

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/24UJ/LSC/2007/0064

Application under Section 27A of the Landlord and Tenant Act 1985

Re: Flat 22, Charles Ley Court, Denny Close, Fawley, Southampton

Applicants	Mr G.W.Porteus & Mrs C.A.Evered-Porteus	
Respondent:	Housing 21	
Date of Application	6 th July 2007	
Date of Inspection	20 th November 2007	
Date of Hearing	20 th November 2007	
Venue	Jubilee Hall, Fawley	
Appearances for the Applicants	The Applicants in person	
Appearances for the Respondent	Mr Simon Strelitz of Counsel; Mr J Newstead (Regional Services Manager), Mr Harkin (Housing Manager), Mrs S Harvey (Court Manager)	
Members of the Leasehold Valuation Tribunal:		
	M J Greenleaves P D Turner-Powell FRICS Mr J Mills	Lawyer Chairman Valuer Member Lay Member
Date of Tribunal's Decision:	2 nd December 2007	

Decision

The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that the following items of service charge relating to Charles Ley Court, Denny Close, Fawley, Southampton (the Court) are reasonable :

1. Wheelie Bins. Of the cost incurred by the Respondent of £1,518.10 inc VAT the sum which it would be reasonable to incur would instead be the sum of £200 and that sum only is chargeable to service charge in respect of waste disposal.
2. Manager's Office – enlargement. By consent, no charge is chargeable to service charge for this item.
3. Move of Manager's Office to Guest Room. By consent, no charge is chargeable to service charge for this item.
4. Apportionment of Service Charge between the residential units. By consent, the conversion of one of the 31 residential units into a Guest Room leaving 30 residential letting units does not change the apportionment of service charge which therefore remains at 1/31st part each
5. Carpets, curtains and armchairs. The sums expended on these items is reasonable and chargeable to service charge on an asset usage charge basis
6. Gardening. The costs incurred by the Respondent for gardening by Allen Garden Services for the year commencing 1st April 2007 of £4,840 are reasonable and recoverable as service charge.
7. Window Cleaner. The costs incurred by the Respondent for window cleaning by Progress Cleaning Service for the year commencing 1st April 2007 of £1,974 inc VAT are reasonable and recoverable as service charge.
8. The Tribunal makes an Order under Section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs incurred in connection with this application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge.

Reasons

Introduction

9. This is an application made by the Applicants under Section 27A of the Landlord and Tenant Act 1985 to determine, in respect of the Court, whether certain service charges are reasonable.
10. On 24th August 2007 the Tribunal held a pre-trial review to clarify the issues to be determined by the Tribunal. That hearing was attended by the Applicants and Mr Strelitz for the Respondent. Although the years in question were not clear, the Tribunal determined that the issues to be decided were as follows:
 - a. Wheelie Bins. The date of purchase, their cost and whether that cost was reasonably incurred and payable as service charge.
 - b. Manager's office. The dates between which the office was enlarged, what work was done and the cost of carrying out that work; and whether that cost was reasonably incurred and payable as service charge.
 - c. Move of the office to the Guest Room. The date of the move, the reason for the move and if any costs resulted from that move; and whether such cost was reasonably incurred and payable as service charge.
 - d. Apportionment of service charge. The basis on which the service charges had been apportioned in 31 parts; whether that apportionment changed as a result of the move of the office to the Guest Room and, if so, how.

- e. Purchase of carpets, curtains and about 12 armchairs "about 4 years ago". The date of purchase of each such item and the reason(s) for each purchase; where such expenditure is reflected in the accounts; and whether that cost is reasonably incurred and payable as service charge.
- f. Gardener. The cost of the present gardener as against the cost of the previous gardener; and whether that cost is reasonably incurred and payable as service charge.
- g. Window cleaner. The cost of the present window cleaner as against the cost of the previous window cleaner; and whether that cost is reasonably incurred and payable as service charge.

Inspection

- 11. On 20th November 2007 the Tribunal inspected the premises in the presence of Mr. Porteus (the Applicant), and Messrs Newstead and Harkin, Mrs Harvey and Mr Strelitz for the Respondent.
- 12. The Court is laid out in lawns flower beds and access roads,. The Court is laid out in three blocks comprising 30 letting units, a Guest Room and Manager's office and Flat. The room formerly used as the Manager's office is used for scooter storage. There is a communal lounge. To the rear is a waste disposal area.
- 13. The Court is in good condition generally.

Hearing

- 14. The hearing of the matter took place on 20th November 2007.
- 15. The Respondent conceded that the costs relating to enlargement of the Manager's Office and the move of that office to the former Guest Room were capital items and were not being charged to service charge
- 16. The Respondent also confirmed that the loss of one letting unit by use of one as a replacement Guest Room did not result in any change in the apportionment of service charges for the future: each letting unit would continue to pay 1/31st part.
- 17. The Tribunal accordingly made orders by consent in respect of those items.
- 18. The issues remaining to be determined by the Tribunal were whether the other services charges listed in the decision above were reasonably incurred and were of a reasonable sum.
- 19. The Tribunal heard evidence from the parties, their submissions and considered all the case papers and further documents submitted. The Tribunal had a copy of the Applicants' tenancy agreement dated 13th February 1998.
- 20. So far as material to the issues, the agreement provides in terms:
 - a. Contributions towards service charge to be paid weekly
 - b. Service charges to be split equally between all tenancies
 - c. The Respondent to provide services (chargeable to service charge) including dustbins/refuse containers, cleaning, window cleaning, gardening, general maintenance, communal facilities, guest room, the services of the house manager

Tribunal's findings on specific items of service charge

- 21. The issues arising on and the findings of the Tribunal (taking into account evidence and also using its own expert knowledge and experience) on each item were as follows:
 - a. **Wheelie Bins.**
 - i. Submissions and evidence.

1. The Applicants said that the bins had been foisted on them; they had been led to understand the cost would be £600, then £1,200. They said the actual cost was too much and they thought only one bin was to be purchased. They had found wheelie bins on the internet available to purchase for £235 plus VAT. There used to be 18 dustbins but bins began to disappear over a period of time and some rubbish was piled up in a corner and all this constituted a ploy to necessitate purchase of wheelie bins. Mrs Porteus said the wheelie bins are too high to use.
 2. The Respondent said the actual wheelie bins are different – they have a front flap to enable refuse collectors to remove bagged rubbish from them (the Council does not take these bins to the refuse vehicle). The reduction in dustbins resulted from their wearing out – there was no ploy as the Applicants suggested. The Respondent had received a letter from the New Forest District Council dated 5th July 2006 concerning infestation, threatening action and suggesting provision of lidded pest proof bins. Two additional recycling bins seen at the inspection had been provided by the Council after purchase of the wheelie bins. They had had to take urgent action to remedy the problem; they had investigated leasing, the annual cost of which including collection costs would have been very similar to their purchase. These bins had been sourced from a nominated supplier of Housing 21 so they had not gone out to tender bearing in mind also the urgency of the matter. They were purchased in July 2006 for £1,518.10. There would not have been enough room to provide a sufficient number of dustbins or a covered store. They thought there had been only 12 dustbins at the time of the purchase of the wheelie bins.
- ii. Tribunal's findings. The Tribunal was satisfied that proper provision had to be made for waste disposal and that purchase of appropriate bins was necessary. It had inspected the storage area and noted that there are 4 wheelie bins (including the recycling bins) and 3 dustbins available for use by residents who could not manage to use the wheelie bins.
 - iii. The Tribunal noted that the wheelie bins purchased were more designed for the assistance of refuse collectors rather than use by residents in view of the height of the bins, the weight of the lids and that those lids had to be opened to enable the front flap to be used. Their difficulty in use was recognised by the Respondent leaving dustbins on site for use by those who could not manage the wheelie bins.
 - iv. The Court has a weekly refuse collection and the Tribunal considered that when the decision was made to buy wheelie bins (when there were not expected to be recycle bins too) there would have been adequate room to provide sufficient dustbins instead which would have given sufficient capacity without causing the dumping of refuse as found by the Council.
 - v. The Tribunal considered that it would have been reasonable to have dealt with the problem by purchase of additional dustbins and this could have been achieved for £200. It therefore found the cost of the wheelie bins was not reasonably incurred, but that in the circumstances a reasonable contribution to their cost by service charge would be £200.

b. Carpets, curtains and chairs

i. Submissions and evidence.

1. The Applicants said

- a. the carpets, other than that on the ground floor of Block 3, only needed a good clean and that would have been sufficient for the foreseeable future.
- b. the curtains in the communal lounge had nothing wrong with them; they could have been washed; it was as if the Respondent just wanted a clean sweep – with chairs too.
- c. The chairs looked a bit tatty but were still serviceable

2. The Respondents said:

- a. Each of these items had been between 7 and 10 years old; most of the residents on ballot had been in favour of replacement; most of the carpets in all blocks were fraying and needing sticking down so there was a health and safety issue; they were also very dirty. All these items were replaced in 2007.
 - b. The curtains could not simply be cleaned – they would have to be fireproofed at some cost as they were in a public place. New curtains were purchased in April 2007 for £1,202.10
 - c. The chairs were old and heavy to move. The new ones are charge as asset usage charge in the service charge
- ii. Tribunal's findings. The Tribunal was satisfied on the balance of the evidence that each of these items would have needed replacement and that payment for them as asset usage charge as shown in the accounts was reasonable.

c. Gardening

i. Submissions and evidence.

- 1. The Applicants said that the present gardener was very good but had been foisted on them; that the previous gardener had not stuck to his contract. They considered the new gardener was significantly more expensive bearing in mind their incomes.
- 2. The Respondent said there had been problems with the previous gardener who was not doing a good job. He had not had a contract and was uninsured. They had carried out a tendering process: the only other tender received had been significantly higher (£8,272.50) and they had decided to accept that of Allens Gardening Services for £4,840. They had had to put the gardens back into shape but now the cost was reducing. Mrs Harvey said she did not need to get 3 quotes: they did not have time to do so but had complied with Housing 21's procedures. They knew also that Allens were providing a good service at another Court at a similar price.

- ii. Tribunal's findings. The Tribunal noted the extent and nature of the Court grounds and the standard to which they were being maintained. The Tribunal noted the increased cost over the previous gardener but was satisfied he had not provided an adequate service and that, albeit that the cost of Allens is higher, the work is being done to a reasonable standard and the cost is reasonable.

d. Window cleaning

i. Submissions and evidence.

- 1. The Applicants said that the new cleaner was quick and inefficient: that they use a pump and hose to reach the upper windows; the windows are not properly cleaned but they had not complained to the

Manager – that would be a waste of time. The charge is too expensive.

2. The Respondent said that while Progress Cleaning Services were not the cheapest they provided a good service even though a ladder was not used; that their charge is reasonable. The previous window cleaner had not worked to contract and was not insured.
- ii. Tribunal's findings. The Tribunal found that for the number of windows involved as well as the glass screens on the staircases, the cost was reasonable: the fact that a charge might not be the cheapest did not necessarily mean that it was unreasonable.

Limitation of Costs.

22. The Applicants sought an Order preventing the Respondent's costs of this application being recovered from the Applicants by way of service charge.
23. The Tribunal found that there was no provision in the Applicants' tenancy agreement which was sufficiently widely drawn to enable the Respondent to recover their costs in connection with the proceedings from the Applicants. In case it was wrong about that, the Tribunal made an Order under Section 20C of the Landlord and Tenant Act 1985.
24. The Tribunal made its decisions accordingly.

Dated 2nd December 2007



A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor