

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



S.27A Landlord & Tenant Act 1985

DECISION AND REASONS

Case Number: CHI/21UC/LSC/2010/0082

Applicant: Harbour Lights "C" (Eastbourne) Management Co Ltd

Represented by: Ms S Hogbin
Labyrinth Properties and

Ms H Macrae
Leasehold Legal Services

Respondent: Mr Mark Ginger

Property: 47 The Portlands
Harbour Lights
Eastbourne
East Sussex
BN23 5RD

Date of Application: 19 May 2010

Date of Hearing: 24 August 2010

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Chairman)
Mrs J K Morris (Lay Member)

Date of this Decision: 8 September 2010

DECISION

1. The amounts payable by Mr Mark Ginger to the Applicant when properly demanded in respect of each of the relevant years is as follows:

Year ending 31 March 2008	£692.92
Year ending 31 March 2009	£2,199.37
Year ending 31 March 2010	£762.48

BACKGROUND

2. This is an application by a management company under S.27A of the Landlord & Tenant Act 1985 for the Tribunal to fix the amounts payable in respect of three accounting years ended 31 March 2008, 2009, and 2010.
3. Although Directions had been issued and Notices provided there had been no response from Mr Mark Ginger the Respondent lessee. The Applicant had no alternative address for the Respondent and had not received any communication from him.
4. It is understood that no payments of outstanding service charges had been made.

THE LAW

5. Section 18 provides that the expression “service charge” for these purposes 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, improvements or insurance or the landlord’s costs of management, and

b. the whole or part of which varies or may vary according to relevant costs.”
6. “Relevant costs” are the costs or estimated costs incurred or to be incurred by the landlord in connection with the matters for which the service charge is payable and the expression “costs” includes overheads.
7. Section 19 provides that:

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. Subsections (1) and (2) of section 27A of the 1985 Act provide 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 to whom it is payable
- b. the person by 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.

Subsection (1) applies whether or not any payment has been made.

THE LEASE

9. The Tribunal was provided with a copy of the lease of Flat 47 The Portlands (Plot 82 Harbour Lights), dated 31 December 1992, between McLean Homes South East Limited, the original lessor, Jennifer Anne Higgins, the original lessee, and the Applicant (The Company). The Tribunal has had regard to the entire document but emphasises here those matters which directly relate to the payment of service charges.
10. In the Particulars, paragraph 10 describes the relevant proportion payable by the lessee in respect of matters referred to in paragraphs 1 to 5 inclusive, and 7,8 and 15 of the Fifth Schedule as 1/15th. The relevant proportion in respect of other matters referred to in the Fifth Schedule shall be 1/35th.
11. The Fifth Schedule includes the usual items of repair, maintenance, and redecoration, together with arrangements for insurance for which the

management company can raise a Service Charge. As the property has a mixture of freehold and leasehold premises which share some common facilities the proportion of 1/15th concerns those matters which relate directly to the leasehold flats, and the proportion of 1/35th to all other matters which apply equally to the flats and to the remaining freehold properties.

12. The Sixth Schedule sets out the arrangements for payment of the service charge. The amount to be paid is assessed on a yearly basis and, before 1 July in each year, the Company is to produce to the lessee a certified statement of any expenditure incurred. There are arrangements for an interim payment of service charges and once the certified statement is produced then there is a balancing arrangement of any deficiency or credit between the interim charge collected and the actual cost of the services.
13. The interim charge is payable on 1 April in each year based on the actual payment made in the previous year or, such other increased amount that is agreed by the Company at a general meeting.

INSPECTION

14. Prior to the hearing the Tribunal members visited the property in company with Ms Hogbin who was able to give access to the common ways. Although the Respondent had been notified of the proposed inspection there was no one available at the property to provide access. On the post-box allocated to the subject property the name of "Manaj" was displayed from which the Tribunal assumed that the flat may be sub-let.
15. The development is a mixture of 20 terrace and linked freehold two-storey houses and 2 three-storey blocks of a total of 15 residential flats. The whole is arranged around a private access roadway together with parking, landscaped areas, communal garage compounds and other shared facilities.

THE HEARING

16. Following the inspection an oral hearing was held at Devonshire Park in Eastbourne at which the Applicant's representatives attended. The

Respondent did not attend the inspection, or the hearing, or send any representative or written statement.

17. The Applicant provided a comprehensive and indexed bundle of documents and information, and both Ms Hogbin and Ms Macrae addressed the Tribunal and dealt with questions.
18. The Applicant's statement set out the source of each item of expenditure and provided copies of invoices or other vouchers in support of the amounts paid.
19. The Chairman pointed out that he believed that the calculation of the proportion in respect of each of the individual items were, in some cases, incorrect. Ms Macrae agreed that some of the calculations had been wrongly shown in the demands sent to the tenant. A revised Schedule for each of the three years in question was produced by the Applicant together with a summary of the Applicant's re-calculation of the amounts owed.
20. The Tribunal questioned the Applicant in respect of some of the matters identified in its written statement, in particular the following.
21. An amount of £1,596.04 had been raised as a levy for the cost of external re-decoration and repairs. The Tribunal could not find any arrangement in the lease to allow for such an additional levy.
22. In addition to the preparation of accounts, the service charge expenditure included an audit charge and a company filing fee in respect of the Company. The Tribunal could find no express provision for these charges to be included in the service charge.
23. A company secretary fee had been made and again the Tribunal was unable to find any express provision for the payment of this amount in the lease.
24. In the accounting year ended 31 March 2009 there had been a charge for the preparation of a reinstatement cost assessment in respect of the

- insurance of the building. The Tribunal could find no express provisions for the inclusion of this charge within the service charges.
25. Ms Macrae had not had notice of the Tribunal's enquiries and requested time to consider these so that a proper response could be given.
 26. The Tribunal had prepared its own calculations in respect of the revised corrected proportions but wished to check these against the calculations provided by the Applicant.
 27. An adjournment was allowed for the Applicant's representatives and the Tribunal to consider the points at issue. After 40 minutes the Applicant's representatives advised the Tribunal that they had had sufficient time to consider the various issues and the Tribunal members confirmed that they had had an opportunity of checking the calculations so the hearing resumed at 12.15p.m.
 28. Ms Macrae agreed that there was no provision in the lease to allow for an additional levy as there were balancing charge arrangements in place at the end of each year. The cost of this re-decoration and repairs is included in the charge for year ended 31 March 2009.
 29. There was an express provision for an auditor to be employed in respect of the service charge accounts and it was suggested that the company filing fee was part of this arrangement.
 30. Ms Macrae explained that the company secretary's charge was only shown as a separate amount because Labyrinth Properties set up a separate company in order to deal with all the company secretarial matters. The total charge made for the management of the property, including the company secretary's charge, was not excessive and the Tribunal was asked to look at both the managing agent's fees and the company secretary's fees together, as a reasonable cost for the managing agent.
 31. Clause 16 of the Fifth Schedule provided for the comprehensive insurance of the building. It is prudent for there to be a regular insurance revaluation,

Ms Macrae believed the recommendation was every 3 years, in order to check that full cover is provided and that an excessive premium is not charged. Although it is not expressly provided for in the lease she considered that the cost of such prudent valuation should be included in the service charge.

32. Ms Macrae confirmed that there had been Company general meetings at which one of the items was to agree the budget for the forthcoming year and this is how the interim charges were set each year. End of year accounts were now ready for each of the years in question and the amounts chargeable were based upon actual charges rather than interim charges alone.
33. The hearing concluded at 12.30p.m.

CONSIDERATION

34. The Applicant provided comprehensive and detailed documentation in support of its case. The Applicant's representatives were able to deal with the Tribunal's enquiries and there had been no objection or comment from the Respondent.
35. The revised amounts due, based upon the proper apportionments of the various elements of service charge, coincided generally with the Tribunal's own calculations and the new figures were therefore adopted as the Applicant's requests for payments. There had, however, been no demands of these new amounts made in accordance with the terms of the lease and any finding of this Tribunal would be based upon proper valid demands being made.
36. There was now no request for a levy in addition to the service charge for the cost of external re-decoration and repairs and this issue was therefore not now before the Tribunal.
37. There was a specific express requirement at paragraph 13 of the Fifth Schedule for the cost of employing a qualified accountant to audit the Company's accounts, especially in respect of the service charge and

certifying the total amounts in respect of its maintenance duties. This cost was expressly stated to be part of the service charge requirement. There is also reference in this clause to the maintenance of the statutory records of the Company as being an allowable service charge. The Tribunal therefore considers that any audit charge or company filing fee are reasonable charges to include in the service charge account and are reasonable in amounts.

38. There is no express provision in the lease for the payment of a company secretary's fee but, at paragraph 12 of the Fifth Schedule, there is an arrangement for the appointment of managing agents which also provides for a charge incurred by the Company for the administration and expenses incurred by the Company in carrying out its duties. The clause is structured in such a way as to indicate that either there should be a managing agents charge, or failing the appointment of a managing agent, a charge not exceeding 10%, in respect of the Company's administration. The Tribunal considered the total charge of both the managing agent's fee and the company secretary's fee and found that this was at the lower end of a range of charges which, from its own knowledge and experience, would be made by a managing agent for all these services. It therefore determined that the company secretary's fee could be included in the service charges in addition to the managing agent's charge.
39. Turning now to the question of the insurance valuation the Tribunal is in no doubt that a prudent managing agent would wish to carry out regular reinstatement cost assessments both to check that the property is not over or under insured and that the correct insurance premium is payable. This is of benefit both to the landlord and to the lessees. The Applicant accepted that there was no express provision within the Fifth Schedule of the lease for the cost of a reinstatement cost assessment to be charged to the service charge. Clause 5, however, requires any shortfall in the funds provided for rebuilding to be added to the service charge. The Tribunal therefore considers that the cost of a reinstatement cost assessment is a reasonable

sum to be included in the service charge and no adjustment is made in this respect.

40. The Tribunal therefore concludes that the revised amounts identified by the Applicants as being due are reasonable and payable, provided that the appropriate demands are issued in accordance with statute and the terms of the lease.

Dated 08 September 2010

[signed Brandon H R Simms]

Brandon H R Simms FRICS MCI Arb
Chairman