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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL and RENT ASSESSMENT COMMITTEE

Reference: RAC/0033/03/13 and LVT/0028/07/13

In the Matter of an Application under Section 13(4) of the Housing Act 1988 (as amended) (the 1988 Act) and an Application under Section 27A (and 19) of the Landlord and Tenant Act 1985 (the 1985 Act)

In the matter of Number 71 Hillview, Gaer Road Newport South Wales NP20 3HZ (the Property)

TRIBUNAL P H Williams, Chairman
NFG Hill FRICS

APPLICANT Mr David Seabrook

RESPONDENT Newport City Homes Housing Association Limited

DECISION

Introduction

We were duly convened as a Rent Assessment Committee at Gaer Community Centre on the 10th June 2013 under the provisions of the 1988 Act.

The Reference

We had before us an Application referring to a Notice proposing a new rent under Section 13 (4) of the 1988 Act. On the 25th February 2013 the Respondent served on the Applicant a Notice proposing a Basic Rent of £74.14p a week, and weekly service charges of £14.70, heating and lighting charges of £14.48 with effect from the 1st April 2013. The figures for the previous year were £71.56p, £11.45p and £11.48p respectively, also on a weekly basis.

The Inspection

Prior to the hearing we inspected the Property internally and externally, and we also had the opportunity of viewing the surrounding area. The Applicant was present at the inspection and the hearing and the Respondent was represented at the hearing. Hillview is a block of flats constructed in the 1970s and comprises 11 floors and a mixture of 83 flats and bed-sits. Hillview has an entrance hall with CCTV, an alarm system, external entry system and 2 lifts. There is a communal sitting room, and an area which can be used for dining and as a kitchen. There is a communal laundry room and an internal chute for waste and with external access for collection. Flat 1 was designed as accommodation for disabled persons and as an office, although the office had been relocated to the 4th floor. There was also a guest room for overnight stays. There is a telephone booth but this is seemingly kept locked, as is a water closet. The tenants were allocated an individual locked storeroom on the ground floor with dimensions of about 3 feet by 6 feet and the Applicant has been allocated number 37. There are individual alarms in the flats but they are only activated if a fee is paid. The Building has oil fired central heating and the heating in the communal areas was on a permanent basis and could not be adjusted by the tenants as far as we could ascertain. There is a car

parking area to the rear of the Building and parking was on a first come first served basis. In addition there were a few parking bays to the front of the Building. The alarm system and the fire extinguishers appeared to be in working order and there were two staircases for emergency exits.
The property was on the 7th floor and comprised an entrance hall, living room, bedroom, kitchen and bathroom. There was a three feet wide open balcony off the living room and the bedroom was larger than the living room. The kitchen had fitted cupboards and work tops, and the bathroom comprised a bath, wash hand basin and water closet although there was no shower. There was a cupboard area which housed an immersion heater and there was a further storage area. The window frames were metal and there were single glazed units. A previous tenant had sealed the windows in the living room so that they did not open. The bedroom windows were, however, in working order. There was an intercom system connected to the door entry system, but it was not working. Accordingly, anyone seeking access to the property would need to telephone the Applicant or try and raise one of his neighbours. The Property was generally in good order save for the noted defects.

There were some grassed areas to the side of the Building which were maintained by the Respondent and the Building is adjacent to Gaer Road, which is one of the main roads running through the Gaer Estate. Gaer Estate is primarily residential, although there is a convenient block of shops on the opposite side of the road. There is also a regular bus service. Newport is a City and has all the usual urban amenities. There is also a Community Centre adjacent to the rear car park. The Centre runs leisure activities and there is also a cafeteria.

The Hearing

The hearing was attended by the Applicant Mr Seabrook, Mrs Evelyn Church and Mr David Price and the Respondent was represented by Miss Rebecca Hunt, the Income Services Manager. It became evident that the Applicant wished to challenge not only the Rent but also the service charges. As the Application before us was only in respect of the Rent the matter was adjourned to enable the Applicant to make an Application under Section 27A of the 1985 Act, which he did on the 24th June 2013.

The Reconvened Hearing

The hearing was reconvened on the 6th June 2014 at the same venue. The Applicant was present, as was Mrs Church and Mr Price. The Respondent was represented by Ms S Jones from Morgan Cole, Solicitors, Mrs C McCreedy, a Senior Management Accountant and by the said Miss R Hunt. Immediately prior to the hearing the Tribunal inspected the offices and the guest accommodation which was undergoing refurbishment and. Indeed, the Building was in the process of being upgraded although this is not relevant to the present matters.

At the hearing we considered the Respondent's bundle of Documents which referred to the 2 disputed years, had invoices attached and incorporated the Applicant's position, as extracted from his own statement of case.

Service Charges 2012- 2013

1. Caretaker. Mr Price commented that the person employed was a cleaner rather than a caretaker and Ms Jones stated that there was no contractual obligation upon the Respondent to provide a caretaker and that the Respondent had only charged for the period that the caretaker was able to work.

2. Water rates. The Applicant did not see why he had to contribute to water rates on the guest room and offices and argued that he only had to contribute to the cost of the caretaker, heating and maintenance as these were the charges referred to in his tenancy agreement. Ms Jones explained that all the claimed service charges were, in fact, included in the original services but accepted that they had not been broken down so that it was difficult for the tenants to appreciate this. The Respondent had decided, as a matter of transparency, to break the services down. She produced a copy of a letter which had been written to the tenants of a block of flats known as Greenwood in St Julians Newport explaining this point and stated that a similar letter had been written to the tenants of Hillview, although the Applicant, Mrs Church and Mr Price stated that they had not received anything similar. Ms Jones argued that the Respondent had not needed to consult the tenants as per the provisions in their tenancy agreements as there had not been any change in the services as such. The Applicant argued that the guest room had been in such a poor state of repair and condition as to be virtually unusable.

3. Contract Cleaning. The Applicant argued that the cost was excessive and that he had heard the owner of the cleaning company order his men to stay on site as they had finished the job so quickly, with the implication that the charges were on the high side. Ms Jones countered by saying that it was a large block and could not be cleaned by buckets of hot water and disinfectant , as suggested by the Applicant, and that in any event this evidence was hearsay and uncorroborated. Mrs McCreedy explained that the entries for staff welfare were for refreshments and that the Bonus was a pay award and not a bonus as such.

4. Cleaning Products. Ms Jones pointed out that the charges were modest and that the Applicant seemed to be arguing for a higher figure.

5. PAT testing. Ms Jones pointed out that this was an obligation and that whilst she could not identify the 44 items, there were many electrical items in the Building and that the Respondent was entitled to rely on the expertise of its qualified contractor.

6. Telephone and internet charges. Mrs McCreedy then produced a statement explaining the BT charges and the relevant telephone numbers that related to the general office, the caretaker's office and the Lift alarm and explained that the Respondent relied on the information set out in BT's summary report. The Applicant objected to the principle of being charged for these lines, particularly as the standing charges were so high and considered that they should be covered by his rent.

7. Security Alarm. The Applicant pointed out that the CCTV was only working in the foyer and not externally and did not consider it to be an effective system.

8. Sundry items There were no additional points made on this category

9. Weekly Fire Alarm Testing. The Applicant argued that there was no need for a professional firm to undertake this and any competent person, such as a caretaker, should suffice. Ms Jones pointed out that there was a heavy responsibility on a Landlord to ensure the safety of its tenants and that a charge of approximately £6000.00p by a professional firm was not unreasonable. The Applicant countered by stating that it only took the firm about 10 minutes to test and that the charge was therefore excessive.

10. Water hygiene Testing. Ms Jones pointed out that the Respondent had a statutory obligation to protect its tenants and that any breach would be potentially serious for both the Respondent and its tenants.

11. Rent. Ms Jones stated that the Respondent had served the Notice under Section 13 of the 1988 Act proposing a weekly rent of £74.14p as from the 1st April 2013 which the Respondent considered was substantially below the market rent. She referred us to Nuttall Parker's valuation of £350 per calendar month as at the 21st February 2014 and which equates to a weekly rent of £80.77p and she added that this was an independent valuation, albeit commissioned by the Respondent. She said that under Section 14 of the 1988 Act the committee would need to determine the rent that might reasonably be expected in the open market by a willing landlord under an assured tenancy. She also confirmed that as a Registered Social Landlord the rent had been set in accordance with the Welsh Government policy on rent and that the figure complied with the benchmark criteria. The Applicant responded by stating that as a Social Landlord the rent should be much lower than an open market rent. He mentioned that he was aware of a one bedroomed flat in Ringland having a rent of £68 a week with no service charges on top and of a 3 bedroomed house in Gaer Vale with front and rear gardens achieving only £94 a week with service charges of £1.61p a week. Mrs Church then stated that Greenwood, St Julians, was a similar block and the rent was only £66 a week. Miss Hunt, for the Respondent, was not aware of this differential. The Applicant then confirmed that his intercom had not worked since he took up residence, and that whilst he had reported this and it had been tested, it had not been repaired.

Service Charges 2013- 2014

12. Caretaker. Ms Jones explained that for this year there was no caretaker but that the cleaning contract had been extended. The Applicant then raised issues about the standard of cleaning but Ms Jones objected as in the documentation the Applicant had only objected to the cost of the service and not the quality. Mr Seabrook also mentioned that the cleaner was carrying out his function for the Respondent and then being employed by the contractors on site to clear up after them which he considered was a very inefficient way of managing the Building. Due to a miscalculation the Respondent was reducing its claim by £5945.00p

13. Mrs McCreedy explained that the water rates only appeared to have risen because there was an undercharge for the preceding year

14. The Applicant maintained the same objections for the preceding year and the same applied for the previous headings of Contract Cleaning, Cleaning materials, PAT testing, Telephone and internet charges and for the Security Alarm

15. Sundry Items. The claim for air fresheners was reduced by £135.00p

16. The Applicant maintained the same objections as for the preceding year as regards Fire equipment and Water hygiene.

17. Rent. The Applicant stated that whilst he considered the rent to be too high, he did take the view that it was a secure place to live in that the tenants were vetted. Miss Hunt was not able to confirm that the Local Authority did not have a right of nomination and it might be that the Applicant is under a misapprehension on this point.

18. Lift Maintenance. Mrs McCreedy explained that the Respondent omitted to charge the full amount due but there would not be a claim in the future for this error.

We then referred to the Respondent's Reply to the Applicant's Points of Dispute (the Respondent's Reply) set out on Pages 1 to 3(a) inclusive of the Bundle.

Paragraph 5. This sets out the services being provided by the Council as at the date of Transfer of the Building to the Respondent.

Paragraph 9. Ms Jones confirmed that the Respondent does not oppose the Applicant's application under Section 20(C) of the 1985 Act.

Paragraphs 11 and 12. In her statement Mrs McCreedy sets out the position concerning depreciation of the lift and acknowledges that a deduction of £14819.00p should have been made once the estimated cost of £272,972.00p had converted to an actual cost of £258153.00p. She stated, on behalf of the Respondent, that it would make an adjustment to the service charge recovery in future years to reflect the actual costs incurred. Mrs Church recollected that new lifts were installed in 2008, as stated by the Respondent.

Paragraphs 14-18 inclusive. Ms Jones stated that the Respondent considered that a management charge of 12.5% of the Total Direct Costs for the provision of services to a reasonable standard was, of itself, reasonable. She emphasised that the Respondent was not recovering all of its costs and the shortfall is not passed on to its tenants. Mr Seabrook, Mrs Church and Mr Price, whilst not criticising the percentage as such, said that it was the quality and quantity of some of the services that they felt the Respondent should investigate.

OUR FINDINGS

Service Charges 2012 -13 and 2013-14

1. Caretaker. We accept that there is no contractual obligation on the Respondent to provide a caretaker and that the Applicant had limited his objection to the cost of the service, rather than the quality. We note that the Respondent has reduced its claim for 2013/14 by £5945.00p and we find that the charges were properly incurred.

2. Water Rates. It is unfortunate that, prior to the Respondent taking over the Building, that the cost of the Services were largely pooled so that the Applicant was unaware of the breakdown. However, we find that the Services referred to in Paragraph 5 of the Respondent's Reply were in place at the date of takeover by the Respondent and are therefore properly chargeable. In particular, the provision of the guest room and office are for the benefit of the tenants, notwithstanding that the guest room appears to have been in a poor condition for the relevant years. It is unfortunate that the Applicant did not receive a circular similar to that sent out for the Greenwood tenants as this would have helped clarify matters. We do not find that the guest flat was totally unusable as there was a minimal income for the year 2013/14, although we have no reason to doubt that it was in a rather poor condition.

3. Contract Cleaning. We find that it is reasonable for the Respondent to employ a specialist. It is a large block and the Applicant's suggested remedy is not considered sufficient. We also find that part of the Applicant's evidence was uncorroborated and hearsay and could not be considered, even though we have no reason to disbelieve his recollection.

4. Cleaning Products. The amount claimed is reasonable.

5. PAT testing. The Respondent is entitled to rely on its specialist and the number of appliances did not seem excessive for such a large Building.

6. Telephone and internet charges. We accept the evidence of the Respondent and there was no evidence to suggest that the charges were not properly incurred, even if the breakdown was difficult to follow. We understand that the line to the former caretaker's office has been disconnected which will help reduce the charges in future, although it is clear that the standing charges are having an adverse impact. We accept that the Respondent needs to maintain telephone lines to the office and lift and that an internet connection is necessary. We accordingly find the charges reasonable.

7. Security Alarm. There is a CCTV system in operation and the charge is considered reasonable.

8. Sundry items. It is reasonable for the Respondent to provide items for office use and it is noted that the Respondent has reduced its claim by £135.00p for 2013/14.

9. Weekly fire alarm testing. The safety of tenants is of paramount importance for landlords and we do not consider it unreasonable to employ specialists rather than untrained or unqualified staff. A charge of just over £110.00p a visit is not considered excessive when the importance of the function is considered.

10. Water hygiene testing. We consider it reasonable for the Respondent to arrange such testing for the protection of its tenants.

11. Rent. It is noted that Nuttall Parker's valuation was £350.00p per calendar month as at the 21st February 2014, and we concur with their valuation. However, we are considering the rent as on the 1st April 2013. In accordance with Section 14 of the 1988 Act we must establish the open market rent. As a Registered Social Landlord the Respondent has followed the Welsh Government Policy, which usually will result in a lower figure than an open market rent, whereas the tribunal has to follow the legislation rather than the said Policy. We are unable to accept the Applicant's suggested comparables as no specific addresses were given, nor was there any verification of the rents referred to, nor the precise details of the terms of occupancy. We have, however, made a deduction of £2.00p a week from our determination of the open market rent because of the absence of a working intercom system. The property is on the 7th floor and we find it unacceptable not to have an intercom system that is functioning. We determine that the open market rent as at the 1st April 2013 is £74.73p a week, exclusive of services and rates. Ms Jones did, on behalf of the Respondent, confirm that it would not be seeking a higher rent than the one that it had proposed, irrespective of our determination.

    Paragraphs 11 and 12 of the Respondent's Reply. We find that the depreciation for the lift, CCTV and flooring in the communal areas are all recoverable items. We have some disquiet at the cost of the replacement lifts in 2007, given that the lift shafts were in place. However, the Contractor was a reputable company and we have no evidence to justify any adjustment, save for the adjustment of £ 14819.00p which the Respondent has offered and which will be recovered by the tenants in future years.

Paragraphs 14-18. We find that a Management charge of 12.5%, based on the Total Direct Costs is entirely reasonable.

THE ADJUSTMENTS

1. The Security Alarm adjustment of £108.00p for the year 2012/13 equates to £0.026p a week for the Property calculated over a 50 week period. As this involves a change in the Total Direct Costs the Applicant will also benefit from the proportionate adjustment of the Management Charges, and we calculate the total adjustment at £0.029p a week.

2. The Caretaker adjustment of £5945.00p and the Sundry Item adjustment of £135.00p for the year 2013/14 equates to £1.46p a week for the property calculated over a 50 week period. Again, the Management Charge needs to be adjusted and we calculate the total adjustment at £1.65p a week.

3. Depreciation of the cost of the Lift. The Respondent has agreed to make an allowance of £14819.00p over the 25 year period which commenced in 2008. The Applicant will only benefit for the years since he took up occupation.

4. The Rent, as from the 1st April 2013 shall be £74.73p a week, exclusive of service charges and rates.

COSTS

We make an Order under Section 20 (C) of the 1985 Act that the costs of these proceedings are not to be treated as relevant costs in determining the amount of any service charge payable by the Applicant.

This Tribunal made its decision on the 6th day of June 2014

Dated this 27th day of June 2014

CHAIRMAN