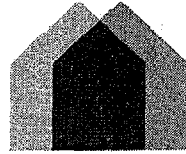


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**Residential  
Property**  
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**IN THE MATTER OF SECTIONS 27A AND 20C OF THE LANDLORD AND  
TENANT ACT 1985**

**Applicant:** Newservice Ltd

**Represented by:** Chatfield Properties Ltd (no appearance)

**Respondent:** Ms Tyicia Riley, Ms Tracey Ann Courtney, Mr Roger Pierre, Mr  
and Mrs Webster (nee Price)

**Premises:** Flats 1 to 4, 30 Marmora Road, London SE22

**Date of Hearing:** 7 June 2007

**Appearances for Applicant:** No Attendance

**Appearances for Respondents:** Mr Alex Rogan and Ms Victoria Tribe of  
BPP for Ms Riley, Mr Pierre, Ms Courtney and Mr Webster in person.

Leasehold Valuation Tribunal: Mr S E Carrott LLB  
Mr R A Potter FRICS  
Ms T Downie MSc

**Date of Decision:** 25 September 2007

1. **Background**

This is an application under section 27A of the Landlord and Tenant Act 1985 for the determination of the reasonableness and liability to pay service charges. The subject property is 30 Marmora Road, London SE22 ORX.

2. The Applicant landlord is Newservice Ltd and has been represented by its managing agents Chatfield Properties Ltd. The Respondent leaseholders are Ms Tyica Riley of Flat 1, Ms Tracey Ann Courtney of Flat 2, Mr Roger Pierre of Flat 3 and Mr and Mrs Webster (nee Price) of Flat 4.

3. In order that this decision may properly be understood, it is necessary by way of background to recite some of the history of the proceedings. In July 2005 the Applicant issued proceedings in the Lambeth County Court against Ms Riley for unpaid service charges for the period 5 November 2004 to 6 July 2005. Ms Riley filed a Defence denying liability. On 1 December 2005 the Court ordered that the proceedings be transferred to this Tribunal for determination. There was however some delay because although the Court ordered the transfer the papers were not actually transferred to the Tribunal until 2007.

4. A pre-trial review took place on 7 February 2007 at which Mr Kalunga, of the managing agents appeared on behalf of the Applicant. Directions were made giving an initial hearing date for 2 May 2007. However, on 28 February 2007 the Applicant issued a further application under section 27A in respect of Flats 1 to 4 requesting that the Tribunal determine the liability and reasonableness of service charges from the year ending 2003 to date (including the estimated cost of service charges for the year 2007 to 2008). Therefore, in respect of Flat 1, the Tribunal has determined the reasonableness and liability to pay service charges beyond the period referred to us by the County Court and as will be seen from the decision below, we have determined that Ms

Riley is not indebted to the Applicant but that she is in credit by £245.77.

5. In the directions that were issued pursuant to the pre-trial review, mention was made of a potential counterclaim that Ms Riley had against the Applicant for failure to service a water pump which had caused damage to her flat. Ms Riley wished to pursue that matter before the Tribunal. As explained at the hearing, the Tribunal's jurisdiction is limited to that under section 27A of the 1985 Act and it does not have jurisdiction to determine liability in respect of a claim for breach of covenant to repair and/or negligence or to award damages. We have therefore not considered the alleged counterclaim or the facts giving rise to it.
6. The Tribunal noted that included in the Applicant's Schedule of Service Charges (Schedule B) there was reference to the indebtedness of the previous leaseholder of Flat 2, Mr Jamie Sloan. He was not named as a party to this application and was not notified of the present proceedings. Therefore the Tribunal has not made any determination in respect of Mr Sloan.
7. At the hearing on 7 June there was no appearance by the Applicant or its managing agents. The clerk to the Tribunal telephoned the managing agents but there was a message on the answer phone saying that the managing agents would not be available that day. The Tribunal perused the office file and was satisfied that notice of the hearing had been sent to the Applicant's representatives. Moreover it was clear from the representations and correspondence received from the managing agents that they were aware of the hearing date. Accordingly the Tribunal determined not to adjourn the proceedings.
8. At the hearing on 7 June 2007, Mr Alex Rogan and Ms Victoria Tribe of BPP represented Ms Riley. Mr Pierre, Ms Courtney and Mr Webster all appeared in person.

9. **The Applicant's Case**

Appended to the application at Schedule B was a breakdown prepared by the managing agents which set out what the Applicant claimed was the indebtedness of each of the Respondents. The document also provided a breakdown of the service charge items. However when compared to the property expenditure sheets for the service charge periods and the individual invoices, this document proved to be inaccurate and in particular did not include various items of service charge such as communal and window cleaning, gardening, repairs and maintenance all of which had been billed to the Respondents. The only items referred to in Schedule B were interim service charge, insurance, management fee, interest and 'excess' (for which it was impossible to discern a meaning since it neither related to arrears or an excess of the actual over the interim service charges). The situation was further complicated by the fact that there were no audited accounts, the accounting period utilised for determining the service charge costs was not the period specified in the lease, but rather the 24 June of one year to 23 June the following and in one case a period of 10 months was used rather than 12 months.

10. The nature of the Applicant's case, as was discerned from the material before the Tribunal was that the Applicant had expended monies on this property on an annual basis and that each of the Respondents was liable to pay a proportion of this expenditure under the terms of their respective leases.
11. The Applicant also sought to claim administration charges for late payment from the Respondents, interim charges in relation to an entry phone system and for major works, and legal costs including the costs of a section 146 notice and court fees.
12. It is also necessary to refer to managing agents letter of 9 February 2007, in so far as that letter purports to set out in detail the case

against Ms Riley. The letter was written by Mr Kalunga on behalf of the Applicant to Ms Riley's advisers and copied to the Tribunal. In that letter, Mr Kalunga traced the history of Ms Riley's arrears. He also made the following concessions; first that administration charges of £100 for the 12 August 2004 and 22 October 2004 had been 'reversed'; secondly, £200 in respect of a section 146 notice dated 21 February 2005, the court fee of £120 levied on 8 July 2005 and interest of the same date of £90.52 and £10.92 had been 'reversed' and; thirdly, that a sum of £100 levied on 14 July 2005 was 'reversed'. The letter also went on to state that since the assignment to Ms Riley had taken place on 23 October 2003 and the Applicant had failed to apportion the service charges, that there was mistake in the initial sum that she had been invoiced for. The letter made further concessions as to mistakes in respect of her account but nevertheless concluded that her total arrears were £2,342 being reduced from a figure in excess of £3000. However, Mr Kalunga did not explain how that sum is payable in the context of the service charges or put forward any case as to the reasonableness of the service charges.

**13. The Respondent's Case**

Each of the Respondents put forward different cases as to the state of their individual accounts. However, save for the case of Ms Riley, which is a referral from the County Court, The Tribunal was not concerned with what payments that the individual Respondents had made to the Applicant but simply with the liability to pay and reasonableness of service charges. The Tribunal determined that this was best achieved by determining what sums would be allowed as reasonable and payable for each of the years in dispute.

14. The Respondents all agreed that their respective cases included a challenge to the following service charge items -

- (1) administration charges for late payment;
- (2) the costs of gardening;
- (3) the costs of window cleaning;

- (4) the cost of cleaning of communal parts;
- (5) the cost of scaffolding and works to the guttering; and
- (6) the cost of major works.

The Respondents also put the Applicant to strict proof of those items for which no invoice or receipt was provided and for those items where they had not been provided an explanation for the item charged.

15. With regard to administration charges, it appeared that each of the Respondents were charged administration charges for late payments and arrears. The method of imposition was that if the leaseholders queried their service charge demands then the managing agents would impose an additional charge for explaining the nature of the charges. If they subsequently failed to pay, then they would be charged an additional amount for having accumulated arrears. In Ms Riley's case this included the costs of a section 146 notice and legal costs for letters written by the Applicant's Solicitors.
16. With regard to gardening, the Respondents gave evidence that the rear garden had not been maintained by the landlord despite the fact that charges were being imposed and that it was often left in an overgrown state (although they conceded that the position had changed during the last 10 months). The Respondents produced photographs taken of the garden during the period concerned. These photographs showed the garden to be considerably over grown to the extent that it could not properly be enjoyed as a garden.
17. Likewise with regard to the window cleaning, evidence was given that the only window which was cleaned was a glass panel to the communal entrance door to the building. It was nevertheless accepted that the Applicant had employed persons to do the work and that the Applicant over the years had paid the costs for window cleaning.
18. Again with regard to the communal cleaning, evidence was given by the Respondents that it was the Respondents themselves who cleaned

the communal parts of the building, although again it is accepted that the Applicant did engage cleaners who attended from time to time. Nevertheless the Respondents maintained that such cleaning as was carried out was not of a reasonable standard.

19. A charge for £3917.02 was levied in respect of repairs and maintenance for the year 2006 to 2007. This related to works to the guttering and the erection of scaffolding. The work to the guttering took some two to three days to complete. The scaffolding however remained in situ for several weeks. The scaffolding was only removed at the insistence of the Ms Courtney. The Respondents maintained that there was no previous consultation by the Applicant or its managing agents in respect of these works.

20. **Determination**

In determining this case, the Tribunal was not assisted by the representations made by the Applicant through its managing agents. The managing agents had failed to explain properly the expenditure on the property and the reason why it was contended that the costs incurred were reasonable and payable. There was no explanation by the managing agents for their failure to attend the hearing or to adequately put forward the Applicant's case. Moreover, there were many inconsistencies in the documents put forward by the managing agents on behalf of the Applicant and though one explanation might be that there had been a change in personnel, this did not excuse the failure to attend the hearing to explain the nature of the case to the Tribunal.

21. Dealing with the issues outlined in paragraph 14 above, the Tribunal accepted the oral evidence of the Respondents. Each of the Respondents was employed in professional capacities. Ms Riley was employed by the Crown Prosecution Service. Mr Pierre worked in the film industry as a cameraman's assistant. Ms Courtney was employed as an accountant and Mr Webster as an administrator. The Tribunal

was impressed by the measured manner in which each of the Respondents gave their oral evidence and the concessions that were made during the course of the hearing, even when it perhaps was not necessary to make such concession. They each gave their evidence in an effort to assist the Tribunal to understand the issues rather than simply furthering their own individual cases.

22. With regard to the administration charges these were unjustified. The Respondents had raised legitimate queries with the managing agents only to be charged for replies which in many cases did not even answer the original query raised. The various explanations given to the Respondents by the managing agents as to their individual accounts were inconsistent and confusing often leading to considerably more confusion after the query was purportedly explained. A prime example of the considerable confusion that has taken place over the years can be seen in Mr Kalunga's letter dated 9 February 2007. Indeed in Ms Riley's case, although Solicitors had been instructed to deal with her alleged arrears, even when she did make payment, the managing agents did not inform the Solicitors thus leading to further correspondence and further legal costs. There was no explanation from the Applicant or its managing agents as to why this should have been the case and although the managing agents had said that these charges would now be reversed, Ms Riley quite rightly had little confidence that this would actually be the case. Indeed given the very poor management and the contradictory information given to them by the managing agents, the Respondents cannot be criticised for not understanding the services charge that were levied.
23. The Tribunal determined that all of the administration charges were irrecoverable, including the costs of serving notices pursuant to section 146 of the Law of Property Act 1925 and any legal costs.
24. With regard to communal cleaning and the cleaning of windows, it was clear that although some cleaning took place it was not of a reasonable



standard and the price charged for the window cleaning (one glazed panel on a door) was excessive. Indeed the Tribunal was concerned that it was not reasonable in any event to engage cleaners to carry out such a task. In 2004 and 2005 there were charges for cleaning the front path. Again the Tribunal determined that this was not carried out to a reasonable standard and that the costs should be disallowed.

25. Prior to the last 10 months it was clear that the gardening had not been carried out in any consistent manner. Charges had been imposed for one off clearances: 11 February 2004 - £470, 27 February 2004 - £680. The costs were surprisingly high given the size of the rear garden. If the gardening had been carried out on a more systematic basis the cost would in all probability would have been substantially less. The Tribunal therefore determined that the costs of gardening for the most part would be disallowed.
26. With regard to the costs of scaffolding and guttering, the cost of these works exceeded the limit set by section 20 of the Landlord and Tenant Act 1985. Since there was no compliance with section 20 and no application by the Applicant for dispensation then these costs would be limited to £250 per flat.
26. In respect of the service charge years the Tribunal determined as follows -
  - (1) In respect of the year 2002 to 2003, having regard to the property expenditure sheet and invoices produced the total reasonable costs incurred by the Applicant were as follows - £772.36 in respect of insurance and £734.37 for maintenance on 18 November 2002 and again on 9 January 2003. There were professional fees (unsupported by any invoice) and so disallowed) and management fees of £125 per flat making a total of £500. The Tribunal was satisfied that the standard of management during this period fell far below the service which would be expected by a reasonable and competent managing

agent would provide and so reduced the total amount claimed to £50 per flat (£200). Accordingly the total reasonable service charge for 2002 to 2003 was £2441.10 (£610.28 per flat). However as Mr Kalunga acknowledged in his letter dated 9 February 2007 in respect of Ms Riley this sum should be apportioned in her case. Ms Courtney was not a leaseholder at this stage having taken her assignment of the lease on 2 April 2006 and therefore she was not in any event liable to pay this amount or indeed any amount prior to the assignment.

- (2) In respect of the year 2003 to 2004, the Applicant claimed £470 (11 February 2004) and £681.50 (27 February 2004) in respect of gardening. This sum was excessive. Mr Webster in his letter dated 30 July 2005 had obtained a quotation for a one off garden clearance of £125 plus VAT. The Tribunal considered that this sum was reasonable and therefore allowed £146.88 for the garden clearance. Further, there was no explanation from the Applicant as to why the garden clearance was repeated some 16 days later. The £681.50 was therefore disallowed in its entirety.

There was no explanation from the Applicant for the alleged internal and minor works, the provision of dustbins and a dehumidifier and the Respondents were not sure what these items were in respect of. These costs were therefore disallowed in their entirety. The building insurance specified on the property sheet was £1081.92. This sum was reasonable.

The management fees would be allowed in the total sum of £200. As stated previously the standard of management was very poor.

The costs of window cleaning would be disallowed as not being reasonably incurred.

Accordingly the total amount for the reasonable costs incurred was £1428.80 (£357.20 per flat).

- (3) In respect of the year 2004 to 2005 the Tribunal determined that the costs of window cleaning and communal cleaning would be

disallowed on the basis of the evidence given by the Respondents. Works were carried out to enlarge a loft hatch which the Respondents concurred with. The cost was £235. This sum was reasonable and the Tribunal found that the costs were reasonably incurred.

The insurance was £1226.46. This sum was reasonable. There was an invoice for heating works. However there was no communal heating in the building. This sum would be disallowed. Further there was no explanation from the Applicant as to other minor works of maintenance and the Respondents could not assist as to what these sums were for. They likewise would be disallowed.

The cost of the managing agents would be reduced to £200 as above since there was no improvement in the service that they provided during this period.

The total reasonable costs incurred for the period 2004 to 2005 was therefore £1661.46 (£415.37 per flat).

- (4) In respect of the period 2005 to 2006, the Applicant's total expenditure was stated to be £3711.73. However the Tribunal determined that the reasonable costs incurred were £1386.73 in respect of insurance (albeit with some hesitation because there was no explanation for the increase) and managing agents fees of £200 (again reduced on account of the poor service). The remainder of the service charge costs during this period were made up of gardening, maintenance charges, cleaning of windows and communal areas and a survey and structural report (undisclosed). Again the Tribunal accepted the evidence of the Respondents with regard to the gardening and cleaning and none of the Respondents were aware of the survey or structural report or why it was carried out or of the maintenance alleged to have been carried out.

Accordingly the Applicant's reasonable costs incurred for the period of 2005 to 2006 was £1586.73 (£396.68 per flat).

- (5) In respect of the period 2006 to 2007 the total cost stated to have been incurred by the Applicant was £7,384.61. However this included the sum of £3917.02 which related to the repairs to the guttering for which no section 20 consultation had been carried out. The Tribunal determined in accordance with section 20 that the major works cost would be limited to £250 per flat making a total of £1000.

The Applicant's stated expenditure with regard to cleaning was £1055.80. In the light of the evidence of the Respondents this was excessive and would be reduced to £300.

The Tribunal determined that in respect of gardening the sum of £180 would be allowed. Although there had been some improvement in this service, it still left a lot to be desired. The Applicant had also charged for smoke detectors and fire extinguishers in the sum of £1,233.75. This work had not been done. That cost would therefore be disallowed in its entirety.

The Respondents agreed that a lock had been installed at the cost of £157.02. This would be allowed. Likewise the Tribunal allowed the cost of insurance for the 10 month period at £1240.64.

The service provided by the managing agents had improved although it was still not up to an appropriate standard. The Tribunal allowed the total sum of £300 for management fees.

With the inclusion of the £1000 for major works the total was therefore £3177.66 (794.41 per flat).

- (6) As regards the estimate for 2007 to 2008 the Applicant's managing agents had provided two conflicting budgets neither of which was satisfactory. The Tribunal determined that the most expedient approach was to base the budget on the reasonable costs incurred during the previous year excluding any element for major works. A sum of £2500 would be reasonable in the circumstances (£625 per flat).

The Tribunal was satisfied from the oral evidence and the material before it that Ms Riley had paid the sum £2715.37. Her arrears were stated to be £2219.60 during the County Court proceedings and more recently in Mr Kalunga's letter dated 9 February, £2342. The latter figure was and is clearly not correct and although the Tribunal accepted that this was a genuine attempt by Mr Kalunga to sort matters out once and for all, it was nevertheless wrong. Including the amount that Ms Riley is liable to pay for the estimated budget for 2007-2008, the Tribunal determined that she was in credit by the sum of £245.77. Accordingly Ms Riley was and is not in arrears. The Tribunal found that the considerable confusion that had arisen concerning her service charge contributions were due to the manner in which the managing agents had conducted her service charge account. The Tribunal determined that Ms Riley was not indebted to the Applicant when proceedings were commenced in the County Court during 2005 and that as stated above, she was now in credit.

28. **Section 20C Landlord and Tenant Act 1985**

The Tribunal reminded itself that the question of whether or not the landlord's costs of proceedings should be limited did not depend solely upon whether a tenant succeeded in proceedings. In exercising its discretion under section 20C the Tribunal noted that it should have regard to all of the circumstances of the case. In the present case it was clear that an important factor in the present case was the very poor performance of the Applicant and its managing agents in communicating to the Respondents information concerning the service charge accounts, the fact that some of the costs could not be justified and in addition, the refusal of the managing agents to enter into reasonable dialogue with the Respondents concerning those costs in dispute. Each of the Respondents had simply required an explanation of the service charges levied. Accordingly the Tribunal would make an order so that the Applicant's and the managing agents' costs of this application before the Tribunal would not be added to the service charge account.

29. **Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002**

The Tribunal heard submissions on behalf of Ms Riley in respect of an application for costs against the Applicant pursuant to paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. The Tribunal when considering this application had regard to the fact that such an order was draconian in nature and that it should only be made in exceptional cases where the conduct of the party against whom such an application was made fell clearly within the provisions of paragraph 10. In this case the conditions of paragraph 10 were met. The Applicant through its managing agent had acted unreasonably.

30. Ms Riley had paid the sum of £750 to Solicitors in respect of obtaining advice and indeed taken time off work in order to sort out what was by all accounts a very muddled demand for service charges. In those circumstances the Tribunal determined that she should be awarded the sum of £500 in relation to her costs, the maximum which the Tribunal could award under the provisions.

31. **Decision**

(1) The reasonable and payable service charges in respect of the property 30 Marmora Road, London SE22 ORX are as follows -

- (a) 2002 to 2003 - £2441.10 (£610.28 per flat).
- (b) 2003 to 2004 - £1428.80 (£357.20 per flat).
- (c) 2004 to 2005 - £1661.46 (£415.37 per flat).
- (d) 2005 to 2006 - £1586.73 (£396.68 per flat).
- (e) 2006 to 2007 - £3177.66 (794.41 per flat).
- (f) 2007 to 2008 (estimate) £2500 (£625 per flat).

(2) All administration charges are unreasonable and disallowed including the costs incurred for the preparation and service of notices pursuant to section 146 of the Law of Property Act 1925.

- (3) Where a Respondent was not a leaseholder at the time of the above service charges, no charge is to be levied. Where the leaseholder took the benefit of an assignment during one of the service charge years in question, the service charges are to be apportioned between the outgoing tenant and the leaseholder.
- (3) The application as against Ms Tyica Joan Riley is dismissed. For the avoidance of doubt Ms Riley does not owe any sums to the Applicant. Her account is in credit by the sum of £245.77 (taking into account also the estimated costs for 2007 to 2008).
- (4) The Applicant's costs of this application are limited pursuant to section 20C of the Landlord and Tenant Act 1985 so that the Applicant and the managing agents costs of this application shall not be added to the service charge account.
- (5) The Applicant shall pay to Ms Tyica Joan Riley the sum of £500 by way of costs pursuant to paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. The costs shall be paid within 28 days of the date of this decision.

Chairman  .....

Dated 24September 2007

