

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL



Section 27A Landlord and Tenant Act 1985

Application for a determination of liability to pay service charges

DECISION AND REASONS

Case Number: CHI/OOMG/LIS/2008/0022

Property: 11 Victoria Place Plymouth – Flats 2, 4, 5 & 11

Applicant : T. R. N. Peters and A. Lane and S. Campbell

Respondent : Blantyre West Country Properties Limited

Date of Application: 30 APRIL 2008

Date of Hearing: 11 AUGUST 2008

Appearances: Mr A Lane, Mr S Campbell (for Applicants),
Mrs C Bagley, Mr T Bagley and Miss H Bright (for Respondent)

Witnesses: None

In Attendance: Mr T Pinker – Clerk to the Tribunal

Tribunal Members: Miss Cindy A Rai LLB – Chairman
Mr Peter Groves – Lay Member
Mr Eric Distin – Valuer Member

Date of Decision: 27th AUGUST 2008

SUMMARY OF DECISION

1. Following consideration of the evidence of the Applicants and the Respondents supplemented by statements on behalf of both at the hearing the Tribunal determined that in relation to the year 2005 the Applicants were not liable to pay the sum of £331.80 paid to Beeline and shown in the Service Charge Expenditure Account for that year but that the Applicants were liable to pay all of the other of the amounts disputed by the Applicants in that year, and all of the amounts disputed in the years ending in 2006, 2007 and 2008.

BACKGROUND

2. The Applicants made the application under Section 27A of the Landlord & Tenant Act 1985 on the 30 April 2008 for a determination of their liability to pay certain disputed items of service charges as referred to and listed in the application. Provisional directions were issued by the Tribunal on 15 May 2008.
3. At the Hearing Mr Lane, speaking for the Applicants, outlined the reasons for the application:-
 - (a) He said the tenants had spent a lot of money (in paying service charges) but do not feel that they received any service or value in terms of what they have spent.
 - (b) They want the Property maintained properly. It is not disputed that it is in a poor state of repair.

- (c) Last year both Mr Campbell and Mr Peters had separately tried to sell their properties (leasehold flats within the Property), and were told (when unsuccessful) that the properties would be worth more if properly maintained. Mr Lane said therefore he believed that the poor condition of the Property was adversely impacting on the value of the Applicants' own properties.

In response to what had been said by the Applicants, the Respondent asked for clarification as to which items it was claimed they had spent money and for which they had seen no return in terms of improvement of the Property. It was agreed to address the disputed items year by year.

2005

4. Following a discussion between the parties it became clear that one of the central issues that had caused the Applicants concern were the works allegedly carried out and invoiced to the Respondents by Beeline. The parties agreed that there may have been issues with regard to the level of the service (if any) provided.. Notwithstanding that that company had claimed to have cleaned internal communal areas at the Property there was no power supply available in the communal areas and it was not apparent that any of the residents had consented to their power being used or indeed facilitated this happening. Nor was there any evidence (according to the Applicants of the works having been carried out. Their complaints about this had not in their opinion been dealt with satisfactorily.
5. The Applicant's second query in relation to the year 2005 was with regard to garden maintenance was explained satisfactorily by the Respondent and accepted by the Applicant. Copy invoices in the bundles documented everything which had been invoiced paid for and which appeared in the accounts for that year.
6. In response to questions from the Applicant the Respondent explained that the maintenance fee was actually a "management fee."
7. Part of the difficulty in relation to the queries raised by the Applicant was that queries had sometimes been raised on the "budgeted" service charges rather than the actual service charges shown in the accounts . The Respondent explained that budgets were produced on the basis of the previous year's expenditure. She also explained that the management fee covered the costs of correspondence, telephone calls and letters for dealing with matters such as the insurance claim that had had to be managed throughout the duration of several of the service charge years 2005, 2006,

2007 and 2008 and in relation to which the Applicants had raised question as to their liability to pay part of the service charges.

2006

8. The only service charge disputed by the Applicant in 2006 was the amount of the management fee (referred to as a maintenance fee) It was established that the amount of this fee was actually £600 and not the £650 that had been referred to in the application.

2007

9. In relation to 2007 the Applicant queried the amount spent on the emergency lighting repair and an explanation was given. It transpired that following the initial repair when the lighting had again not worked this was actually on account of one of the residents having removed the fuse and this was not disputed by the Applicants.
10. Although the Applicants queried why an asbestos survey and fire risk assessment was carried out and in particular why this anticipated expenditure had not shown in the budget for that year discussions revealed that the actual amount charged was not of itself in dispute. The Applicant's discomfort really arose from the fact that the Applicants believed that the costs had been incurred on an ad hoc basis and without them receiving prior notice. The Respondent explained that it had been aware of the need for the reports and had taken advantage of agreed terms if it obtained reports for all the properties that it managed in the area within which the Property is located.
11. The Respondent, however, did accept that the time delay in dealing with the repair was not really acceptable. The Applicant's complaint in relation to the service charges in that year were not so much on account of the expenditure or the cost of the repairs but the way in which the repairs were dealt with and the fact that this illustrated poor management which underlined the reason why the Applicant had queried the amount of the management fees (which in that year were £650). The Respondent expressed a willingness to liaise with the Applicants to avoid this in the future

2008

12. In relation to 2008 the disputed amount was partly a budgeted amount of that years anticipated service charge expenditure. The figure disputed was £299.22 in respect of the budgeted expenditure up to 31 August 2008 and a balance of £163.78 payable in relation to the 2007 service charge expenditure in respect of the difference between the amount collected "on account" and monies actually spent. Following

further discussions between the parties and an explanation as to how the figure had been queried it became clear that in fact the calculation of the balancing figure for the previous year's service charge was not being disputed and the budgeted amount was in line with previous years' expenditure and therefore accepted by the Applicants as being reasonable.

13. The Respondent explained the history of its involvement with the Property and how they had purchased it as part of a portfolio of properties in the locality which was not within their usual locality; therefore the Respondent had relied upon using contractors with which it was unfamiliar and who had been previously employed by its predecessor under the supervision of a locally appointed surveyor. The Respondent accepted that some of the contractors it had originally employed may not have been satisfactory but had suggested that it had tried to liaise with the Applicants, although perhaps not always successfully. It indicated that it had a real desire to improve all of the properties that it managed and that had it been able to gain agreement from the Applicants in relation to a proposed programme of major works it would have been possible to improve the appearance of the Property.
14. Although clearly there were matters which the Applicant and Respondent did not agree it appeared that notwithstanding these differences the Respondent wished to move forward and its representative at the Tribunal was now actively involved with the management and wanted to work with the Applicants to agree a scheme to improve the condition of the Property. It was not disputed by either party that the Property is in a neglected state and condition.
15. What the Respondent did dispute was that the management charges which were £500 in 2005, £600 in 2006 and £650 for the years 2007 and 2008 were unreasonable. She said these were in line with management charges for other similar properties in the locality and had previously been accepted as being reasonable by another Tribunal.

THE LAW

16. The Statutory provisions relevant to this application are contained in Sections 18, 19 and 27A of the Landlord & Tenant Act 1985 which are reproduced below.

S18 Meaning of "service charge" and "relevant costs".

- (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[, improvements 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 for which the service charge is payable.

- (3) For this purposes—
 - (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 or later period.

S19 Limitation of service charges: reasonableness.

- (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 provisions 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.

- (5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.

S27A Liability to pay service charges: jurisdiction

- (1) 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, if 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.

- (4) No application under subsection (1) or (3) may be made in respect of a matter which—

- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter

17. The application appears to have been made because the Applicants have disputed their liability to pay certain specified service charge items of service charges (listed in the application) in respect of the service charge years ending in 2005, 2006, 2007 and 2008.
18. Section 18 deals with the meaning of service charges and relevant costs.
19. Section 19 indicates that in relation to “relevant costs”, which are costs or estimated costs incurred or to be incurred by or on behalf of a landlord or superior landlord in connection with matters for which a service charge is payable, these should only be taken into account in determining the amount of a service charge payable for a period to the extent they are reasonably incurred and where they are actually incurred in relation to the provision of services only if the services or works are of a reasonable standard.
20. Therefore the issue of reasonableness is relevant in relation to the Applicant’s query raised as to the level of the management fees which are “relevant costs”.
21. In part 5 of the schedule to the Applicants’ leases, and copies of these were provided to the Tribunal in the bundles, it is stated that the service charge payable by each tenant should be one fifth of the sum which on the 1 September in every year the

- Landlord or its agent estimates, and certifies in writing to be the reasonable costs and expenses to the Landlord for the 12 months following of performing its obligations under clause 6 and collecting ground rents and service charges in relation to all the flats in the building.
22. It is this wording that the Respondent relies upon as justifying the imposition of a management charge. Clause 6 of the lease provides for the landlord, subject to the payment of service charges previously referred to, to keep the common parts of the property in good and substantial repair and condition and to keep the exterior of the building in good decorative repair and condition and inter alia to keep the whole of the building comprehensively insured.
23. In relation to the lease the Applicant queried whether in fact the landlord was entitled to increase the amount of service charge payable on account beyond a specified level. He relied upon some drafting in the lease in relation to which he said he had taken legal advice on and which would prevent the landlord charging higher service charge figures. He was advised by the Tribunal that if he did have queries about the interpretation of the lease he should seek legal advice but the Tribunal did not agree with his interpretation of the lease. The lease clearly does provide in clause 5 for the tenant to pay both ground rent and service charge to the landlord and in clause 4 (b) the lease states that service charge is payable as "additional rent" calculated in accordance with part 5 of the schedule in advance on 1 September and if service charge is not paid it is recoverable by the landlord as if it were rent in arrears. This does not however enable any tenant to suggest that any cap on the rent would cap the amount of service charge payable since each tenant's share is simply a part of the actual expenditure incurred by the landlord in carrying out its obligations (and subject to its also complying with the relevant current legislation with regard to service charges)

THE INSPECTION

24. Prior to the hearing, accompanied by both Applicant and Respondent, an inspection was been made of the common parts of the Property. The Property is a terraced property in a secondary road located within a distinct part of the city of Plymouth. At the front of the building is a small garden area which is in a neglected condition. A downpipe running down the front wall had originally run into a gully which appeared to have been taken away and was blocked by concrete debris. Inside the front door a small communal hallway and passage leads to the rear garden which is also a

communal area and to the stairs which provide access to the upper flats. The hallway passageway and stairs are in poor decorative condition and quite dirty. The rear garden is unkempt and untidy. At the bottom of the garden is a gate leading on to the rear service lane. There is a dilapidated lean to shed at the rear and a cellar cupboard at the side of the building the access to which was obstructed by a ladder. There was no visual evidence of any recent maintenance having been undertaken in relation to any of the common areas.

DECISION

25. Having considered item by item each of the amounts queried by the Applicants in relation to the service years 2005, 2006, 2007 and 2008 the Tribunal decided that with regard to the year 2005 the Applicant had validly questioned the amount of the communal maintenance charges that had been paid to Beeline. The Respondent had accepted that it was possible that these costs were unsatisfactory. In fact the Applicants had questioned whether Beeline had ever even attempted to carry out any of the works for which it had submitted accounts. The Tribunal decided therefore that to the extent that the amount disputed related to maintenance and cleaning costs paid to Beeline the Applicants were not liable to pay. It should be noted that in the application form the disputed figure referred to communal maintenance by Beeline of £200, but that this was the estimated figure and the amount shown in the accounts for the year ending 31 August 2005 was actually £331.80 this being the amount actually paid to Beeline. The Tribunal therefore determined that it was this amount that the Applicant was not liable to pay.
26. The other amounts that the Applicant had disputed in this year albeit in the estimates appeared to have been satisfactorily incurred and on that basis the Tribunal determined that the Applicant was liable to pay the other amounts he had queried for that year.
27. In relation to the year 2007 the Tribunal determined that the Applicant was liable to pay all of the amounts disputed.
28. As the management charges were disputed in every year the Tribunal dealt with these "collectively" as the evidence of each party was the same in relation to each year.
29. The Tribunal determined that the management fees charged being £500 for 2005, £600 for 2006 and £650 for the years 2007 and 2008 were reasonable in relation to

the management of a building such as the Property In the most recent year the amount payable amounted to £130 for each of the flats

Cindy A. Rai

Chairman

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



Section 27A Landlord and Tenant Act 1985

Application for a determination of liability to pay service charges

DECISION AND REASONS

Case Number: CHI/OOMG/LIS/2008/0022

Property: 11 Victoria Place Plymouth – Flats 2, 4, 5 & 11

Applicant : T. R. N. Peters and A. Lane and S. Campbell

Respondent : Blantyre West Country Properties Limited

Date of Application: 30 APRIL 2008

Date of Hearing: 11 AUGUST 2008

Appearances: Mr A Lane, Mr S Campbell (for Applicants),
Mrs C Bagley, Mr T Bagley and Miss H Bright (for Respondent)

Witnesses: None

In Attendance: Mr T Pinker – Clerk to the Tribunal

Tribunal Members: Miss Cindy A Rai LLB – Chairman
Mr Peter Groves – Lay Member
Mr Eric Distin – Valuer Member

Date of Decision: 27th AUGUST 2008

SUMMARY OF DECISION

1. Following consideration of the evidence of the Applicants and the Respondents supplemented by statements on behalf of both at the hearing the Tribunal determined that in relation to the year 2005 the Applicants were not liable to pay the sum of £331.80 paid to Beeline and shown in the Service Charge Expenditure Account for that year but that the Applicants were liable to pay all of the other of the amounts disputed by the Applicants in that year, and all of the amounts disputed in the years ending in 2006, 2007 and 2008.

BACKGROUND

2. The Applicants made the application under Section 27A of the Landlord & Tenant Act 1985 on the 30 April 2008 for a determination of their liability to pay certain disputed items of service charges as referred to and listed in the application. Provisional directions were issued by the Tribunal on 15 May 2008.
3. At the Hearing Mr Lane, speaking for the Applicants, outlined the reasons for the application:-
 - (a) He said the tenants had spent a lot of money (in paying service charges) but do not feel that they received any service or value in terms of what they have spent.
 - (b) They want the Property maintained properly. It is not disputed that it is in a poor state of repair.

- (c) Last year both Mr Campbell and Mr Peters had separately tried to sell their properties (leasehold flats within the Property), and were told (when unsuccessful) that the properties would be worth more if properly maintained. Mr Lane said therefore he believed that the poor condition of the Property was adversely impacting on the value of the Applicants' own properties.

In response to what had been said by the Applicants, the Respondent asked for clarification as to which items it was claimed they had spent money and for which they had seen no return in terms of improvement of the Property. It was agreed to address the disputed items year by year.

2005

4. Following a discussion between the parties it became clear that one of the central issues that had caused the Applicants concern were the works allegedly carried out and invoiced to the Respondents by Beeline. The parties agreed that there may have been issues with regard to the level of the service (if any) provided.. Notwithstanding that that company had claimed to have cleaned internal communal areas at the Property there was no power supply available in the communal areas and it was not apparent that any of the residents had consented to their power being used or indeed facilitated this happening. Nor was there any evidence (according to the Applicants of the works having been carried out. Their complaints about this had not in their opinion been dealt with satisfactorily.
5. The Applicant's second query in relation to the year 2005 was with regard to garden maintenance was explained satisfactorily by the Respondent and accepted by the Applicant. Copy invoices in the bundles documented everything which had been invoiced paid for and which appeared in the accounts for that year.
6. In response to questions from the Applicant the Respondent explained that the maintenance fee was actually a "management fee."
7. Part of the difficulty in relation to the queries raised by the Applicant was that queries had sometimes been raised on the "budgeted" service charges rather than the actual service charges shown in the accounts . The Respondent explained that budgets were produced on the basis of the previous year's expenditure. She also explained that the management fee covered the costs of correspondence, telephone calls and letters for dealing with matters such as the insurance claim that had had to be managed throughout the duration of several of the service charge years 2005, 2006,

2007 and 2008 and in relation to which the Applicants had raised question as to their liability to pay part of the service charges.

2006

8. The only service charge disputed by the Applicant in 2006 was the amount of the management fee (referred to as a maintenance fee) It was established that the amount of this fee was actually £600 and not the £650 that had been referred to in the application.

2007

9. In relation to 2007 the Applicant queried the amount spent on the emergency lighting repair and an explanation was given. It transpired that following the initial repair when the lighting had again not worked this was actually on account of one of the residents having removed the fuse and this was not disputed by the Applicants.
10. Although the Applicants queried why an asbestos survey and fire risk assessment was carried out and in particular why this anticipated expenditure had not shown in the budget for that year discussions revealed that the actual amount charged was not of itself in dispute. The Applicant's discomfort really arose from the fact that the Applicants believed that the costs had been incurred on an ad hoc basis and without them receiving prior notice. The Respondent explained that it had been aware of the need for the reports and had taken advantage of agreed terms if it obtained reports for all the properties that it managed in the area within which the Property is located.
11. The Respondent, however, did accept that the time delay in dealing with the repair was not really acceptable. The Applicant's complaint in relation to the service charges in that year were not so much on account of the expenditure or the cost of the repairs but the way in which the repairs were dealt with and the fact that this illustrated poor management which underlined the reason why the Applicant had queried the amount of the management fees (which in that year were £650). The Respondent expressed a willingness to liaise with the Applicants to avoid this in the future

2008

12. In relation to 2008 the disputed amount was partly a budgeted amount of that years anticipated service charge expenditure. The figure disputed was £299.22 in respect of the budgeted expenditure up to 31 August 2008 and a balance of £163.78 payable in relation to the 2007 service charge expenditure in respect of the difference between the amount collected "on account" and monies actually spent. Following

further discussions between the parties and an explanation as to how the figure had been queried it became clear that in fact the calculation of the balancing figure for the previous year's service charge was not being disputed and the budgeted amount was in line with previous years' expenditure and therefore accepted by the Applicants as being reasonable.

13. The Respondent explained the history of its involvement with the Property and how they had purchased it as part of a portfolio of properties in the locality which was not within their usual locality; therefore the Respondent had relied upon using contractors with which it was unfamiliar and who had been previously employed by its predecessor under the supervision of a locally appointed surveyor. The Respondent accepted that some of the contractors it had originally employed may not have been satisfactory but had suggested that it had tried to liaise with the Applicants, although perhaps not always successfully. It indicated that it had a real desire to improve all of the properties that it managed and that had it been able to gain agreement from the Applicants in relation to a proposed programme of major works it would have been possible to improve the appearance of the Property.
14. Although clearly there were matters which the Applicant and Respondent did not agree it appeared that notwithstanding these differences the Respondent wished to move forward and its representative at the Tribunal was now actively involved with the management and wanted to work with the Applicants to agree a scheme to improve the condition of the Property. It was not disputed by either party that the Property is in a neglected state and condition.
15. What the Respondent did dispute was that the management charges which were £500 in 2005, £600 in 2006 and £650 for the years 2007 and 2008 were unreasonable. She said these were in line with management charges for other similar properties in the locality and had previously been accepted as being reasonable by another Tribunal.

THE LAW

16. The Statutory provisions relevant to this application are contained in Sections 18, 19 and 27A of the Landlord & Tenant Act 1985 which are reproduced below.

S18 Meaning of "service charge" and "relevant costs".

- (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[, improvements 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 for which the service charge is payable.

- (3) For this purposes—
 - (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 or later period.

S19 Limitation of service charges: reasonableness.

- (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 provisions 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.

- (5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.

S27A Liability to pay service charges: jurisdiction

- (1) 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, if 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.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter

17. The application appears to have been made because the Applicants have disputed their liability to pay certain specified service charge items of service charges (listed in the application) in respect of the service charge years ending in 2005, 2006, 2007 and 2008.
18. Section 18 deals with the meaning of service charges and relevant costs.
19. Section 19 indicates that in relation to “relevant costs”, which are costs or estimated costs incurred or to be incurred by or on behalf of a landlord or superior landlord in connection with matters for which a service charge is payable, these should only be taken into account in determining the amount of a service charge payable for a period to the extent they are reasonably incurred and where they are actually incurred in relation to the provision of services only if the services or works are of a reasonable standard.
20. Therefore the issue of reasonableness is relevant in relation to the Applicant’s query raised as to the level of the management fees which are “relevant costs”.
21. In part 5 of the schedule to the Applicants’ leases, and copies of these were provided to the Tribunal in the bundles, it is stated that the service charge payable by each tenant should be one fifth of the sum which on the 1 September in every year the

Landlord or its agent estimates, and certifies in writing to be the reasonable costs and expenses to the Landlord for the 12 months following of performing its obligations under clause 6 and collecting ground rents and service charges in relation to all the flats in the building.

22. It is this wording that the Respondent relies upon as justifying the imposition of a management charge. Clause 6 of the lease provides for the landlord, subject to the payment of service charges previously referred to, to keep the common parts of the property in good and substantial repair and condition and to keep the exterior of the building in good decorative repair and condition and inter alia to keep the whole of the building comprehensively insured.
23. In relation to the lease the Applicant queried whether in fact the landlord was entitled to increase the amount of service charge payable on account beyond a specified level. He relied upon some drafting in the lease in relation to which he said he had taken legal advice on and which would prevent the landlord charging higher service charge figures. He was advised by the Tribunal that if he did have queries about the interpretation of the lease he should seek legal advice but the Tribunal did not agree with his interpretation of the lease. The lease clearly does provide in clause 5 for the tenant to pay both ground rent and service charge to the landlord and in clause 4 (b) the lease states that service charge is payable as "additional rent" calculated in accordance with part 5 of the schedule in advance on 1 September and if service charge is not paid it is recoverable by the landlord as if it were rent in arrears. This does not however enable any tenant to suggest that any cap on the rent would cap the amount of service charge payable since each tenant's share is simply a part of the actual expenditure incurred by the landlord in carrying out its obligations (and subject to its also complying with the relevant current legislation with regard to service charges)

THE INSPECTION


24. Prior to the hearing, accompanied by both Applicant and Respondent, an inspection was been made of the common parts of the Property. The Property is a terraced property in a secondary road located within a distinct part of the city of Plymouth. At the front of the building is a small garden area which is in a neglected condition. A downpipe running down the front wall had originally run into a gully which appeared to have been taken away and was blocked by concrete debris. Inside the front door a small communal hallway and passage leads to the rear garden which is also a

communal area and to the stairs which provide access to the upper flats. The hallway passageway and stairs are in poor decorative condition and quite dirty. The rear garden is unkempt and untidy. At the bottom of the garden is a gate leading on to the rear service lane. There is a dilapidated lean to shed at the rear and a cellar cupboard at the side of the building the access to which was obstructed by a ladder. There was no visual evidence of any recent maintenance having been undertaken in relation to any of the common areas.

DECISION

25. Having considered item by item each of the amounts queried by the Applicants in relation to the service years 2005, 2006, 2007 and 2008 the Tribunal decided that with regard to the year 2005 the Applicant had validly questioned the amount of the communal maintenance charges that had been paid to Beeline. The Respondent had accepted that it was possible that these costs were unsatisfactory. In fact the Applicants had questioned whether Beeline had ever even attempted to carry out any of the works for which it had submitted accounts. The Tribunal decided therefore that to the extent that the amount disputed related to maintenance and cleaning costs paid to Beeline the Applicants were not liable to pay. It should be noted that in the application form the disputed figure referred to communal maintenance by Beeline of £200, but that this was the estimated figure and the amount shown in the accounts for the year ending 31 August 2005 was actually £331.80 this being the amount actually paid to Beeline. The Tribunal therefore determined that it was this amount that the Applicant was not liable to pay.
26. The other amounts that the Applicant had disputed in this year albeit in the estimates appeared to have been satisfactorily incurred and on that basis the Tribunal determined that the Applicant was liable to pay the other amounts he had queried for that year.
27. In relation to the year 2007 the Tribunal determined that the Applicant was liable to pay all of the amounts disputed.
28. As the management charges were disputed in every year the Tribunal dealt with these "collectively" as the evidence of each party was the same in relation to each year.
29. The Tribunal determined that the management fees charged being £500 for 2005, £600 for 2006 and £650 for the years 2007 and 2008 were reasonable in relation to

the management of a building such as the Property In the most recent year the amount payable amounted to £130 for each of the flats



Cindy A. Rai
Chairman