

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

CASE No: CHI/24UL/LSC/2007/0023

BETWEEN:-

MISS ANGELA KENNEDY & OTHER LESSEES

Applicants

AND

RETIREMENT LEASE HOUSING ASSOCIATION

Respondent

PREMISES: Eggars Court
St George's Road East
Aldershot
Hampshire
GU12 4LN ("the Premises")

HEARING: 6th July 2007

TRIBUNAL: Mr D Agnew LLB, LLM (Chairman)
Mr D Lintott FRICS
Mrs M Phillips J.P.

DETERMINATION AND REASONS

1. Background

1.1 On 28th March 2007 Miss Angela Kennedy made an application to the Tribunal on behalf of herself and 24 other lessees of Eggars Court, St George's Road East, Aldershot ("the Premises") under Section 27A of the Landlord & Tenant Act 1985 and under Section 20C of that Act seeking a determination as to the reasonableness of certain service charges in respect of the Premises and an order that the costs of the Tribunal procedure should not be added to future service charge demands.

1.2 The full list of the Applicants is as follows:-

Flat number	2	Nell Grafton
	3	Kitty Watkin
	5	Ruth Harmsworth
	6	Joyce Wadey
	7	Richard Deane
	8	Lilliana Oliveri

9	Connie Staff
10	Dorothy Tucker
12	Jean Blackwood
13	Joyce Stockwell
14	Florence Darling
15	Rose Stelling
16	Keith Williams
19	Iris Hawes
20	Ruth Mason
21	Frank Novak
22	Margaret Collier
23	Doug & Rose Mackin
24	Angela Kennedy
25	Freda Monk
26	Joan Spindler
27	Joan Stevens
28	Margaret Coole
31	Lillian Boulden
32	Margaret Turner

1.3 Although the application suggested that service charges for the years 2005/6 and 2006/7 were to be the subject of the Tribunal's determination and also the years 2007/8 and 2008/9 it was made clear by the Applicant at the outset of the hearing that the sole issue for the Tribunal to determine was the element of the service charge for 2006/7 which related to the contributions sought for the "Future Maintenance Fund". The Applicants also accepted at the outset of the hearing that the Tribunal could make no determination as to the budgets for 2007/8 or 2008/9 as these had not yet been set.

2. The Premises

2.1 The Tribunal inspected the Premises immediately prior to the hearing on 6th July 2007. They comprise 31 flats (one of which is the resident Scheme Manager's flat) in a quiet side road near to the centre of Aldershot. Two buildings comprise Eggar Court: one considerably larger than the other. They are situated in pleasant and well maintained gardens and accessed by a pavier driveway. There is a parking area to the front and a large parking area to the rear of the building. The two two-storey blocks were constructed in 1987 and are in good condition. Originally the windows were single glazed wooden units but approximately one-half have been replaced by upvc double glazed units. Those that have not yet been replaced seemed to be in good condition and had recently been painted. Some of the plastic guttering would shortly be in need of replacement. The buildings were of brick construction, tile hung at first floor level and with tiled roofs. The roofs appeared to be in good condition.

2.2 Inside, the Tribunal found that the common parts were clean and well decorated and lit. The carpet was in good condition (it having been renewed in 2005). There was a residents' lounge containing a small stainless steel sink in a beverage preparation area. A metal double-glazed sliding door led out to a paved and garden area. The Tribunal inspected the interior of one flat which still had its original kitchen. This appeared to be well equipped with a range of four base units, wall units, a good sized work top and a stainless steel sink unit. Although this kitchen was twenty years old and slightly dated it was perfectly serviceable and in good condition. The bathroom comprised a white suite with, again, slightly dated components but perfectly serviceable and in good condition. The Tribunal noted the storage heaters and electric heaters in the flat.

3. The Lease

3.1 In Clause (2) of the Recitals it is stated that the objects of the Landlord are to provide housing designed or adapted for active elderly retired persons. The demise is for 99 years. Every time a flat is sold 0.5% of the sale price for each year of occupation is paid to the Landlord who applies this sum to the "sinking fund" for the "cost or anticipated cost of renewal replacement or improvement of any part of the structure of the Property or its services and other items of capital expenditure as are now covered by the Management Service Charge" (Clause 6.2 (iii) of the lease).

3.2 By Clause 3.1 of the lease the Landlord covenants

"(a) During the said term to keep in good and substantial repair and decorative order the demised premises (except internal decorative repair thereto) and the interior and exterior of the Retained Parts and all drains and water pipes and sanitary and water apparatus serving the demised premises and the common entrance halls staircases passenger lifts (if any) alarm system (if any) and all other services provided by RLHA and all apparatus equipment plant and machinery serving the said services and all landings passages drives paths and ways"

3.3 By Clause 2.1 of the lease the lessee covenants to pay the Service Charge in accordance with the provisions of the Third Schedule.

3.4 By the Third Schedule "the estimated service provision in respect of any Account Year Shall be computed as follows:-

(1) The estimated Service Provision shall consist of the sum of:-

(a) the expenditure estimated by the RLHA as likely to be incurred in the Account Year by RLHA upon the matters specified in Clause 2(2) of this schedule plus the amount (if any) which RLHA intends to spend from the reserve hereinafter mentioned in the Account Year.

(b) an appropriate amount as a reserve for or towards such of the matters specified in Clause 2(2) as are likely to give rise to expenditure after such Account Year being matters which are likely to arise either only once during the then unexpired term of this lease or at intervals of more than one year including (without prejudice to the generality of the foregoing) the maintenance decoration and repair of the exterior of the Property and of the Retained Parts and the replacement of furniture plant and all other equipment (the said amount to be computed in such a manner as to ensure as far as is reasonably foreseeable that the Management Service Charge shall not fluctuate unduly from year to year).

(2) the expenditure to be included in the Service Provision shall comprise all expenditure of RLHA in connection with the repair management maintenance and provision of services for the property and shall include (without prejudice to the generality of the foregoing):-

(a) the cost of the warden's salary and the provision of accommodation for the warden

(b) the cost and expense of the decoration and maintenance and repair of the exterior of the demised premises and the Retained Parts of the property

(c) the cost and expense of the maintenance repair and cultivation of the paths drives garden and lawns of the Retained Parts

(d) the cost and expense of the maintenance and repair of the interior of the demised premises and the other units of accommodation (other than decorative repair) and of the Retained Parts of the Property including the mechanical and other services and the communal hot water system (if any)

4. The Law

4.1 Section 27A of the Landlord & Tenant Act 1985 ("the 1985 Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

- (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
- (e) the manner in which it is payable.

- 4.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.
5. The Applicants' case
- 5.1 The Applicants were solely concerned with the amount they had been requested to pay into the Future Maintenance Fund (FMF) for the year 2006/7 and the amount they were likely to be asked to pay into this fund in the future. They realised that there would have to be an increase in the amount paid in previous years but the amount that the Landlord had requested in that regard for 2006/7 was a considerable increase on the previous years' requirement. This was partly due to the fact that too little had been demanded previously which, they said, amounted to mismanagement, and they had no confidence that the forecast of future expenditure was appropriate or justified the amounts they were being requested to put aside in the future Maintenance Fund.
- 5.2 More specifically the Applicants showed that from 1999/2000 to 2002/3 £6,000 per annum had been required to be paid into the FMF. In 2003/4 it increased to £8,294 but then it reduced again in 2004/5 to £5,000. The following year it increased to £7,500 but in the budget for 2006/7 it was proposed to increase the amount to be paid into the fund to £31,000. After protests from the lessees this was reduced to £29,072, still a very significant increase. This, they said, was contrary to the wording of the lease which states that the amount is to be computed in such a manner so as to ensure as far as is reasonably foreseeable that the management service charge shall not fluctuate unduly from year to year."
- 5.3 The reason given for the dramatic increase in the FMF charge was said to be due to the fact that in 2005 the Landlord carried out a Stock Condition Survey and a report was prepared by a firm of Chartered Surveyors for the whole of the landlord's portfolio. The Applicants had asked the Landlord for an explanation as to how some of the figures contained in the report had been arrived at and they did not feel as though they had had an adequate explanation. Various meetings attended by representatives of the Landlord and the lessees had failed to satisfy them. Certain options were put to the lessees to reduce or defer the collection of the charge for the FMF but the lessees had not taken up any of the proposals, some of which would have required variations to the lease. Instead, encouraged by the Landlord, the lessees decided to apply to the Tribunal for a determination as to what was a reasonable contribution to pay to the FMF for 2006/7.
- 5.4 The Applicants pointed out that some of the residents had replaced their windows with double glazed upvc units not realising that this was a Landlord's responsibility and others (3 in all) had replaced their kitchens. One of the suggestions of the Landlord for reducing the call upon the FMF was for all the lessees to agree that they would be responsible for replacing their own kitchens and bathrooms when they wished to do so or a replacement became necessary. This would relieve the FMF of a considerable expenditure but it would require all the lessees to agree.

- 5.5 The Applicants were also annoyed at what they took to be an attempt by the Landlord to prevent their solicitor attending a meeting and representing them.
- 5.6 In his evidence to the Tribunal Mr Darling, the son of the lessee of Flat 14, pointed out that the request for such a large increase in the payment into the FMF for 2006/7 had been brought about in part by a shortfall in funds in 2005 but mainly by the enormous increase in predicted future costs as set out in the 2005 Condition Report. These predicted costs were much higher than the 15 year predicted costs contained in a similar survey carried out in 2000. All the reserves in the FMF were exhausted in 2005 because insufficient had been budgeted for. Had more been contributed to the FMF in previous years there would not have to be such a large increase now. Instead of a contribution of £5,000 to the FMF in that year it should have been more like £11,000.
- 5.7 The Applicants pointed out that they were all retired and on "fixed incomes." Such an increase in the service charge (40% higher than the previous year) was not something that they could all withstand and certainly not easily.
- 5.8 Mr Darling pointed out that although 3% inflation had been added to costs, inflation had not been taken into account in the contribution to the sinking fund from flat sales, thus increasing the difference between the cost and the funds available to meet those costs.

6. The Respondent's case

- 6.1 Ms Rose for the Respondent stated that in 2005 a stock condition survey was commissioned which was to give a guide to future expenditure required at Eggars Court (and all the properties in the Landlord's portfolio) over the next 15 years. This was to be prepared in a standard format which, it was said, complies with the Association of Retirement Housing Managers (ARHM) code of practice.
- 6.2 When this report was received it was realised that in order to cover the expected expenditure there would need to be a considerable increase in the contributions to the FMF in year 2006/7 and subsequent years. They then began a series of meetings to explain the situation to the lessees. As a result of those meetings they revisited the survey and certain items were deleted. This resulted in the requirement for an injection into the FMF being reduced for 2006/7 from £31,000 to £29,072. This would mean leaseholders of one bedroom flats paying a service charge of £2,048.44 and for a two bedroom flat of £2,921.65. In the previous year the service charge was £1,494.27 for a one bedroom and £2,094.90 for a two bedroom flat.
- 6.3 Ms Rose explained that the reason for this increase was as follows:-
- a) First, the reserves in the FMF and sinking fund were depleted in 2005 due to expenditure in external decorations, carpeting for passageways and some kitchen improvements. In 2004 the total reserves were £88,525. In 2005 they had reduced to £52,971 of which only £56 was in the FMF (the balance being made up as to £52,043 in the sinking fund and £872 in the provision for furniture and equipment. In 2006 the total figure had reduced slightly further to £50,588.

b) The stock survey report of 2005 showed a far greater need for funds to repair and maintain the Premises over the next 15 years compared with the survey carried out in 2000. This was for a number of reasons:

First, a figure for inflation at 3% was included in the later survey but not in the earlier one; secondly, there has been an increase in building costs generally; thirdly, the cost of professional fees has been included in the 2005 survey but they were not in the 2000 survey and finally the 2005 survey took on board to a much greater extent the Landlord's obligation at Eggars Court to replace bathrooms and kitchens than had been appreciated in the 2000 survey.

6.4 Ms Rose stated that the Landlord was concerned that they were proposing a large increase over the previous year and that was why it had called meetings to forewarn of the increase and to discuss how it might be lessened. Various proposals had been put forward to the lessees but they had not as yet decided to take up any of the suggestions. They did not like having to ask for an increase from the residents but they would be failing in their duty if they did not seek to cover this anticipated cost. As it is, they have discounted the figure advised by the surveyors in the report by 1/3rd in the expectation that the whole of the predicted cost would not be required to be expended. This comes with a warning that should the costs as predicted be realised the shortfall would have to be made up by the lessees.

6.5 Ms Rose called Mr Paul Gatland, surveyor with Moore Salmon Associates to give evidence as to how the survey of 2005 was compiled. He said that he had visited Eggars Court and had entered a number of flats (this latter point was disputed by the residents in attendance at the hearing). He said that the predicted costs were based on current day prices and the life expectancy of various items were taken from the industry standard. Inflation at 3% had been added to the figures. Greater provision has been made for kitchen replacement in the 2005 survey compared with that in 2000. He said he had taken into account the number of doors and windows that had been replaced by upvc units. He said that the budget would be revised in 5 years time and it might be adjusted down. Window replacement was based on an average price of £500 per window. The resulting figure was that £1,045,000 would be required to be spent on Eggars Court over the next 15 years. After discussion with the Landlord this was reduced to £750,000 by certain items being removed from the predicted expenditure. When divided by 15 this produced a requirement of £43,608 to be paid into the FMF each year on top of contributions into the sinking fund from sales of flats. The Landlord had reduced this requirement by 1/3rd leaving a contribution of £29,000.

7. The determination

7.1 The Tribunal considered that the stock condition survey carried out every five years was a useful exercise for the Respondent to undertake. It was necessary, however, at the conclusion of that exercise, to step back and look at the resultant figures and apply a practical and common-sense overview. In a sense, this is what the Landlord had done by applying a 1/3rd formula to the surveyors' figures. There was, however, nothing magical or scientific about the 1/3rd deduction.

- 7.2 The Tribunal had to decide what was a reasonable figure for the Applicants to pay into the FMF for 2006/7. The level of previous requirements in that regard was relevant but if it could have been demonstrated that, for example, the roof was at the end of its life and would definitely need to be replaced within the next 3 – 5 years then a serious uplift in the level of contribution to the Fund would have been reasonable, even though the increase was steep. In this case, however, Eggars Court is in good condition. There are no signs of any problems with the roof or the main structure. The driveway and paths were in sound condition. Over the coming years some repairs might be required but complete replacement is unlikely to be necessary. About one-half of the windows have already been replaced by double glazed upvc units. Thus, the cost of external painting is going to reduce drastically if the remaining windows are replaced over time. All that will need to be painted then will be barge boards and soffits.
- 7.3 Although the kitchens and bathrooms are perfectly serviceable it may be that kitchens in particular may need attention over the course of the next 15 years, by which time those that have not been replaced by lessees themselves will be 35 years old. The cost of replacing kitchens was estimated by the surveyors at £5,000 each at to-day's prices. This appeared to be on the high side, particularly if bulk purchasing could be employed. There is, however, much to be said for the lessees agreeing en bloc to take on responsibility for repair, maintenance and replacement of their own kitchens and bathrooms. This would considerably relieve the FMF of the cost and lessees could choose to replace or not depending upon whether they could afford to do so and how well they have looked after the fittings and fixtures. They could also choose the level of expenditure involved and when they incurred it. That is, however, a matter for the lessees as a whole and is not a matter for the Tribunal.
- 7.4 What the Tribunal is not permitted to take into account is the personal financial circumstances of the Applicants. If a certain level of service charge is reasonable then that is what the Tribunal should determine and it cannot be swayed by whether or not any particular lessee or the lessees in general can or cannot afford to pay it.
- 7.5 The clash of personalities that seems to have arisen between Ms Rose and the Applicants' solicitor is unfortunate but would appear to have been the result of misunderstandings rather than deliberate action. The Tribunal has not placed any weight on it in coming to its decision. If the solicitor was not permitted to attend a meeting there was nothing to have prevented the solicitor from representing the Applicants at the hearing should she have wished and been instructed to attend. In the event, the Applicants' case was ably presented by Mr Darling and Miss Kennedy and the Applicants were therefore not disadvantaged in that respect.
- 7.6 In deciding what a reasonable provision for the FMF for 2006/7 is, the Tribunal considered that Mr Darling's analysis of what should have happened in 2004/5 was a good starting point. At that time there were reserves of £87,000. A reasonable forecast of expenditure over the next 5 years was £112,000. It would have been prudent to provide for a reserve of, say, £60,000 at the end of the period. Thus, the contribution in that year should have been:-

	£
Expenditure	112,000.00
Less opening reserves	87,000.00

	25,000.00
Pius final reserve	60,000.00

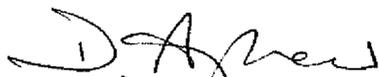
	85,000.00
Less sinking fund contributions	30,000.00

	55,000.00

- 7.7 The estimated expenditure of £112,000 over the next five years in 2004/05 was, however, based on the 2000 survey. Undoubtedly this needed to be increased to account for inflation and professional fees involved in the supervision of major works. Thus, the £11,000 per annum referred to in paragraph 7.6 above needs to be increased to make up for the shortfall at the start of 2006/07 and those additional costs at least.
- 7.8 Doing the best it could on the information available and weighing up all the circumstances, the Tribunal decided that for 2006/07 a contribution to the FMF by the lessees as part of their service charge for that year should be £15,000 and not the £29,000 proposed by the Respondent. This would mean that, with the addition of the other service charge items the service charge for a one bedroom flat for that year would be £1,706.00 and for a two bedroom flat £2,407.00.
- 7.9 The Tribunal wishes to make two points clear. First, this decision is peculiar to Eggars Court, Aldershot and is not applicable to any other property within the Respondent's portfolio. This is because the particular circumstances of this case are the condition of this particular building. Furthermore, the decision of this Tribunal is not binding on any other Tribunal. Secondly, the Tribunal could be proved to be wrong and £15,000 may turn out to be an inadequate provision in the event. If this is the case then the Applicants must realise that it is they who must make up the difference between what has been set aside in the FMF and the sinking fund and the actual cost of repairs and maintenance. The Applicants' safeguard is the Sec 20 Landlord and Tenant Act 1985 consultation procedure for any expenditure which would result in a payment of more than £250 per flat (in actual fact this Landlord voluntarily uses the Sec 20 procedure for expenditure of less than £250). The lessees will be able to participate fully in that consultation procedure when it arises.
- 7.10 With regard to the application under Section 20C of the Landlord & Tenant Act 1985 Ms Rou confirmed that the landlord had no intention of adding the costs of the Tribunal procedure to a

future service charge account and therefore there was no need for the Tribunal to make an order under that Section.

Dated this 16th day of July 2007

A handwritten signature in black ink, appearing to read 'D. Agnew', written over a horizontal dotted line.

D Agnew LLB, LLM Chairman