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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Property:	Flat 3 Claremont Court, Rose Land, Biggleswade SG18 0JZ
Applicant(s):	Mr A and Mrs L Haywood
Respondent -	
Landlord:	Logistix Developments Limited
Management Company:	Claremont Court (Biggleswade) Limited
Registered Office of above companies according to Lease:	20 Strathmore Avenue, Hitchin, Hertfordshire SG5 1SL
Address for service:	C/o Mr C Bhamra, Director, 164 Bedford Road, Kempston, Bedfordshire MK42 8BH (as stated by the Landlords on 17th January 2006)
Case number:	CAM/09UC/LSC/2005/0064
Application:	Application for a determination of the liability to pay Service charges including the reasonableness of service charge (Section 27A Landlord and Tenant Act 1985) for the financial years 2004 and 2005 An application for the limitation of service charge arising from the landlord's costs of proceedings (Section 20C Landlord and Tenant Act 1985)
Tribunal:	Mr JR Morris (Chairman) Miss M Krisko BSc (Est Man) BA FRICS Mr JR Humphrys FRICS
Hearing Date:	5th June 2006
Attending Hearing: **Applicants:**	Mr A and Mrs L Haywood

STATEMENT OF REASONS

The Application

1. The Applicants applied to the Tribunal on the 9th December 2005 under section 27A of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002 for a determination as to whether costs incurred by way of service charge in respect of Service Charges for the years 1st January 2004 to 31st December 2004 and 1st January 2005 to 31st December 2005 are reasonably incurred and payable.

Service of Documents

2. The Directions for the Application were issued on the 18th January although the Respondent stated that they did not receive them until 28th February. Directions were sent by courier on the 3rd March 2006, with new dates for compliance. Nevertheless the Respondent did not comply with Directions or attend the Hearing on the 5th June 2006.

The Law

3. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

Section 18

(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, improvement 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 of 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 period

Section 19

(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

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- 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 amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable

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

(3) An application may also be made to a leasehold valuation tribunal for a determination whether costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable

Description of the Building and Property

4. The Property is a three-bedroom split level flat in a Development comprising a Grade II listed school conversion with gravel drive, communal grounds and gardens and allocated car parking spaces. Access to the Development is through security gates.

Inspection

5. The Tribunal inspected the Development and Property in the presence of the Applicants.

6. The Development comprises four Buildings, which are referred to in the Lease as six Blocks of apartments A-F. Block A is a detached building comprising two apartments, Blocks B, C and D are part of the main building and comprise 10, 8 and 10 apartments respectively, Block E is a detached building

comprising two apartments and Block F is also a detached building comprising four apartments. The original buildings, of which the Property is a part, are of brick under a slate/tile roof with cast iron gutters and metal windows. Block F is of modern construction. There are allocated parking spaces in the Development. There are access ways on the Development, which are defined in the Lease as the footpaths, common car parking, roads, lighting systems etc. There are Communal Areas, which are all the external and internal areas used in common by the tenants.

7. Externally the gardens were in poor state of maintenance save where the tenants had undertaken work themselves. The roof also needed some attention some of the slates/tiles were chipped and clipped and the flashings were not cut into the wall or otherwise properly fixed. The valleys were unevenly cut and there appeared to be mixed slates/tiles used. There was vegetation growing around the gables. The joints in the cast iron guttering needed resealing in places. At least one of the outside pillar lights was unstable. On the day of inspection the automated security gates were not working. The external finish was not of the best quality. The painting was poor and the sills were beginning to crack. Other garden areas were poorly maintained and overgrown. The borders around the perimeter were in fair condition, which was said to be because they were only freshly completed.

8. Internally the common areas were accessed via a door entry system. They were carpeted but not well lit and were in fair conditions although there was no evidence of regular cleaning or maintenance. The Applicants' Property had its own external door and was not accessed through the common areas.

9. The interior of the Property was not finished to the best standard. The woodwork was rough in places and the windows leaked. There were cracks appearing where the window frame meets the wall. The plaster work in the bedroom over the window to the lounge was rough and not well finished. There was no telephone or TV wiring behind the sockets.

10. The Tribunal observed that the Development was now nearing its completion and most of the buildings appeared to be occupied. However it appeared that the builders were still carrying out some work and there was a large container on the site.

The Lease

11. The Respondents are the freeholder and landlord and the Managing Company of the Property, Building and Estate. A copy of the Lease was provided. The Lease is for a term of one hundred and twenty five years from 29th September 2003 at a rent of £130 per annum, which shall double on each twenty-fifth anniversary of the term commencement date for the first 100 years.

12. The Lease contains a number of definitions as follows:
    - Demised Premises/Properties: the apartments
    - Buildings: the Blocks of apartments
    - Development: the whole site

- Maintained Property: Development excluding Demised Premises
- Communal areas: external and internal areas excluding the Demised Premises and allocated parking spaces
- The Access ways: footpaths and roads, common car parking and lighting
- Service Installations: sewers, drains, channels, pipes, watercourses, gutters, mains, wires, cables, conduits, aerials etc
- The Estate is not defined but appears to be the Development without the Demised Premises and Access ways

13. The Fifth Schedule sets out the Maintenance Obligations of the Landlord. The obligation of the Landlord to carry out the Maintenance Obligations is in the Ninth Schedule. The Maintenance Obligations of the Landlord includes:
    - Keeping the access ways in good repair and clean and tidy (Clause2)
    - Maintaining the boundary wall hedge or fence
    - Repairing, maintaining and inspecting the Service Installations
    - Providing and maintaining fire fighting appliances
    - Keeping the internal and external parts of the Maintained Property in good and substantial repair
    - Insuring the Buildings
    - Managing the Development

14. The Sixth Schedule provides for the payment of the Maintenance Expenses incurred by the Landlord in meeting the Maintenance Obligations. The obligation of the Tenant to pay Maintenance Expenses is in Clause 7 of the Seventh Schedule. The Tenant's contribution to the Maintenance Expenses are payable in the following proportions:
    - Part A Estate 2.78% (except Clause 2 of the Fifth Schedule)
    - Part B Access ways 2.78% (Clause 2 of the Fifth Schedule)
    - Part C Block 17%

    The Maintenance Expenses are payable in advance on the 1st January and 1st July each year. The amount is an estimate of the costs with a balancing payment being due 21 days after the service charge accounts have been certificated by the Accountants as provided in the Schedule

Documentation

15. The documents provided by the parties as being of particular relevance for the determination of the Tribunal included the following:
    - Copy of the Applicant's Lease
    - Copy of the application form
    - Copies of Service Charges as estimated for the years 1st January 2004 to 31st December 2004 and 1st January 2005 to 31st December 2005
    - Correspondence including letters sent by the Applicants to the Respondent and invoices sent by the Respondent to the Applicants for Ground Rent and Service Charges

Matters in Dispute

16. The Applicant applied for a determination as to the reasonableness and payability of the costs incurred by way of Service Charges for the years 1st January 2004 to 31st December 2004 and 1st January 2005 to 31st December 2005.

Hearing

17. The Hearing took place on the 5th June 2006 and was attended by the Applicants. The Respondents did not attend nor were oral or written representations submitted on it's behalf.

Evidence

18. The Applicant's stated that they had moved into the Property in 2004 whereupon they paid an apportionment of services of £259.58 for the period 30th June 2004. They were one of the first residents on the Development. In December 2004 an invoice was produced for £438.07 but without any outline of how the costs were incurred although the invoice was paid in good faith. The Applicant's wrote to the Respondent requesting justification of the service charges but these were unanswered.

19. No maintenance was carried out on the site during 2004. The Applicant described the site as being: "in its infancy, with many builders living on site". A half to a third of the development was still under construction.

20. The situation was much the same in 2005. Any maintenance was sporadic and carried out by the builders that were on site as part of their general work. The windows were cleaned twice but in a very cursory manner by hosing them down and wiping them over. The Applicants were not aware that any other cleaning had taken place. At a residents' meeting in October 2005 it was apparent to the Applicants that they were the only residents to have paid the amounts demanded, so far, in full. Invoices were sent to all residents for 2005 and the Applicants' share was stated to be £790.46. There was no explanation as to how the charge was arrived at notwithstanding repeated requests by the Applicants for a justification of the charges.

21. No receipts have been received for ground rent or service charges paid and no justification has been made of the service charge for 2004 or 2005. It was not until the Application to the Tribunal that a statement of the service charges was received. The Applicants' had obtained a search from Companies House relating to the management company Claremont Court Biggleswade limited and found that the company was dormant until 2006. The Development is now nearing completion and most of the builders have left the site although some are still working.

22. The Service Charge Accounts for 2004 received by the Respondent were considered:

Estate & Access way Costs	**£**
Cleaning	600.00
Gardening	1,600.00
Electricity – Road and Common areas	1,200.00
General repairs	500.00
Electronic Gates Maintenance	400.00
Accountancy	588.00
Bank Charges	120.00
Company secretarial & other	100.00
Management	893.90

Block Costs – Block B	
Contract maintenance	**£**
Cleaning	120.00
Window Cleaning	960.00
Insurance	
Buildings and Public Liability	671.00
General Repairs	
Minor repairs	500.00
Electrical Repairs, light bulbs etc	250.00
Door entry system	100.00
Other	
Electricity - Common parts	100.00
Reserves Fund	300.00
Management Fees	525.00

23. With regard to the Estate and Access way costs the items Cleaning, Gardening, General repairs and Electronic Gates Maintenance were stated as being "under query" and that a credit note had been issued for them but there was no explanation of what this meant. The Applicants stated that no cleaning or gardening appeared to have taken place and there was no evidence adduced such as a contract or invoices in relation these charges. The only gardening that had been done was said to be by the residents. The Applicants stated that the electronic gates had not been fitted until 2005. No evidence was adduced of repair work carried out for the item of General Repairs. No evidence was adduced to justify the items of Accountancy, Bank Charges or Company Secretarial work.

24. With regard to the Block charges the items of Cleaning, Window Cleaning, Minor Repairs and Electrical Repairs, light bulbs etc were stated as being "under query" on the account but again there was no explanation of what this meant. The Applicants stated they understood that the tenants cleaned the common parts and that there was no evidence of any contract or invoices for these services. No evidence of any work having been carried out or invoices for work done in relation to the door entry system was produced.

25. The Service Charge Accounts for year ending 31st December 2005 received by the Respondent were considered:

Estate & Access way Costs	**£**
Cleaning	700.00

Gardening	1,800.00
Electricity – Road and Common areas	1,400.00
General repairs	500.00
Electronic Gates Maintenance	400.00
Accountancy	588.00
Bank Charges	120.00
Company secretarial & other	100.00
Management	981.40

Block Costs – Block B	
Contract maintenance	**£**
Cleaning	120.00
Window Cleaning	650.00
Insurance	
Buildings and Public Liability	1,021.00
General Repairs	
Minor repairs	500.00
Electrical Repairs, light bulbs etc	250.00
Door entry system	100.00
Other	
Electricity - Common parts	100.00
Reserves Fund	300.00
Management Fees	532.00

26. With regard to the Estate and Access way costs the items Cleaning, Gardening, General repairs and Electronic Gates Maintenance were again stated as being "under query" and that a credit note had been issued for them but there was no explanation of what this meant. The Applicants stated that as for 2004 no cleaning or gardening appeared to have taken place and there was no evidence adduced such as a contract or invoices in relation these charges. The Applicants stated that the electronic gates were fitted in 2005 however any maintenance would be under the guarantee and therefore this charge was determined to be unreasonable. No evidence was adduced of repair work carried out for the item of General Repairs. No evidence was adduced to justify the items of Accountancy, Bank Charges or Company Secretarial work.

27 With regard to the Block Costs the items of Cleaning, Window Cleaning, Minor Repairs and Electrical Repairs, light bulbs etc were stated as being "under query" on the account but again there was no explanation of what this meant. As in the year 2004 the Applicants understood that the tenants cleaned the common parts and that there was no evidence of any contract or invoices for these services. No evidence of any work having been carried out or invoices for work done in relation to the door entry system was produced.

28. The Applicants concluded by stating that in respect of the years in issue they considered the management to be poor and that the service charges unreasonable in that any work that had been carried out was by the builders in the course of the construction work.

Determination

29 The Tribunal found that:

- There was no evidence that the Service Charge Accounts presented by the respondent had been certified by a qualified accountant as required by the Fifth Schedule paragraph 15 (c) of the Lease.
- The Accounts as presented are only estimates and yet sufficient time has elapsed since their preparation and the end of the year for actual accounts to have been drawn up, audited and/or certified showing any balancing payment to be made by either Landlord or Tenant.
- When the Applicants purchased the Lease the Development was under construction and that building works continued to be carried out until 2006.
- The management company was dormant until 2006.

30 In the Tribunal's experience it is common practice in respect of new developments for there to be a specified date when interested parties agree that construction work is complete and there is a formal handover by the developer and the landlord to a management company and tenants. Until that date the costs of the Development are the responsibility of the developer and the landlord with the repairs being part of the snagging that follows any major construction work and the maintenance being undertaken to secure the sale of the remaining units. Such a date is necessary to give business efficacy to the contract because until that date the landlord could not provide the appropriate level of services required by the Lease. This said there are likely to be some costs, such as insurance, a proportion of which are properly payable by the tenants who are already in residence with the proportion attributable to units yet to be taken being paid by the landlord.

31 No date is specifically referred in the Lease however the Development was not complete until early 2006 and that the Management Company, Claremont Court (Biggleswade) Limited, was dormant until early 2006. The Tribunal therefore find that since the most recent Service Charge Account in issue is for the year ending 31st December 2005 they are both in relation to a period before the handover to the Management Company as it was still dormant at that time.

32 The Tribunal therefore make the following determination in relation the year ending 31st December 2004 and 31st December 2005:

Estate & Access way Costs

33 Cleaning, Gardening, General repairs are not reasonable and so not payable for either year as being costs that are related to snagging and construction work and therefore the responsibility of the Developer or Respondent and not the Applicant.

34 It was found that the electronic gates were not installed until 2005 and for the year in which they were installed would have been under guarantee therefore the charge for Electronic Gates Maintenance is not reasonable and so not payable for either year.

35 No evidence was adduced as to what precisely the charges of Accountancy, Bank Charges, Company secretarial and Management related to or how they were incurred. It appeared to the Tribunal that these related to the Management Company, which was dormant at the time of these Accounts, and therefore the Tribunal determined that the costs are not reasonable and so not payable for either year.

36. The Respondent adduced no evidence in relation the electricity charge although it was agreed that a cost would have be incurred for such external lighting that was in operation in that year. It was therefore determined that a proportion of 2.78% was reasonable and payable on production of the electricity company's account calculated by an actual meter reading of the meter for external lighting. If the external lighting was not separately metered then the charge is not reasonable and so not payable for either year. It is not possible to distinguish between the consumption for lighting and other uses by the developer.

Block Costs – Block B
Contract maintenance

37. Cleaning and Window Cleaning are not reasonable and therefore not payable for either year being costs that are related to snagging and construction work and therefore the responsibility of the Developer or Respondent and not the Applicant.

Insurance

38. Buildings and Public Liability of £671.00 for 2004 and £1,021.00 for 2005 are a reasonable and payable cost on production by the Respondent of the Insurance Certificate and receipt for the premium.

General Repairs

39. Minor Repairs, Electrical Repairs, Light bulbs etc, Door entry system are not reasonable and therefore not payable for either year being costs that are related to snagging and construction work and therefore the responsibility of the Developer or Respondent and not the Applicant.

Other

40. The Respondent adduced no evidence in relation to the electricity charge for the common parts although it was agreed that a cost would have be incurred for such lighting that was in operation. It was therefore determined that a proportion of 17% was reasonable and payable on production of the electricity company's account calculated by an actual meter reading of the meter for the common parts lighting. If the lighting was not separately metered then it is not a reasonable item. It is not possible to distinguish between the consumption for lighting and other uses by the developer.

41. The Reserves Fund of £300 00 was determined to be a reasonable and payable cost. However pursuant to s 42 Landlord and Tenant Act 1987 such funds must be kept in a designated account and evidence of this should be provided. In addition the Respondent should produce a Schedule of Condition and programme for future works such as redecoration and other maintenance to ensure that a reasonable annual amount is charged each year for the Reserve Fund.

42. The Lease does not make provision as to whether the Management Charge is an Estate Charge or Block Charge. The Tribunal found that the Management Charge is an Estate Charge applying to all common parts and so under the Lease should be apportioned on a basis of 2.78% and not 17% as referred to in the Accounts. The Tribunal found the management of the Development to be poor but accepted that some management had been carried out in relation to the collection of Ground Rent and arranging insurance. The Tribunal determined that the charges of £525.00 for 2004 and £535.00 for 2005 are reasonable and payable.

Summary

43. The Tribunal determine that the following charges are reasonable and payable by the Applicant on production of accounts certificated in accordance with the Lease and the provisions of the Landlord and Tenant Act 1985 and on production of evidence that the reserve and any other funds held to the Tenants credit are kept in a designated account pursuant to the Landlord and Tenant Act 1987:

For the year ending 31st December 2004

Access way Costs
2.78% of the electricity company's account on production of that account calculated by an actual meter reading of the meter for the external lighting

Estate Costs
2.78% of £525.00 being **£14.59** for Management Fees

Block Costs – Block B
17% of £671.00 being **£114.07** on production by the Respondent of the Insurance Certificate and receipt for the premium
17% of the electricity company's account on production of that account calculated by an actual meter reading of the meter for the common parts lighting
17% of £300.00 being **£51.00** for the Reserves Fund

For the year ending 31st December 2005

Access way Costs
2.78% of the electricity company's account on production of that account calculated by an actual meter reading of the meter for the external lighting

Estate Costs
2.78% of £535.00 being **£14.87** for Management Fees

Block Costs – Block B
17% of £1,021.00 **being £173.57** on production by the Respondent of the Insurance Certificate and receipt for the premium
17% of the electricity company's account on production of that account calculated by an actual meter reading of the meter for the common parts lighting
17% of £300.00 being **£51.00** for the Reserves Fund

Application under 20C Landlord and Tenant Act 1985

44 An application was made by the Applicant for the limitation of service charge arising from the landlord's costs of proceedings. The Tribunal found that the Service Charge Accounts were not produced until the Application and that the Respondent had made no attempt to answer the issues raised by the Applicant, which the Tribunal has found to be justified. Also the Respondent did not comply with the Directions of the Tribunal or adduce evidence other than the estimated Service Charge Accounts for the year ending 31st December 2004 and 2005 or appear at the Hearing. In addition the Tribunal found predominantly in favour of the Applicant in its determinations. If the Respondent had answered the Applicants' letters and/or complied with the Directions the Tribunal were of the opinion that the proceedings might have been avoided.

45. The Tribunal therefore make an Order under section 20C of the 1985 Act that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

46. The Tribunal for the reasons stated in paragraph 44 above requires the Respondent to reimburse the Applicant's fees of £250.00 by virtue of paragraph 9 Leasehold Valuation Tribunals (Fees) (England) Regulation 2003.

JR Morris Chairman