

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



S.27A and S.20 of the Landlord & Tenant Act 1985 (as amended) ("the 1985 Act")

Case Number:	CHI/45UH/LSC/2010/0050
Property:	27 Berkshire Court The Strand Goring by Sea West Sussex BN12 6LF
Applicant:	Stafford Freeborn
Respondents:	James Butcher Housing Association
Appearances for the Respondents:	Mr Guna Ratna of Counsel
Date of Inspection/Hearing	27th September 2010
Tribunal:	Robert Wilson LLB (Lawyer Chairman) Roger Wilkey FRICS (Surveyor Member)
Date of the Tribunal's Decision:	11th October 2010

Application

1. This was an application by Mr. Freeborn made to the tribunal pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") in order to determine whether, if costs were incurred for the replacement of the fire alarm system and the replacement of the existing communal TV aerial with equipment that is capable of supporting digital reception for all residents of the property, then service charges would be payable by Mr. Freeborn as a result.
2. The tribunal was also required to determine if the costs incurred by the respondent for the replacement of emergency lights in the sum of £672.75 inc. of vat were recoverable from Mr. Freeborn by way of service charge.

Decision

3. The tribunal has determined that if the respondents were to incur costs for the replacement of the fire alarm system and or for the replacement of the TV aerial system then a service charge would be payable by Mr. Freeborn to reimburse the reasonable cost of those works. Mr. Freeborn's tenancy agreement places an obligation upon Mr. Freeborn to make payments to the respondent by way of service charge in reimbursement.
4. By consent the tribunal makes an order under Section 20C of the 1985 Act
5. The tribunal determines that Mr. Freeborn is obliged to contribute towards the costs of the emergency lights and the sum claimed of £672.75 inc. of vat is a reasonable sum.

Inspection

6. Berkshire Court is a three storey block of 36 self-contained flats. The elevations are brick/tile hung and the roofs are tiled. The building is in three sections. The tribunal was told that seven of the residents have secure tenancies and the remaining residents are assured tenants; in addition that the majority of the tenants are middle aged or over.
7. The members of the tribunal inspected the building prior to the hearing. They were accompanied by Mr. Freeborn and a representative of James Butcher Housing Association. A cursory examination was made of the outside of the block and the tribunal noted the television aerial fixed to the end wall. Mr. Freeborn then showed the tribunal the internal common parts and pointed out the location of the fire alarm control panel and various light fittings which are the subject of the dispute. The tribunal also examined the interior of Mr. Freeborn's flat and he pointed out the location of heat detectors, smoke detectors and a "noise maker". Mr. Freeborn advised the tribunal that the other flats have the same fittings.

The Law

8. The law relevant to the determination of service charges is to be found primarily in sections 18, 19 and 27A of the 1985 Act. In brief summary, section 18 defines what is a service charge in terms that present no difficulty here and section 19 provides in the context of this case that a service charge must be reasonably incurred. Section 27 (3) allows the tribunal to determine in this context 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. It is this latter provision that is particularly relevant to the present application.

The Tenancy Agreement

9. The tribunal was supplied with a copy of Mr. Freeborn's tenancy agreement, which is an assured tenancy, dated the 6th May 2002.
10. The relevant provisions of the tenancy agreement are those set out below namely:
 - Clause 4 (3) states *Where the association provides services in connection with the property as described in section 3 of this agreement, you will pay the service charge to be included in the rent. The service charge will be a fair proportion of the costs incurred or to be incurred in the provision of services during the accounting period and any reasonable provision for replacement or renewal of equipment and furniture. The service charge will be reviewed annually on the 1st day of April of each year on the basis of costs incurred during the previous accounting period and any reasonably anticipated or known increases in costs, including any overpayment from previous accounting periods. The service charge calculation and the method of apportionment will be made available to you on request.*
 - Clause 3 of the agreement defines the services which the service charge covers as *provision of caretaker, cleaning of communal areas, ground maintenance, redecorations as required of all external, internal communal areas. External window cleaning.*

The Hearing

The Applicant's Case

11. Mr Freeborn's primary submission was that he had no liability to pay any part of the costs claimed because there was no provision in his tenancy agreement requiring him to reimburse the respondent in respect of the works either carried out or to be carried out. It was his contention that the reference to *any reasonable provision for replacement or renewal of equipment and furniture* set out in clause 4.3 of his tenancy agreement related to small items only such as furniture or coffee making equipment or similar items. He did not accept that these words entitled the respondent to charge him for the replacement of expensive items such as a fire alarm system and the TV aerial and he invited the tribunal to make a determination in these terms.
12. In the event of the tribunal holding that his tenancy terms did entitle the respondent to reclaim these sort of costs, then he maintained that the costs to replace the emergency light were grossly excessive and this was a simple case of overcharging. In support of this contention he had obtained a quotation from an electrical supply company in Worthing and had found that the cost of replacing one light bulb was under £12. The respondent had however charged £585 plus VAT. He believed that only one bulb had been changed. He invited the tribunal to reduce the charge that he was liable to pay for this item.
13. As far as the replacement of the fire alarm system was concerned Mr Freeborn contended that there was no reason to replace it as it was working perfectly adequately at the current time. The mere fact that technology had moved on did not mean that the equipment needed replacing. He had been prevented from obtaining an independent report to confirm his suspicions because the fire alarm needed a code before any test could be carried out and the respondent had refused to disclose that code to him. Accordingly in the event of the tribunal finding that he did have to contribute towards the costs of the new system, he invited the tribunal to determine that there was no necessity for the system to be replaced at the current time.

14. As far as the replacement of the TV aerial was concerned, once again his position was that there was no need to replace the system at the current time as it was already capable of receiving a digital signal. He accepted that the signal was not as good as it could be but he contended that this was because the aerial was wrongly orientated towards the Isle of Wight transmitter whereas it should be pointing towards the Brighton transmitter. Accordingly in the event of the tribunal finding that he did have to contribute towards the costs of a new system he invited the tribunal to find that there was currently no need to replace the system and the issue of replacement should be left until the digital transfer had happened. At that point it could be seen whether or not the system was satisfactory, and in the event of it not being so then a new aerial system could be commissioned at that stage.

The Respondents' Case.

15. Mr Ratna contended that Mr Freeborn was obliged to pay service charge pursuant to the provisions of his tenancy agreement dated 6th May 2002. He maintained that clauses 3 and clause 4.3 of the tenancy agreement must be read in conjunction. The landlord was able to recover a fair proportion of the costs incurred or to be incurred for the provision of services during the accounting period. Those services were defined in clause 3. However, the agreement also allowed the recovery of a fair proportion of any costs for *the reasonable provision for replacement or renewal of the equipment or furniture*. It was the respondent's position that the items which Mr Freeborn had brought a complaint to fell within the definition of service charges that the respondent was entitled to recover as they were costs incurred in relation to the replacement or renewal of equipment at the premises.
16. The replacement of the emergency lighting was the renewal of existing equipment and was therefore a cost covered by the service charge provisions of the tenancy agreement and recoverable by the respondent. The work consisted of the replacement of light fittings and there was an invoice in the respondent's bundle describing the work done and supporting the cost claimed.
17. In respect of the fire alarm system it was the respondent's position that this would be the renewal of existing equipment and therefore covered by the tenancy agreement. The respondent had taken independent advice from specialist contractors and had been advised that the fire alarm should be replaced now because it was near the end of its useful life. In particular, only limited spare parts were now available and the manufacturers would stop supporting the system in 2013.
18. In respect of the installation of a new digital TV system it was the respondent's position that this again would be the renewal of existing equipment and therefore covered by the tenancy agreement. The respondent had taken independent advice from Digital UK an independent not-for-profit organization and had received a report stating that it could not be guaranteed that the existing aerial system would continue to provide a digital signal once the digital switchover occurred. Accordingly the respondent took the view that action should be taken now as there was a risk that the services already provided would be interrupted or indeed cease.
19. In summary, Mr Ratna reiterated that it was the position of the respondent that all of the matters and items of expenditure challenged by Mr Freeborn were matters contained in the service charge provisions of his tenancy agreement and in particular covered by clauses 3 and clause 4.3 on the basis that these clauses were read together.

The Tribunal's Deliberation

20. The tribunal first directed its consideration to the combined effect of clauses 3 and 4.3. of Mr. Freeborns tenancy agreement. In so doing it took into account the fact that there was already in place for the benefit of the building both a communal TV aerial system and also a fire alarm system serving both the common parts and the individual flats. The tribunal was told that these facilities were in place at the time that Mr. Freeborn took his tenancy.
21. The tribunal considered that the words "replacement or renewal" as set out in clause 4.3 of the tenancy agreement should be given their natural meaning and that there was no need to import into that meaning any restrictions, for instance that there should be a precise like for like replacement. Indeed common sense suggests that a like-for-like replacement is not possible in relation to equipment bearing in mind that improvements are continual in the field of technology. Whilst the tribunal accepts that the words replacement and renewal should not entitle the landlords to replace items of a substantially different nature there is no suggestion that the respondent intends to install radically different systems. Furthermore the tribunal could find no provision stating that the obligation on the landlord to carry out works and recover the cost was limited to works which amounted to a mandatory requirement pursuant to statute. The only limitation is that the provision for the works of replacement or renewal should be reasonable.
22. We consider it appropriate, unless driven by the plain words of the tenancy agreement to a contrary conclusion, to give a commonsense construction to the tenancy agreement. Commonsense strongly suggests that the intention of the draftsmen of the tenancy agreement was that the fire alarm system, the emergency lights and the communal TV aerial are all facilities to be maintained by the landlord in a planned and coherent way. To leave these matters to individual tenants, or worse to no one at all, would be to our minds almost unworkable and therefore is a construction of the tenancy agreement to be avoided if at all possible.
23. In this case we do not consider that such an unfortunate conclusion is inevitable. Indeed we are satisfied that the plain meaning of the tenancy, taken as a whole, is that the obligation to replace these systems falls on the landlord and that the landlord is entitled to make reasonable provision in the service charge fund for the replacement or renewal of these items which fall within the definition of equipment.
24. We accept the evidence of the respondent that both the fire alarm system and the TV aerial are coming to the end of their useful life and need to be replaced. As far as the fire alarm system is concerned the tribunal was told that it had been installed at least 12 years ago. The respondent had commissioned an independent report which recommends that it should be replaced due to its age making it difficult to obtain parts. In addition it is a closed system which means that only selected companies are authorized to carry out repair work. In short the current system is difficult to maintain and it is hard to acquire spare parts. The respondent stated that the manufacturers will cease their support for this system entirely in 2013. Bearing in mind the size of the building and the elderly age of most of the occupants the tribunal considers that it is of vital importance that an up-to-date fire alarm system is installed which can be maintained and repaired in a cost-effective manner.
25. The tribunal was further told that the respondent intends to place a contract for the replacement of fire alarm systems in a number of properties in their portfolio and that if the system in this property is replaced now as part of this contract, economies of scale will be achieved.
26. Having regard to this expert evidence the tribunal is satisfied that it is reasonable to replace the system at this stage, and determines accordingly.

27. As far as the installation of a digital aerial is concerned it is the tribunal's collective experience that landlords responsible for the maintenance of communal TV aerials are planning for the digital changeover now, and are upgrading communal systems. The tribunal noted that the respondent has the benefit of an independent report, which suggests that there is no guarantee that the existing system will provide an adequate signal once the digital changeover occurs. The tribunal is satisfied that the existing system is approaching the end of its useful life and that it is reasonable for provision to be made by the landlord for the replacement of this equipment now.
28. The tribunal was told that the consultation process is in place and bearing in mind representations already received, the original proposal to upgrade the system by the installation of a satellite dish has now been abandoned and a lower specification upgrade is now planned. The intention is simply to replace the existing communal aerial with equipment that is capable of supporting a digital signal reception for all the residents in the building.
29. Having regard to the above the tribunal is satisfied that the installation of a new system now is reasonable and that such an installation will fall within the definition of replacement or renewal of the equipment as provided for in Mr Freeborn's tenancy agreement.
30. The tribunal is also satisfied that in 2008/2009 the emergency lighting system needed repair by the replacement of 4 light fittings. There is in the respondents' bundle clear documentation that 4 lights (not one as contended by the applicant) were replaced and the tribunal considers that the cost of £585 plus vat is a reasonable sum for this work. There is no suggestion that the work has been carried out badly. The cost is therefore upheld.
31. Mr. Freeborn also challenged the fixing of two light bulbs at a cost of £153. The respondent accepts that this work had been billed to the service charge account in error. They accepted that Mr. Freeborn should not have to pay any part of the cost of this work and they assured the tribunal that correcting entries had been made. On this basis the tribunal heard no evidence on this issue.

Section 20C Application.

32. The legislation gives the tribunal discretion to disallow in whole or in part the costs incurred by a landlord in proceedings before it being treated as relevant costs to be taken into account when determining the amount of future service charges. The tribunal has a wide discretion to make such an order that is just and equitable in all the circumstances. Decided cases suggest that in arriving at its decision tribunals should have regard not only to the outcome of the case but also the conduct of the parties.
33. By consent the tribunal makes an order in this case. The effect of this order is that no part of the costs incurred by the respondent in connection with this application is capable of forming part of the service charges to be recovered from the lessees in the building.

Signed _____
Robert T A Wilson Solicitor LLB.

Dated 11th October 2010.