

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00HP/LSC/2007/0072

BETWEEN:

RICHARD SMITH

Applicant/Lessor

- and -

JOHN HUBBUCK & ROSEMARY HUBBUCK

Respondents/Lessees

IN THE MATTER OF AN APPLICATION UNDER SECTION 27A OF THE
LANDLORD & TENANT ACT 1985
AND IN THE MATTER OF FLAT 2, AUDLEY LODGE, 15 GLENAIRE ROAD,
POOLE, DORSET BH14 8AA (the Premises)

PREMISES: Flat 2
Audley Lodge
15 Glenaire Road
Poole
Dorset
BN14 8AA ("the Premises")

TRIBUNAL: MR D AGNEW LLB, LLM (Chairman)
MR D L EDGE FRICS

HEARING: 25th October 2007

REASONS FOR DETERMINATION AND DETERMINATION

REASONS

1. **Background**
 - 1.1 On the 27th July 2007 District Judge Freeman in Poole County Court transferred to the Tribunal for determination under Section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the reasonableness of service charges claimed by the Applicant against the Defendants in proceedings in that court under Claim Number 7QZ62314.
 - 1.2 This claim was for the sum of £1,651.87 plus the court fee for service charges said to be outstanding since the 1st July 2005.

- 1.3 The Respondents had filed a Defence claiming that they had attempted to pay the insurance element of the service charges (together with the ground rent) but this has been rejected by the Applicant who, it was said, would not accept part payment and required payment in full.
- 1.4 The Defendants said in their defence that they had not paid the balance of the service charges due to the fact that information that they had requested concerning those charges had not been supplied by the Applicant.

2. Directions

- 2.1 Directions were given by a member of the Tribunal on the 13th August 2007 requiring the Applicant to file and serve a copy of his statement of case by the 12th September 2007 and for the Respondents to respond by the 10th October 2007. A statement of case was filed by the Applicant on the 4th September 2007 and the Respondents' statement of case in response was filed on the 11th October 2007.

3. Inspection

- 3.1 The Tribunal inspected the premises immediately prior to the hearing on the 24th October 2007. They comprise a flat within a substantial Edwardian villa which has been converted into 4 flats. The Premises are on the ground floor. The property is situated in a pleasant residential area of large detached houses close to the centre of Poole. It has brick elevations under a tiled roof. At the rear of the premises there is a large single storey extension (part of Flat 1) which has a felted flat roof. The tarmac driveway which leads from the road alongside the house to the garages at the rear is broken up in places where tree roots have forced up the tarmac. There are 5 garages. The garage to flat 2 has an asbestos roof and the garage suffers from water ingress. The house has a mixture of upvc and wooden windows. The fascia and barge boards are in need of decoration. The paintwork to the front bay of the house (Flat 2) is peeling away and requires re-painting. Wooden French doors to Flat 2 are suffering from wet rot. There is some bubbling up of paintwork to the side windows on the first floor. Flat 2 suffers from some water ingress into the corner of the bedroom which has stained the wallpaper. There is damp in the ceiling of a bedroom in Flat 3 (on the first floor) which has stained the plaster work and also under the window in the living room. The flat roof over the rear of Flat 1 covers an extensive area. It has previously been patched but looks to be in need of attention soon.

4. The Law

- 4.1 Section 27A of the Landlord & Tenant Act 1985 ("the 1985 Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

- (a) the person by whom it is payable
- (b) the person to whom it is payable
- (c) the amount which is payable
- (d) the date at or by which it is payable
- (e) the manner in which it is payable.

4.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

5. The hearing

5.1 The hearing took place at the Lighthouse, Kingland Road, Poole, Dorset on Thursday the 25th October 2007. Present was the Applicant in person. Ms H Oran, solicitor, appeared on behalf of the Respondents who were also in attendance as was Mrs Josephs of Flat 3.

5.2 The Applicant indicated that he was content to proceed with the hearing notwithstanding the fact that the solicitors practice whom he had originally instructed to deal with the matter on his behalf had recently closed down and the Law Society had intervened.

5.3 The Applicant explained that the following payments on account of service charge had not been paid by the Respondents:-

For the year 2006/7 – instalments due in July and October 2005 and in January and April 2006. The payments on account of service charge were fixed by the landlord at £135 per quarter. In addition there were some management charges and stairwell lighting of £35 and £15.50 respectively for 2006/7.

For the year 2007/8, prior to the issue of the County Court proceedings, the following payments were outstanding:-

Payments on account of service charge for July and October 2006 and January and April 2007 in the sum of £135 per quarter plus management charges of £35 and stairwell lighting of £15.50. The total now claimed due was £1,651.87 but £50 of that figure was attributable to ground rent in respect of which this Tribunal does not have any jurisdiction. The Tribunal was therefore being asked to make a determination in respect of service

charges amounting to £1,601.87 for the period up to the issue of the County Court proceedings.

- 5.4 The Applicant explained how he used one account which he referred to as the "sinking fund" for the receipt and payment of regular items of expenditure (other than insurance and electricity charges for the common parts) as well as for future major expenditure on repairs or maintenance.
- 5.5 The Applicant explained that he charged each of the lessees £35 per annum quarter for management expenses. This covered his time for dealing with all the paperwork, organising the insurance, dealing with contractors and issuing demands. He did it himself in order to save costs and he pointed out that he had been charging the same amount for the past 4 years.
- 5.6 As far as electricity for the stairwell lighting is concerned, the amount of electricity consumed was only about £1 a year but because it had a separate meter this accounted for the balance of the charge of £15.50 per quarter for the 3 flats concerned. He said that he had suggested that one of the lessees might like to take on responsibility for the electricity being supplied through their own meter, collecting a small contribution from the other 2 lessees in order to save money, but to date this had not been taken up.
- 5.7 The Applicant accepted that interest had not been added to the sinking fund account prior to 2003 when a conventional business account was taken out to cater for this fund because the Applicant said he had been experiencing problems with the payment of service charges since 1993 and felt it unfair that he was paying in to the sinking fund and others were not, so he decided that he would compensate himself by retaining the interest and not credit it to the sinking fund account.
- 5.8 Mr Smith confirmed that the debit from the sinking fund of a £150 for the 8th October 2007 was for the Tribunal hearing fee and that items paid in March 2007 to solicitors was in respect of a payment on account for his solicitor's fees in relation to the outstanding service charges. On the 30th April 2007 a £120 debit was for the court issue fee and on the 20th June 2007 there was a debit of £100 from the sinking fund to cover the fee for the transfer of the case to Poole County Court. Mr Smith considered that he was entitled to take these sums from the sinking fund as under the seventh schedule of the lease it is provided that he should be indemnified in recovering monies not paid by lessees.
- 5.9 Under cross examination from Ms Oran Mr Smith agreed that he had refused to furnish the lessees with copies of the bank account saying that the account is held in trust for the property. He said that the property is his property and not theirs. It was also his account and he did not consider that they were entitled to have a copy of it. Mr Smith also accepted that he had refused to supply a copy of invoices and other documents supporting the expenditure figures for the service charge. He said that he tried to be fair

and had run the account as a non profit affair; that he had been called a thief and a liar in public and was therefore not inclined to co-operate. He confirmed however that he did have all receipts going back over several years. He also confirmed that he had declined to accept the payments tendered in respect of the ground rent and insurance as he thought that if he had accepted those payments he would have been accepting the lessees' contention that the sinking fund was too high.

- 5.10 As far as future expenditure is concerned Mr Smith confirmed that at this stage he had not received any firm estimates because the work would not need to be done until next year but he had received an indication of the costs from the contractors who last did the work.
- 5.11 As far as the painting which had been done on the last occasion was concerned Mr Smith believed that the painter had come back twice to attend to problems. Thereafter he had received no further complaints.
- 5.12 With regard to the work which was anticipated to be carried out to the flat roof Mr Smith said that he had obtained an informal estimate that this would cost in the region of £3,600.00. This was based on replacement of the substrate and covering.
- 5.13 As far as the driveway was concerned, Mr Smith said that this surface was beginning to break up. If you walk on the drive when it is frosty it is hollow underneath the tarmac surface.
- 5.14 With regard to the work done by the tree surgeon in December 2005, Mr Smith agreed that he had paid the contractor £1,500.00 including VAT. The work was not finished but the contractor had asked for a payment on account as it was just before Christmas. Mr Smith agreed that he needed to take up with him the fact that he needed to come back and complete the works.
- 5.15 Ms Oran confirmed to the Tribunal that there was no challenge by the lessees to the insurance premium that had been charged or the amount of the electricity or the management charges. She pointed out that the Respondent appeared to have used the sinking fund as a payment to meet regular expenditure as well as for major repairs whereas the lease provided that this should be for future repairs and redecoration only and that it would be better if that were adhered to. She submitted that the lease provided no authority for the lessor to be able to withhold interest from the account or allow the applicant to use the sinking fund for payment of his solicitors and Court and Tribunal fees. In response to a question from the Tribunal Ms Oran was not able to suggest herself what would be a reasonable figure for carrying out the external redecoration as no steps had been taken by her or her clients at this stage to obtain estimates. When asked what she considered would be a reasonable figure for the lessees to contribute to the sinking fund each quarter she suggested that the figure should be the same as it was

- prior to 2002 when it was last increased by the applicant. Then the contribution was £100.00 per quarter per flat which she considered to be appropriate.
- 5.16 No application was made by the respondents under Section 20C of the 1985 Act.

6. Determination

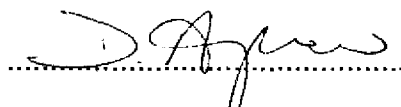
- 6.1 The Tribunal considered that the request for the lessees to contribute to the sinking fund at the rate of £135.00 per quarter was reasonable. The lessees thought that £100.00 per quarter would be a reasonable figure but this was the contribution which had been paid in 2002 and the cost of repairs and maintenance has increased significantly since that time. The Tribunal was satisfied that the sort of expenditure that was going to be required in the foreseeable future for the external painting, the work to the flat roof and the driveway at the premises was likely to be in the region of that estimated by the Applicant and in those circumstances £135.00 per quarter was going to be required to meet that expected expenditure.
- 6.2 The Tribunal found, however, that the Applicant was not entitled to decide unilaterally that interest should not be added to the sinking fund account and the Applicant should credit the fund with the interest that has been withheld. The parties should try to agree how much should be credited to the sinking fund in respect of interest. In default of agreement within the next 3 months the parties may submit written representations to the Tribunal supported by documentary evidence such as copy bank statements showing how much interest has been earned so that a supplemental determination can be made on this point. The Tribunal however urges the parties to avoid the inconvenience and expense of having to revert to the Tribunal on this point which should be capable of being agreed between the parties.
- 6.3 The Tribunal found that the lease does not permit the Applicant to reimburse himself for his legal costs out of the sinking fund without obtaining an order from the Court or the Tribunal. Consequently those costs of £520.00 should be paid back into the sinking fund account.
- 6.4 The Tribunal appreciates that the Applicant has tried to keep the costs of managing the property to a minimum but part of the problem in this case appears to have resulted from the fact that the Applicant has used the sinking fund as an account to pay both regular items of expenditure such as gardening and provide for major expenditure on repairs and maintenance. The lease provides that the sinking fund should be for repairs and maintenance only. The Tribunal therefore recommends that the Applicant sets up a separate account to deal with regular items of expenditure and that he either apports part of the £135.00 per quarter as a payment on account of regular items of expenditure and pays that proportion into the new account or alternatively he uses his powers under

the lease to seek a sum quarterly in advance on account of the lessees' obligations to reimburse him for expenses incurred in carrying out his obligations under the lease. The lessees must understand that this may involve the lessor in expense over and above that which is currently incurred on their behalf but if they wish matters to be dealt with strictly in accordance with the lease and good practice this is something they will have to expect and accept.

6.5 The Tribunal was concerned that in the course of the hearing it had become apparent that the Applicant had been totally unaware of the RICS Code of Management Practice and recommends that he become familiar with the contents of that document as a matter of priority. Furthermore, the Tribunal was concerned to note the Applicant's attitude in some instances was that as he was the freeholder, the property really belonged to him and that the long leaseholders had very little interest in the property and how it was maintained and managed. The fact of the matter is that long leaseholders do have a very considerable financial interest in the building and are given quite extensive rights by various statutes. They are entitled to more consideration than the Applicant seems to have given to them in some instances in the past. It is to be hoped that as a result of these proceedings the Applicant will now be far better informed and that the management of the premises may proceed on a more consensual basis in the future.

6.6 In conclusion, therefore, the Tribunal determines that the Respondents should pay the sum of £1,601.87 being the contributions required from them towards the service charges and sinking fund for the years 2006/2007 and 2007/2008 to the 1st April 2007. This sum does not include a figure for ground rent for each of the two years in question as this Tribunal has no jurisdiction to make a determination in respect of ground rent. The Applicant is to pay the sum of £520.00 into the sinking fund in respect of the legal costs which have been deducted from that account and is to credit the sinking fund with interest which would have accrued to the fund but which has previously been withheld from it.

Dated this 16th day of November 2007



D. Agnew LLB, LLM
Chairman