THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Residential Property
TRIBUNAL SERVICE

S.27A & S20C Landlord & Tenant Act 1985(as amended)("the Act")

Case Number:	**CHI/45UF/LAC/2008/0005**
Property:	**Hollin Court Northgate Crawley RH10 8TT**
Applicant/Leaseholders:	**Ms R Wynne Mr R Wynne Mr D Street**
Respondent/Landlord:	**Developments Portfolio Ltd**
Appearances for the Applicants:	**Ms R Wynne**
Appearances for the Respondent:	**Humbert Mozzi Solicitor**
Date of Inspection /Hearing	**21st April 2009**
Tribunal:	**Mr R T A Wilson LLB (Lawyer Chairman) Mr R Potter FRICS (Valuer Member) Ms T Wong (Lay Member)**
Date of the Tribunal's Decision:	**6th May 2009**

THE APPLICATIONS

The applications made in this matter by the Applicants are as follows: -

1. for a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 of their liability to pay service charge for flats 4,7,15,18 & 20 Hollin Court, London Road, Crawley for the service charge years ending 2006, 2007 and 2008 and

2. for an order pursuant to Section 20C of the Act that the Respondent's costs incurred in these proceedings are not relevant costs to be included in the service charge for the building in future years.

3. The tribunal is also required to consider, pursuant to regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 whether the Respondent should be required to reimburse the fees incurred by the Applicant in these proceedings.

DECISION IN SUMMARY

4. The tribunal determines for each of the reasons set out below as follows:-

   i) The correct service charge proportion payable by the Applicants in respect of each lease is 4.8% of the total annual service charge expenditure.

   ii) The debt collection costs incurred by the Respondent in relation to the property from the inception of the leases to date are not recoverable as a service charge item.

   iii) The washing machine repair of £40 is not allowed as a service charge item.

   iv) Tree work of £1,570 is allowed as a service charge item.

5. No order is made under section 20C of the Act.

6. No order is made in relation to the repayment of tribunal fees incurred by the Applicants in these proceedings.

JURISDICTION

Section 27A of the 1985 Act

7. The tribunal has power under Section 27A of the Landlord and Tenant Act 1985 to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable in so far as it is reasonably incurred, or the works to which it related are of a reasonable standard. The tribunal therefore also determines the reasonableness of the charges.

THE LEASE

8. The tribunal had a copy of the lease relating to flat 18 Hollin Court, London Road, Crawley which is dated the 31st October 2005 and is for a term of 125 years from the 25th March 2005 paying an initial yearly rent of £150 rising every 25 years.

9. The tribunal was told that all of the leases of the flats in the building were in similar form save that the larger flats contributed 4.8% of the service charge expenditure whilst the smaller flats contributed 4% of total expenditure.

INSPECTION

10. The tribunal inspected the property before the hearing in the presence of the Applicant and representatives for the Respondent. Hollin Court is a 3 storey residential development of flats built circa 1960s with a painted brick, part rendered and part tiled hung facade under a pitched tiled roof. The block has plastic double glazed windows, limited grass common arrears, parking to the area and one screened refuge area. At the front there is a brick dwarf boundary wall fronting a busy dual carriageway. Externally the property appeared to be in fair decorative order although the gardens and communal road ways appeared neglected. The tribunal inspected some of the common parts which were in poor decorative order and with open electronic cabling taped down to the carpet. The carpets were of poor quality and in parts worn.

PRELIMINARYS / ISSUES IN DISPUTE

11. The case had been the subject of a pre-trial review (PTR) heard on the 16th January 2009 when it was established that the only matters in dispute over which the tribunal had jurisdiction were as follows:-

    i) The proper way to construe the leases so as to calculate the service charge liability.

    ii) Whether the Applicants are liable to pay service charges in respect of debt collection cost and / or whether such charges have been reasonably incurred.

    iii) Whether charges in respect of the following items could be collected by way of service charge:-

        a) Washing Machine repairs

        b) Work to remove diseased trees from the communal garden

        c) Conversion works on flats including a repair to a false wall.

12. At the PTR the Applicants were directed to serve their statement of case together with supporting evidence by the 20th February 2009. Upon receipt of the statement of case the Respondent was to serve its reply together with its evidence by the 20th March 2009. Both parties were to prepare their own bundles of evidence to be submitted to the tribunal in advance of the hearing.

13. In the event the Applicants all failed to file either a statement of case or any accompanying evidence. As a result of this failure the Respondent had not been in a position to prepare and file its reply. Neither party had prepared a bundle of documents for the tribunal's use and the only papers before the tribunal at the hearing were those utilized for the PTR.

14. The tribunal decided that notwithstanding the Applicants' failure to comply with the PTR, it would proceed with the determination and each of the disputed items is considered below.

Service charge percentage: The Applicants' Case

15. Ms Wynne contended that the proper way to construe the leases so as to calculate the service charge liability was in effect 0.2304% of the total expenditure, i.e. 4.8% of 4.8%. In coming to this conclusion she relied on the cumulative effect of clauses 2(2) of the lease and paragraphs 1(i) and (ii) of the Fourth Schedule to the lease.

16. Clause 2(2) of the lease contained a lessees covenant *to pay to the lessor 4.8% or other reasonable proportion that the landlords surveyor may determine of the service charge as calculated in the Fourth Schedule to this lease.* Paragraph 1 of the Fourth Schedule of the lease defines Service Charge *as 4.8% of total expenditure.* Total Expenditure is defined as *the total expenditure incurred by the Lessor in any accounting period in carrying out the obligations contained in clause 5 of this lease to include any professional and management fees incurred by the Lessor.* The accumulative effect of these clauses meant that the proper service charge proportion was 4.8% of 4.8% of the service charge, in other words 0.2304% of total expenditure. In cross examination she conceded that she had been paying 4.8% of the total charge until now but she had always disputed the correct amount. The lease was a binding contract between the parties and in her opinion a principle was at stack and she should only have to pay what she had contractually agreed to pay namely 0.2304%

Service charge percentage: The Respondent's Case

17. Mr Mozzi contended that the Applicants' interpretation of the lease was complete nonsense. The Fourth Schedule set out the correct service charge percentage and it quite clearly stated that the service charge applicable to the flats in question was 4.8% of total expenditure. Total expenditure was defined as the total expenditure incurred by the lessor in any accounting period in carrying out his obligations contained in clause 5 of the lease to include any professional or management fees incurred by the lessor.

18. It was Mr Mozzi's contention that the leases could only be construed in one way, namely that each lessee was responsible for 4.8% of the total expenditure. In his view there was no ambiguity in the leases and the service charge percentages had been accepted by all other lessees in the building.

The Tribunal's deliberations

19. Having carefully considered the lease relating to flat 18, the tribunal concludes that the correct service charge proportion is simply 4.8% of the total expenditure incurred by the freeholder in carrying out his obligations as set out in clause 5 of the lease.

20. The Fourth Schedule to the lease entitled the service charge is on the whole clear and the tribunal considers that the reference to 4.8% in paragraph 2(2) is intended to relate to 4.8 % of the total expenditure incurred by the landlord in complying with its service charge obligations set out in clause 5 and not 4.8% of 4.8 % of the service charge. In arriving at this decision the tribunal has had regard to the fact that there are 24 flats in the building and that it was told by the Applicants that the larger flats all pay 4.8% of total expenditure whilst smaller flats pay 4%. It is the tribunal's experience that residential leases of this sort are drawn on the basis that the landlord is able to recover 100% of expenditure incurred by it in complying with its obligations under the leases. Assuming that the freeholder is to recover the entire service charge spend each year this would equate to approximately 4.1% per flat on the basis of 24 flats in the building all paying the same percentage. This figure is in line with the Respondent's interpretation.

21. The Applicants' contention that each of the subject flats should only pay 4.8% of 4.8% of the total expenditure would result in the service charge being considerably in deficit each year. Indeed the landlord would only be able to recover approximately 5 % of expenditure. The tribunal is of the view that this is a fanciful interpretation, which does not flow from the wording of the lease. The Applicants interpretation is not sustainable on the wording of the lease, which in the tribunal's opinion provides for the Applicants percentage of service charge to be simply 4.8 % of total expenditure.

Debt Collection Charges: The Applicant's Case

22. Ms Wynne's case simply put was that there was no clause in the lease which allowed the landlord to collect debt collection fees and in the absence of a specific clause allowing this expenditure to be recovered she should not have to pay for it.

Debt Collection Charges: The Respondent's Case

23. Mr Mozzi confirmed that debt collection charges had been made and he relied on clause 2(6) of the lease to sustain the charges. He accepted that this clause related to the *reasonable costs and charges properly incurred by the landlord in proceedings under section 146 and / or 147 of the Law of Property Act 1925* (Forfeiture Proceedings) He further accepted that the charges could only be sustained if, as a matter of fact, forfeiture proceedings had been initiated against the Applicant. As his client had only acquired the acquisition of the freehold in January of this year he was not able to confirm this. His clients had bought the freehold at auction and the previous freeholders had not been forthcoming with management information. Mr Mozzi confirmed that there were no other clauses in the lease upon which he relied for the recovery of the debt collection charges.

The Tribunal's deliberations

24. The tribunal upholds the case put forward by the Applicants namely there are no clauses in the lease, which allow the landlord to recover debt collection charges as a service charge item. Clause 5 contains the items of expenditure which the freeholder can recover by way of service charge and there is no reference in this clause to the costs of recovering outstanding rent / service charge. The definition of total expenditure as set out in the Fourth Schedule does include professional and managements fees incurred by the lessor but the tribunal is of the view that professional and management fees does not extend to the debt collection charges made by Property Debt Collection Limited or a similar company.

25. The tribunal heard evidence from the Applicants that they had not received any notices from the freeholder giving notice of forfeiture proceedings. In these circumstances the tribunal considers that the debt collection costs cannot be recovered by the Respondent either by way of an administration charge or by way of a service charge item.

Sundry Items: The Applicants' case

26. The Applicants showed the tribunal a service charge account showing an item of £40 for washing machine repairs. She contended that as there was no communal washing machine then the figure of £40 was not recoverable. She also showed the tribunal a service charge account showing an item of £1,570 for tree works. It was her contention that the lease did not provide for recovery of this item as clause 5 did not extend to expenditure in relation to the common parts. Furthermore in her opinion the figure of £1,570 for the removal of one tree was far too high even if there was a clause in the lease allowing the landlords to recover this charge. She was not able to say what a reasonable figure would be. She also made un-particularized allegations that the previous Freeholder had charged conversion costs of flats to the service charge account.

Sundry Items: The Respondent's case

27. Mr Mozzi tended no evidence in relation to the washing machine repairs of £40 or the conversion costs.

28. In respect of the tree works he contended that the lease was wide enough to enable the freeholder to recover the costs of the tree work. Clause 5(2) placed the lessor under an obligation to maintain, repair, redecorate and renew amongst other things the items set out in sub-clause (c) which reads as follows,

> *'the main entrances, lifts, passages, landing and staircases and other parts of the building so enjoyed or used by the lessee or the lessees of the other flats in common as aforesaid and the garden, boundary walls and fences of the building'.*

The building was defined as "Blocks 1 and 2, Hollin Court, London Road, Crawley" which by inference must include not only the blocks themselves but also the common parts, which included the communal gardens and the trees. The removal of a dead tree constituted maintenance and was therefore covered by clause 5 and his clients were able to seek a contribution from the Applicants by way of a service charge. He was not able to comment on the figure itself but his records indicated that tree work was carried out to two trees. In

these circumstances he felt that the figure was reasonable and should be upheld by the tribunal

The Tribunal's deliberations

29. We uphold the case put forward by the Respondent in respect of the tree charges. In our view the lease places the Respondents under an obligation to maintain the common parts, which includes maintaining the gardens. It is common ground that a tree in the gardens had died and needed to be removed. Whilst the Applicants suggest that the figure charged is too high they tendered no evidence of an alternative reasonable amount. In the absence of this evidence the tribunal is not minded to reduce the figure charged to the service charge account and the sum of £1,570 is therefore upheld.

30. The tribunal makes no determination on the issue of conversion costs, as the Applicants did not put forward any coherent evidence to substantiate the allegations made by them on this issue.

31. The tribunal disallows the costs of the washing machine repairs as it accepts the evidence of the Applicants, which was borne out at the inspection, that there is no communal washing machine on site.

SECTION 20C AND REIMBURSEMENT OF FEES

32. Both of these matters can be taken together as the tribunal's considerations in relation to both are largely the same. The section gives the tribunal discretion to disallow in whole or in part the costs incurred by a landlord in proceedings before it. The tribunal has a very wide discretion to make an order that is, 'just and equitable' in all the circumstances.

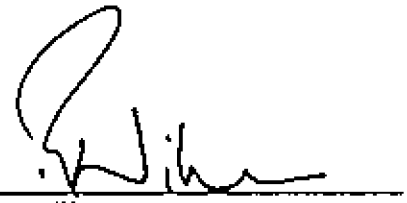
33. In the tribunal's opinion it would not be just and equitable to make a section 20C Order. The Applicants failed to comply with the directions issued at the PTR and arrived at the hearing having failed to serve their statement of case particularizing the allegations that they had made against the Respondent. As a result neither the tribunal nor the Respondent were aware of the details of the Applicants case and at the hearing were taken by surprise. Even at the hearing the Applicants were not in a position to itemize with any clarity their complaints, which meant that for much of the time the tribunal was left guessing as to exactly what the issues were.

34. Mr Mozzi rightly pointed out that the Applicants had presented no evidence since the PTR and therefore his clients were at a loss to understand the case put against them. Notwithstanding this they were obliged to retain his firm to act for them and to attend the hearing. In these circumstances there was no reason why his client should have to be out of pocket and he claimed fifteen hours of his time to cover both the costs of the PTR and the hearing. His charge out rate was £250 per hour which covered not only preparation but also attendance, travel and waiting.

35. The tribunal largely accepts the submissions made by Mr Mozzi on the issue of costs. The Applicants have failed to substantiate the claims set out in their application and have failed

to conduct their case in accordance with the directions given. In these circumstances it would not be just and equitable for a section 20 order to be made. For the same reasons the tribunal makes no order in relation to the reimbursement of fees.

36. However the tribunal expresses surprise that the Respondent solicitors should have incurred fifteen chargeable hours of time in relation to this straightforward matter where they were not called upon to file a reply or defence. Furthermore, having considered the lease in detail and the representations made by Mr Mozzi, the tribunal expresses its opinion that there are no clauses in the lease wide enough to enable the Respondent's costs to be recovered either by way of a service charge or by way of an administration charge applied to the Applicants personally.

Chairman 

R.T.A.Wilson

Dated 6th May 2009