

MAN/00EW/LSC/2010/0144

**LEASEHOLD VALUATION TRIBUNAL
OF THE
NORTHERN RENT ASSESSMENT PANEL**

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

**LANDLORD AND TENANT ACT 1985
SECTION 27A (1) AND SECTION 20C**

Property: 21 Malvern Avenue, Ellesmere Port, South Wirral CH65
5AF

Applicant: Mrs Jillian Marie Nicholls

Respondent: Riverside Housing Association Limited

Chairman: Mr G C Freeman
Mrs E Thornton-Firkin B.Sc MRICS

Date of Determination: 26th May 2011

ORDER

The reasonable service charge payable for the Property for the year ending 30th November 2009 is £63.41 per month and the reasonable budgeted service charge payable for the Property for the period ending 30th November 2010 is £54.14 per month.

No order is made under S20C of the Landlord and Tenant Act 1985

Application

1. By her application dated 6th December 2010 the Applicant ("Mrs Nicholls") seeks a determination of the liability to pay and reasonableness of service charges for the above property where costs have been incurred, or are about to be incurred, for the service charge years 2009 and 2010 Mrs Nicholls named the Respondent ("Riverside") in her application as her landlord.
2. Mrs Nicholls included in their application an application to limit the costs of Riverside under Section 20C of the Act.

Background

3. Mrs Nicholls owns the Property on a shared ownership basis. It comprises a bungalow within an estate of 16 bungalows constructed for elderly persons towards the end of the last century. She produced a copy of her lease dated 22 November 1999 and made between the Riverside of the one part and John Frederick Brazier and Brenda Brazier of the other part. It grants a term of 99 years from 1st April 1999.
4. Clause 5 provides that the Riverside is to provide certain services in return for payment of a service charge. Clause 7 provides for payment and specifies how this is to be calculated. It consists of a sum estimated by the landlord to be expended during the forthcoming service charge year together with a reserve to cover items, such as external re-decoration and replacement of communal facilities, which will be necessary at intervals of more than one year during the term, so that the annual amount of the service charge is “smoothed” over the term of the lease.

Procedure

5. The Tribunal determined that this was a case which could be decided on a consideration of the papers without a hearing and so directed on 17th March 2011. In accordance with Regulation 5 of the Leasehold Valuation Tribunals (Procedure) (Amendments) (England) Regulations 2004 notice was given to the parties that:
 - (a) a determination would be made on the basis of a consideration of the papers including the written representations of the parties before 27th May 2011, and
 - (b) a hearing would be held if either party requested one before that date.

Neither party requested a hearing. Both parties submitted written representations which were copied to the other side and were considered by the Tribunal.

The Law

6. Section 18 of the Landlord and Tenant Act 1985 (“the 1985 Act”) provides:
 - (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, improvements 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 or later period.

7.. Section 19 provides that

(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.

8. Section 27A provides 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 date at or by which it is payable, and

(d) the manner in which it is payable.

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

(3)

(4) No application under subsection (1)...may be made in respect of a matter which –

(a) has been agreed by the tenant.....

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

9. No guidance is given in the 1985 Act as to the meaning of the words "reasonably incurred". Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.

10. In *Veena v S A Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that

the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].

Mrs Nicholls’ Case

11. In accordance with the directions, the Riverside provided budgets and audited accounts for expenditure for the service charge year 1st December 2008 to 30th November 2009. Mrs Nicholls set out her objections in a letter received by the Tribunal on 10th May 2011. Riverside subsequently responded to this and provided audited accounts for the year to 30th November 2009, budgets for the years ended 30th November 2010 and 2011 and supplementary invoices..
12. Helpfully, Riverside replied to Mrs Nicholls’ points in tabulated form. They may be summarised as follows:
 - 12.1 Cost of building insurance is excessive.
 - 12.2 A large increase in service charge from 2009 to 2010.
 - 12.3 Cyclical painting is too expensive.
 - 12.4 Fencing not painted.
 - 12.5 Gardening cost is excessive for amount of work carried out.
 - 12.6 Day to day repairs not carried out.
 - 12.7 Pigeons fouling rear door.

Riverside’s Case

13. Riverside responded to each point in the tabulated form referred to above, supported by accounts and invoices. The Tribunal noted that no audited accounts for the year ended 30th November 2010 were produced, despite a gap of five months between the end of the year and the consideration of the application.

The Tribunal’s Conclusions

14. The Tribunal concluded that the amount payable by the Mrs Nicholls for the provisions of services within the Property was a variable service charge within the meaning of the Act and that they had jurisdiction to consider the reasonableness of the amount payable.
15. Having decided this, the Tribunal had to apply a three stage test to the application under section 27A:-
 - 15.1 Are the service charges recoverable under the terms of the Lease? This depends on common principles of construction, and interpretation of the Lease.

- 15.2 Are the service charges reasonably incurred and/or for services of a reasonable standard under section 19 of the 1985 Act?
- 15.3 Where a tenant disputes items, he need only put forward sufficient evidence to show that the question of reasonableness is arguable. Then it is for the landlord to meet the tenant's case with evidence of its own. The LVT then decides on the basis of the evidence put before it.
16. Applying the recoverability test under paragraph 15.1 above, the Tribunal noted that the Lease provided for the recovery of a service charge including an amount to provided for a reserve to cover cyclical repairs, replacement and re-decoration.
17. The Tribunal then considered the points raised by Mrs Nicholls as follows, using the numbering in clause 12 above, and came to the following conclusions.
 - 17.1 The Tribunal find that the method of recovery of insurance costs by a monthly charge is reasonable. They noted that Riverside consulted with other owners before implementing this method of collection. They also noted that Mrs Nicholls does not seem to be objecting to the level of premium payable.
 - 17.2 Riverside produced budgets and accounts showing how the increase was made up. With one exception discussed at paragraphs 20 to 23 below, the Tribunal considered that these were reasonable..
 - 17.3 Riverside produced a fully measured and priced schedule showing how the reserve for the cyclical painting was to be funded. The Tribunal found this to be reasonable.
 - 17.4 They also provided an explanation that the non-painting of certain parts of the fencing had not been charged to owners. The Tribunal accepted this.
 - 17.5. Riverside produced evidence that they had complied with the consultation provisions of the Act with regard to gardening. The Tribunal accepted that these were competitively tendered and analysed for "best value". They also accepted Riverside's explanation for Mrs Nicholls' complaint of "moss on paths" and rotten fencing,
 - 17.6. Riverside produced the invoice for flagging which Mrs Nicholls' claimed covered lifting 4 or five flags which allegedly cost approximately £500.00. The invoice shows that work was also carried out to other property in addition to the work referred to by Mrs Nicholls. The Tribunal considered that this invoice was reasonable.
 - 17.7. The cleaning of pigeon droppings from Mrs Nichols back door is not a service charge item, as it is not cleaning or repairing a communal part of the development.

18. The Tribunal noted that Riverside allege that the management charge for 2010/2011 went up by only £0.74 per month, i.e. a 3% increase. They also noted that for the year ended 30th November 2008, out of a total service charge expenditure of £14742.59, £4498.40 was attributable to management fees. This represents just over 30% of the total service charge account, or £281.15 per bungalow. For the year ended 30th November 2009 the management fees increased by 2% and represented nearly 32% of the total service charge account or £286.77 per bungalow.

19. The Tribunal had no corresponding figures for the year ending 30th November 2010, as no audited accounts were produced. From an examination for the budgets for 2010/2011, the following figures were extracted:

Total budget	(£83.84 × 16 × 12)	£16097.28
Management fees	(£25.48 × 16 × 12)	£ 4892.16

% of fees to total: 30.39%

% of increase in management charges since 2008: 8.75%

20. The Tribunal noted that this was a development of 16 bungalows. It is not a block of flats, whose communal internal parts would require a greater degree of management involvement, for example, on communal internal cleaning, redecoration, repairs and electricity. It seems the only common parts requiring active management are the communal landscaped areas, window cleaning and redecoration from time to time.

21. It is the Tribunal's view that the amount charged by way of management fees of above 30% of the service charge collected cannot be justified by reason of the nature of the development. The Tribunal further considered that an increase of nearly 9% in management charges over three years, when other costs did not increase similarly, cannot be justified. It is trite to say that the fee should reflect the amount of work involved. This is sometimes expressed as a percentage of the amount collected but this should not be adopted as a hard and fast rule. Each case has to be decided on the circumstances of the development, its occupants and the level of service demanded by them.

22. The Tribunal considered what should be a reasonable fee for managing a development of 16 bungalows. From its own knowledge and experience it considered that a reasonable management fee, taking into account the level of service to be provided, for this development should be £2400.00 per year. This works out at £150.00 per bungalow per year for the service charge years ending 30th November 2009 and 30th November 2010 which are the subject of this application. This is equivalent to £12.50 per month.

23. Save for the adjustment in paragraph 25 above the Tribunal considers that the service charges for the Property for the year ended 30th November 2009 and as shown in the budget for the year ending 30th November 2010 are reasonable.

24. Taking into accounts the adjustments for management charges for the respective years under consideration, the following monthly figures apply:-

y/e 30th November 2009


Service charge per accounts	£14362.22
Deduct management charges	£4588.32
Add management charges as para 22	<u>£2400.00</u>
	<u>£12173.90</u> = £63.41

y/e 30th November 2010

Service charge per budget	£12744.96
Deduct management charges	£ 4750.00
Add management charges as para 22	<u>£2400.00</u>
	<u>£10394.96</u> = £54.14

25. Some leases allow a landlord to recover costs incurred in connection with proceedings before the LVT as part of the service charge. Mrs Nicholls made an application under s20C of the Act to disallow the costs incurred by Riverside in calculating service charge payable for the Property, subject, of course, to such costs being properly recoverable under the provisions of the Lease.
26. The Tribunal determines that, as it has found that, in the main, the service charges for the period in question are reasonable, it would be reasonable to decline to make an order under the section.

Dated 22 August 2011.



G.C.Freeman
Chairman