that amount as a payment of this nature was not required under the terms of the lease.

47. Accordingly, The Tribunal determine that the charge of £1000.00 in respect of the reserve fund is unreasonable in its entirety.

48. There were no further applications made by the parties.

Dated this 13th day of June 2017

A handwritten signature in black ink, appearing to read 'Andrew Grant', written over a horizontal dotted line.

Andrew Grant
Chairman