

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



Section 27A Landlord and Tenant Act 1985 (as amended)
Application for a determination of liability to pay service charges

DECISION AND REASONS

Case Number: CHI/00HG/LSC/2009/0019

Property: 4 Abbey Court, Buckwell Street, The Barbican
Plymouth PL1 2DA

Applicant: Plymouth City Council

Respondent: Mr. A. C. B. Paterson

Date of Application: 26th January 2009 - by an order made by District Judge Tromans in the Plymouth County Court and pursuant to Schedule 10 Paragraph 3 of the Commonhold and Leasehold Reform Act the Applicants claim was transferred to the Leasehold Valuation Tribunal.

Date of Hearing: 18th May 2009

Appearances: Mrs C. A. Cheshire and Mr Damerall both of Plymouth City Council for the Applicant
Mr A. C. B. Paterson Respondent

Witnesses: Mr Frank Corbridge Plymouth City Council

In Attendance: Mrs Harrison - for part only
(occupier of Flat 1 Abbey Court)
Mr Jim May (Clerk to the Tribunal)

Tribunal Members: Cindy A. Rai LLB Solicitor (Chairman)
Michael C. Woodrow MRICS (Valuer Member)

Date of Decision: 26th June 2009

SUMMARY OF DECISION

1. The Tribunal decided that all of the service charges claimed by the Applicant pursuant to the invoices numbered:-
55800 394073
55800 781027
55801 467467
55801 096035
55801 767999
being service charge invoices for the years ending 2006, 2007 and 2008 were payable in full in respect of the Property (4 Abbey Court The Barbican Plymouth PL21 2DA).

INSPECTION

2. Prior to the Hearing the Tribunal accompanied by its clerk inspected the common areas and exterior of the Property. The Respondent was present as were both Mrs Cheshire and Mr Damerall on behalf of the Applicant.
3. Access to the Property is via a communal door leading off Buckwell Street. A shared hallway leads to the stairs and serves six flats located in this block. The staircase is concrete. It is shabby and does not appear to have been recently cleaned. It is impossible to assess how long some of the rubbish has remained in situ but the Respondent pointed out what appeared to be a squashed soft sweet and wrapper, a photograph of which he later referred to at the Hearing.
4. A rear doorway gives access to a rear courtyard which, the Tribunal were told, has recently been partly repaved. This opens out to a larger yard situate behind the whole of Abbey Court with an obsolete laundry room and a large open area, part of which is laid out as a children's play area. The whole of the yard appears to be rather neglected and generally untidy. Access to the rear yard can also be gained through a separate metal gate off Buckwell Street with the communal bins for the properties fronting Notte Street also located here. This gate was not locked. The Tribunal was told by the Respondent that there were 3 entrances to the courtyard area.

BACKGROUND

5. The Respondent has refused to pay the service charges invoiced by the Applicant for the service charge years referred to above. The Applicant submitted a claim to Plymouth County Court on the 20th February 2008. The claim (numbered 8PL00670) was allocated the small claims track and a hearing was scheduled to take place on the 15th July 2008. At the hearing which took place on the 26th January 2009 District Judge Tromans ordered that the claim be transferred to the Leasehold Valuation Tribunal with jurisdiction for Plymouth. A pre trial review took place on the 11th March 2009 following which

directions dated 13th March 2009 were issued to the parties and a hearing date proposed.

THE HEARING

6. The Applicant asked Mr Frank Corbridge, a leasehold services manager, employed by it, to give evidence in support of its case. He had already provided a written statement to the Tribunal but said he was willing, to respond to any questions arising from his statement. It was agreed that he would give evidence at the start of the hearing to enable him to return to his usual duties promptly thereafter.
7. Mr Corbridge's statement refers to the frequency of the service charge demands, the disputed costs for the door entry system, the day to day repairs to the block in which the Property is located, the administrative charges shown on the invoices, the building insurance premium and the window cleaning charges, all of which appear to be disputed by the Respondent. A second written statement from Phil Sargent the Caretaking Manager for the Applicant had also been produced by the Respondent for the Tribunal but Mr Sargent was unable to attend the hearing.
8. Mr Corbridge explained that the administrative charge which appeared on the invoices and which the Respondent disputes, was calculated by the Applicants accountants to enable it to recover its costs in providing the services to all of its tenants. Pages **27 – 42** (inclusive) of the bundle contains copies various of Plymouth Leaseholder Newsletters regularly supplied by the Applicant to its residential leaseholders; Copies of the newsletters dated April 2003 ,April 2004, April 2005, April 2006 and April 2007 are included in the bundle. It was suggested by the Respondent that copies of the current newsletter usually accompanied the service charge demands sent out in or around April in each year. Neither party appeared to know if a newsletter had been issued or supplied in April 2008 and April 2009. The newsletters contained information about how the administrative charge was calculated and how the amount related to the number of services supplied to the relevant property.
9. The disputed service charge accounts refer to charges for specific items. These items are set out in the statement which appears at **pages 74 and 75** of the bundle supplied to the Tribunal. The first disputed item is the door entry system the charge for which appears on invoice 55800 394073 dated 27.07.2007. This account shows a printed figure of £250 but two other versions of what appears to be the same account, corrected in manuscript, show lesser figures of £104.83 and £108.83 respectively. The Respondent questioned Mr. Corbridge about this invoice and the works that it related to. It was suggested that prior to the issue of the invoice there had been an exchange of correspondence between the Applicant and the

Respondent. A letter dated 3rd May 2005 from Mr Corbridge (which was at **page 76** of the bundle) refers to a new door entry system "that was installed in your block during 2004". It refers to:-

1. installation costs of £15,454.50;
2. a proportion payable of 1/6 being £2,575.75 and
3. an amount payable of £250.

The letter stated that as the Applicant had "not previously advised you of your estimated contribution in accordance with Section 20, [of the Landlord and Tenant Act 1985] the amount for you to pay is determined by the Commonhold and Leasehold Reform Act 2002 and limited to a maximum of £250". The letter also stated that an account for payment would be sent shortly. Following receipt of a letter 4th November 2005 the Respondent replied, (**page 77** of the bundle) and acknowledged that there had been no consultation; he questioned the installation costs and stated that the only work carried out to the entry system was in 2005 was the replacement of the "operating door" which had previously been lockable but which was replaced with a door which had failed to close and the replacement of an internal handset (supplied to each of the six tenants in the block). He also indicated that he would not pay the invoice and encouraged the Applicant to "proceed to court". Mr Corbridge responded to this letter on the 21st November 2005, (**page 78** of the bundle). He explained that consultation was not necessary unless PCC sought to recover in excess of £250 from a leaseholder. He said that whilst the comments regarding the installation costs were noted the tenants were only being asked for a contribution toward the actual costs of installation and that other tenants had confirmed that the work to which the invoice related had been carried out. He advised the Respondent that the invoice was "properly payable" and recommended that he take independent legal advice if he was not going to pay. The Respondent in a letter to the Applicant dated 30th April 2006, stated that he refused payment "until it is proved to my satisfaction that the work has been carried out as I do not believe this to be the case". The letter contains some factual statement and states that the Respondent did not believe that the £15,454.50 had been spent (**page 80** of the bundle). Mr Carpanini, a legal assistant of the Applicant in Housing Litigation and Debt Recovery, responded on the 9th June 2006 (page 81 of the bundle) and confirmed that the Respondent's complaint about the invoice had been investigated. He said that the work was part installation and part repair (and appears to have been just repair in the Respondent's block) and that the account had therefore been recalculated to £104.83 which is the amount that the Applicants have sought unsuccessfully to recover. Mr Corbridge explained that the original estimate which was provided by the Building Department was "wildly inaccurate". However no part of

this amount had been invoiced to a tenant. Nor could it have been without consultation; hence the reference in the correspondence to the capped figure and then, following an investigation of the Respondent's complaint, the figure in the invoice was reduced to the figure of £104.83 which is the amount the Applicant claims and the Respondent has refused to pay. In relation to the administrative element of the charge, the Applicant's case was that these charges are levied on all its tenants on the basis set out in the newsletters. Specific administrative charges were levied in relation to each service that was supplied on an annual basis. This enables the Applicant to recover its expenses for the provision of the services and the costs of each team supplying those services. Those tenants who enjoyed or required the benefit of the most services, paid an administrative fee for each such service. The Applicant believes it is entitled to recover such charges by the 6th Schedule of the lease.. 15% is the ad hoc fee that was charged in respect of all repairs but now instead the charges are as set out in the relevant newsletters and paid by all leaseholders. The minimum charge is currently £6.44. This is set out on **page 41** of the bundle in the April 2007 newsletter.

10. The next item disputed by the Respondent is the day to day repair costs referred to on invoices 55801 096035 and 55801 767999. His evidence was that he was being charged for the replacement of the same lamp twice within a few days. Mr Corbridge indicated that such repairs were dealt with by repair staff. It was not possible to provide specific information about each such repair or replacement of lamps.
11. The next disputed item was Insurance. The Respondents complaint appeared to be twofold. Firstly he said that he had no copy of the current insurance policy. Secondly he believed that the Respondent might not have paid its premium and they were profiting from commission. The factual basis of his claim was not clear. It was explained by the Applicant that the administrative charge referred to in the newsletters also applied to the insurance cover. The charge was simply levied to enable the Applicant to recover the costs it incurred in administering insurance claims.
12. The Respondent does not appear to dispute that he should pay for window cleaning. The relevant charges are contained in the two invoices numbered 55800 781027 and 55801 467467. His complaint appears to be that in the newsletter dated April 2004, occupiers were supposed to sign off window cleaners invoices, (presumably to "check" that the service had been provided). He also said that no tenant in his block had ever seen a window cleaner. The more recent newsletter states that the caretaker can sign the invoices and this appears to have been the much more usual way in which invoices were approved for payment.

13. The next cost which the Respondent disputes is the cost of bulk bins. The Applicant explained that this was a cost for hiring the bins not for emptying them. It accepts that the cost of rubbish removal is within the council tax. At the time of the inspection the rear yard was in a fair condition. The Respondent has suggested that this is not always the case. The photographic evidence he supplied is not clearly dated and the Respondent admitted, when pressed, by the Applicant, that the dates he had written on to the photographs were the dates he had downloaded the photographs to a computer and not the dates when the photographs had been taken.
14. The Respondent queried the caretaking charges, which are apparently for an allocated 3.5 hours per week. It was made clear by the Applicant that this was a basic minimal charge that would involve inspection in relation to necessary repairs as was evident in the references to repairs required being reported by the caretaker.
15. In summary the Applicant's case is that:-
 - The Respondents submission (page 77) regarding a lack of consultation is unjustified. The work to which he refers was not actually done; neither was any resident charged for it. Consultation was not necessary since the amount invoiced – originally £250, was below the limit for consultation but following correspondence with the Respondent and an investigation, the amount claimed from him was reduced to £104.83. This is the amount claimed.
 - The comments in relation to the receipts for window cleaning are unjustified. There is no resident caretaker for this block. The Applicant has no record of complaints from the Respondent regarding the service and indeed the Respondent has admitted he made none.
 - The Applicant does not profit from providing the insurance.
 - The charges for Bulk Bins relate only to bin hire. The administrative charges and the basis of the calculation of the charges are set out in the various newsletters issued. In previous decisions made by the Leasehold Valuation Tribunal with regard to similar charges, the Leasehold Valuation Tribunal had determined the charges to be reasonable and recoverable. The Applicant states the Respondent is liable to pay such charges by virtue of Para 21 of the 5th Schedule to the lease of the Property.
 - In addition by virtue of Para 10 of the 6th Schedule, the Applicant believes it is entitled to recover its legal costs as part of the service charge and would resist any application by the Respondent under section 20C of the Landlord and Tenant Act 1985 limiting its ability so to do that any such costs are not to be regarded as relevant costs.

The Respondent dealt with all of his reasons for not paying the service charges as the evidence in relation to each specific item

was discussed. He had produced a bundle of photographs but the copies supplied were not actually dated with the dates when the photographs had been taken. Instead the Respondent had dated the photographs when they were downloaded to a computer and had endeavoured to take photographs of the current day's newspaper to enable the Tribunal to "fix" a date.

16. The Law

The Tribunal's jurisdiction is contained in section 27 of the Act. Section 27 is set out below.

S27A Landlord and Tenant Act 19 85 **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.[...] [FN1]*

[FN1] inserted subject to savings specified in SI 2004/669 Sch.2 para.6 by
Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 155 (1)

17. Clause 15 of the 5th schedule to the Respondent's lease states "the Lessee shall contribute and shall keep the Lessor indemnified from and against one sixth of all costs and expenses incurred by the Lessor in carrying out its obligations under and giving effect to the provisions of the 6th Schedule hereto including Clauses 10 to 11 of that Schedule and in enabling the Lessee to enjoy the rights contained in the Third Schedule hereto"
18. Clause 16 of the same schedule enables the Lessor to recover the difference between any sum paid in advance and on account for a service charge year and also to recover periodically (but not more frequently than monthly) a payment on account of service charges
19. The 6th Schedule of the lease requires the Lessor to:-
 - pay taxes in respect of the "Reserved Property" defined earlier as being that part of the Block not included in the Flats. The Flats "means the flats"...."forming part of the Block". The Block "means the building or block of flats of which the premises form part and shown edged blue"....."on the block location plan" (a copy of which is attached to the copy lease in the bundle – although the copy of the plan is not coloured).
 - keep the Flat insured
 - as often as the Block or any part is destroyedrebuildusing the insurance moneys received
 - keep the Reserved Propertyin good and tenantable repair and condition
 - pay any proportion properly due of the cost of maintaining party walls bounding the Reserved Property
 - give notice to the Lessee if it needs access to the Premises in order to carry out such works
 - keep the Reserved Property clean "save those matters for which the Lessee is responsible under clause 21 of the fifth schedule to the lease". Clause 21 of the 5th schedule of the lease states "The Lessee shall to the satisfaction in all respects of the Lessor keep properly cleaned and tidied such parts of the communal halls and stairs and passageways leading to the premises through the Reserved

Property as shall have previously been so kept and maintained by him whilst he occupied the premises as a tenant of the Lessor or such other part or parts thereof as the Lessor shall agree"

Decision

20. The only dispute in this case relates the service charges for the service charge years ending 2006, 2007 and 2008 invoiced by the Applicant which the Respondent has refused to pay and which remain unpaid at the date of the hearing. The lease provides for the Applicant to recover the cost of the services it provides in accordance with its obligations in the sixth schedule. The disputed items to which the service charge invoices relate are set out clearly by the Respondent in his statement on pages **74 and 75** of the bundle and provide a convenient order for the Tribunal to consider each of the items in turn.

Door Entry System

21. The Tribunal determined from the evidence produced to it and in particular based on the information contained in the schedule of "small works" that the charges which relate to the repair of the door are payable and reasonable and have been reasonably incurred. It noted that it is impossible to distinguish if any of these works relate to the entry system and door or just the door itself but it is reasonable to suppose that they might have done. The Tribunal noted the following references to works in the bundle.

Page no	Date	
49	2005	Main Door adjustment
	16/04/2005	Main Door adjustment
50	10/5/2005	Carpentry front door swollen
	23/05/2005	Renew hinges (to which door not clear)
52	18/07/2005	Renew door closers to communal doors and 1 st floor
	18.10.2005	Door closer not working
	26/10/2005	Door closer not working
	28/10/2005	Door sticking open
	--12/2005	Door closer not working

The invoice dated 29.08.2008 and numbered 58802 and 159276 refers to door entry and "1 unit" but no price is charged.

The Tribunal, on the basis of this evidence and what was said at the hearing, concluded that work had been carried out to the entrance door; that the work was by way of repair rather than the installation of a new system; and that the amount of £104.83 claimed by the Applicant was payable. Various references to this work were made by each party

throughout the hearing. At one point the Respondent said no work had been carried out but this did not seem to accord with Mr Corbridge's evidence which was that he had spoken to another tenant in the block who accepted that work had been done. During the Hearing the Respondent had said that the work carried out was of a poor standard. He also admitted however that there was a period when the door had worked (this appears to have been in the November). Whilst it appears to be accepted by both parties that the original invoices produced by the Applicant were not correct, correspondence between the parties had resulted in a reduced and corrected invoice being produced. It is accepted that, of the two similar invoices, it was the lower figure that was claimed and payable and the confusion with regard to another invoice showing a different figure had arisen because Mrs Cheshire had erroneously altered the original invoice.

Day to day repair cost

22. The Tribunal concluded that there was no evidence that this charge was unreasonable. It was possible that the proximity in relation to the dates of the entries in the repair schedules could have been explained by investigatory visits to identify what needed repair or replacement followed swiftly by follow up visits to replace either bulbs or circuits as required

Insurance

23. The Tribunal determined that the Respondent is liable to pay the amount invoiced. The Respondent could have asked for more information about the insurance policy but does not appear to have done so. He is clearly liable for the costs under the terms of his lease.

Window Cleaning

24. The total charge per flat in the block for the communal windows to be cleaned on a quarterly basis is £2.88 per flat per quarter. On the basis that copies of signed invoices have been provided, and although there was much debate between the parties about this, the charge seems to be reasonable and reasonably incurred. The Tribunal determines that the amounts invoiced are payable by the Respondent.

Bulk Bins

25. The Tribunal accepts that on the evidence supplied this is a hire charge and determines that the Respondent is liable to pay the amount invoiced

Lighting

26. The complaint by the Respondent seems to relate to the operation of the time switch. This does not justify his not paying for the cost of the lighting. On the evidence supplied there are appropriate channels through which the Respondent could make a complaint but he confirmed that he has not actually done so. The Tribunal determines

that the amounts invoiced are reasonably incurred and payable by the Respondent.

Grounds Maintenance

27. The Respondent produced photographs showing the grounds as being in a poor condition from time to time. It is not clear who caused the mess illustrated by the photographs or why the Respondent does not appear to have reported the mess. At the time of the inspection the yard was reasonably tidy. The Respondent should approach the Applicant through the documented channels if he considers that they are failing to provide this service. It is not appropriate simply to withhold payment. The Tribunal determines that the amounts invoiced are reasonably incurred and payable by the Respondent.

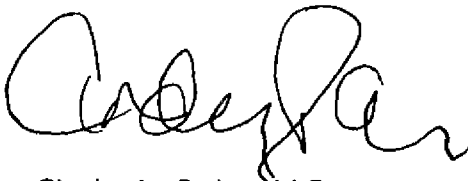
Caretaking

28. It appears that the Respondent assumed that the caretaker would clean the communal hallway and stairs and that his evidence at the inspection and the photographic evidence supplied was intended to show that these areas were not cleaned regularly nor had they been cleaned at all. The lease suggests that the Applicants obligations do not extend to making provision for the cleaning of the communal stairs and passageways. It seems to be the case that the Block may be occupied by a mixture of both council tenants who have tenancy agreement and other occupiers who have bought their leasehold property and therefore simply pay service charges and not rent under a tenancy agreement to the Applicant. The Tribunal interprets the wording of the lease to imply that where an occupier was obliged to keep communal areas clean under the terms of its tenancy agreement the obligation does not cease when it becomes the owner of its flat. Occupiers, who are not owners, are obliged under their tenancy agreements to maintain the communal areas. Therefore the photographs and evidence of the dirty and untidy state and condition of the communal halls and stairs is not evidence of a failure of the Applicant to supply appropriate caretaking services; neither does it appear to be within the caretakers duties to clean the communal hall and staircase. Whilst the Respondent at some time during the Hearing indicated that he had not seen a caretaker he later contradicted this and referred to the caretaker having visited the Block at about 0951 hours prior to the Tribunal's inspection. He said that the caretaker had turned off the communal lights and that the settings were not correct (due to summer time?). He also said that he had made verbal complaints to the caretaker (but did not say when this was). When questioned by the Applicant about the photographs he had produced showing rubbish within the communal yard he accepted that he had not reported this and that the mess could have been caused by another resident. On balance, and again based on the signatures on the invoices for window cleaning and the reporting schedule, it

appears to the Tribunal that the charges for this caretaking service are reasonable and have been reasonably incurred. In addition, their complaints procedure with regard to Caretaking services, together with a telephone number, is set out in the newsletters, (see **page 34** of the bundle). There is no record of calls being made by the Respondent. The Tribunal determine that these costs are reasonably incurred and payable by the Respondent.

Administration

29. The calculation of the Administrative Charges is clearly explained in the newsletters together with the level of charges which had been increased in recent years. These charges are not Administration Charges within the definition contained in the Commonhold and Leasehold Reform Act 2002, but rather management charges, which the Lessor reclaims by the method set out in the newsletters to enable it to share the costs between all of its tenants on an equitable basis but on a service by service basis as different properties enjoy different levels and types of services. The total charge due and invoiced in respect of this property appeared to compare favourably with the charges levied by commercial managing agents comprising privately owned blocks of flats. The Tribunal determine that these charges are reasonably incurred and payable by the Respondent.



Cindy A. Rai. LLB

Chairman
26th June 2009