

5042

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Case number: CAM/OOKA/LSC/2010/0015.

Property: 93, 94 and 95 Milliners Court, Milliners Way, Luton LU3 1AQ.

Applicant: Ms. A. Tekyi.

Respondents: Relayed Systems Limited.

Application: Application for a determination of the reasonableness and liability to pay Service charges including the reasonableness of service charge (Section 27A Landlord and Tenant Act 1985) (The Act).

Tribunal: Mr R Brown FRICS (Chairman)
Dr J Morris (Lawyer)
Mrs N Bhatti

DECISION

1. The Tribunal determines that the following service charges are reasonable per flat (based on 1/92 of the whole cost), per year for the years ending 6th February 2008, 2009 and the budget for 2010 as follows:

| Item | 2008 | 2009 | 2010 |
|--------------------|---------------|--------------|---------------|
| Building Insurance | 00.00 | 00.00 | 122.02 |
| Electricity | 00.00 | 00.00 | 79.98 |
| Water | 87.40 | 87.40 | 87.40 |
| Maintenance | 00.00 | 00.00 | 26.22 |
| Health and Safety | 00.00 | 00.00 | 11.19 |
| Caretaker | 105.60 | 00.00 | 00.00 |
| Total | 193.00 | 87.40 | 326.81 |

2. The service charges determined above are not payable unless a demand has been or is issued in compliance with section 21B of the Act.

REASONS FOR DECISION

The Application

3. The Application made by Ms. A Tekyi referred to above relates to a determination of the standard and reasonableness of services and cost of services under Section 27A of the Act for the service charge years ending 31st May 2008, 2009 and to be incurred in 2010.
4. It is not in dispute between the parties that the lease requires service charges to be paid for the insurance and maintenance of the building as described in the Sixth Schedule.

The Law

5. The relevant law is set out in **Appendix 1** attached.

The Lease

6. The Tribunal was provided with a sample lease for the premises and the parties agreed that that this sample was representative of the actual leases to the premises.
7. The Sixth Schedule to the lease details the services to be provided.
8. Part One of the 8th Schedule to the lease requires the tenant to pay a service charge in accordance with the Sixth Schedule.
9. The Applicant's share of the costs is a 'fair and reasonable proportion of the Development and Maintained Property Costs'. The Respondent Landlord has determined (and it is not disputed by the Applicant) this at 1/92 of the total there being 92 units on the Development.

The Property and the Tribunal's Inspection

10. The Tribunal inspected the property on the 22nd March 2010 in the presence of the Applicant.
11. The property comprises a Development of 92 residential units converted to private accommodation from student accommodation approximately 4 years ago. There are four 3 storey blocks and three 2 storey blocks constructed in brick with tile roofs and upvc windows. The subject properties are located in Block C a 2 storey block comprising six flats.
12. The Tribunal noted:
 - Secure door entry system not working properly.
 - Untidy grounds with overgrown grass, hedges and weeds.
 - Untidy Bin stores
 - Dirty common parts to Block C with scuffed and marked walls, stained carpets and dirty windows.

- In Block C, some of the common lighting was not working but other parts were permanently lit due to the failure of the time switches.
- Proliferation of satellite dishes and cctv cameras.
- It was not clear if the roadway into the development had been adopted but weeds were noted growing in the kerbs.

The Hearing

13. A hearing was held after the inspection at the Chiltern Hotel, Waller Avenue, Luton.
14. Further Directions (No 2) were issued verbally at the hearing (and confirmed in writing) requiring the Respondents to produce:
 - (a) Copies of the Buildings insurance for all the years in dispute.
 - (b) Confirm the date the management was taken back 'in house' following the insolvency of Mypad Asset Management Ltd.
 - (c) Copies of all invoices paid since the management reverted to Relayed Systems Ltd in respect of:
 - (i) Electricity used in the common parts of the Block C –numbers 93-98 Milliners Court.
 - (ii) Maintenance expenses.
 - (iii) Health and Safety.
 - (d) Letter from the company's bankers confirming that the service charge account in respect of Milliners Court is an account which complies with the provisions of section 42 of the Landlord and Tenant Act 1987.

These Directions were complied with in part only and are taken into account in our reasons and decision. No invoices (or other evidence of payment) for common parts electricity or insurance paid for 2008 and 2009 were produced.

Applicant's Case

15. The Applicant's case stems from a general dissatisfaction with the standard of services provided by the Freeholder and their agents.
16. The Applicant had completed the purchase of the subject properties as investments on 13 January 2007.
17. In April 2009 she received a demand for service charge dated 9th April 2009 in respect of all three flats for the years ending 06/02/08, 06/02/09 and 06/02/10. On the 1st of June 2009 she was provided with a breakdown of the costs:

Insurance £133.52
 Electricity for communal areas £166.96
 Water £87.40
 Maintenance £26.22
 Health and Safety £14.69
 Ground Rent £100.00
 Caretaker £105.64

Total £634.39

18. The Applicant wrote to the Respondent on several occasions seeking explanation of the invoice and breakdown. She pointed out that the invoice did not contain a summary of 'rights and obligations'.
19. Subsequently, after much correspondence The Applicant received a breakdown of the service charge, unfortunately this did not reconcile with the figures provided on the 9th April 2009. It was agreed by all parties at the hearing that this page (page 82 of the bundle) would be removed from the evidence.
20. The Applicant explained that during the period up to January 2008 the Caretaker Alin Nedelcu had undertaken some duties. However during her period of ownership she had on occasion; arranged for her tenants to clean the common parts, arranged for the redecoration of the common entrance hall to block C and mown the lawn to the rear of Block C.
21. The Respondent stated the service charge for each of the years in question as shown in the breakdown sent to the Applicant and dated 1st June 2009 (as summarised in paragraph 15 (above)).

In respect of all years in dispute

Insurance

22. The Applicant says that she requested insurance certificates but these had not been provided. After trying to confirm, without success, with the insurers (Norwich Union/Aviva) that the properties were covered and therefore she arranged her own insurance for the year ending 6th February 2009. An Insurance Schedule which had been received by the Applicant was provided for the year ending 6th February 2010 which stated that the insurance premium for the period 13th February 2009 to 12th February 2010 was £11,226.05.

Electricity

23. The Applicant says that she considers the cost to be too high and that her requests for sight of invoices to justify the cost had not been met.

Water

24. The Applicant accepts that, although not evidenced, the water charge is reasonable.

Maintenance and Health and Safety

25. The Applicant had requested but not been provided with any evidence as to what these figures relate.

Caretaker

26. The Applicant acknowledges that the Caretaker undertook his duties until, approximately, January 2008. Her tenants have reported that since then no Caretaker has been seen on site.

Respondents' Case

27. Mr P Christodoulou explained that he was an employee of the Freeholder and his duties in connection with Milliner's Court were to oversee the management of the development. He explained that the Freeholder had retained 61 units which were let to Luton Borough Council for housing vulnerable people. The standard of management required by the council was high and there had not been any issues with them in relation to the management. A further 18 units were let to St Alex for housing people with special needs.
28. The Respondent acknowledged there had been problems. In particular the agent instructed to manage the development on their behalf, Mypad Asset Management Ltd, had gone into liquidation in early 2009 and they had assumed the role of manager on 25th February 2009. Subsequently they had employed Omega Management to oversee the Development.
29. He explained it had been difficult to work backwards without records. He considered the charges made to be approximately 20% below the correct charge as the Respondent had tried to be fair given the circumstances.

Insurance

30. The Respondents produced insurance certificates for 2009 and 2010 at the hearing, but in contravention of Directions No 2 failed to produce certificates for 2007.
31. No explanation of the lack of certificates for the preceding period is given other than they are held by the bank funding the development.

Electricity

32. No electricity invoices (Directions Order No 2) were produced which indicate that the amounts charged are reasonable, although the Respondent did state in response to Directions Order No 2 that although he could not produce invoices there was in place a direct debit order for £39.94 per month for the particular block of six in which the Applicant's flats were situated.

Water

33. This is not now in dispute.

Maintenance and Health and Safety

34. In compliance with Directions Order No 2 invoices were produced which indicate that the amounts paid in the year to 6th February 2010 year are:

Maintenance:

Manhole Covers Ltd - £75.90
J Jones- (lawnmower/Strimmer) £312.00
Omega- (lawnmower) £195.73
Key Solutions- (Change keys) £4865.00
Omega- (Remove graffiti) £230.00
DPS Clearance-(Remove rubbish) £1029.48
Omega- (hoover) £69.99

Total £6778.10 divided by 92 units = £73.67

Health and Safety

Ashbeck Extinguishers Ltd £1029.48

Total £1029.48 divided by 92 units = £11.19

Caretaker

35. He produced an agreement dated 10th June 2009 in respect of the employment of Jumell Jones as caretaker. His duties are detailed in the contract and include:
- (a) Litter picking
 - (b) Keeping communal areas clean 'at all times' and vacuuming twice per month.
 - (c) Grass Areas to keep the grass neat and tidy at all times and in the spring and summer cut the grass 'every other week'.
 - (d) To carry out minor or emergency maintenance
36. After the departure of Alin Nedelcu another caretaker had been appointed on the same terms as Jumell Jones however he could not remember his name. In accordance with directions invoices were produced:

Caretaker- (10 months at £800.00) £8000.00

Tribunals Deliberations

General comment on evidence of the parties

37. The Tribunal considered the evidence of both parties but placed limited weight on the Respondents' evidence as he was unable to give detailed evidence in relation to the period prior to Relayed Systems taking over management. He had only been employed by the company for 18 months.

38. The Tribunal placed more weight on the evidence of the Applicant, however they noted that the Applicant was a 'non resident' landlord and therefore not on the Development on a daily basis.
39. In making its decision the Tribunal considered the importance of the decision in *Schilling v Canary Riverside Developments PTD Ltd* (LRX/26/2005, LRX/31/2005 and LRX/47/2005) his Honour Judge Rich stated at paragraph 15:
'If a landlord is seeking a declaration that a service is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable'.
40. The Tribunal noted that no budget (RICS Service Charge Residential Management Code – Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993) upon which a demand could be issued had been served on the Applicant for the year ending 6th February 2010 indicating lack of management as referred to below. The Tribunal based its assessment of the costs to be incurred upon the invoices for maintenance incurred to date the insurance Schedule for the year ending 6th February 2010 provided and the direct debit for electricity.
41. The Tribunal noted that the year end for the accounts was according to the lease the 31st May however the period used by the Respondent was in fact 6th February. No explanation was given for this anomaly. For convenience the Tribunal uses the year end adopted by the Respondent.
42. No audited accounts were produced for the completed years despite this being a requirement of the lease (6th Schedule Part B Paragraph 9).
43. The Ground Rent, although included by the Respondent, is not part of the service charge and is therefore excluded from the determination above.
44. The Tribunal finds as a matter of fact that the demand issued on the 9th April 2009 is invalid as it does not comply with either section 48 of the Landlord and Tenant Act 1987 (Landlord address for service) or section 21B of the Act (Notice to accompany demands for service charges).
45. The Tribunal in Directions Order No 2 directed that evidence be produced to show that service charge monies were held in trust (Section 42 of the Landlord and Tenant Act 1987) by the landlord or his agent. No such evidence was produced.

Management Fees

46. The Tribunal notes that in the (now removed) page 82 of the bundle that management fees are included. The Tribunal is satisfied on an interpretation of the Lease that Management fees are recoverable under the lease. However The Tribunal finds and determines that no management fee is payable for the period in dispute because it has not been provided with any evidence that management to a reasonable standard has been undertaken.

Insurance

47. In respect of the year 2008 no evidence of the buildings being insured is produced and accordingly no premium is payable. The Tribunal finds that the development has been insured for the years 2009 and 2010 in dispute and determines that the premium is reasonable. However since no evidence of insurance for the year 2009 was produced, despite requests from the Applicant, until the hearing the Tribunal determine that no premium is payable for that year. The Tribunal noted the Insurance Schedule for the year ending 6th February 2010 which stated that the insurance premium for the period 13th February 2009 to 12th February 2010 was £11,226.05. This divided between 92 would give a contribution of £122.02 per flat which the Tribunal using its knowledge and experience determined to be reasonable and payable for the costs to be incurred for the year ending 6th February 2010.

Electricity

48. Although acknowledging the responsibility of the Applicant to pay for electricity for the common parts the Tribunal were presented with no evidence that the electricity invoices had been paid for the years 2008 and 2009 and therefore determines that nothing is payable. In response to Directions the Respondent states that there is a direct debit in place for the subject block in the sum of £39.94 per month. The Tribunal finds that electricity is being supplied to the block and using their knowledge and experience the amount of £479.28 per annum (being 12 x £39.94) is reasonable for the block. Therefore the Tribunal determined that a contribution of £79.88 per flat is reasonable and payable for the costs to be incurred for the year ending 6th February 2010..

Water

49. There is no dispute and the Tribunal therefore determines the amount demanded of £87.40 as costs incurred for the years ending 6th February 2008 and 2008 and to be incurred for the year 2010 are reasonable and payable.

Maintenance and Health and Safety

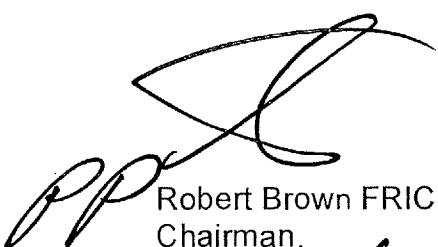
50. The Tribunal finds that no evidence of expenditure on or the carrying out of maintenance for the years 2008 and 2009 is produced and determines that nothing is payable in those years. In respect of the budget for 2010 it appears that the sum of £73.67 has already been expended and accordingly the budgeted sum of £26.22 put forward in the letter dated 1st June 2009 is

reasonable and payable per unit for the costs to be incurred for the year ending 6th February 2010.

51. The Tribunal finds that no evidence of expenditure on or the carrying out of Health and Safety for the years 2008 and 2009 is produced and determines that nothing is payable in those years. In respect of the year ending 2010 it appears that the sum of £1029.48 has been expended on fire extinguisher replacement. The Tribunal finds this amount is reasonable. Therefore the Tribunal determined that a contribution of £11.19 (being £1,029.48 divided by 92) per flat is reasonable and payable for the costs to be incurred for the year ending 6th February 2010

Caretaker

52. The Tribunal finds that for the period to January 2008 that there was a caretaker and the parties are in agreement that he carried out his duties. The Tribunal determines that the charge made of £105.60 per flat is reasonable and payable.
53. The Tribunal finds on the evidence given at the hearing and their site inspection that the caretaker had failed to carry out his duties during the years ending 6th February 2009 and 2010 to a reasonable standard (if at all) and accordingly no charge is payable.


Robert Brown FRICS
Chairman.

Dated.....25/5/10.....

Appendix 1- The Law

Landlord and Tenant Act 1985

Section 18 Meaning of "service charge" and "relevant costs"

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-
- (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs

- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters for which the service charge is payable.
- (3) for this purpose
 - (a) costs includes overheads and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period

Section 19 Limitation of service charges: reasonableness

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
 - (a) only to the extent that they are reasonably incurred; and
 - (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A Liability to pay service charges: jurisdiction

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-
 - (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, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable

Section 21B Notice to accompany demands for service charges

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Landlord and Tenant Act 1987

42 Service charge contributions to be held in trust

(1) This section applies where the tenants of two or more dwellings may be required under the terms of their leases to contribute to the same costs by the payment of service charges; and in this section—

- “the contributing tenants” means those tenants;
- “the payee” means the landlord or other person to whom any such charges are payable by those tenants under the terms of their leases;
- “relevant service charges” means any such charges;
- “service charge” has the meaning given by section 18(1) of the 1985 Act, except that it does not include a service charge payable by the tenant of a dwelling the rent of which is registered under Part IV of the Rent Act 1977, unless the amount registered is, in pursuance of section 71(4) of that Act, entered as a variable amount;
- “tenant” does not include a tenant of an exempt landlord; and
- “trust fund” means the fund, or (as the case may be) any of the funds, mentioned in subsection (2) below.

(2) Any sums paid to the payee by the contributing tenants by way of relevant service charges, and any investments representing those sums, shall (together with any income accruing thereon) be held by the payee either as a single fund or, if he thinks fit, in two or more separate funds.

(3) The payee shall hold any trust fund—

(a) on trust to defray costs incurred in connection with the matters for which the relevant service charges were payable (whether incurred by himself or by any other person), and

(b) subject to that, on trust for the persons who are the contributing tenants for the time being.

(4) Subject to subsections (6) to (8), the contributing tenants shall be treated as entitled by virtue of subsection (3)(b) to such shares in the residue of any such fund as are proportionate to their respective liabilities to pay relevant service charges.

(5) If the Secretary of State by order so provides, any sums standing to the credit of any trust fund may, instead of being invested in any other manner authorised by law, be invested in such manner as may be specified in the order; and any such order may contain such incidental, supplemental or transitional provisions as the Secretary of State considers appropriate in connection with the order.

(6) On the termination of the lease of a contributing tenant the tenant shall not be entitled to any part of any trust fund, and (except where subsection (7) applies) any part of any such fund which is attributable to relevant service charges paid under the lease shall accordingly continue to be held on the trusts referred to in subsection (3).

(7) If after the termination of any such lease there are no longer any contributing tenants, any trust fund shall be dissolved as at the date of the termination of the lease, and any assets comprised in the fund immediately before its dissolution shall—

(a) if the payee is the landlord, be retained by him for his own use and benefit, and

(b) in any other case, be transferred to the landlord by the payee.

(8) Subsections (4), (6) and (7) shall have effect in relation to a contributing tenant subject to any express terms of his lease which relate to the distribution, either before or (as the case may be) at the termination of the lease, of amounts attributable to relevant service charges paid under its terms (whether the lease was granted before or after the commencement of this section).

(9) Subject to subsection (8), the provisions of this section shall prevail over the terms of any express or implied trust created by a lease so far as inconsistent with those provisions, other than an express trust so created before the commencement of this section

48 Notification by landlord of address for service of notices

(1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.

(2) Where a landlord of any such premises fails to comply with subsection (1), any rent or service charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.

(3) Any such rent or service charge shall not be so treated in relation to any time when, by virtue of an order of any court, there is in force an appointment of a receiver or manager whose functions include the receiving of rent or (as the case may be) service charges from the tenant.