

**SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL**

**Case No: CHI/43UG/LIS/2007/0001**

**IN THE MATTER OF SECTION 27A OF THE LANDLORD AND TENANT ACT 1985**

**BETWEEN:**

**MRS A. PEGG**

**Applicant/Lessee**

**- and -**

**RETIREMENT CARE GROUP LIMITED**

**Respondent/Landlord**

**PREMISES:** Flat 20  
The Lodge  
St Jude's Close  
Englefield Green  
Surrey  
TW20 ODN ("the Premises")

**TRIBUNAL:** MR D AGNEW LLB, LLM (Chairman)  
MR R WILKEY FRICS, FICPD  
MS J PLAYFAIR

**HEARING:** 4<sup>th</sup> SEPTEMBER 2007

**REASONS**

**1. Background**

- 1.1 On 31<sup>st</sup> October 2006 the Applicant submitted an application under Section 27A of the Landlord & Tenant Act 1985 ("the Act") for the Tribunal to consider the reasonableness of service charges in respect of the Premises for the service charge years 2003/4, 2004/5 and 2005/6. When none of the Tribunal's directions had been complied with the Applicant was advised by the Tribunal office that her application would be treated as closed.
- 1.2 The Applicant subsequently contacted the Tribunal office by telephone to explain that she had been away from home and wanted her application to continue. She was advised that she would need to complete a fresh application form. She did not want to do this and persuaded the Tribunal office to treat her original application form as the form she wished the Tribunal to use.

1.3 The Applicant also wrote on two occasions to the Tribunal office indicating that she now wished her application to relate only to the year 2003/4 but adding that the outcome of the determination in respect of that year would be replicated automatically in the subsequent years. The Tribunal office did not comment upon this assertion. The Respondent submitted evidence on the basis that all the years from 2003 to 2006 were in issue and the Tribunal's hearing bundle contained all the evidence on both sides for all those years.

## **2. Inspection**

- 2.1 The Tribunal inspected the common parts of The Lodge immediately prior to the hearing on 4<sup>th</sup> September 2007. The Lodge was formerly a hotel to which new wings had been added on either side of the original building and connected to it, in the early 1990's. The new development had been carried out very sympathetically and blends in well with the original building. The older part retains original features such as an ornate fireplace in the entrance hall and a sweeping staircase from the hall to the first floor where there is a stained glass roof light depicting a coat of arms. The newer wings have a similar architectural style and again have roof lights in the communal hallways. The building is two storeys high and although intended to be occupied by older people (the lease restricts occupation to those over a certain age) there are no lifts. There are twenty-four flats in all.
- 2.2 As far as this case is concerned the most important areas are the communal entrance hallways, staircases and landings. There are four entrances, including the main front entrance to the original building. These are bright and airy, and on the day of inspection, clean and tidy. As far as the carpet in the common parts serving flat 20 are concerned the Tribunal noticed that there was some spot staining to the carpet and more extensive soiling of the carpet just inside the front door of the block adjacent to the front mat, presumably as a result of people entering the building with wet or dirty feet and not cleaning them well enough on the mat provided. This carpet was also tired and slightly worn but it was not frayed or torn and was secured to the floor and not rumped up at all. It was slightly faded.
- 2.3 There was a greater area of carpet on the floor of the original part of the Premises. This was in reasonable condition, slightly better than that in the block containing flat 20 but nevertheless spot-stained in places. The carpeting in the other two newer blocks was in a similar condition to that in the original part of the building but the colour on one of the carpets seemed to have faded more than the other carpets.
- 2.4 The Tribunal saw some evidence that marks on the emulsion paintwork of the plaster to the walls in flat 20's block had been touched up.

2.5 The whole of the premises were set in well-kept gated grounds with plenty of parking spaces and there were some garages. The whole development gave the impression of quality and of being well cared for.

### **3. The Lease**

3.1 By Clause 3 of the lease dated the 14<sup>th</sup> July 1993 made between Lovell Homes Limited (1) Village Residential PLC (2) and Hanorah Mary Kinley (3) the Tenant covenants to "pay to the Landlord:

3.1 The Service Charge as a contribution towards the costs and expenses of running the Estate and the maintenance thereof and the other matters more particularly specified in the Third Schedule in accordance with the provisions of the said Schedule."

3.2 By the Third Schedule to the lease the Tenant is required "to pay to the Landlord quarterly ..... a Service Charge ..... being the proper proportion of the reasonable cost ..... to the Landlord of providing supplying maintaining and making provision for the supply of the services and other matters specified in paragraph 2 of this Schedule together with a fee in respect of the cost of management which shall not exceed the maximum amount which Housing Associations are permitted by the Department of the Environment ..... to charge." There follows details of the method by which the Landlord can claim contributions from the Tenants.

3.3 By paragraph 2 of the Third Schedule the services referred to in the last paragraph above are set out as follows:-

"1. The carrying out by the Landlord of its obligations in Clauses 5.1(a) maintenance repair decoration and renewal of the Main Structure and the Common Parts; maintenance of services

5.1(b) cleaning and lighting and heating (where applicable) of the Common Parts of the Estate; cleaning of outside windows; maintaining driveways forecourts gardens and grounds

5.1(c) maintenance of alarm system

5.2 maintenance repair decoration and renewal of the 9 garages on the Development."

### **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 hearing**

5.1 This took place at The Hythe Centre, Thorpe Road, Staines on 4<sup>th</sup> September 2007. Present were the Applicant, Mrs Pegg and for the Respondent Ms Sandra Barton, Legal Services Manager employed by Peverel Management Services Limited who had recently taken over management of The Lodge and Ms Victoria Brown Estate Manager with Peverel Management Services Limited and previously employed by the Respondent.

5.2 The Applicant's case

5.2.1 The Applicant's complaint concerned the state of the carpet in the entrance hall, staircase and landing leading to her flat and the need for the walls of the communal hallway to be decorated. She said that the carpet was in poor condition. It had been laid when the new wings were built. Her aunt's flat which she had inherited had been the show flat and there had therefore been heavy traffic of feet over this carpet when prospective buyers were being shown round. She said that it was worn and dirty and that she had complained to the Landlord about it as early as 2002. She pointed out that there were funds available in the Sinking Fund so that the Respondent could have replaced the carpet had it chosen to do so. Other calls on the Sinking Fund had not come to light until 2005 or 2006 and these could not therefore be a proper excuse for the Landlord's failure in this respect which she said amounted to negligence. She claimed that the carpet was slippery when wet and potentially dangerous. She noted that the new managing agents had accepted that the carpet needed replacing but she disputed that all the carpets throughout the building required replacement. Those in the original building and in the other newer blocks which had not had the show-flat traffic were in a better condition and she felt they did not need to be replaced immediately but that the cost could be spread out over the next few years.

- 5.2.2 Mrs Pegg accepted that she had not attended budget meetings called by the Respondent but she did not think that if she had attended it would have done any good as the efforts of her solicitor had failed to have an effect.
- 5.2.3 The only other matter of complaint was that marks on the plaster walls of her entrance hall had been patched up and that the emulsion had become discoloured over time and that it needed decoration.
- 5.2.4 The Applicant insisted that it was not that she was trying to evade paying her full service charge demands that she had withheld part of the sums demanded (she said she had paid approximately half the amount demanded) but she saw this as the only way to make the Landlord comply with what she saw as its clear obligation under Clause 5.1(a)(ii) namely to "maintain repair decorate and renew the Common Parts."
- 5.2.5 The Applicant was insistent that she was only asking the Tribunal to make a determination as to the one year's service charges for 2003/4. She maintained that once that was decided, all the other charges would follow suit. She explained that she expected that if a reduction was allowed for that year she would seek a corresponding reduction for subsequent years because "the carpet is still in a poor state" and she has had to put up with it for all this time since 2003. When challenged by the Tribunal that if a reduction were made for 2003/4 it would not necessarily follow, without a determination by the Tribunal, that there should be a corresponding reduction in subsequent years, the Applicant said that she would try to get subsequent years agreed with the managing agents. If agreement were not possible there would have to be further applications to the Tribunal. When pointed out to the Applicant that the Tribunal, having heard the evidence which would be applicable to all the years in question and being in a position to rule on those years, it might be considered by a subsequent Tribunal that it would be an abuse of process if she started fresh proceedings based on the same evidence in this case, the Applicant was insistent upon the Tribunal only considering 2003/4 and that she should not be forced into seeking a determination in respect of subsequent years.
- 5.2.6 Mrs Barton for the Respondent submitted that the Landlord was not obliged under the lease to replace the carpet in the communal areas. Clause 5.1(a)(ii) did not extend to include replacement of the carpet and Clause 5.1(b) required the Landlord only to keep the passages landings and staircases clean and reasonably lighted. Nevertheless the Respondent intended to replace the carpet in all the communal parts as a matter of good estate management. It was the policy of Peverel to replace all carpeting at one and the same time. The only reason why it had not already been replaced was to enable the Tribunal to inspect the original carpet in situ. She mentioned that although the carpet was in need of replacement it was not in a dangerous condition and the defects were cosmetic only. That being the case other more important issues which did involve

matters of health and safety had to take precedence over cosmetic defects where there was only a limited amount of funds that elderly tenants could be expected to pay. She explained that budget meetings had been held at which expenditure had been discussed and, at least since 2004 when Ms Brown was in post, the residents had preferred to defer replacing the carpet in question until other matters had been attended to and when the Sinking Fund could afford to carry out the replacement. She asked the Tribunal to determine that all the service charges demanded for the year 2003/4 to 2005/6 be found to be reasonable and payable by the Applicant. She considered that the Applicant should not be permitted to withdraw her application unless she was prepared to say that she could pay all subsequent years in full whatever the Tribunal determined was the appropriate amount for the year 2003/4. The Applicant was not prepared to give that assurance.

- 5.2.7 Ms Barton produced a schedule showing sums due and owing by the Applicant for 2003/4 onwards. The Applicant did not dispute the figures save that she said she had paid a further cheque within the past few days. Ms Barton said that this had not yet reached the computer system which was understandable if it had only been paid within the past few days.

## **6. The determination**

- 6.1 The Tribunal decided that the following were the issues in this case:-
- a) whether the Tribunal should determine only the reasonableness of service charges for 2003/4 or to make a determination in respect of all years from 2003/4 to 2005/6.
  - b) whether the lease obliged the Landlord to maintain and renew the carpet in the communal hallways, staircases and landings (the Common Parts) or not and
  - c) if it did, whether the condition of the carpet complained about by the Applicant justified her in withholding a proportion of the service charge demanded of her and absolve her from paying the service charge in full for the year or years in question even when the carpet is renewed.
- 6.2 In answer to 6(1)(a) the Tribunal reluctantly agreed to restrict its determination to the 2003/4 service charge year. The Tribunal's reluctance was due to the fact that without a formal determination in respect of years 2004/5 and 2005/6 there is left open the possibility of further dispute and cost because one or other party may seek to refer those years to another Tribunal if the parties cannot agree payments for those years following this determination for 2003/4. This would be regrettable as this Tribunal had heard all the relevant evidence and it would be undesirable for further proceedings to be brought. However, the Tribunal accedes to the Applicant's request to determine only the service charges for 2003/4 due to the fact that when her application was re-instated there is

some evidence to the effect that the Applicant wished to restrict the re-instated case to the one year. The Applicant's insistence on using the original Application form had made the picture unclear and not surprisingly the Respondent thought that the case it had to meet was in respect of all the years stated on the form. Indeed, until well into the hearing, the Tribunal thought that was the case too. Had it not been the reference in correspondence from the Applicant to the Tribunal office that suggested she only wanted the one year considered, the Tribunal would have been less prepared to accede to the Applicant's request but in the circumstances the Tribunal considered it would be wrong to proceed to determine all the years service charges since 2003/4 against the Applicant's will. It is hoped, however, that following this determination it will be possible for the Applicant to accept that any future Tribunal is likely to reach the same conclusion about those years and come to an agreement with the Landlord as to payment.

6.3 The Tribunal construed Clause 5.1(a)(ii) as referring to the Common Parts of the building meaning the bricks, mortar, plaster, concrete etc making up the building itself and not to extend to the carpet which the Tribunal considered to be a fitting and not part of the building itself. Consequently, the Tribunal finds that the Respondent was not in breach of the lease in failing to replace the carpeting even if the Tribunal had decided that the carpet was in such a condition that the Respondent would have been in breach of covenant had it extended to the carpet (as to which see paragraph 6.4 below). The Tribunal was pleased to hear, however, that as a matter of good estate management the managing agents were proposing to replace the carpet imminently even though there is no strict legal requirement under the lease for the Landlord to do so. As to whether all the carpeting or just that in the block serving flat 20 should be replaced, that is not now a matter for this Tribunal to determine as a consequence of deciding that there will be a determination for year 2003/4 only. However, even though the carpeting in other parts of the building may last a little longer there are no doubt arguments that it is more satisfactory to replace them all in one go. It is to be hoped that if all the carpeting is replaced as planned that this will not lead to further dispute as to payment of future service charges.

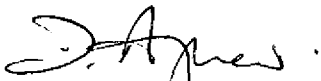
6.4 Finally, even if the Tribunal is wrong in its construction of the lease as set out in paragraph 6.3 above the Tribunal could find no justification for the stance that the Applicant had taken about the state of the carpeting and the decoration of the hallway in the approach to her flat. It is true that there was some staining of the carpet but this was by no means unsightly. The carpet was not torn or threadbare. It was not in a dangerous condition. It was slightly faded and worn and ideally could do with being replaced (as it is being) but the Tribunal agreed with Mrs Barton in describing the defects in the carpet as cosmetic only and the Tribunal could not really understand why this

should have assumed such proportions with the Applicant. The Tribunal did not consider that it justified the Applicant in withholding payment of any part of her service charge. The same applies to the decoration of the hallways. The patch repairs were hardly noticeable and the Tribunal did not consider that the emulsion paintwork was significantly discoloured.

**7. Conclusion**

- 7.1 The Tribunal determined therefore that the Applicant should pay the whole of the service charge demanded for the year 2003/4 in the sum of £1,558 less a credit of £45 and £759 paid by the Applicant on account leaving an amount due and owing of £754 for that year. It follows that had the Tribunal been required to determine the service charges for the two subsequent years it would have found no justification for any reduction in the sum demanded, but for the reasons already stated the Tribunal has not in fact hereby made any formal determination in respect of the years 2004/5 and 2005/6.

Dated this 18<sup>th</sup> day of September 2007



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**D. Agnew LLB, LLM**  
**Chairman**