



**Residential
Property**
TRIBUNAL SERVICE

Leasehold Valuation Tribunal

LON/00AZ/LSC/2007/0413

London Rent Assessment Panel

Landlord and Tenant Act 1985 sections 27A and 20C

Property: 33 Darfield Road, Brockley, London SE4 1ET

Applicant: Southern Land Securities Limited – Landlord

Represented by: Mr. B Taylor and Ms. D Toson, both on behalf of
Hamilton King Management Limited

Respondent: Mr. Andrew Thomas – Tenant

Represented by: Acting in person

Tribunal members: Mr T J Powell LLB
Mr P Roberts DipArch RIBA
Mr. D Wills ACIB

**Transfer from
Bromley County Court:** 17 October 2007

Oral Pre-Trial Review: 12 November 2007

Hearing: 4 March 2008

Decision: 20 March 2008

Decisions of the Tribunal

- (1) The Tribunal has taken into account all charges and payments up to 22nd February 2008, being the date of printing of the Respondent's running account provided by the Applicant at the hearing;
- (2) The Tribunal has no jurisdiction to determine payability of ground rents, which comprised £200 of the £3,754.69 "outstanding charges" for the period to 22nd February 2008;
- (3) The balance of £3,554.69 represents a mixture of service charges and administration charges. Of this sum the Tribunal disallows £2,760.52 (for the reasons set out in this Decision and as summarised in the attached Schedule). The Tribunal therefore determines that £794.17 is payable by the Respondent, for service charges and administration charges for the period to 22nd February 2008;
- (4) The Tribunal does not order the Respondent to refund any Tribunal fees to the Applicant. In addition, for the avoidance of doubt, the Tribunal makes an order under Section 20C of the Act so that none of the Applicant's costs of the Tribunal proceedings are passed on to the Respondent;
- (5) The questions of interest and of costs payable by the Respondent in the current court proceedings (if any) are decisions for the Bromley County Court, to which this case should now be returned.

Background

1. The Applicant is the freeholder of 33 Darfield Road, London SE4, a mid-terrace Victorian house converted into two flats on the ground and first floors. The Respondent is the leaseholder of the first floor flat, having purchased the Lease on 1st January 1996.
2. On 21st March 2007 the Applicant (as Claimant) issued proceedings in the Chorley County Court for arrears of service charges in the sum of £2,247.64 up to and including 2nd March 2007, plus interest of £312.43. The Respondent filed a defence and the court action was transferred to Bromley County Court. By order of District Judge Brett dated 17th October 2007 the matter was transferred to the Leasehold Valuation Tribunal "to determine what service charges are payable (amount and date of payment)."

The Lease

3. The Lease is dated 28th November 1980 and is made between (1) Eugenios Leontiades and Linda Margaret Leontiades, both of 33 Darfield Road, London SE4 and (2) James Ferrier Oliver and Ann Oliver. The Lease runs for 99 years from 24th June 1980.

4. By clause 1 of the Lease the Lessee is to pay one half of any amount which the Lessors may expend in effecting or maintaining insurance of the building.
5. By clause 2(3) the Lessee covenants "from time to time to pay the Lessors upon demand one half of the cost incurred by the Lessors in complying with the covenants on their part contained in clause 4(b) hereof." By clause 2(8) the Lessee covenants "to pay and contribute a rateable or due proportion of the expense of making repairing maintaining ... rebuilding and cleansing ..." the common parts. By clause 2(24) the Lessee covenants "to pay all expenses (including solicitors' costs and surveyors' fees) incurred by the Lessors incidental to the preparation and service of a Notice under section 146 of The Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the court."
6. The Lessors' obligations in clause 4(b)(i) are "at all times during the said term to keep in good and substantial repair and in clean and proper order and condition and properly painted decorated or treated the common entrance hall and the structure and exterior of the building" and (b)(ii) "to maintain in good working order and repair all sewers drains" etc.
7. By clause 4(c) the Lessors covenant "to insure the building against fire and such other risks as the Lessors may reasonably require in a sum which represents the full reinstatement value thereof (including architects' surveyors' and other professional fees) and two years' loss of rent ..."
8. Clause 5(b) is a forfeiture clause in the usual terms should rent be in arrear for 21 days after the same shall have become due.
9. There is no provision in the Lease for advance service charges or for end-of-year adjustments, although the managing agents, Hamilton King Management Limited ("Hamilton King") have adopted the practice of charging the Leaseholders in advance in two half-yearly instalments, on the basis of an estimated budget for the year to 25th March in each year, with a reconciliation against actual expenditure figures on that date. None of the advance charges throughout the period in question have exceeded the actual amount of Lessor's expenditure.
10. The Respondent sub-let the first floor flat in 2003, and has not lived in it since then.

The law

11. Service charges and relevant costs are defined in section 18 of the Landlord and Tenant Act 1985 (as amended) and include an amount payable by a leaseholder for insurance. The amount of service charges which can be claimed against leaseholders is limited by a test of reasonableness which is set out in section 19 of the Act. Under section 27A an application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is payable, including an advance service charge.

12. Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 allows a Tribunal to order a party to reimburse the whole or part of any fees paid by another party.
13. Section 20C of the Landlord and Tenant Act 1985 Act provides that a Tribunal can make an order preventing the Lessor recovering its costs of proceedings (before the Tribunal) through the service charge, if the Tribunal considers it to be just and equitable.
14. The Tribunal has no jurisdiction to determine payability of ground rents.

The Hearing

15. The matter proceeded by way of an assessment of the payability and reasonableness of service charges pursuant to section 27A of the Landlord & Tenant Act 1985 and of administration charges pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002. Charges after 25th March 2007 included advance service charges.
16. The Respondent's challenge to the service charges was contained in his letter to the Tribunal dated 7th December 2007. He disputed all of the service charges billed to his account since 25th March 2000 on the following grounds:
 - i) The managing agents had provided no information about the interim services charges that they had raised and their end-of-year adjustments;
 - ii) The cost of buildings insurance was "very excessive;"
 - iii) The managing agents had provided no information as to what the management fees related to, what services they provided and what their duties were; and
 - iv) the legal charges were disputed on the basis that there had been no court proceedings or judgment against the Respondent, until the current court action.
17. The majority of the relevant documents were contained in the trial bundle. A number of documents were handed in to the Tribunal on the day of hearing. These were first given to the Respondent to consider, who, after he had done so, confirmed on each occasion that he was happy for the hearing to continue.

The Evidence and the Tribunal's Findings

Interim service charges and end-of-year adjustments

18. The Tribunal analysed the annual accounts and the running accounts. The Applicant's representatives gave an explanation as to how the figures had been arrived at. They pointed out that a credit figure of £292.50 dated 25th March 2001 should in fact have been a debit entry, but that it had been re-applied to

the account as part of a later £426.96 undercharge entry on 7th May 2002. Although the evidence was unclear on this point and there remained a question as to the accuracy of the running account, the Tribunal noted that when issuing proceedings in 2007, the Applicant had relied upon the then balance of the running account of £2,247.64. The Tribunal therefore determined that there should be no further adjustment to the running account in respect of this (or any similar) apparent error, which in any event is now 7 years old.

19. After listening to the Applicant's representatives, the Respondent said that he was now satisfied at the explanation of how these charges had arisen – which had not been forthcoming before the hearing, when he had asked for an explanation – but he maintained his challenge to the payability and reasonableness of the charges themselves.

Insurance premiums

20. The annual amounts for building insurance for the whole building varied from between £567.82 (for the year to 25th March 2000) to £995.37 (for the current year to 22nd March 2008), a 75% increase over the period.
21. The insurance was placed with Royal & SunAlliance until the year ending 22nd March 2004, and thereafter with AXA Insurance. Each annual policy was a "blocks of flats" portfolio insurance policy. The paperwork was unsatisfactory and confusing. The named policyholder in each case was not the freeholder Respondent, but the managing agents, Hamilton King. However, from at least March 2003 the insurance was procured by Reich Insurance Brokers, whose covering letters to Hamilton King stated "we are pleased to confirm that the above-noted property has been included within the insurance portfolio of the freeholder..." [emphasis added].
22. In evidence, Mr. Taylor said that the brokers obtained 3 quotes for insurance each year and that this exercise had instigated the change to AXA Insurance for the year ending March 2005. He also said that the sum insured for the year ending 24th March 2008 had been increased during the year from £151,848 to £200,000.
23. The evidence was that the Respondent had queried the cost of insurance in December 2003 and again in December 2005; and in each case the managing agents had responded by a letter enclosing copies of the insurance summary of cover.
24. The Respondent produced two alternative quotes for buildings insurance dated December 2007, which were contained in the trial bundle. The first, from Property Quote Direct was for a building sum insured of £175,500 and quoted a premium of £241.10, with Zurich Insurance. It covered a number of the usual perils, including landlord's loss of rent, but not terrorism cover, and it was subject to standard conditions. The second quote from JPR Insurance Brokers Limited was for a rebuild cost of £120,000 and quoted a premium of £226.80.

25. Mr. Taylor criticised the quotations as being not like-for-like. He compared the very brief list of perils in the alternative quotations unfavourably with the more detailed block policy with AXA Insurance. He also said that if the Respondent had provided these or other alternative quotations earlier, he would have investigated to see if they were comparable and whether the buildings insurance could be obtained at a cheaper cost. If the policies had been comparable and had been cheaper, then he would have gone with the alternative quotations for the buildings insurance, as he had done on other properties. When asked by the Tribunal, Mr. Taylor was unable to say if any commission was paid to the Applicant for taking up insurance with AXA.
26. The Respondent's main criticism was the cost of insurance; he had no criticism as to the way that Reich Insurance Brokers had obtained the quotes, apart from a comment that it was "a bit of a mystery how the insurance was obtained".

The Tribunal's decision relating to the insurance premiums

27. While the Tribunal considered that the level of insurance premiums was high, it was not convinced that the Respondent's quotations were like-for-like. The terms of the Lessor's covenant to insure in clause 4(c) of the Lease are very wide. The AXA policy offers a high level of cover. There was no evidence to suggest the Landlord had obtained insurance in any other way than in the normal course of business.
28. On the evidence before it, the Tribunal determined that the cost of insurance was reasonably incurred and payable by the Respondent. The premiums were reasonable in amount, although clearly at the higher end of the range.
29. However, despite this decision, the Tribunal strongly encourages the Respondent to provide the managing agents with further details of the alternative quotes he has obtained, or others, so that the managing agents can pursue the possibility of obtaining cheaper insurance in the future.

Management fees

30. The evidence was that each year Hamilton King had charged around £100 plus VAT by way of management fee. In a letter dated 22nd February 2008 to the Tribunal, Hamilton King explained that "our management fees are in respect of the general management of the property, such as providing accounts at the period end, looking after the service charge account, demanding ground rent and service charges, providing copies as and when required by residents ..." In addition Mr. Taylor said that Hamilton King inspected the property at least annually, arranged insurance and communicated by telephone and by letter with Lessees.
31. The Respondent said that this was the first time he had understood what the management fee was for. Even then, he did not accept that £100 plus VAT was a reasonable charge for the level of service that Hamilton King had provided.

32. The Tribunal asked Mr. Taylor to point to the provisions in the Lease which allowed the Landlord to appoint managing agents and/or obliged the Lessee to pay a management fee, but he could not do so.

The Tribunal's decision relating to management fees

33. In the absence of any express provision in the Lease, which allowed for either of these things, the Tribunal determined that whilst the level of charge is reasonable, it is not payable by the Respondent. It is settled law that landlords will not, as a rule, be able to rely on any implied, as opposed to express, obligation on the part of tenants to contribute to the cost of services. There was clearly no intention on the part of the original Lessors to delegate the management of the building to agents and this is undoubtedly why the Lease is silent as to the appointment of managing agents or any obligation on the part of the Tenant to pay a management fee.
34. Helpfully, the Respondent provided a schedule of service charge demands and payments between 25th March 2000 and 25th March 2007 (although the running account provided by the Applicant was printed on 22nd February 2008 and was up-to-date to that date). The schedule showed that management fees in the sum of £972.92 had been charged, which sum the Tribunal determines is not payable by him.
35. The schedule included a further demand for £123.32 under a column headed "professional fees". However, this related to an asbestos survey report dated 12th October 2004. Since this was a new requirement for landlords and not a management fee of any kind, the Tribunal determined that the Respondent is liable to pay for this, under clauses 2(3) and 4(b) of the Lease.

Legal costs charged to the Respondent

36. So far as the Tribunal can determine, the various legal costs and management fees under this heading are not service charge items, but rather administration charges, over which the Tribunal has jurisdiction under the 2002 Act.
37. On 3rd April 2001, the Applicant served a Notice on the Respondent under section 146 of the Law of Property Act 1925 in respect of £676.41 arrears of service charges. There had been a poor payment record by the Respondent up to this date. The evidence was that 10 warning and threatening letters had been sent to him seeking payment.

The Tribunal's decision about legal costs charged to the Respondent

38. The Tribunal determined that £235 charged for the section 146 Notice, plus £41.13 in respect of a mortgage search, were payable under the Lease, reasonably incurred in the circumstances and reasonable in amount.
39. The administration fees charged by Hamilton King on 3rd April 2001 and 11th May 2001 for £76.38 and £17.63 respectively are not payable under the Lease,

which makes no provision for any administration charges to be charged to or payable by the Lessee. The Tribunal therefore disallows these costs, which are not payable by the Respondent.

40. Likewise, there is no provision under the Lease to recover solicitors' charges of £29.38 (on 10th May 2001) for the letter before action (which in any event appears from the solicitors' bill to have been a demand for an amount higher than the outstanding balance on the running account at the time) and this sum is also disallowed and is not payable by the Respondent. Furthermore, there is no evidence of any proceedings having been initiated at the time immediately after the letter before action was sent.
41. On 11th October 2005, the Applicant's solicitors incurred a fee of £120, which related to a court fee on the issue of earlier proceedings in the Chorley County Court on 2nd November 2005. It was apparent from the documents that the Applicant's solicitors had applied for judgment in default on 21st November 2005, but there was no evidence that a judgment had been granted. For his part the Respondent denied any knowledge of the proceedings.
42. The Lease does not provide for the Lessor to recover any solicitor's costs in respect of court proceedings to recover outstanding service charges and there is no evidence of any judgment having been obtained. The Tribunal is therefore bound to disallow the £120 claimed by the Applicant and determines that it is not payable by the Respondent.
43. As for the several costs incurred on 26th January 2006 by Hamilton King and the freeholder and by Marsdens solicitors on 16th March 2006 (all related to the proceedings in 2005), once again there is no provision in the Lease for such charges to be raised or for the Lessee to pay them. The Tribunal therefore determines that these charges are not payable by the Respondent under the Lease. Equally, in the absence of any evidence that a judgment was granted by the Chorley County Court in 2005, the claim for £229.11 "statutory court interest" (which appears in the 2005 Particulars of Claim) cannot stand.
44. Nothing in the Tribunal's Decision affects any decision of the county court in relation to the costs of the current small claim transferred to Bromley County Court, or any fixed costs, which the court may allow.

Charges appearing on the running account after 25 March 2007

45. The running account includes two demands on 26 March 2007 and 26 September 2007 in respect of interim service charges, both for £384.25. As indicated above, the Lease makes no provision for any advance service charge to be paid by the Lessee. However, only part of the combined charge of £768.50 is a true advance charge, as £497.69 is in respect of the Respondent's share of the buildings insurance premium for the current year and is payable as such under the Lease. The Tribunal therefore disallows £270.81 of the interim service charges as being not payable by the Respondent under the Lease.

Summary

46. The Tribunal has determined the outstanding charges to the 22nd February 2008, being the date of printing of the Respondent's running account provided at the hearing. The balance on the running account as of that date was £3,754.69, which includes all payments made by the Respondent to date. Of this sum, £200 relates to ground rent over which the Tribunal has no jurisdiction to determine payability. The Tribunal has disallowed those charges set out in the attached Schedule, which total £2,760.52.
47. Therefore, the outstanding balance payable by the Respondent to 22nd February 2008 is £794.17 (£3,554.69 less £2,760.52).

Refund of fees and Section 20C application

48. The representatives for the Applicant sought a refund of the £150 Tribunal hearing fee that the Applicant had paid. It follows from the above Decision that the Tribunal does not order the Respondent to refund any fees to the Applicant.
49. The Respondent applied for an order under Section 20C of The Landlord & Tenant Act 1985 limiting the ability of the Respondent to pass the costs of the Tribunal proceedings through the service charge. The Tribunal cannot see any provision in the Lease by which the Respondent is obliged to pay any such costs to the Applicant. However, for the avoidance of doubt the Tribunal is content to make an order under Section 20C of the Act so that no such costs are passed on to the Respondent.
50. This matter should now be referred back to the Bromley County Court.

Chairman:



Timothy Powell

Date:

20 March 2008

LON/00AZ/LSC/2007/0413

Property: 33 Darfield Road, Brockley, London SE4 1ET

Schedule of amounts disallowed by the Tribunal

Date	Item description	Disallowed £
25 Mar 2000	Management fee	117.50
25 Mar 2001	Management fee	117.50
3 Apr 2001	Admin fee collecting debt	76.38
10 May 2001	13068 Ryan Heatons fees	29.38
11 May 2001	Instruct solicitors bad debt	17.63
25 Mar 2002	Management fee	117.50
25 Mar 2003	Management fee	117.50
25 Mar 2004	Management fee	123.38
25 Mar 2005	Management fee	124.55
11 Oct 2005	37325 Marsdens court fees	120.00
26 Jan 2006	Hkm instructing solicitors	111.63
26 Jan 2006	Sls instructing solicitors	89.00
26 Jan 2006	Hkm instructing sol judgment	88.13
26 Jan 2006	Sls instruction sol judgment	65.00
26 Jan 2006	Statutory court interest	229.11
16 Mar 2006	40459 Marsdens solicitors fees	269.90
25 Mar 2006	Management fee	126.32
25 Mar 2007	Management fee	128.67
26 Mar 2007	Interim s/charge 26/3/07 - 25/9/07	384.25
2 Apr 2007	Hkm instructing solicitors	111.63
2 Apr 2007	Sls instructing solicitors	89.00
3 Apr 2007	47758 marsdens solicitors fees	120.00
20 Jun 2007	49141 marsdens solicitors fees	100.00
26 Sep 2007	Interim s/charge 26/9/07 - 25/3/08	<u>384.25</u>
	Sub Total	£3,258.21
25 Mar 2007	Add back 50% current insurance premium	<u>497.69</u>
	TOTAL DISALLOWED	£2,760.52