

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

Case Number: CH1/46UC/LSC/2008/0066

Re: 1 Stockwood Road, Chippenham, Wiltshire, SN14 0RY

In the matter of an application under Section 27A of the Landlord and Tenant Act 1985 for a determination of liability to pay service charges.

Between:

Miss Hazel Margaret De La Haye Applicant

and

**Jephson Homes Housing
Association Limited** Respondent

Date of application: 7 July 2008

Date of hearing: 8 October 2008

Members of the Tribunal: Mr. J. G. Orme (Lawyer Chairman)

Mr. S. Hodges FRICS (Valuer member)

Mr. M. Cook (Lay member)

Date of decision: 13 October 2008

Decision of the Leasehold Valuation Tribunal

For the reasons set out below, the Tribunal determines that the service charge payable by Miss Hazel Margaret De La Haye in respect of 1 Stockwood Road, Chippenham, Wiltshire SN14 0RY for the year from 1 April 2008 to 31 March 2009 is £1,442.67.

Further, the Tribunal dismisses the application by Miss Hazel Margaret De La Haye for an order pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended).

Reasons

The Application

1. On 7 July 2008, the Applicant, Miss Hazel Margaret De La Haye, applied to the Tribunal under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") to determine her liability to pay service charges in respect of 1 Stockwood Road, Chippenham, ("the Property"). The Applicant seeks a determination as to the amount that she is liable to pay to the Respondent, Jephson Homes Housing Association Limited in respect of the year from 1 April 2008 to 31 March 2009.

2. The Tribunal issued directions on 18 July 2008 providing for both parties to prepare written statements of case. Both parties have lodged statements of case in accordance with the directions.
3. The Property is a flat in a block of 6 flats, 5 of which are leasehold and subject to payment of the same service charge. When the Applicant sent her application to the Tribunal, she notified the Tribunal of the names and addresses of the other leasehold owners. The Tribunal wrote to those persons notifying them of their right to apply to be joined as parties to the application. The Tribunal has not received any application to be joined as a party.
4. Mrs. Linda Ball, the leasehold owner of 7 Stockwood Road, one of the flats in the same block, appeared at the hearing and applied to be joined as a party. She said that she had not received a letter from the Tribunal notifying her of her right to apply to be joined. As Mrs. Ball had not filed a statement of case and as the Respondent would not have had any opportunity to consider any case which she might present, the Tribunal refused Mrs. Ball's application to be joined on the basis that it was made too late and it would not be possible to give a fair hearing to the parties without an adjournment.

The Law

5. The statutory provisions primarily relevant to applications of this nature are to be found in sections 18, 19 and 27A of the Act.
6. Section 18 provides:
 - 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 purpose:-*
 - 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.*
7. Section 19 provides:-
 - 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 provision 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.*
8. Section 27A provides:-
- 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.*

Subsections 2 to 7 of section 27A are not relevant in this application.

The Lease

9. The lease of the Property is dated 28 October 2002. The lease was granted by the Respondent to the Applicant for a term of 125 years from 1 January 2002.
10. The Lease contains the following definitions which are relevant:
- “The Development” means the land premises and works more particularly described in the First Schedule hereto including the Blocks of Flats the Garages the Houses and the Reserved Property.*
 - “The Ordinary Blocks of Flats” means the 6 blocks of flats other than Walk-in Blocks of Flats comprising in total 88 self-contained flats.*
 - “The Walk-in Blocks of Flats” means the 12 Blocks of Flats specially so designed so as to render each flat therein capable of entry at ground floor level comprising in total 24 self-contained flats.*
 - “The Houses” means those detached semi-detached or terraced houses erected or within the permitted period to be erected on the Development...*
 - “The Reserved Property” means that part of the Development not included in the Blocks of Flats the Buildings the Houses or the Garages but comprises (inter alia) the private estate roads garden areas lawns parking areas and amenity areas more particularly described in Part II of the Second Schedule hereto.*

11. By clause 3 of the lease, the Applicant covenanted with the Respondent that *"the Lessee will at all times hereafter pay the rent and the Lessee's Proportion.. and observe and perform the obligations on the part of the Lessee set out in the Sixth Schedule hereto."*
12. By paragraph 1:2 of the sixth schedule the Applicant covenanted *"To pay and to keep the Lessor indemnified from and against the Lessee's Proportion of the Lessor's Fund A expenses and the Lessor's Fund B expenses or the Lessor's Fund C expenses at the times and in the manner provided in this Lease or otherwise on demand."*
13. The service charge provisions are set out in the seventh schedule. They are long and complex. They set out the Respondent's obligations to repair and maintain the common parts of the Development. They provide for the Respondent to divide its expenses in carrying out such obligations into three parts. The Lessor's Fund A expenses are the expenses incurred in connection with the Reserved Property. The Lessor's Fund B expenses are the expenses incurred in connection with the Ordinary Blocks of Flats. The Lessor's Fund C expenses are the expenses incurred in connection with the Walk-in Blocks of Flats.
14. In each case the seventh schedule provides for the Respondent to recover the cost of carrying out a wide range of activities including employing professional advisors and to recover reasonable fees for carrying out general management and administration.
15. Part IV of the seventh schedule defines the Lessee's Proportion. In relation to the Fund A expenses the total is to be divided by the total number of houses and flats on the Development and the lessee is to pay one equal part. In relation to the Fund B expenses the total is to be divided by the number of flats in the Ordinary Blocks of Flats and the lessee is to pay one equal part.
16. Paragraph 3:5 of part IV of the seventh schedule provides *"As soon as practicable after the beginning of each Lessor's Accounting Year the Lessor shall serve on the Lessee a Notice of Estimate being an estimate of the Lessee's Proportion in respect of the relevant fund prepared by the Lessor for that current Lessor's Accounting Year and the Lessee shall pay to the Lessor on account of the Lessee's Proportion the sum so estimated by the Lessor by two equal instalments in advance the first payment to be made within one month of the delivery on the Lessee of a Notice of Estimate and the second instalment shall be paid on or before the 1st day of December in the same Lessor's Accounting Year."*
17. Paragraphs 3:6 and 3:7 provide for adjustments to be made in the subsequent year if the Lessee's Proportion differs from the estimate.

Background

18. The Property forms part of the Development at Hungerdown Road, Chippenham. Mr. John Evans, a Housing Manager employed by the Respondent, informed the Tribunal that the Development was originally intended to provide rented social housing. Subsequently, many of the properties on the Development have been sold on long leaseholds under the "right to buy" scheme.
19. Mr. Evans informed the Tribunal that there are 238 units on the Development consisting of 116 houses, 88 flats with communal entrances (described in the lease as Ordinary Blocks of Flats) and 34 flats with no communal entrance (described in the lease as Walk-in Blocks of Flats.) A total of 137 units have been sold.
20. The Respondent remains liable for the repair and maintenance of the common parts of the Development other than those that have been adopted. The leases of those units which have been sold contain service charge provisions enabling the Respondent to recover a proportion of the costs incurred in carrying out those obligations.
21. On 14 June 2007 the Respondent gave notice under Section 20 of the Act of its intention to carry out a programme of cyclical painting and associated repairs to the common parts of the Development. The Applicant and other leaseholders informed the Respondent that they did not consider that decoration works were required on their block of flats. Notwithstanding those representations, the Respondent decided to go ahead with the works. They instructed consultants to prepare a specification of works and that was put out to tender. The Respondent was not asked to obtain an estimate from a nominated contractor. On 20 November 2007 the Respondent gave notice of the three estimates received. It then proceeded to enter into a contract with the contractor providing the lowest estimate.
22. The work had been commenced but it had not been completed by the date of the hearing. The estimated cost of the works has been included in the service charge demands for 2008/09.
23. The Applicant objects to paying her share of the cost of the works. In essence, she says that the works were not necessary and that the works have not been done to a proper standard. She also objects to other elements of the service charge not connected to the works.

Inspection

24. The Tribunal carried out an inspection prior to the hearing on 8 October in the presence of the Applicant and Mr. Evans.
25. The Tribunal was able to walk around a substantial part of the Development. The common parts of the Development appeared to be maintained in good condition.

26. The Property is a ground floor flat in one of the Ordinary Blocks of Flats. It shares a common entrance hall and stairway with 5 other flats. It was apparent that the hall and stairway had been decorated recently. The Applicant pointed out paint splashes on light covers, the door closer and glass of the front door and on the floor coverings. She pointed out ventilation grilles on doors to storage cupboards which had been replaced after the doors had been painted leaving exposed areas which had not been painted. She pointed out a light fitting on the top floor which had been replaced thereby exposing parts of the ceiling which had not been painted. She pointed out bolts which had been recently fitted to meter cupboards which she said were unnecessary. The bolts were poorly aligned and appeared out of place. The Applicant also drew attention to the front doors of the flats about which there was a dispute as to whether or not they had been painted.

The Hearing and the Issues

27. The hearing took place at the Castle Inn Hotel, Castle Coombe on 8 October 2008. The Applicant appeared in person. Mr. Evans represented the Respondent. Both the Applicant and Mr. Evans gave evidence at the hearing.

28. The Applicant raised the following issues:

- i. Redecoration of the common parts – She said that the work was not necessary; that the work carried out was to a poor standard with personal property and gardens being damaged, and that the finish and colour were not suitable for a communal entrance.
- ii. Cleaning of the hallway and stairs – She said that this was not carried out effectively.
- iii. Maintenance of grassed areas – She said that the lawns are not mowed properly, leaving large clumps and that there are bare areas due to damage caused in laying pipes.
- iv. External window cleaning – She said that she would prefer to do it herself.
- v. Management fees – She complained of a lack of response from the Respondent's staff to letters and complaints and a bullying attitude by staff.
- vi. General lack of maintenance – She said that a broken washing line pole had not been replaced for 6 months, plumbers laying gas pipes had damaged drains, the front security door and some tiles above her kitchen window, that rubbish remains around the development for a long time and that the sites are not properly checked.

She did not raise any issue as to whether or not the charges were properly recoverable under the terms of her lease. She was objecting to the amount of the charge. Her real concern was that she could not afford to pay the service charge this year and that the cost was causing her to sell the Property.

29. The Respondent responded to these issues in its statement of case and the evidence of Mr. Evans.

The Evidence

30. As to whether the painting work was necessary, the Applicant said that in her block the walls were in better condition before they were painted, as they were painted with a multifleck system which did not show up the dirt, and that the doors did not need painting as could be seen from the front doors to the individual flats which had not been painted. She had not inspected all the blocks on the Development but when she had visited friends elsewhere, their blocks appeared to be in good condition.
31. Mr. Evans said that the Respondent normally carries out external painting on a 4 to 5 year cycle. The Development had been last painted in 2002. Whilst some areas may not have been in need of painting, there were other areas that did need attention and it was reasonable to carry out work to the whole development.
32. As to the cost, Mr. Evans explained the tendering process and said that the lowest of three estimates had been accepted. The Applicant was not able to comment on the cost other than to say that she thought that it was very expensive.
33. On the standard of work, the Applicant reiterated what she had pointed out at the inspection. She said that the contractors had not complied with a substantial number of requirements of the specification of works, for instance not providing dust proofing (paragraph 3.05.03), not easing the front security door (8.03.02), not cleaning external glass (8.03.03) and not offering different colours for front doors (9.01.03). She said that paint had been splashed on bicycles belonging to No.3 and plants had been splashed with a compound used on the external windows. She said that the front doors to her flat and to the other flats in the block had not been painted. She denied that she had refused access for her door to be painted. She referred to a photograph of the door to No.7 produced by the Respondent which showed where a door-closer had been removed and not painted over. She said that the door-closer had been removed some time ago. She called Mrs. Ball to give evidence. Mrs. Ball confirmed that she owns No.7 but as she does not live there, she could not say when the door-closer had been removed nor had she seen the door being painted.
34. Mr. Evans relied on a report dated 5 September 2008 prepared by Kendall Kingscott Limited, the consultants appointed by the Respondent to supervise the contract. The report states that the works are being carried out to an acceptable standard and that the consultants were not aware of paint splashes or damage to personal property or gardens. However, Mr. Evans accepted, following the inspection, that there were areas that needed attention. He said that

the contract was continuing and that these areas would be attended to during snagging. He said that the contract would not be signed off until the work had been done or adjustments had been made to the price. He said that he had been told by Kendall Kingscott Limited that the front doors of the flats had been painted with the exception of No.1 where the Applicant had refused access. He accepted that the contractor had overlooked the requirement to offer alternative colours for front doors.

35. On cleaning, the Applicant said that the cleaners attended on a weekly basis but did not do the work effectively. They rarely wash down with hot water and on one occasion had asked her to provide hot water. Mr. Evans said that the contractors had been changed about 1 year ago following a tender process. He produced a copy of the cleaning specification. The estates manager monitors their performance on a monthly basis. He said that the cleaning cost in 2008 is £10,338 equivalent to £2.26 per week per flat. He said that the contractors are obliged to provide their own hot water.
36. On grass mowing, the Applicant relied on the evidence of the inspection. Mr. Evans said that the Respondent employs contractors to cut grass, clear leaves and to clean the communal areas. He produced the estate maintenance specification. He said that the grass was due to be cut on the day of the hearing and that in his opinion, the grass areas were in good condition.
37. The Applicant said that she would prefer to clean her own windows. Mr. Evans said that the Respondent is obliged to carry out this work under the lease. He said that the cost of the contract was £23 per flat per year.
38. Mr. Evans said that it is the Respondent's policy to respond to letters and complaints but that on occasions, letters do go astray. He accepted that there was an occasion when the Respondent had failed to attend a meeting with the Applicant and that compensation had been paid. He denied that the staff adopted a bullying attitude. He said that the management charges are based on the time spent by staff attending the Development and that the current charge was £212 per flat per year.
39. On the general maintenance issues, Mr. Evans accepted that the broken washing pole had not been repaired until August. He did not know why. He had investigated allegations that plumbers had damaged drains and other items. He was not aware of any continuing problem but assured the Tribunal that if the plumbers had caused damage, any cost of rectification work would be charged to them and not to the service charge. He accepted that there were occasions when rubbish was left on site but that it was the responsibility of contractors to keep areas clean and this was checked on routine inspections.

Findings of Fact

40. The Tribunal is satisfied that the Respondent acted reasonably in entering into a contract for cyclical repairs and decoration in 2008. It accepts that there may have been some areas not requiring immediate attention and that there were others that required attention. It notes that 6 years had passed since the previous decorations and that the specification required work other than decorations. The Tribunal accepts that the Respondent has to look at the Development as a whole rather than an individual block of flats. The Respondent cannot be criticised for carrying out a programme of repairs and decorations after a period of 6 years.
41. The Tribunal finds as a fact that the work inspected by the Tribunal in the hall and stairs of the block including the Property was not of a proper standard if that work had been completed. The work seen by the Tribunal was certainly not then of a standard that would be acceptable to an individual paying a contractor to do work on his or her own property. The Tribunal accepts that there are paint splashes, badly fitting grilles and other defects. The Tribunal also finds as a fact that some of the front doors of the flats including No.1 have not been painted during the works. The Tribunal prefers the evidence of the Applicant on this issue. The Tribunal does not accept the report of Kendall Kingscott Limited to the effect that the work is being carried out to a proper standard. If that is their opinion, they have paid scant regard to the Applicant's observations.

Conclusions

42. The Tribunal has already found that it was reasonable for the Respondent to proceed with the cyclical repair and decoration works. The Tribunal accepts that the Respondent went through the correct processes both in terms of statutory consultation with the leaseholders and in terms of tendering. The Respondent accepted the lowest tender and in the absence of any evidence from the Applicant to suggest that the contract price was not a fair price, the Tribunal accepts that the cost of the contract is reasonable.
43. The Tribunal has already found that the work which it inspected was not of a proper standard. However, the contract has not yet been completed. Mr. Evans assured the Tribunal that the outstanding issues would be dealt with in the snagging process where that is possible (e.g. completing painting of doors, cleaning of paint splashes, etc.) and that an appropriate adjustment in the price would be made where matters could not be put right (e.g. the failure of the contractors to offer alternative colours for front doors.) Provided that the snagging work is completed properly and the contract sum is adjusted to reflect the variances from the specification, the Tribunal is satisfied that the service charge for the cyclical works is reasonable.

44. The Tribunal does not accept the Applicant's complaints about cleaning, grass cutting and general maintenance of the estate. From its own inspection of the Development, the Tribunal is satisfied that the Development is being maintained to a satisfactory standard. The hall and stairs appeared clean. The grass appeared neat and tidy considering that it had not been cut for 2 weeks. There were some clumps of taller grass due to different growth rates rather than lack of maintenance. The Tribunal considers that the Applicant was demanding too high a standard in all the circumstances. Although there was some evidence of rubbish around the Development, it was not at an unacceptable level. The Tribunal accepts that it is the responsibility of the Respondent to clean the exterior windows. The Tribunal notes the problems with the washing line pole and the damage alleged to have been caused by the plumbers. In managing a large development, there are bound to be some problems of this nature. However, the Applicant produced no evidence to suggest that they had resulted in inappropriate costs being charged to the service charge.
45. Having heard the evidence, the Tribunal is concerned that there may be a lack of communication between the parties and that the Respondent may not have been dealing with the Applicant's concerns in a sympathetic manner. In particular it appears that no satisfactory individual response was given to the Applicant (and others) following her observations on the consultation process. Whilst better communications may have improved relations between the parties and may have avoided the need for this application, that is not an issue which affects the reasonableness or the amount of the service charge.
46. The Tribunal concludes that it should not make any changes to the service charge which has been demanded. Mr. Evans informed the Tribunal that the cost of the cyclical works had been reduced since the Notice of Estimate had been sent to the Applicant. He said that the cost charged to the Applicant had been reduced to £835.28 to which must be added £607.39 for routine items making a total service charge of £1,442.67. In the circumstances, the Tribunal determines that the service charge payable by the Applicant in respect of 1 Stockwood Road, Chippenham for the year from 1 April 2008 to 31 March 2009 is £1,442.67. The lease provides for it to be paid as set out at paragraph 3:5 of part IV of the seventh schedule. However, the Tribunal understands that arrangements have been made for the service charge to be paid monthly and so the Tribunal will make no further direction in that respect.
47. The Tribunal understands the Applicant's concern that she cannot afford to pay the service charge. The lease is drawn in such a way that she receives little credit for caring for her own property and must contribute to the cost of maintaining the whole development. It is that fact that results in the service charge being at a level which the Applicant considers unreasonable rather than the manner in which the Respondent is carrying out its obligations under the lease.

48. The Applicant applied for an order under Section 20C of the Act that the costs incurred by the Respondent in connection with this application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant. In support of her application, the Applicant said that she could not afford to pay such costs. That is not a sufficient reason for such an order. The Applicant has failed in her application. The Respondent has acted reasonably in dealing with the application. The Tribunal makes no such order and dismisses the application.

Mr. J G Orme
Chairman
Dated 13 October 2008