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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0039/09/19

In the matter of 30 Newlands Court, 94 Station Road, Llanishen, Cardiff, CF14 5HU

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

Applicant: Wales and West Housing Association Limited
(Represented by Ms. E Stewart)

Respondent: Mr. Henry James Oliver

Tribunal: Mr. Andrew Grant (Legal chairperson)
Mr. Kerry Watkins (Surveyor member)
Mrs. Juliet Playfair (Lay member)

Decision

1. The service charge budget for the year 2017 be reduced by the sum of £1,006.39 (consisting of £821.00 (para.57), £76.56 (para. 64) and £108.83 (para.83)

2. The service charge budget for the year 2018 be reduced by the sum of £1,249.76 (consisting of £797.00 (para 57), £245.21 (para 64) and £207.55 (para 78).

3. The service charge budget for the year 2019 be reduced by the sum of £268 (consisting of £129 (para 57) and £139 (para.98).

4. Credit be given to the tenants for sums paid in the relevant years.

Reasons

5. This is an application brought by the Wales and West Housing Association Limited seeking a determination in respect of service charges pursuant to section 27(A) and section 19 of the Landlord and Tenant Act 1985.

6. The years in respect of which a determination is sought are 2017/2018, 2018/2019 and 2019/2020.

Background

7. Wales and West Housing Association Limited ("the Applicant") are the Freehold owners of a Housing development known as Newlands Court, 94 Station Road, Llanishen, Cardiff, CF14 5HU "(the Property").

8. The Property consists of 35 separate Leasehold flats. There are a mixture of properties. There are 21 Properties with 1 bedroom and there are 14 properties that have two bedrooms. The Development has been nominated as a development for persons over the age of 55.

9. Mr Oliver ("the Respondent") is the owner of flat number 30. This is a two - bedroom property.

10. The Respondent occupies the Property at number 30 pursuant to the terms of a lease dated the 12th December 2012 ("the Lease") and made between the Applicant and the Respondent. It has a term of 60 years.

11. The Landlord's obligations under the terms of the lease are set out at clause 5 of the lease which reads as follows –

    5.1 – *During the said term to keep in good and substantial repair and to repair redecorate and renew amend and clean when and as necessary and appropriate:*

    (a) The structure of the building or buildings comprised in the Property and in particular roofs foundations external walls and external wood and woodwork ironwork and load bearing walls window frames excluding the internal surfaces thereof and timbers (including the timber joists and the beams of the floors and ceilings thereof) and the outside faces of all external doors (but in any case excluding the internal repair of the demised premises) provided that if the Landlord carries out any works to the load bearing walls within the demise to make good all damage thereby occasioned to the plastered coverings plasterwork tiles and all other materials.

(b) The water pipes conduits gutters sewers drains and electric wires and cables (including television wiring and aerials) and all other water sewerage drainage and electric and ventilation installations in under or upon the Property excluding such installations and services as are incorporated in and exclusively serve the demised premises.

(c) The passages landings and staircases laundry room common room or guest bedroom (if any) and all other interior common parts of the Property enjoyed or used by the Tenant in common with others

(d) The boundary walls and fences of and in the Property and the entrance ways drives paths forecourt landscaped areas and grounds of the Property

(e) The passenger lifts (if any) and all apparatus equipment plant and machinery serving the passenger lifts

***AND** so far as practicable to keep the common entrance halls staircase landings passages properly lighted and cleaned……"*

5.3 To insure and keep insured in the name of the Landlord at full rebuilding or replacement cost the demised premises and all other buildings at Newlands Court together with such contents as are available for use in common by the tenants during the term……

12. Pursuant to Clause 4.1 of the Lease, the Respondent covenanted to "*pay the Service charge in the manner and on the dates herein mentioned and in accordance with the Provisions of the First Schedule hereto."*

13. The First Schedule of the Lease sets out those provisions which relate specifically to the Service Charges relating to the Property. The details are specifically that –

1. *The amount of the service charge shall be certified by the Landlords accountants at the end of each financial year and if such charge shall be greater than the sum paid in advance in any year of the term by the Tenant as previously provided in this lease the balance of the said sum shall be a debt due and owing to the Landlord and payable with the service charge for the ensuing year.*

2. The said certificate shall contain a summary of the Landlords expenses and the service charge shall (inter alia) make provision for the following expenditure in respect of the Property: -

(a) The Cost of the Warden salary and emoluments provision of accommodation for the Warden of Newlands Court and all other costs in connection with the Provision of the Warden Service

(b) The cost and expense of maintenance of the structure exterior and common parts of the property and reasonable provision for a reserve against expenditure on maintenance and repairs (and replacements)

(c) The expense of lighting cleaning heating the areas used in common by the Tenant and other Tenants of the Landlord

(d) The cost of maintaining and repairing (and of making provision for replacement of) the lifts and other Landlord plant and equipment

(e) The rates taxes and other outgoings (including insurance of risks other than structure and contents) payable upon the premises not separately occupied by the Tenant

(f) The expense of insurance in accordance with the provisions hereof and of insurance of the parts used in common and such contents as are for use in common by all Tenants

(g) Auditors fees

(h) The cost of management which shall not exceed the sheltered management allowance permitted from time to time by the Department of the Environment.

14. The Respondent has objected to a number of the items which appear in the service charge account for the years in question. His particular objections are contained in his written submission to the Tribunal which, unfortunately, is undated. In any event the Submissions raise 16 particular objections. One of the objections relates to the question of how the charges are apportioned and the remainder of the objections relate to the reasonableness of the charges.

15. At the hearing the Applicant was represented by Ms. E Stewart who was the Leasehold Services Manager for the Applicant. The Respondent was in person.

16. The Tribunal took each item in order in which it was raised by the Respondent.

The Hearing

Issue number 1 – Refund from earlier decision

17. Mr. Oliver complained at the length of time that it had taken the Applicant to refund the charges which were awarded by a previous Tribunal. The Applicant confirmed that the Charges had now been refunded.

18. Given that it was accepted that the charges had been repaid the Tribunal made no findings upon the issue of delay

Issue number 2 – Apportionment of charges

19. The Respondent submitted that Tenants that occupy properties with two bedrooms should not be asked to pay a higher service charge than those Tenants that had properties' which only had one bedroom. It was submitted that charging them a higher percentage of the service charge was unreasonable.

20. The Applicant stated that they based the apportionment of service charge upon floor area. Those properties which had two bedrooms had a larger floor area and were charged more. The service charge paid by the Respondent (and other Tenants that occupied a property with two bedrooms) was calculated at 3% of the whole whilst those with 1 bedroom' apartments paid 2.7%. However, the Applicant could not state how that figure had been reached.

21. Unfortunately, the Lease provides no assistance on how the service charge should be apportioned as it was silent upon the issue.

22. The Relevant provisions relating to Service Charges were set out in the First Schedule to the Lease. Clause 1 provided that the amount of service charge payable shall be such amount as "shall be certified by the Landlords Accountant at the end of each financial year". However, it is clear that this refers to the amount payable at the end of each period and not how that figure is then to be apportioned between the Tenants.

23. In the absence of guidance from the terms of the Lease on this issue, and in the absence of expert evidence from either party on the point, the Tribunal must do the best that it can in assessing whether the apportionment method adopted by the Landlord is reasonable.

24. Adopting floor area as a means of apportionment is not uncommon in Leasehold properties and is one of a number of approaches that one may come across. In the current case it seems to the Tribunal that the Respondent's approach is unreasonable in that it envisages that he should pay the same service charge as those Tenants that occupy smaller properties at the development whilst his own property occupies a larger area of the development.

25. In the circumstances, and doing the best that it can, the Tribunal determine that the method adopted by the Applicant is reasonable as it applies a fair means of apportioning costs between properties of differing sizes and reflects the higher footprint and usage of the site by those which occupy the larger properties.

Issue number 3 – Gas Maintenance servicing

26. The Respondent stated that the Tenants were not responsible for paying for the servicing of individual gas boilers in the private flats at the development. He stated that this point had been determined at an earlier Tribunal hearing.

27. The Applicant stated that some Tenants had asked the Applicant to continue to arrange for their boilers to be serviced. Only those Tenants that had requested that service were subject to that particular charge. Therefore, because the Respondent had not requested that service, he had not been asked to pay for that charge.

28. In those circumstances, it appears that the Respondent had not been requested to make any contribution towards that particular charge. This must be correct as the Tenants are not responsible for the costs of servicing the boilers in each of the flats. The responsibility to pay for servicing only extends to servicing of the boilers in the common areas of which, the Tribunal was informed, there are two.

Issue number 4 – Lift Refurbishment.

29. The Respondent indicated that the Tenants had not been consulted about the costs of refurbishing the lift. The cost was high and the charge came to £32,880.00.

30. Given the level of the charge, the work was subject to a statutory consultation pursuant to section 20ZA of the Landlord and Tenant Act 1985.

31. The Applicant stated that it had made a separate application to the Tribunal seeking dispensation from the Consultation requirement. The application had been granted by the Tribunal. A copy of the decision was handed to the Tribunal (ref: LVT/0057/02/17)

32. The Respondent also objected to the costs of the works, stating that the charges were unreasonable.

33. The Respondent had been provided with a copy of the proposal for the works which contained a specification for the works together with a breakdown of the relevant costs associated with the refurbishment.

34. In particular, the Respondent stated that the charges for items 9, 10, 11, 12 and 13 of the specification were too high. He also challenged the labour costs which he stated were too high and unreasonable.

35. As regards item 9, namely the safety mirror, the Respondent stated that the charge was unreasonable as the mirror was not fit for purpose as it had been fitted too high up on the wall.

36. In respect of item 10, the handrail in the lift, the Respondent again submitted that the charge was unreasonable as the handrail should be at the side of the lift and not the back.

37. As regards item 11, the Respondent submitted that the charge for the “in car” lighting was too high at £525.00. He submitted a reasonable sum to be £250.00. The Respondent stated that he had some knowledge of these matters as prior to retirement he used to work as an electrician.

38. The Respondent submitted that the cost of the floor tiling (item 12) was also unreasonably high. He submitted a reasonable charge would be £350 - £360.

39. In respect of item 13 (the wall panelling in the lift) the Respondent said again the charge was unreasonable and that a reasonable figure would be £400.00

40. As regards the labour element which was charged at £4,484.00, the Respondent submitted that a reasonable fee would be £800.00.

41. Finally, the Respondent submitted that the express delivery fee of £500 was unreasonable and should not be charged at all.

42. The Applicant stated that it was not an expert on these matters but had relied upon the advice of those providing the service.

43. As regards items 9 and 10 of the specification, the Tribunal are satisfied that the work and the charge is reasonable. The issues raised by the Respondent are matters of opinion. The Applicant was guided by the service provider and the Tribunal find nothing wrong with the advice received and accordingly find those charges to be reasonable.

44. As regards item 11, the charge for the in-car lighting, the Tribunal find that the charge of £525.00 is reasonable. The Tribunal notes that the Applicant was an electrician prior to retirement but also notes that the Respondent retired some considerable time ago and may not be up to date with current pricing. In any event, the Respondent did not produce any evidence to support his suggested figure.

45. In relation to items 12 and 13 and in respect of the labour charge, the Tribunal note that whilst the Respondent challenges the level of the charge, he has not produced any evidence to support his contentions. On the face of the invoice the charges do not appear unreasonable. The Tribunal notes that the Respondent previously worked as an electrician but he has been retired for some considerable time so his knowledge of pricing may be historic. In the circumstances, the Tribunal consider the charges to be reasonable.

46. An issue was also raised by the Respondent in respect of the Insurance charges for the lift. In essence, the Respondent was questioning the charge as much as making any definite challenge in respect of the charge.

47. The insurance charge was £126 in 2017, £132 in 2018 and £135 in 2019.

48. The Applicant stated that insurance was required to comply with its statutory health and safety obligations and the payments included regular inspections and reports.

49. In the absence of any evidence to the contrary, the Tribunal find this charge reasonable.

Issue number 5 – Fire Hatches.

50. In his initial submission, the Respondent indicated that the tenants had been charged for 7 Fire Hatches when in fact there were only 6 fire hatches at the Property. He sought a refund in respect of one of the fire hatches.

51. Following the inspection, the Respondent accepted that there were in fact 7 hatches. One of the hatches was situated in the roof space and the Respondent had been unaware of the same. This challenge was withdrawn.

52. In respect of the invoice from “Onecall Wales” in the sum of £288.00, The Respondent challenged the legitimacy of the charge stating that the work had not been done.

53. The Tribunal noted that the charge in question was in respect of an invoice raised in 2015. The charge in question falls outside of the period in question and is in respect of a period which has already been determined by a previous Tribunal. In those circumstances, the issue has previously been determined and the Tribunal reject the current challenge.

Issue number 6 -T. V Aerial Maintenance

54. The Respondent challenged the charges applied for the servicing and maintenance of the communal Television Aerial and system.

55. It was stated that very often the problem was within each flat and the Tenants should not be charged for what is effectively “private work”. The Respondent stated that when he had a problem with his own television, he paid privately to resolve the problem.

56. The Applicant stated that a service agreement was in place which provided for routine maintenance of the equipment and prompt resolution of problems. It was submitted that often problems in the private residences were due to difficulties

with the communal system so it was reasonable to do the work in those circumstances.

57. The charges for 2017 and 2018 was £373.00 per year. The charges for 2019/20 was £402. The Tribunal do not find these charges unreasonable for a complex consisting of 35 separate flats. The Tribunal determine these charges to be reasonable.

Issue number 7- Fire Alarm Testing

58. The Applicant confirmed that the charges for the years 2017/2018, 2018/2019 and 2019/2020 would be refunded. These charges come to £1,747.00.

59. The Tribunal determine that those charges must be refunded to the service charge account.

Issue number 8 – Emergency lighting

60. The Respondent submitted that the emergency lighting was fitted by a company called GKR Maintenance and Building Company Limited. However, ever since the lights had been fitted there were problems in that the lights keep “tripping” on the ground floor. It was submitted that GKR had overloaded the circuits.

61. The Respondent had produced a number of invoices which appeared at pages 40 – 49 of the bundle. The invoices showed that on at least 6 occasions during 2017 and 2018 the lighting had tripped and had to be reset. One of the invoices (page 47 of the bundle) seems to indicate that the Tenants have been charged to have someone to go to site to find out that the work had already been completed.

62. The Applicant stated that the Respondent had produced no expert evidence to support the allegation that the system has been overloaded.

63. The Tribunal find that the number of problems at the property which indicated that the system has “tripped” necessitated further investigation rather than simply sending someone to reset the lighting. This alleviated the problem but did not resolve it. Accordingly, the Tribunal determine that it should have taken no more than 2 visits to identify the problem. Accordingly, the charges applied, namely £472.36 are unreasonable. The Tribunal find a reasonable charge to be £166.38 being the charges applied in respect of the first two visits being the invoices which appear at pages 42 and 44 of the Respondents bundle.

64. The Tribunal also determine the charge of £15.79 (being the unnecessary call out fee) which appears at page 47 of the bundle is also unreasonable.

65. Accordingly, the Service charge account should be credited with a sum of £321.77.

Issue number 9 – Emergency Lighting

66. The Respondent stated that in 2018 the emergency lighting failed on floor 3. He stated that the system was only installed in 2015 and 2016 so any repair work should have been carried out under warranty. He challenged a particular invoice from Cambria dated the 15th November 2018 in the sum of £949.82.

67. The Tribunal asked the Applicant if they had any information as to what the problem was and what worked was carried out as the invoice did not have sufficient information to see what had been done and why. The Applicant stated that they had no further information although they may have had more information if they had been able to log on to the system. They confirmed that they did not check on work done.

68. It is not unusual that there is no warranty in place 3 years after the installation had taken place so the Tribunal find that the absence of a warranty is not unreasonable. The Respondent makes no other complaint in respect of the charge. In the absence of any evidence showing the charge to be unreasonable, the Tribunal determine the charge to be reasonable.

Issue number 10 – Fluorescent Lighting

69. The Respondent challenged 11 particular invoices (pages 53-63 of the Respondent's bundle). However, of those invoices 3 fell outside the period under consideration namely those which appear at pages 53-55.

70. The Respondent submitted that the particular invoices were fraudulent in so far that 3 invoices had been submitted in the space of 10 months in relation to the laundry room alone.

71. The Applicant submitted that it saw nothing suspicious about the invoices such as would concern them.

72. The Tribunal note that there appear to be 8 invoices raised between the 23rd January 2017 and the 19th January 2019 being a period of 2 years. The invoices seem to relate to various areas of the development. The Tribunal does not find that the number of invoices in question is so high as to be unreasonable on a development of this size. Accordingly, the Tribunal find the charges reasonable.

Issue number 11 – Charges applied by Onecall wales

73. The Respondent challenged two invoices raised by One Call Wales. The first charge was an invoice dated the 19th October 2017 in the sum of £294.00. The second invoice was dated the 3rd March 2018 and was in the sum of £384.00.

74. As regards the first invoice, The Respondent has not actually made any challenge but has asked where the work was carried out. In the absence of a specific challenge the Tribunal determine the charge to be reasonable.

75. As regards the second invoice, The Respondent challenges the charge as being excessive. He submits that a reasonable charge would be £100.00. He provides no evidence in support of that contention.

76. Whilst the work carried out does not appear to have been a particularly large job, the Tribunal note that asbestos was present in the area in question. The invoice itself refers specifically to the presence of asbestos and the need to take safety precautions in the manner in which the work was carried out and in the manner of how the waste was disposed of. In the circumstances, the Tribunal is satisfied that there was more work involved in this job than suggested by the Respondent and they find the charge reasonable.

Issue number 12 – Damage caused by GKR/The Applicant

77. The Respondent's next challenge was in respect of 4 specific invoices charged to the tenants by Cambria Maintenance services ("Cambria"). Cambria are the in-housing maintenance arm of the Applicant association. The invoices appear at pages 91-92 and 94 -95 of the Respondents bundle.

78. The Respondent asserted that the works carried out by Cambria were repairs to the property caused following damage caused by one of the Applicant's contractors namely, GKR and a plumber from the Applicant Company itself.

79. Together, the charges came to £207.55

80. The Applicant indicated that the costs of investigating these matters were disproportionate to the charges and it agreed to refund these sums to the service charge account.

Issue number 13 – Fire Extinguishers

81. The Respondent stated that in 2013 the residents were charged £249.36 in respect of the supply of fire extinguishers to the Property. The extinguishers were subsequently removed by the Applicant in July 2017. The Respondent stated that he wanted a refund.

82. The Applicant stated that all but two of the extinguishers had been removed from site. The Applicant stated that fire safety guidance is regularly updated and that has certainly been the case since the Grenfell fire incident. The Applicant stated that the extinguishers were removed after receiving updated guidance on fire safety.

83. The application before the Tribunal is in respect of costs incurred for the years 2017 – 2020. The Respondent's challenge does not amount to a challenge for a cost incurred in respect of the period under consideration. In those circumstances the submission that the Respondent is entitled to a refund is rejected.

84. The Respondent also asserts that the walls of the Property were damaged by the Applicant when the extinguishers were removed and that the Applicant then recharged the decorating costs to the Tenants. The Respondent stated that the tenants should not have to pay for that work. The charge came to £108.83.

85. The Applicant agreed to refund this charge to the service charge account.

Issue number 14 – Tree removal

86. The Respondent challenged the reasonableness of the invoice from TR33 in respect of invoice number 9240 in the sum of £768.00.

87. The invoice was purportedly for felling three trees at the development and applying eco plugs to the stumps to prevent future growth.

88. The Respondent stated that there was only one tree that was felled and that the work had not been done properly as the tree had regrown. He challenged the entirety of the charge.

89. The Applicant stated that there were three trees. two were growing out of the boundary wall and the third was a self - seeded tree situated in the border. The Applicant stated that with the passage of time it was impossible to see if the tree referred to by the Respondent was the same tree worked on by TR33, due to significant undergrowth being present at the time of the inspection.

90. The Tribunal find for the Applicant on this issue. The inspection clearly showed that work had been carried out to the boundary wall of the property in two places and stones were stacked on the floor. This fits with the narrative in the invoice itself.

91. Aside from that fact, the charge falls outside of the years under consideration as the work was carried out and the invoice raised in 2016. The Respondent's request for a refund is rejected.

Issue number 15 – Removal of Trestle Table.

92. The Respondent challenged the invoice from the Applicant in the sum of £322.77 which had been charged from removing waste from the development.

93. The Respondent asserted that the charge was unreasonable as the Applicant only removed one trestle table from the development.

94. The Applicant indicated that it had emptied the communal storerooms as they are frequently used by tenants to store goods. Notices were sent to tenants asking them to remove goods by a specified date and any goods left after that time were removed. The Applicant stated that they had taken a large number of goods from the development and not just the trestle table as had been alleged. The Applicant submitted that the work took six hours to clear the storerooms.

95. In support of its contention, the Applicant relied upon the witness statement of Donna Hunt who managed the development at the time of the work. Her evidence stated that on the day in question the storage cupboards were cleared by three site supervisors who took away the goods in a van.

96. The Tribunal prefers the Applicant's evidence on this point. It is clear that the job involved more work than the Respondent is aware of as the job took six hours and involved three people. This indicates more than just the removal of one table. The Tribunal determine the charge to be reasonable.

Issue number 16 – Exterior fence

97. The Respondent challenges the charges in an invoice dated the 19th September 2018 in the sum of £599.61. The invoice relates to work carried out to an external fence at the Property and to removing mould from the canopy of the communal entrance.

98. The Applicant acknowledged that the work done to the fence was of a poor standard and had taken too long. The work had subsequently been carried out again and a credit had been offered of £139. The Applicant had removed the labour element of the work. This left a charge of £460.61

99. The Respondent asserted that the charge was still unreasonable. He asserted a reasonable fee to be £264.00. He advanced no evidence to support that assertion.

100. The Tribunal find that the sum claimed by the Applicant is reasonable. The Respondent is applying his own view of the cost which is unsupported by any evidence at all. The charge applied is reasonable given the work required to both the fence and the canopy.

Conclusion

101. The service charge budget for the year 2017 be reduced by the sum of £1,006.39 (consisting of £821.00 (paragraph 57), £76.56 (paragraph 64) and £108.83 (paragraph 83)

102. The service charge budget for the year 2018 be reduced by the sum of £1,249.76 (consisting of £797.00 (para 57), £245.21 (para 64) and £207.55 (para 78).

103. The service charge budget for 2019 be reduced by the sum of £268 (consisting of £129.00 (para.57) and £139.00 (para. 98)

104. Credit be awarded for sums overpaid by the tenants for these years.

Dated this 25th day of February 2020

Andrew Grant
Chairman.