

RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL



S.27A Landlord & Tenant Act 1985

**DECISION AND REASONS**

Case Number: CHI/45UC/LDC/2010/0024

Applicant: Sarum Properties Ltd &  
Connaught House RTM Company Ltd

Represented by: Darren Dalton  
Hobdens Property Management Ltd

Respondent: Nigel Smith

Property: Connaught House  
The Esplanade  
Bognor Regis  
West Sussex  
PO21 1TS

Date of Application: 21 June 2010

Date of Determination: 10 September 2010

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Chairman)  
Mr J B Tarling MCMI (Legal Member)

Date of this Decision: 27 September 2010

**DECISION**

1. The service charges payable by Mr Nigel Smith to Connaught House RTM Company Ltd are as follows.

Year ended 24 March 2009	£564.93
Year ended 24 March 2010	£579.75
Half Year to 28 September 2010	£301.73

2. These service charges are payments in advance on account of service charges representing a reasonable interim payment.

3. Interest is payable calculated on a day to day basis from the date of demand dated 1 April 2010 in accordance with Clause 7(4) of the lease.

## **BACKGROUND**

4. This is an application by Hobdens Property Management Ltd on behalf of Sarum Properties Ltd the landlord of these premises. Although the application is made in the name of the landlord, service charges are payable to Connaught House RTM Management Company Ltd (the Company) and the Tribunal has therefore taken the Company as being the correct identity of the Applicant. From the papers in front of the Tribunal Hobdens Property Management Ltd act for both the landlord and the Company. Their letter to the Tribunal dated 19<sup>th</sup> May 2010 claims that they act for both the Landlord and the RTM Company.
5. The application is made under S.27A of the Landlord & Tenant Act 1985 (The Act) for service charges in respect of the years ended 24 March 2009, 24 March 2010 and 24 March 2011.
6. Directions for the conduct of the case were published on 26 May 2010 and included a Notice to the parties under Regulation 13 of the Leasehold Valuation Tribunal's (Procedure) (England) Regulations 2003 to proceed to determine the case on the basis only of written representations and without an oral hearing. No objection to this procedure was received within the 28 day notice period and the Tribunal therefore proceeded to deal with the case based only on documents.
7. The Applicant complied with Directions and provided a Statement of Case and a bundle of documents.
8. The Respondent made no response and made no representations to the Tribunal.
9. The Tribunal did not inspect the property.

## THE LAW

10. Section 18 of the Act 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.”

11. “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.

12. 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.

13. Subsections (1) and (2) of section 27A of the 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

14. The Tribunal was provided with a copy of the lease of Flat No. 17 Connaught House dated 4 October 1989 between Ian Stanley Shelley (the original lessor) and Sandra Maureen Shelley (the original lessee). The lessor is now Sarum Properties Ltd and the lessee Nigel Smith. The Tribunal has had regard to the entire document but emphasis here those matters which directly relate to the payment of service charges.
15. The functions of the lessor in respect of the management of the property and the collection of service charges are now carried out by the Company.
16. The lease states at Clause 3 that the lessee pays to the lessor, by way of additional rent, a proportion of the expenses and outgoings of the lessor incurred in the repair, maintenance, renewal and insurance of the building, and provision of services. Details of these outgoings are set out in the Fourth Schedule.
17. The arrangement for collecting the service charges is that a certificate is to be prepared at the end of each financial year containing a summary of the expenses and outgoings during the financial year to which it relates. A copy of this certificate is to be provided to the lessee.
18. At Clause 3(e) the proportion payable for flat 17 is stated to be 1/28<sup>th</sup> of the expenses and outgoings incurred in the year to which the certificate relates.
19. In addition to actual costs, the expenses and outgoings can include a reasonable provision for anticipated expenditure which is of a regular or irregular periodically recurring nature.

20. At Clause 3(g) the lessee shall, if required by the lessor, pay a sum in advance on account of the service charge which is estimated by the lessor, his accountants, or managing agents, to be a fair and reasonable interim payment.
21. The Fourth Schedule sets out in express detail the costs expenses and outgoings in respect of which the lessee is to contribute. These include the cost of the lessor's usual obligations for maintenance, repair and decoration of the building, the cleaning and lighting of common parts, the employment of persons to carry out any of the specific duties, and to insure the building.
22. The Fourth Schedule also allows the service charge to include rates and outgoings on any parts of the estate, other than those included in the leases of the flat, any other expenses incurred by the lessor in and about the maintenance and proper management of the estate, and fees and disbursements paid to any managing agent and to any auditors appointed for the purpose of the lease.

## **EVIDENCE**

23. The Respondent submitted no documents and made no representations to the Tribunal.
24. Mr Dalton for Hobdens Property Management Ltd on behalf of the Company submitted a witness statement and a Statement of Case.
25. Hobdens were appointed by the Company which is a Right To Manage Company formed by the tenants in 2007 to take over the management function at the building. There is a long history of the non-payment of service charges by the Respondent and there have been two previous applications to the Leasehold Valuation Tribunal.
26. The application for the year ended 24 March 2009 is for two service charge amounts of £293.20 representing interim charges demanded in advance as set out in a demand (Invoice) to the Respondent sent by Hobdens dated 1 April 2010.

27. In addition for the year ended 24 March 2009 the Applicant asks for interest in accordance with the terms of the lease, the costs of bringing the application to the Tribunal and a the cost of a letter before action issued to Mr Smith by Trethowans Solicitors. These sums are not specified in the application although there is mention of some amount in Mr Dalton's witness statement.
28. The Statement of Case recites the relevant parts of the lease relating to service charges and interest and also identifies Clause 2(m)(i) which relates to the payment to the lessor of costs and charges relating to the issue of a S.146 Notice.
29. For the year ended 24 March 2010 the Applicant seeks two, half-yearly charges of £318.50 together with interest and costs in a similar fashion to the year ended 24 March 2009.
30. For the year ending 24 March 2011 only one half-yearly payment to 28 September 2010 in the sum of £330 is demanded together with interest and other costs as previously described.
31. The demand dated 1 April 2010 identifies the service charge amounts and also interest as per the lease of £79.91. The demand does not include any other amounts for any other costs.
32. In support of the sum claimed a budget is provided in respect of the three years in question and this lists items of general maintenance, the provision of electricity, insurances, fees and, in each case, a general reserve. The total budget for y/e 25 March 2009 is £16,408, for y/e 25 March 2010 £17,823 and for y/e 25 March 2011 £18,487.
33. In addition, the Tribunal is provided with Company accounts prepared for the purposes of the Companies Act 2006 for Connaught House RTM Company Ltd which includes a profit and loss account for the relevant years to 25 March 2010.

34. Mr Dalton relies on the documents to speak for themselves and does not assist the Tribunal by describing the chronology of events or the relevance of the Company accounts.

## CONSIDERATION

35. The Tribunal met to consider the documents before it. It became apparent early in its deliberations that the lease had not been followed in so far as no certificate had been issued showing actual expenditure at the end of each financial year. The single demand dated 1 April 2010 was only for interim service charges and interest.
36. Contrary to the terms of the lease the practise has been to balance the accounts at the end of each year by adding to, or removing from, the reserves the relevant amounts. The budget for each year tops up the reserve fund as required but this process is not in accordance with the terms of the lease.
37. Although there is a provision for collecting a reserve the annual certification process must be followed and adjustments then made to the interim payments received. No evidence of any such annual certification was before the Tribunal.
38. The Tribunal is therefore only asked to consider whether the budgets are reasonable in order to prepare demands for the interim amounts and it has therefore not considered the Company accounts. These Company accounts may, or may not, satisfy the requirements of the lease or the relevant statute for the preparation of annual service charge accounts. The Tribunal has not been asked to consider these.
39. The budgets for each year include the usual expenditure and the amounts relate to the figures included in the annual accounts.
40. The Tribunal noted that one of the items in the budget was for Directors and Officers liability insurance at £590 in each year. The lease makes no provision for the payment of the costs of this type although it might be argued that it would be allowed under paragraph 3 of the Fourth Schedule

which includes “*all other expenses (if any) incurred by the lessor in and about the maintenance and proper management of the estate*”. In the absence of any express provision the Tribunal did not consider that the insurance of the Directors had any relevance to the maintenance or proper management of the estate and it related entirely to the functions of the Company.

41. For example if a lessor chooses to operate as a limited company, rather than as a partnership or private individual, any costs incurred only in connection with running that company would, in the Tribunal's view, not be recoverable by way of service charge as they are not relevant to *the maintenance and management of the estate*. It must therefore follow that if the Company chooses to incur costs of this sort relevant to its own administration and not *the maintenance and management of the estate* then it would be unreasonable for them to be recovered by way of the service charge under the terms of the lease. It may be that these costs can be recovered in other ways but not by way of the service charge.
42. The only demand available to the Tribunal is that dated 1 April 2010. An amount of interest is stated in that demand at £79.91 but the Tribunal has no evidence of the way in which that amount is calculated. Clause 7 (4) of the lease does allow for interest payments, but the calculation should be based upon the date of the demand 1 April 2010 and not any earlier date, when interim charges may have been due but not demanded. The interest calculation will need to be in accordance with the terms of the lease.
43. The budget for years ending 25 March 2010 and 2011 include in each case an amount of £1,000 for legal fees. The Tribunal was not informed of the reasons for including this amount in the budget as the only reference to legal costs is an amount of £305.50 from Trethowans mentioned in Mr Dalton's witness statement. There is no invoice or document in support of this amount. In any case, it would appear that the Trethowans sum may relate to S.146 costs which are not service charges but are administration charges under Schedule 11 of the Commonhold and Leasehold Reform Act



2002. The Tribunal has received no application in respect of administration charges.

44. For this reason the item relating to legal costs in the budget cannot be allowed as a service charge item based on the evidence before the Tribunal.

45. The budget figures are adjusted by deducting £590 in each year and a further £1,000 in the years ended March 2010 and March 2011.

46. The amounts payable by the tenant to the RTM Company are as follows:

(a) Budget year ended 25<sup>th</sup> March 2009 £16,408

Less amounts deducted

D & O Company insurance £590

£15,818

**Divided by 28 = £564.93**

(b) Budget year ended 25<sup>th</sup> March 2010 £17,823

Less amounts deducted

D & O Company Insurance £590

Legal costs £1,000 £1,590

£16,233

**Divided by 28 = £579.75**

(c) Budget year ending 25<sup>th</sup> March 2011 £18,487

Less amounts deducted

D & O Company Insurance £590

Legal costs £1,000 £1,590

£16,897

Divided by 28 = £603.46

**Half-Year to 28<sup>th</sup> September 2010 = ½ x £603.46 = £301.73**

47. Nothing in this Decision prevents either party from making any further application to the Tribunal under Section 27A of the Landlord and Tenant Act 1985 for a determination as to the amounts of service charge payable under the Lease after a Certificate in accordance with Clause 3 of the Lease has been issued.

Dated 27 September 2010

[Signed Brandon H R Simms]

Brandon H R Simms FRICS MCI Arb  
Chairman