

IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/29UG/LSC/2006/0114

**IN THE MATTER OF SECTION 27A OF THE LANDLORD AND TENANT
ACT 1985**

**AND IN THE MATTER OF 50 WEST CRESCENT ROAD, GRAVESEND,
KENT, DA12 2AB**

BETWEEN:

MR VISHNA M KAPIL

Applicant

-and-

**(1) MR T HOWARD
(2) MRS B HOWARD**

Respondents

THE TRIBUNAL'S DECISION

Background

1. The Applicant commenced these proceedings in the Gravesend County Court for the recovery of total service charge arrears in the sum of £3,573.84 allegedly owed by the Respondents. Pursuant to an Order made by District Judge Blunsdon dated 12 October 2006 the matter was transferred to this Tribunal for a determination of the Respondents liability to pay and/or the reasonableness of the service charges claimed by the Applicant. The Tribunal's determination is made pursuant to Section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act").

2. The Respondents occupy the subject property by virtue of taking an assignment of a lease dated 25 January 1990 granted by the Applicant and Rajiv Laxman to Margaret Rose Dudman for a term of 99 years from 29 September 1988 (“the lease”). In the Recitals to the lease, the demised premises is described as forming part of a development (“the Building”) comprising 13, 15, and 17 Harmer Street and land to the rear consisting of 15 units with parking facilities. The First Schedule of the lease defines the subject property as being the town house to the rear of 13 Harmer Street, Gravesend known as Unit 15 Harmer Street aforesaid.
3. By clause 3(4) of the lease, the lessee covenanted with the lessor to pay and contribute 8.5% of the expense incurred by the lessor in the performance of its obligations contained in clause 5. The same clause also provides for the lessee to pay in advance the estimated cost of any such works, if required by the lessor.
4. By clause 5(4) of the lease, the lessor covenanted to at all times to observe and perform the obligations contained in the Second Schedule. Paragraph 1 of the Second Schedule provides, *inter alia*, that the lessor will maintain and keep in good and substantial repair and condition the external parts of the building (paragraph 1(a)) and:

“(c) all other parts (of the building) used or capable of being used (our emphasis) in common by the Lessees for the time being of the flats in the building....”

Paragraph 4(a) of the Second Schedule provides that the estimated service charge demanded by the lessor shall be payable by the lessee on 25 March of each year. Paragraph 3 also allows the lessor to recover management fees equivalent to 15% of the gross service charge expenditure. The annual service charge period, therefore, commences on 25 March of each year and ends on 24 March of the following year.

Inspection

5. The Tribunal inspected the subject property on 19 February 2007. The property comprises 3 mid terrace houses on four floors fronting Harmer Street, which have been converted to give a total of twelve flats accessed via three separate entrance halls with staircases, which have their own security entry systems to each house. Additionally there is a courtyard approached from West Crescent Road to the rear of the site which then has three units known as 50, 52 and 54 West Crescent Road which are detached from the three terraced houses. The subject premises are a mews house on two floors with part of its accommodation over the entrance to the courtyard. There is no access from these three units into the other three terraced houses.

Hearing

6. The hearing in this matter also took place on 19 February 2007. The Applicant appeared in person. The Second Respondent also appeared in person on behalf of both Respondents.
7. The disputed service charges can be summarised as follows:

2003

- £9,362.40 Renewal, maintenance and fitting a fire alarm system to 13, 15 & 17 Harmer Street.
- £2,585 Installation of fire doors and other works to 15 Harmer Street.

2004

- £35.73 Electricity bill for common hallways of 13, 15 & 17 Harmer Street.
- £5,975 Total cost of painting and decorating the common hallways, front doors and internal doors of flats to 13, 15 & 17 Harmer Street and the railings and fascia of 50 & 52 West Crescent.

2005

- £344.83 Electricity bill for common hallways of 13, 15 & 17 Harmer Street.
- £295 Clearing of rubbish from the cellar of 15 Harmer Street, fixing new door and fitting of a lock.

2006

- £281.07 Electricity for common hallway and courtyard.
- £1,8112.88 Total maintenance costs incurred.

8. At the commencement of the hearing, the Applicant, Mr Kapil, confirmed to the Tribunal that 13, 15 & 17 Harmer Street formed part of the development and fell within the definition of “the building” contained in the lease. However, he went on to say that each was a separate dwelling consisting of four separate one-bedroom flats making a total of 12 flats. Each dwelling had a communal front door. No other persons, including the Respondent had a right to occupy or enter upon those dwellings other than the tenants to whom the flats had been demised. Moreover, Mr Kapil accepted that neither of the

Respondents had used or were capable of using the common parts of 13, 15 & 17 Harmer Street. Mr Kapil also confirmed to the Tribunal that the majority of the service charge costs in issue related to the installation of three separate fire alarms, the redecoration of the common parts and other minor repairs solely to 13, 15 & 17 Harmer Street. He submitted, in terms that they were recoverable under the terms of the lease.

9. The Second Respondent, Mrs Howard simply submitted that they were not liable for the cost of the works carried out solely to 13, 15 & 17 Harmer Street. When invited to do so by the Tribunal, Mrs Howard said that she was not able to comment on the lease terms or the construction of any of the relevant provisions. In her opinion, the disputed service charges were not recoverable against the Respondents.

Decision

10. This entire matter turned on the single issue of whether the lease allowed for the recovery of all or any of the service charge contributions claimed against the Respondents by the Applicant. To decide this issue the Tribunal had to construe the relevant provisions of the lease.
11. As stated earlier, under the terms of the lease, the lessee is only liable to pay a service charge contribution of 8.5% of the expenditure incurred by the lessor pursuant to the obligations set out in clause 5. Sub-paragraph 4 of clause 5 has to be read together with the Second Schedule, and in particular paragraph 1. It is only the heads of expenditure set out in the Second Schedule that are

recoverable by the lessor as a service charge contribution from the lessee, in this instance, the Respondents and nothing else.

12. It was common ground that the vast majority of the service charge costs in issue related solely to the repair, maintenance and redecoration of the (internal) common parts to 13, 15 & 17 Harmer Street. The only relevant provision under which these costs may be recovered as a service charge expenditure is paragraph 1 of the Second Schedule. However, a proper reading of paragraph 1(a) and (b) reveals that they have no application in this case. The only relevant provision is contained in paragraph 1(c). This provides that the Respondents have a potential liability for service charge expenditure incurred in relation to “the building”, of which 13, 15 & 17 Harmer Street forms part including the subject property. However, any such liability is conditional upon the Respondents using or capable of using those other common parts of the building. This includes the common parts to 13, 15 & 17 Harmer Street as they fall within the definition of “the building” under the lease.. Mr Kapil, in evidence, confirmed that the Respondents have no right, under the lease or otherwise, to use or are capable of using the common parts of 13, 15 & 17 Harmer Street. The Respondents have no express or implied licence or right of way nor is any easement granted, either in law or contract, in relation to those common parts. It follows that any expenditure so incurred, including the electricity bills relating to those areas, is not recoverable as a service charge contribution against the Respondents. Accordingly, for the reasons stated the following sums are allowed by the Tribunal.

2003

All of the disputed sums are disallowed because they are not recoverable against the Respondents under the terms of the lease as a service charge contribution. The Respondents total liability for this year is, therefore, £480.23

2004

Only the costs of decorating the railings to 50 & 52 West Crescent Road are recoverable under the lease. The Respondents liability for this year is £536.19.

2005

All of the disputed sums are disallowed because they are not recoverable against the Respondents under the terms of the lease as a service charge contribution. The Respondents total liability for this year is, therefore, £437.55.

2006

The Tribunal allowed 50% of the electricity costs of £281.07 for the courtyard only as being recoverable but allowed the entire sum of £639.06 for the installation of new lighting to that area. The Respondents total liability for this year is, therefore, £483.37.

Costs

13. Mr Kapil indicated at the end of the hearing that he was not seeking to recover any costs he had incurred in these proceedings against the Respondents. In any event, the Tribunal was satisfied that the lease did not provide for any such costs to be recovered through the service charge account.

Dated the 16 day of March 2007

CHAIRMAN.....*J. Mohabir*.....
Mr I Mohabir LLB (Hons)