SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/21UC/LSC/2010/0012

Between:

Eastbourne Borough Council (Applicant/Landlord)

and

Miss P Hurd (Respondent/Tenant)

Premises: 22 Gloucester Court, Etchingham Road, Eastbourne, East Sussex BN23 7DU

Date of Hearing: 24 May 2010

Tribunal: Mr D Agnew BA LLB LLM Chairman
Lady J Davies FRICS

DETERMINATION AND REASONS

1. The Tribunal finds that the amounts sought by the Applicant from the Respondent by way of service charges claimed under invoices dated 1 April 2008 and 1 April 2009 and charged under clause 3(A) of the lease made between the Applicant and Respondent dated 28 November 2003 are reasonable and payable by the Respondent with the exception of an item in respect of buildings insurance claimed under the invoice dated 1 April 2009. The Tribunal considers that a figure of £87.12 would have been a reasonable figure to charge rather than £100 for that item. The amount that the Respondent is liable to pay therefore is £276.66 under the invoice dated 1 April 2008 and £309.32 under the invoice dated 1 April 2009.

   The Tribunal makes no order under Section 20C of the Landlord and Tenant Act 1985. Consequently, if the lease can be construed as enabling the Applicant to add the cost of their application to the Tribunal to the future service charges, then it is not precluded from doing so by any order that the Tribunal may have made to that effect in these proceedings. On the other hand, the Tribunal makes no order that the Respondent reimburse the Tribunal fees paid by the Applicant.

The Application

2. On 19 January 2010 the Applicant made an application under Section 27A of the Landlord and Tenant Act 1985 asking the Tribunal to determine the liability for and reasonableness of service charges it sought from the Respondent by invoices dated 1 April 2008 and 1 April 2009 in respect of the premises. A pre-trial review was held on 25 February 2010 and statements of case were received from both the Applicant and the Respondent.

The Inspection

3. The Tribunal inspected the premises immediately prior to the hearing on 24 May 2010. The premises are on the top floor of a three-storey purpose built block of 24 flats constructed in about 1955. The building is of brick under an interlocking tiled roof. It stands in grounds with some lawned areas which are kept trim and an extensive rear parking, clothes drying and bin storage area which on the day of the inspection was reasonably clean and tidy. The windows to the individual flats are UPVC double glazed but the large windows to the communal hall areas and the entrance doors are not double glazed. The whole of the building appeared to be maintained to a reasonable standard.

The Lease

4. By clause 3(A) of the Respondent's lease the lessee covenants as follows:-
"to pay to the lessor such annual sum as may be notified to the lessee by the lessor from time to time as representing the due proportion of the reasonably estimated amount required to cover the costs and expenses incurred or to be incurred by the lessor in carrying out the obligations or functions contained in or referred to in this clause and clauses 5 and 6 hereof and in the covenants set out in the ninth schedule hereto (such costs and expenses being hereinafter together called "the management charges") such estimated amount to be payable half-yearly in advance on the days for payment of rent hereunder ... AND it is hereby declared that the management charges may (without prejudice to the generality of the foregoing) include such amounts as the lessor shall from time to time consider necessary to put to reserve to meet the future liability of carrying out major works to the property the reserved property or the demised premises".

5. By schedule 9 to the lease the lessor is required to keep in good and substantial repair and condition (and whenever necessary rebuild and reinstate and renew and replace) all worn or damaged parts of the main structure of the property. Further the applicant landlord is required to insure the property against loss or damage by fire and such other risks as the lessor may from time to time consider desirable to the full rebuilding cost, to keep the common parts adequately lit and to paint and decorate the common parts of the building.

The Law

6. By Section 27A of the 1985 Act it is provided that:-
(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, improvement, 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 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.

7. By Section 19(1) of the said Act, "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."

8. By Section 19(2) of the Act where the service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable.

The Applicant's case

9. The Applicant was represented at the hearing by counsel Ms Victoria Osler. The Applicant's witnesses who were present at the hearing were Ms Brenda Walker, leasehold administrator, and Mr Phil Brackley, the area housing officer.

10. The Applicant had rendered itemised invoices for service charges under clause 3(A) of the Respondent's lease on 1 April 2008 and 1 April 2009 and Ms Walker's evidence was that no payments had been received in respect of those invoices. These itemised invoices were as follows:-

For the period 1 April 2008 to 31 March 2009	
Administration	£ 12.71
Caretaking	£ 8.26
Grounds maintenance	£ 5.08
Insurance	£ 79.20

Communal lighting	£ 16.21
Major works fund contribution	£100.00
Itemised repair	£ 46.76
TV aerial maintenance	£ 4.20
Cleaning communal windows	£ 4.24
Total	£276.66

For the period 1 April 2009 to 31 March 2010

Administration	£ 28.98
Caretaking	£ 9.09
Grounds maintenance	£ 5.58
Insurance	£100.00
Communal lighting	£ 17.83
Major works fund contribution	£100.00
Itemised repair	£ 51.44
TV aerial maintenance	£ 4.62
Cleaning communal windows	£ 4.66
Total	£322.20

(Both invoices included a figure of £10.00 for ground rent but this Tribunal has no jurisdiction to deal with outstanding ground rent and this figure has not therefore been included or referred to in the figures set out above.)

11. The Applicant's bundle contained documentary evidence in support of the amounts claimed. In some instances the service provided by the Landlord to Gloucester Court was part of a service that the Landlord council provided to other properties in its ownership and where that was the case Ms Walker had to rely on the information supplied to her by Eastbourne Borough Council when apportioning the costs to Gloucester Court.

12. Although the Applicant was asking the Tribunal to make a determination with regard to the amount sought on account of service charges at the beginning of each of the two service charge years in question the actual figures for 2008/09 had been established. This had resulted in a surplus of £19.72 for that year and that sum would therefore be credited to the 2009/10 account when that year's figures had been finalised.

The Respondent's case

13. The Respondent appeared at the hearing in person. Her challenge to the charges for each of the service charge years in question was as follows:-
(a) Caretaking (£8.26 estimated and actual for 2008/9). The Respondent's challenge with regard to caretaking was twofold. First she said that she did not have the necessary information on which to assess whether the charge was reasonable or not. The documents in

the Applicant's bundle showed a total figure of £50,000 for caretaking and that 20% was allocated to flats. She had no way of assessing whether that was reasonable or not. She did not know whether the caretakers were employed by Eastbourne Borough Council or whether the service was contracted out. The second limb of her challenge was that she did not think that the caretakers carried out all the duties that were included in the job description with which she had been supplied. She thought for example that the communal lighting was checked by an external contractor. Although there is poster information as to who to contact to report fly-tipping she does not know who the caretakers are and it would be useful to be able to meet them and discuss what needs to be done. She suggested that matters had improved recently.
(b) Grounds maintenance (£5.08 estimated £5.53 actual for 2008/9). The Respondent had been supplied with documentation showing that the total cost of ground maintenance carried out by the landlord, Eastbourne Borough Council, was £146,560.00. The Respondent's challenge was that she had no means of ascertaining whether or not that figure was reasonable. She did confirm, however, that the grass cutting was carried out satisfactorily and that £5.53 was a reasonable amount for her to pay for grass cutting for the year 2008/09.
(c) Insurance (£79.20 estimated and actual for 2008/09). The Respondent's concern with regard to insurance was that she had been provided with no information in order to assess whether the premium charged was reasonable. She said she had never been provided with an insurance policy and had no idea what is covered by the policy and what is not.
In response Ms Walker produced an information booklet explaining the insurance policy which had been sent to all leaseholders in 2008. She confirmed that the landlord went to the market every year to obtain competitive quotes when placing the insurance for the following year.
(d) Communal lighting (£16.21 estimated and £12.78 actual for 2008/09). The Respondent understood that the estimated figure is produced from an average of the previous five years' bills. However, if this was the case it would have produced an estimated figure of £9.45 for 2008/09 and not £16.21 as charged. She was not able to reconcile from the information provided by the Applicant how they had arrived at a figure of £12.78 for 2008/09.
Miss Walker explained that the estimate was increased above the average charges for the previous five years because of the rise in fuel cost. Whilst the actual bill did come to more than was actually charged this was due to the fact that the Decent Homes contractor who had been doing some work at the premises had used some electricity and it was impossible to say what the tenants' actual consumption was from the bills that had been received from the electricity company. In order to be fair to the tenants, therefore, Miss Walker had charged them at the same rate as 2007/08.
(e) Contribution to major works (£100.00). The Respondent's challenge was not so much as to the reasonableness of the £100 per year provision towards major works but was more to do with the fact that she said she was unaware as to how much credit had been built

up towards the cost of major works over the years in her case. She had received a letter stating that her contribution towards the cost of major works was going to be £1427.02. This, however, had been based on a wrong apportionment figure and she had no way of assessing whether the cost of the works represented value for money.

In response to this Ms Walker confirmed that no invoice had yet been submitted for the cost of major works. She accepted that the apportionment figure quoted in the letter that the Respondent had received was wrong and that this would be rectified. She also said that other tenants had made various representations in respect of these major works and that the final cost position had not yet been finalised so no final invoice could yet be sent out. It was for this reason that the Applicant was seeking a determination as to the reasonableness and liability for the payments on account of service charges which the lease provided for rather than the actual charges for 2009/10. Ms Walker also supplied the Respondent at the hearing with details of the payments towards major works that she had already made which would be set against the final charge. Ms Walker also explained that there were various schemes available to enable tenants to pay for major works over a period of time and that when the final figure was known she encouraged the Respondent to contact her to discuss these.

(f) Itemised repairs (£47.76 estimated for 2008/09 - £23.74 actual). The Respondent considered that damage to a communal door which was caused by the police when they raided another flat in the block should have been claimed from the police. Alternatively if the police are not responsible then it is for the Applicant to pursue the tenant concerned and not charge the damage to the service charge account. Mr Brackley explained that the police would only be responsible if they had caused damage during a raid which had been effected in error and Ms Walker said that there was no evidence of that in this case. Ms Walker also explained that if damage had been effected to the Respondent's own front door she could make a claim on the landlord's insurance.

(g) TV aerial maintenance. A charge for £4.62 had been made in 2008/09 but no work was needed to be done.
Ms Walker explained that the estimated charge was there in case work was necessary. As no work was carried out during 2008/09 that element would be credited to the Respondent's account for 2009/10. Some work will be required shortly due to the changeover to digital tv.

(h) Window cleaning (£4.24 estimated for 2008/09 : £4.24 actual). The Respondent's main complaint about this charge was that she had never seen anyone clean the communal windows. She cleans the communal windows in her own block herself. She asked what check was made as to whether this service was being carried out for which the landlord and consequently the lessees were being charged.
Mr Brackley confirmed that it was part of the caretaker's job to check that the window cleaning contractors were carrying out their work satisfactorily. He had received no indication from the caretakers that

this was not the case and furthermore he had received no complaints from residents that window cleaning was not being carried out. Until this case Mr Brackley was not aware of the Respondent complaining about the window cleaning either.

(i) Administration charge (£12.71 estimated £23.19 actual for 2008/09). The Respondent was unable to reconcile the figures but she accepted that 15% of the actual expenditure figure was the amount that had been charged to her under the invoice of 1 April 2008. She challenged the Applicant to demonstrate that a charge of 15% of expenditure was a reasonable sum to seek by way of service charge for administration cost.

Ms Walker explained that the administration charge was all office expenses and the cost of office staff (including the housing officers and surveyors). It covered asset management, postage and copying costs. The landlord consulted with the leasholders as to what would be an appropriate administration charge. It used to be 20% but after that consultation which took place in about 2004 or 2005 it was agreed that this would be reduced to 15%. The administration charge for dealing with the insurance was separated out. Ms Walker stated that the administration charge does not fully cover all the landlord's administration costs.

(j) The invoice for 2009/10 was again for the amount on account of service charges for that year and was based on a 10% rise in the estimated charges for 2008/09, with the exception of insurance, which was somewhat higher than 10%.

Ms Walker explained that when the invoice was sent out she did not have the information on which to base the claim from the tenants for insurance so erring on the side of caution she applied a blanket figure of £100 for all flats which was slightly in excess of the 10% increase on the previous year.

Otherwise, the Respondent had the same comments to make about the individual charges for 2009/10 as she had for the 2008/09 year and the Applicant's response was the same in each case.

Determination

14. Having carefully considered the matters raised by the Respondent and having examined each item of service charge challenged by the Respondent the Tribunal considered that in all but one case the amounts sought on account of service charges for the years 2008/09 and 2009/10 were reasonable and that the Respondent was therefore liable to pay them as demanded. The one exception was with regard to the buildings insurance for 2009/10. The Tribunal considered that it would have been reasonable for an increase of 10% on the previous year's premium to be applied in the same way as every other item of the service charge and that the Tribunal would therefore reduce the figure for that item from £100 to £87.12. This results in the amount payable by the Respondent for the year 2008/09 by way of service charge to be £276.66 and for 2009/10 to be £309.62.

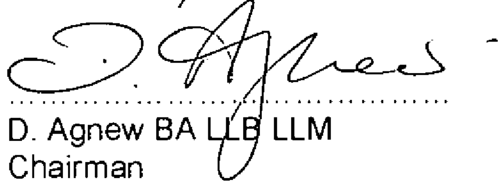
15. The Tribunal accepted that it was not possible for the Respondent to check the information provided by the Applicant as to the overall cost of a service where the landlord was providing that service to a number of its properties. In such circumstances, however, it was appropriate to look at the amount that the Respondent was actually being charged for the service and to pose the question as to whether what she was being asked to pay was a reasonable sum for the service that was being provided. None of the amounts being charged were unreasonable when that approach is adopted. There was, however, a complete conflict of evidence with regard to window cleaning with the Respondent on the one hand saying that the landlord does not carry out any window cleaning and that she cleans the outside of the communal windows in her block, whereas the Applicant's evidence was that their contractors did carry out the window cleaning. It was difficult for the Tribunal to resolve that conflict. The Tribunal did not notice anything unsatisfactory about the cleanliness of the windows on its inspection. The Applicant says it has a system of control and that it has not received any complaints from other lessees or indeed prior to this case from the Respondent herself that window cleaning was not being carried out. The Applicant does seem to be a responsive landlord and the Tribunal would expect it to have done something about it if it had received complaints that the window cleaning was not being carried out. On balance, therefore, the Tribunal decided that it would allow the small amount claimed for outside communal window cleaning (£4.24 in 2008/09 and £4.66 in 2009/10).

16. The Tribunal explained to the Respondent that the legislation entitled her to seek an order that the Applicant should not be able to add the cost of the current Tribunal proceedings to any future service charge demand if the Tribunal considers it just and equitable in the circumstances. The Respondent confirmed that she understood and wished to make such an application. Ms Osler on behalf of the Applicant resisted the application but made a cross application for reimbursement of the Tribunal fee if the Tribunal found in the Applicant's favour.

17. As the Tribunal has found that all but one of the items leading to the service charges claim were reasonable the Tribunal does not consider that it would be just and equitable to make an order under Section 20C of the Landlord and Tenant Act 1985 depriving the Applicant of the ability to add the Tribunal costs to future service charges. This does not mean to say that this Tribunal has considered whether or not the Applicant is entitled to include the cost of these proceedings in any future service charge under the terms of the lease. This Tribunal has not had the benefit of detailed argument on that point which is something that a future Tribunal may have to consider if the Applicant does decide to seek reimbursement of the costs it has incurred in connection with these Tribunal proceedings in a future service charge demand and if the liability therefor and/or the amount thereof is challenged.

On the other hand, the Tribunal did not consider that the Respondent has acted in any way unreasonably in challenging the service charge demands which she was perfectly entitled to do under Section 27A of the 1985 Act and in those circumstances the Tribunal does not consider that it would be appropriate to order the Respondent to reimburse the Applicant for the amount of the fees it has had to pay to the Tribunal for the determination of this matter.

Dated this 7th day of June 2010



D. Agnew BA LLB LLM
Chairman