

**IN THE MATTER OF**  
**FLAT 4, BLOCK 30, BYRON AVENUE, PODSMEAD, GLOUCESTER, GL2 5AG**

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

**CASE NO: CHI/23UE/LIS/2008/0003**

**AND**

**IN THE MATTER OF**  
**AN APPLICATION – SECTION 27A OF THE LANDLORD & TENANT ACT 1985**  
**AS AMENDED (“THE 1985 ACT”)**

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**DECISION**

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**Applicant/Landlord** Gloucester City Homes

**Respondent/Tenant** Mr Clive Thomas

**Premises:** Flat 4  
Block 30  
Byron Avenue  
Podsmead  
Gloucester  
GL2 5AG

**Date of Application:** 2 January 2008

**Directions Given:** 11 January 2008

**Pre-Hearing Further  
Directions:** 20 February 2008

**Date of Inspection and  
Hearing:** 28 May 2008

**Venue of Hearing:** The Oval Room  
Pitville Pump Rooms  
Pitville Park  
Cheltenham, GL52 5JE

**Members of the Leasehold Valuation Tribunal:**

Mr A D McC Gregg, Chairman  
Mr Paul Smith, FRICS  
Mrs Juliette Playfair

Clerk: Mr A J Peach

**Persons Present at the Hearing (For the Applicant):**

Mrs Jasmine Ellicott

**Persons Present at the Hearing (For the Respondent):**

(There was no Appearance or representation by or on behalf of the Respondent, Mr Clive Thomas)

**Preliminary Matters**

1. At 9.40 a.m. on the 28<sup>th</sup> of May 2008 prior to the hearing the Tribunal attended at the premises at Flat 4, Block 30, Byron Avenue, Podsmead, Gloucester, GL2 5AG for the purpose of inspecting those premises at 10pm.
2. Unfortunately and notwithstanding having been advised of the proposed inspection, the Respondent was absent from the premises at the appointed time and an internal inspection was not therefore possible.
3. The Tribunal did however inspect the external aspect of Block 30, Byron Avenue and noted that it was a three story block of 6 flats, built in the 1950s to a basic standard with similar common areas. The are grassed common areas without dedicated bins stores or off street parking
4. The Tribunal were informed that they were originally all Council flats and that 3 have been purchased (including Flat 4) under the Right to Buy legislation.
5. The Tribunal then adjourned to The Oval Room, The Pittville Pump Rooms, Pittville Park, Cheltenham, GL52 5JE for the hearing.
6. Again there was no appearance by or on behalf of the Respondent. The Applicant was represented by Mrs Jasmine Ellicott.
7. The Tribunal had previously received and considered the papers relating to this case including the Applicant's paginated bundle, there being no papers or written representations from the Respondent.
8. It was however noted from the papers that there was a suggestion that Mr Thomas is unable to read.

## **The Issues**

The Applicant's case was put by Mrs Jasmine Ellicott who asked the Tribunal to determine the liability in respect of specific items contained in the service charges for the years 2005/6 and 2006/7 as set out in the application form to the Tribunal and more particularly on Pages 4, 5, 6 and 7 of the Applicant's bundle.

## **Relevant Liabilities under the Lease**

The Liabilities for the provision of services and the payment of service charges are contained in the Lease (Document 12 of the Applicant's bundle) dated the 5<sup>th</sup> December 2005 for a period of 102 years from that date expiring in March 2107 and more particularly set out and referred in the Tenant's Covenants (the 4<sup>th</sup> Schedule).

The calculation of service charge and specified proportions (the 5<sup>th</sup> Schedule) and items of expenditure (the 7<sup>th</sup> Schedule).

## **The Law**

The Landlord & Tenant Act 1985 (as amended) is the applicable law. For the purposes of the 1985 Act a service charge is defined in Section 18(1) as "an amount payable by the tenant of a dwelling as part of or in addition to the rent

- (a) which is payable directly or indirectly for services, repairs, maintenance, improvement 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 (including overheads)"

"Relevant costs" are defined as costs or estimated costs incurred or to be incurred by or on behalf of a landlord or superior landlord in connection with the matters for which the service charge is payable. Section 20 of the 1985 Act sets out the consultation requirements that are to take place between a landlord (freeholder) and a tenant (leaseholder) prior to expenditure being incurred by way of service charges and the requirement to obtain estimates in respect of that expenditure.

## **The Hearing**

The hearing commenced at 11.20 a.m. and the case for the Applicant was put by Mrs Jasmine Ellicott who outlined the difficulties that the Applicant had experienced in obtaining payment for the service charges provided.

The Tribunal were informed that the Respondent apparently does not believe that he has to pay a service charge.

Having considered the terms of the lease and read the copies of all the correspondence between the Applicant and the Respondent the Tribunal concluded that there was a liability to pay the service charges as set out in the application and that these were properly payable by the Respondent.

**The Decision of the Tribunal**

That the Respondent, Mr Clive Thomas was liable to pay the service charges for the years 2005/6 and 2006/7.

Signed .....

Andrew D McCallum Gregg (Chairman)

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

Dated: 12 June 2008