

**SOUTHERN RENT ASSESSMENT PANEL AND TRIBUNAL**

**Case No: CHI/00LC/LSC/2008/0099**

**BETWEEN:**

**R V SUMMERTON  
MS A COLE  
K LYNN  
MS A JORDAN  
MS V BALLANCE**

**LesseesApplicants**

**- and -**

**MAXIWOOD LIMITED**

**Landlord/Respondent**

**PREMISES:**

Troudau House  
296 Chatham Hill  
Chatham  
Kent  
ME5 7BA ("the Premises")

**TRIBUNAL:**

Mr D Agnew LLB, LLM (Chairman)  
Lady J Davies FRICS  
Ms L Farrier

**HEARING:**

16<sup>th</sup> January 2009

**Determination and Reasons**

**Determination**

1. The service charges levied for the years 2006/7 and 2007/8 and for the budgeted service charge year for 2008/9 are reasonable.
2. As the Landlord's representative stated that there was no intention to charge the costs of the leasehold valuation tribunal proceedings against future service charges there was no need for any order to be made under Section 20C of the Landlord & Tenant Act 1985.

## Reasons

1. The Application
  - 1.1 On 14<sup>th</sup> September 2008 the Applicant, Mr Summerton of Flat 10 at the Premises made an application to the tribunal for a determination as to the reasonableness of service charges demanded in respect of the Premises for the service charge years 2006/7 and 2007/8 and in respect of the budget figures for 2008/9.
  - 1.2 At the Pre-trial review on 22<sup>nd</sup> October 2008 at their request Ms A Cole (Flat 5), Mr K Lynn (Flat 13), Ms A Jordan (Flat 9) and Ms V Ballance (Flat 12) were added as Applicants.
  
2. Inspection
  - 2.1 The tribunal inspected the premises immediately prior to the hearing on 15<sup>th</sup> January 2009. They comprise a modern block of fourteen flats built in about 1991 situated close to a very busy main road. There is a large car parking area to the rear of the premises the surface of which is potholed and in need of re-surfacing. The building is of brick under a tiled roof. A couple of tiles had slipped from the side of a dormer window to the rear of the premises and one roof tile was missing. The rainwater guttering was in need of replacement at the rear of the premises. There were signs of the remains of vegetation which had been climbing up the brickwork to the rear elevation of the building but this had been chopped down by the time of the inspection.
  - 2.2 Inside the premises the communal hallway had recently been re-decorated following a serious leak from one of the hot water cylinders serving one of the flats. The carpet was in a reasonable condition but the tribunal was told that as part of the insurance claim relating to the leak referred to above, it was hoped that the carpet would soon be replaced.
  
3. The hearing
  - 3.1 This took place at Lordswood Leisure Centre. The following Applicants appeared: Mr Summerton, Ms Cole and Ms Jordan. A family friend of Mr Summerton's, Mr Ballard, attended to speak on behalf of Mr Summerton and was the main spokesperson for the Applicants. Mr Brotherton, a director of the Respondent Company, appeared on behalf of the Respondent.
  
4. The lease
  - 4.1 This is for 99 years from 25<sup>th</sup> March 1991. By Clause 1 of the lease the lessee covenants to pay by way of additional rent such sums of service charge payable in accordance with the provisions of the Fourth Schedule to the lease.

- 4.2 By paragraph 1(i) of the Fourth Schedule, "expenditure on services" is defined as "the expenditure of the Landlord in complying with his obligations set out in the Sixth Schedule" and "service charge" is stated to mean "a one-fourteenth part of the expenditure on services for the estate."
- 4.3 By paragraph 4 of the Fourth Schedule it is provided that: "By equal half yearly payments in advance on the 25<sup>th</sup> March and 29<sup>th</sup> September in each year of the term .... the Tenant shall pay to the Landlord an interim service charge instalment which may if the Landlord so stipulates be applied for the purpose of creating a reserve fund to meet anticipated future expenditure on services for the estate".
- 4.4 Under the Sixth Schedule the Landlord's obligations are, inter alia, to repair the estate including all structural parts such as the roof and foundations, floor structures below the surfaces of the floors, plaster surfaces above the ceilings, and all external walls, load bearing walls and all boundary walls and fences. In every fourth year there is an obligation to paint the exterior. Generally there is an obligation to comply with all orders notices and regulations of a competent authority, and to keep all parts of the estate used in common by the Tenants of more than one flat adequately cleaned and lighted.
5. The law
- 5.1 Under Section 27A of the Landlord and Tenant Act 1985 (hereafter referred to as the 1985 Act) 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.
- 5.2 By Section 19(1) 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.
- 5.3 By Section 19(2) of the 1985 Act: "Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable....."
6. The Applicants' case
- 6.1 The Applicants' main complaint was that they were being asked for money based on a budget each year in respect of which they had no input. They were not consulted about the budget and the budget was never explained to them. They had written to Mr Brotherton for an explanation but had received none. They did not consider that items

which needed attention were ever attended to and they could not see anything for the money that they were paying. In desperation they said they had applied to the Tribunal.

6.2 Much of the lessees' dissatisfaction therefore related to matters which they said needed doing but which had not been attended to. The Tribunal had to explain to the lessees that that was not something that the tribunal had jurisdiction to deal with under Section 27 A of the 1985 Act, particularly as there was no challenge to the reasonableness of the management fee that had been charged by the Respondent.

6.3 The items which were challenged by the Applicants were as follows:-

2006/2007:-	
Maintenance of external common parts	£252.30
Cleaning and sundries	£896.74
2007/2008:-	
Common way cleaning	£750.00
Repairs: miscellaneous	£1,420.00
Common way repairs and redecoration contract	£5,600.00
Repairs: reserve external decorations	£750.00
Refuse collection	£650.00
Fire safety and asbestos survey	£750.00
2008/2009 budget:-	
Common way cleaning	£780.00
Repairs: miscellaneous	£2,645.00
Common way repairs and redecoration contract	£4,600.00
Repairs: reserve external decorations	£3,000.00
Refuse collection	£650.00
Fire Alarm	£600.00

6.4 The Applicants could not understand the reference to cleaning of common ways as no internal cleaning had been carried out as far as they were aware. Refuse was collected by the local authority and so they could not understand the charge for this. They were unaware of any fire safety checks having been carried out. Redecoration of internal hallways had only recently been carried out and not, they said, to a good standard and this was done under an insurance claim. They had no confidence that the Respondent would

carry out any external decorating for which they had been asked to contribute £3,750.00 over the past two years.

7. The Respondent's case

7.1 The Respondent explained that the two figures queried by the Applicants on the 2006/2007 accounts totalling £1,149.04 were made up of four invoices:-

a) rental of refuse containers £611.00

b) payment to Mr Wilson for applying weed killer and tidying the car park area £210.00

c) two invoices from contract cleaners for cleaning on two occasions £169.20 and £158.84

7.2 As for 2007/2008 Mr Brotherton produced invoices for the expenditure for refuse collection, common way cleaning and repairs. The figure of £750.00 was an initial reserve amount to go toward the cost of external maintenance that would be required shortly covering items such as windows, roof repairs, drainage works and cleaning brickwork.

The £5,600.00 was intended to cover the cost of works recommended as a result of the fire survey and to cover the cost of redecorating the common hallways and staircase. A specification and details of estimates recovered for this work were produced. When the estimates were received it was clear that the figure of £5,600.00 would be inadequate to pay for this work and so a further £4,600.00 was requested in the 2008/2009 budget. In the event, the internal decoration has been dealt with under an insurance claim submitted following the bursting of a hot water cylinder and so the money collected on account of internal decoration will not be needed for this, other than to cover the excess. Mr Brotherton hoped that the insurers would also pay for new carpeting throughout the common parts. If new carpets are laid he will then arrange for cleaning of the common parts to be carried out on a regular basis. If the insurers will not agree to pay for new carpets, once he knows this he will arrange for the existing carpets to be cleaned regularly. Although a figure of £1,420.00 had been requested on account of possible expenditure on repairs (just over £100.00 per flat) the actual expenditure was £430.06 meaning that there was a surplus in the account at the end of the year for this item. The £430.06 was made up as to:-

Asbestos Survey	£165.68
Surveyor's fees for the survey	£58.75
Fire Alarm System	£205.63

7.3 As far as the budgeted future for 2008/2009 is concerned these were estimated figures and included reserves for possible future expenditure on internal redecoration referred to in paragraph 7.2 above. It also provided for a £3,000.00 reserve for external decoration.

Mr Brotherton confirmed that the lessees would shortly be receiving notices under Section 20 of the 1985 Act, which is the consultation procedure, in respect of the external repairs and redecoration. It was sensible to attend to the slipped or missing tiles and the guttering at the same time as the external redecoration is done. The Section 20 Notice will set out the work that is to be done and details of the estimates received and will invite the lessees to comment on the same.

7.4 Mr Brotherton produced details of the individual lessees' accounts from which it was evident that some lessees had not paid the service charges demanded of them. In response to questioning from the Tribunal he said that if at the end of this service charge year any lessee was still in arrears he would have to institute legal action to recover the outstanding sums. This was not something that his company liked doing if it could be avoided but he acknowledged that it was unfair on those lessees who had paid if these accounts were not chased up and that the longer they reminded unpaid the more difficult it would be to collect them.

7.5 Mr Brotherton accepted and apologised for the fact that requests for information or action on his part from the lessees had gone unanswered in recent times. He explained that to a large extent this had been because of his health problems. It could be that the best thing would be to hand over the management to a management company and he would consider this but he recognised that many of the problems that had arisen with these lessees could have been avoided if they had been consulted about the budget and had been kept informed as to what was going on.

## 8. Determination

8.1 The Tribunal, having inspected the invoices and having heard the basis upon which the budgets had been set which in turn dictated the amount of service charges demanded, considered that the service charges which had been rendered for 2006/2007, 2007/2008 and 2008/2009 were all reasonable. If all the lessees had paid their service charges there would now be a reasonable sum in the account to pay for the anticipated expenditure shortly on external repairs as internal redecoration has largely been carried out under the insurance claim rather than at the expense of the lessees.

The budget for the year 2009/2010 should hopefully therefore be less onerous to the lessees than it might otherwise have been. It is important, however, that outstanding service charges are collected from those lessees who have not paid to date so that there will be money in the service charge account to meet the forthcoming costs of external repairs and redecoration.

The Tribunal hopes that in future the lessees will be consulted when the budget is set so that they "buy in" to the process and have a better understanding of what their service

charges are intended to cover. Such consultation is recommended as good practice in the Service Charge Residential Management Code published by the Royal Institution of Chartered Surveyors.

Dated this 27<sup>th</sup> day of January 2009

A handwritten signature in black ink, appearing to read 'D. Agnew', written over a horizontal dotted line.

D. Agnew LLB, LLM  
Chairman