

MIDLAND RENT ASSESSMENT PANEL

CASE NO: BIR/00FK/LIS/2005/0004

Landlord and Tenant Act 1985 as amended by
Commonhold and Leasehold Reform Act 2002

DETERMINATIONS OF THE LEASEHOLD VALUATION TRIBUNAL

In the matter of

Katrina Hurd, Sarah Needham, Susan Fry,
and, as joined applicants, Joan Godden, Maxine Smith and S Gordon King
(the Applicants)

and
Ralph Walter Cutting (the Respondent)

on the Applicants' applications:

- (1) under section 27A for determinations of liability to pay service charges for the years 2002-2003, 2003-2004, 2004-2005 and 2005-2006; and
- (2) for an order, under section 20C, that the Respondent's costs in connection with these proceedings shall not be part of any service charge

Properties: Flats 1, 3 and 4, Lilac Court, Alvaston, Derby DE24 0JF

Flats 1, 3 and 4 Courtyard Mews, off Boulton Lane, Alvaston, Derby DE24 0FF

Heard at: Alvaston, DerbyOn: 22 June 2006

APPEARANCES:

The Applicants: Katrina Hurd (Tenant of Flat 1, Lilac Court), a joint Applicant and for the joint Applicants

The Respondent: Mr R W Cutting

Tribunal members:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)

Mr W J Martin, Solicitor

Miss B Granger

Date of determination: 10 AUG 2006

The application:

- 1 Mr and Mrs Hawkesworth the Tenants of flat 2 Lilac Court were joint Applicants but withdrew their application prior to the hearing. We set out below the substance of the application (the '**Application**') dated 7 November 2005 for determinations of the Applicants' liability for service charges for the years stated for the properties stated under section 27A Landlord and Tenant Act 1985, inserted by section 155 Commonhold and Leasehold Reform Act 2002, (the '**Act**'); and for an order that the costs of **Mr R W Cutting** (the '**Landlord**') in connection with these proceedings shall not be part of any service charge under section 20C of the Act. The delay in making our determination after the date of the hearing (22 June 2006) is due to awaiting a copy of the leases of Flats 1 and 4 Courtyard Mews.

Tenant/Applicant	Property	Years
Ms K Hurd	Flat 1, Lilac Court	2004/05, 2005/06
Ms S Needham	Flat 3, Lilac Court	2004/05, 2005/06
Ms S Fry	Flat 4, Lilac Court	2002/03, 2003/04, 2004/05, 2005/06
Ms J Godden (joined)	Flat 1, Courtyard Mews	2002/03, 2003/04, 2004/05, 2005/06
Mr R King (joined)	Flat 3, Courtyard Mews	2005/06
Ms M Smith (joined)	Flat 4, Courtyard Mews	2003/04, 2004/05, 2005/06

The Properties and adjoining/adjacent property:

- 2 The subject Properties (the '**Flats**') comprise:
- (a) As to Lilac Court (Flats 1, 3 and 4) - 3 flats in a purpose built two storey block of four flats (the '**Lilac Court Building**').
 - (b) As to Courtyard Mews (Flats 1, 3 and 4) - 3 flats in a converted two storey block of six flats (the '**Courtyard Mews Building**').

The Lilac Court and Courtyard Mews Buildings are part of the Estate (the '**Estate**') defined in the Leases of the Applicants. In addition to the two Buildings, the Estate includes: a former retirement home (adjoining and similar in construction to Lilac Court) which is currently being converted into four flats and a brick built day centre (adjoining the four flats being converted).

Joining of parties:

- 3 Under Regulation 6. Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 we granted the applications by Ms J Godden, Mr R King and Ms M Smith to be treated as an Applicant by being joined as a party to the proceedings. Accordingly our determination determines the amount of the service charges payable by them, as well as the three Applicants at Lilac Court.

Pre-trial review:

- 4 A pre-trial review was held on 12 January 2006 and detailed written procedural directions dated 13 January were given.

Inspection and hearing:

- 5 We inspected the exterior of the Properties and relevant parts of the estate (the '**Estate**') in which the properties are situated on 22 June 2006 and the hearing was held on the same day at which **Ms Hurd** appeared and spoke for the joint Applicants and **Mr Cutting** appeared in person.

Jurisdiction:

- 6 Our jurisdiction is not contested and we are satisfied that we have the jurisdiction to determine the Application.

The Leases:

7 We have been supplied with: (a) a copy of the lease (the 'Lease') of Flat 1 Lilac Court dated 24 January 2003 made between Ralph Walter Cutting and Julia Noreen Cutting (1) and Louisa Mary Wibberley (2) (Ms Hurd's predecessor) and we are told the leases of Flats 3 and 4 Lilac Court contain the same terms; (b) after the hearing, a copy of the lease of Flat 4 Courtyard Mews dated 6 May 2003 made between Ralph Walter Cutting and Julia Noreen Cutting (1) and Maxine Smith (2); and (c) after the hearing, a copy of a draft of the lease of Flat 1 Courtyard Mews not dated and made between Ralph Walter Cutting and Julia Noreen Cutting (1) and Joan Edith Mildred Godden (2); and we are told that, other than insignificant matters and matters not relevant to our determination, the lease of Flat 3 Courtyard Mews contains the same terms as the lease of Flat 1. We hold that the service charge provisions in the lease of Flats 1 and 4 Courtyard Mews are to the same effect as the service charge provisions in the Lease (Flat 1 Lilac Court); save that, unlike the Lease and the lease of Flat 1 Courtyard Mews, the lease of Flat 4 Courtyard Mews, at clause 1.7, defines 'service charge proportion' as a 'fair and proper proportion of the costs and expenses incurred by the Landlord in providing the Services having regard to the number of flats or other premises benefiting from the services'. The Lease includes variable service charge provisions by reference to costs incurred by the Landlord relating to Flat 1, the Lilac Court Building (in which Flat 1 is situated) and the Estate (defined in the Lease at clause 2.2 as 'the Building and includes the open gardens and grounds comprised in the [registered] land [identified by the plan annexed to the Lease]').

The Applicants' case generally:

8 Much of the Applicant's case centres on the alleged failure of the Landlord to comply with his maintenance obligations in the Lease. We explained that we have no jurisdiction to require the Landlord to comply. Our jurisdiction is limited to the payability of service charges and the section 20C order sought in the Application.

The Landlord's service charge for 2004-2005 - year ended 31 March 2005:

9 Following the Tribunal's directions the Landlord provides the following service charge statement for the Lilac Court and Courtyard Mews Buildings:

Income		£ 4,334
Expenditure:		
Insurance	£ 1,042	
Repairs and renewals	£ 638	
Electricity	£ 150	
Gardening	£ 1,800	
Legal and professional	£ 140	
General expenses	£ <u>102</u>	£ <u>3,872</u>
Surplus		£ 462

10 As to apportionment of the service charge between the Applicants and others - The Lease has no provisions for certain apportionment of the service charge for each flat; the Lease refers (at clause 5.1) to payment of 'a contribution towards the costs and expenses of running the Estate and the maintenance thereof and the other matters [including repairs to the Building and decoration of the exterior of the Flat] more particularly specified in the Fourth Schedule'; although the Lease (at clause 5.2(b)) refers to 'the service charge proportion' it is not defined. We do however note that 'the service charge proportion' is defined in the lease (at clause 1.7) of Flat 4 Courtyard Mews (see para 7 above) which we hold and find is not inconsistent with our decision on apportionment at the end of this paragraph. Mr

Cutting says Ms Hurd, the other Applicants and occupying tenants of Lilac Court and Courtyard Mews (8 flats in total) have been and are paying £47 pcm (£564 pa). He has been demanding a service charge from 8 tenants only who occupy a flat subject to a service charge. There are, in fact, 4 flats in the Lilac Court Building and 6 flats in the Courtyard Mews Building (10 flats in total, not 8). While the £4,512 total for 8 flats [$£47 \text{ pcm} \times 12 \text{ months} \times 8 \text{ tenants} = £4,512$] is greater than £4,334 (income), Mr Cutting says allowances were made to some tenants because they had not been in occupation of a flat for the whole relevant period. It is apparent from the evidence that Mr Cutting has taken no account of flats (within the 10 flats) which are not let or occupied in his calculation of the service charge for each Applicant. In consequence the service charge for each Applicant has been higher than it would have been had Mr Cutting apportioned the total service charge costs between the flats benefiting from the services (8 flats charged, 10 flats benefiting). In any event there is, in addition to the Lilac Court and Courtyard Mews Buildings, a building (the 'Former Retirement Home') similar to Lilac Court adjoining Lilac Court and within the Estate which was a retirement home and is being converted into 4 flats. The Former Retirement Home benefits from the services in respect of the 'open gardens and grounds' (see clause 2.2 of the Lease) provided to the Lilac Court and Courtyard Mews Buildings. We find that to determine the amount of the service charge for each of the Applicants, in the absence of the alleged costs incurred being itemised for the Flats, the two Buildings and the 'open gardens and grounds', the amount of the costs reasonably incurred is one fourteenth of the 'global' amount we determine at para 17 below.

- 11 In compliance with directions the Landlord has allowed inspection and copying of relevant documents and copy receipted invoices are produced by Ms Hurd. However, they do not account for the total expenditure of £3,872; Mr Cutting explains that some were not provided to him.
- 12 From the evidence it soon became apparent that the Landlord has not kept a detailed nor adequate record of the costs incurred in calculating the service charge to enable persuasive comprehensive evidence of costs incurred to be adduced consistent with the service charge provisions in each of the Applicants' leases. The Landlord's evidence (in para 9 above) 'pools' the costs alleged to have been incurred for the two Buildings and the Estate. In respect of the Lilac Court Building and the Courtyard Mews Building he should have itemised: (a) the costs of maintenance and insurance (consistent with clause 7.4.1 and para 4. Fourth Schedule of the Lease) to the Lilac Court Building; (b) the costs of maintenance and insurance (consistent with clause 7.4.1 and para 4. Fourth Schedule of the Lease) to the Courtyard Mews Building; (c) the costs of external decoration to each of the Flats (consistent with clause 7.6 of the Lease); and (d) the costs of maintenance of common areas/open garden and grounds, drains/pipes/cables/wires within the Estate (consistent with clauses 2.2, 7.4.1, 7.4.2, 7.4.3 and para 3. Fourth Schedule of the Lease). We derive some assistance from the landlord's service charge statement (at para 9 above) but in the absence of evidence allocated to each Building and consistent with the Lease provisions we, in making our determination, have regard to what may reasonably be expected as inherently likely on the balance of probability. Having heard the evidence in respect of each of the items (in para 9 above) and doing the best we can:
 - 13 As to insurance - £1,042 is not contested and we accept it is reasonable.
 - 14 As to repairs and renewals (£638) - Mr Cutting says this is for materials only and no labour charge has been included. Ms Hurd contests some of the items for which receipted invoices have been produced, particularly £185 labour for gardening when gardening appears as a separate item (in para 9 above). We accept that £185 should be disallowed and that some of the items cannot be said to be costs incurred for the service charge. We find, on the limited evidence we have, that the reasonable amount is £350.
 - 15 As to electricity (£150) - No evidence of costs incurred is produced. We take particular account of the extent of the Estate (defined in the Lease and by reference to a plan in the Lease and a title number). It

is clear to us that the costs of lighting claimed by Mr Cutting includes property not within the Estate, as defined. For these reasons we find £75 is the reasonable amount.

- 16 As to gardening (£1,800) - From what we saw at our inspection and accepted by the parties there are areas of lawn and grounds which are not within the Estate; and while we accept there are areas planted with shrubs within the Estate the only areas of lawn are two small lawns in front of the Lilac Court Building (about 75m² in total). Ms Hurd says it is not reasonable for Mr Cutting to have purchased (new for £1,636 in May 2002 (evidenced by a receipted invoice)) and use a 13hp 'Ride-on' lawnmower; we agree. Mr Cutting refers us to maintenance of the planted areas and says a gardener attends the Estate weekly in July and August and once a fortnight during other months. We find, from the limited evidence available, that £1,000 is the reasonable amount.
- 17 As to legal and professional - £140 is not contested and we accept it is reasonable.
- 18 As to general expenses (£102) - While not accepted by Ms Hurd and not supported by 'costs incurred' from Mr Cutting we accept that it is inherently likely that £102 is reasonable.
- 19 In summary we find, and accept where not contested, the following amounts are reasonable:

Insurance	£ 1,042
Repairs and renewals	£ 350
Electricity	£ 75
Gardening	£ 1,000
Legal and professional	£ 140
General expenses	£ <u>102</u>
Total	£ 2,709

- 20 £2,709 is our determination of the 'global' costs reasonably incurred (for the service charges) in respect of the two Buildings and the Estate for the year ended 31 March 2005. At para 10 above we determine the amount of the costs reasonably incurred in determining the service charge payable by each Applicant is one fourteenth of the 'global' amount.

21 Summary of our decisions for 2004-2005:

- (a) The amount of the reasonable 'global' costs incurred for the Flats, two Buildings and Estate is £2,709;
- (b) The apportioned amount of the 'global' costs for each Applicant is £193.50 (£2,709 ÷ 14 = £193.50); and
- (c) The monthly apportioned amount for each Applicant is £16.13 (£193.50 ÷ 12 = £16.13).
- 22 Accordingly, we determine that for the year ended 31 March 2005, the service charge payable by each of the Applicants is £16.13 pcm, payable in accordance with the provisions of the Lease.

The Landlord's service charge for 2005-2006 - year ended 31 March 2006:

- 23 Following the Tribunal's directions the Landlord provides the following estimated service charge statement for the Lilac Court and Courtyard Mews Buildings:

Income		£ 4,512
Expenditure:		
Insurance	£ 1,116	
Repairs	£ 500	
Decorating (10 flats)	£ 1,050	
Electricity	£ 150	
Gardening	£ 1,050	
Legal costs	£ 75	
Accountant's costs	£ 380	
General expenses	£ <u>102</u>	£ <u>4,423</u>

- 24 The estimated service charge (at para 23 above) is presented by Mr Cutting as a 'global' amount, consistent with the Landlord's statement for 2004-2005 (see para 9 above). At para 10 above we determine the apportioned amount of the costs reasonably incurred for each Applicant at one fourteenth of the 'global' amount. However, for the year ended 31 March 2006 the amount of £1,050 is for decorating the exterior of 10 flats (the Lilac Court and Courtyard Mews Buildings) only, not the Former Retirement Home; so, the decorating costs, if found reasonable, shall be divided by 10, not 14 to derive the reasonable service charge.
- 25 Mr Cutting supports his estimate by reference to recent examples of maintenance costs, including fencing, guttering, paint and labour costs. Other than the electricity (£150), Ms Hurd does not seriously contest the amounts. She says the electricity estimate is too high and should be about £75; we agree.
- 26 Mr Cutting admits the costs he provides are an estimate and not evidence of costs incurred. Despite our reasons in para 12 above - which are also applicable to the year ended 31 March 2006 - we find that Mr Cutting's estimate cannot be said to be unreasonable; save electricity.
- 27 We, therefore, find, and accept where not contested, the following amounts are reasonable:

Insurance	£ 1,116	
Repairs	£ 500	
Electricity	£ 75	
Gardening	£ 1,050	
Legal costs	£ 75	
Accountant's costs	£ 380	
General expenses	£ <u>102</u>	£ 3,298
Decorating (10 flats)		£ <u>1,050</u>
Total 'global' costs		£ 4,348

- 28 Our decision for 2005-2006 For the reasons we give in para 10 above we calculate the apportioned amount of the reasonable 'global' costs for each Applicant for the year is £340.57 ((£3,298 ÷ 14) + (£1,050 ÷ 10)) and the monthly apportioned amount is £28.38 (£340.57 ÷ 12) payable in accordance with the provisions of the Lease.

The Landlord's service charge for 2003-2004 - year ended 31 March 2004:

- 29 Following the Tribunal's directions the Landlord provides the following estimated service charge statement for the Lilac Court and Courtyard Mews Buildings:

Income		£ 3,253
Expenditure:		
Insurance	£ 576	
Repairs and renewals	£ 1,881	
Electricity	£ 140	
Gardening	£ 1,800	
Legal and professional costs	£ 130	
General expenses	£ <u>102</u>	£ 4,629
Deficit		£(1,376)

- 30 Ms Hurd does not seriously contest the amounts for insurance, legal and professional costs and general expenses; we accept they are reasonable. We find the evidence given (including copy receipted invoices) does not support £1,881 for repairs and renewals; we find £500 is the reasonable amount. For the reasons we give at para 13 above we find the reasonable cost for electricity is £70 (1/2 of £140). For the reasons give at para 16 above and taking account of some planted areas had annual plants, not perennial shrubs, we find £1,000 is reasonable.

31 In summary we find, and accept where not contested, the following amounts are reasonable:

Insurance	£ 576
Repairs and renewals	£ 500
Electricity	£ 70
Gardening	£ 1,000
Legal and professional	£ 130
General expenses	£ <u>102</u>
Total	£ 2,378

32 Our decision for 2003-2004 For the reasons we give in para 10 above we calculate the apportioned amount of the reasonable 'global' costs for each Applicant for the year is £169.86 (£2,378 ÷ 14) and the monthly apportioned amount is £14.16 (£169.86 ÷ 12) payable in accordance with the provisions of the Lease.

The Landlord's service charge for 2002-2003 - year ended 31 March 2003:

33 Following the Tribunal's directions the Landlord provides the following estimated service charge statement for the Lilac Court and Courtyard Mews Buildings:

Income		£ 1,185
Expenditure:		
Insurance	£ 576	
Repairs and renewals	£ 2,653	
Electricity	£ 130	
Gardening	£ 1,800	
Legal and professional costs	£ 100	
General expenses	£ <u>102</u>	£ 5,361
Deficit		£(4,176)

34 Ms Hurd does not seriously contest the amounts for insurance, legal and professional costs and general expenses; we accept they are reasonable. We find the evidence given (including copy receipted invoices) does not support £2,653 for repairs and renewals especially as £1,636 is claimed for a Ride-on mower (see para 16 above); we find £1,000 is the reasonable amount. For the reasons we give at para 13 above we find the reasonable cost for electricity is £65 (1/2 of £130). For the reasons give at para 16 above and taking account of some planted areas had annual plants, not perennial shrubs, we find £1,000 is reasonable.

35 In summary we find, and accept where not contested, the following amounts are reasonable:

Insurance	£ 576
Repairs and renewals	£ 1,000
Electricity	£ 65
Gardening	£ 1,000
Legal and professional	£ 100
General expenses	£ <u>102</u>
Total	£ 2,843

36 Our decision for 2002-2003 For the reasons we give in para 10 above we calculate the apportioned amount of the reasonable 'global' costs for each Applicant for the year is £203.07 (£2,843 ÷ 14) and the monthly apportioned amount is £16.92 (£203.07 ÷ 12) payable in accordance with the provisions of the Lease.

Summary of our determination on the Applicants' liability to pay service charges:

37 We set out below each of Applicants' liabilities for the years in question:

Applicant	Year(s)	Monthly amount
Ms K Hurd	2004/05	£ 16.13
	2005/06	£ 28.38
Ms S Needham	2004/05	£ 16.13
	2005/06	£ 28.38
Ms S Fry	2002/03	£ 16.92
	2003/04	£ 14.16
	2004/05	£ 16.13
	2005/06	£ 28.38
Ms J Godden (joined)	2002/03	£ 16.92
	2003/04	£ 14.16
	2004/05	£ 16.13
	2005/06	£ 28.38
Mr R King (joined)	2005/06	£ 28.38
Ms M Smith (joined)	2003/04	£ 14.16
	2004/05	£ 16.13
	2005/06	£ 28.38

Section 20C order:

- 38 Ms Hurd applies to us to order that all of the costs incurred, or to be incurred, by the Landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants. Mr Cutting does not seriously contest the application.
- 39 Our discretion to make the order sought is what we consider to be just and equitable in the circumstances. We find that it is just and equitable to make the order and Ms Hurd's application is allowed which, for the avoidance of doubt, is our order applicable to any service charge payable by each of the Applicants.

Date:

10 AUG 2008

T F Cooper
Chairman

