

Carey Bay Retirement Village Residents Committee v Anglican Care

Village: Carey Bay Retirement Village

Operator: Anglican care



The Advocates: The CTTT case was also prepared by Judith Daley (see previous page) as an RVRA advocate, on behalf of the Residents Committee of Carey Bay. The Chairman of the Residents Committee, Ms Joyce Clarkson, assisted Ms Daley.

The Dispute:

It is a small village with 34 units. There are six different levels of contracts in the village for units that are all exactly the same size. The highest rate of recurrent charges is 94% higher than the lowest rate. The surplus, achieved each year, was distributed to each resident in equal shares, but this meant that a couple received two portions of the surplus.

Each resident received the same amount regardless of their payment to recurrent charges.

The following budget line items were also disputed: Insurance; Property Maintenance; Gardens and Grounds; Security Light; Security Hand Rails; Audit Fees and Legal Fees.

The Case History:

The Tribunal appeared to be uninterested in probing into aspects of the contracts in any way. However, a fairer formula to cover any future refund of the surplus recurrent fees was requested by the residents.

Budget Line Items:

The operator provided additional information regarding most of these items first listed, so that the residents could understand the charges, and the claims were (reluctantly) withdrawn. However, detailed evidence was heard regarding Repairs and Maintenance -Plumbing; Repairs and Maintenance – Shower Screen; Security – Vital Call System; Management and Administration Fees (Marketing, Software Licenses and Conference Education Fees); Chaplaincy; and Welfare Fees.

The Results:

A formula to cover any future refund of the recurrent fees was agreed by consent, and that will restore some equity. This formula means the amount to be refunded for each unit must be individually calculated according to the formula decided between the parties and approved by the CTTT.

The residents were successful in saving \$9,399.40 from the budget line items in dispute.

What has been learnt?

Some of these successes resulted from the principles established in the Queens Lake Village decision, in the District Court. That means, because insufficient detail was provided by the operators this year, and because they had “averaged the costs across several villages or used a formula”, the costs were disallowed this year. In future, if proper information is provided, the residents will have to pay these line items.

Other successes were to provide some clarification between ‘capital maintenance’ and ‘capital replacement’, but this still seems open to interpretation on each line item.

It meant in this case, that the repair cannot be charged to the residents, if the part is so essential that the unit will not operate without it. This was established by the CTTT’s ruling that, replacing the faulty flushing mechanism within a toilet system, in a leased premises, is not considered to be a repair, but is a replacement to be paid by the operator, not by the resident, or from residents’ Recurrent Charges.
