

SOUTHERN LEASEHOLD VALUATION TRIBUNAL

CASE NUMBER: CHI/00HG/LSC/2009/0056/01

**IN THE MATTER OF
SECTION 27A(1) OF THE LANDLORD AND TENANT ACT 1985**

**22 WALKER TERRACE
THE HOE
PLYMOUTH PL1 3BN**

**LANDLORD'S APPLICATION FOR THE DETERMINATION OF
REASONABLENESS OF SERVICE CHARGE DEMANDED FOR THE YEARS
2007, 2008 AND 2009**

APPLICANT

22 WALKER TERRACE MANAGEMENT COMPANY LIMITED

RESPONDENT

**MR D J DICKINS
MR I HOSKING
MR R and MRS L FORBES**

TRIBUNAL

**Mr R Batho MA BSc LLB FRICS FCI Arb (Chairman)
Dr M L James MA BS FRSA**

DETERMINATION

Introduction

1. On 25th March 2009, Freehold Management Services of 308 St Leven Road Keyham Plymouth PL2 1JP, acting on behalf of 22 Walker Terrace Management Company Limited, made an application to the Leasehold Valuation Tribunal for the determination of the reasonableness of service charge costs incurred for the years 2007, 2008 and 2009 in respect of 22 Walker Terrace The Hoe Plymouth PL1 3BN.
2. Directions in connection with the application were given by the Tribunal on 31st March 2009. In fulfilment of those Directions, on 21st April 2009 Freehold Management Services submitted a brief statement in support of the application, together with documentation including a copy of the lease of Flat C (that occupied by Mr and Mrs Forbes); copy tenant and client ledgers; copy service charge accounts for the years 2007 and 2008 and for the first quarter of 2009, with associated invoices and receipts; copy service charge demands; various documents relating to the insurance of the building and to an insurance claim in respect it; and other copy correspondence. No documentation was received from any of the tenants.

Hearing

3. A hearing was held on Wednesday 8th July 2009. Immediately prior to the hearing, the members of the Tribunal attended at 22 Walker Terrace in the company of Mr Charles Knapper, a director of the landlord company, having previously given notice to the leaseholders of their intention to do so. Mr Knapper was able to give the Tribunal access to the communal entrance hall of the building only; none of the flats was inspected and the members otherwise viewed the premises from the exterior only.

4. The hearing was attended by Mr Knapper, who is also a consultant with Fursdon Knapper, solicitors on behalf of the applicant Landlord. None of the leaseholders attended or was represented.

The Lease Terms

5. The papers submitted to the Tribunal included a copy of the lease of Flat C only, although the Tribunal records indicate that at a hearing in 2002 Mr Knapper had also produced the lease in respect of Flat B, and that the Tribunal had accepted his evidence that all three leases were expressed in identical terms. Each of these leases has thus been shown to provide, at clause 4, that

“the tenant shall pay rent to the landlord as follows:

(a) the Tenant shall pay to the Landlord the yearly rent of £50.00 in advance on the first day of January in each year free of all deductions the first payment to be made on the execution hereof.

(b) (i) the Tenant shall pay to the Landlord by way of further or additional rent an annual sum amounting to 33% of a service charge (herein after called “the service charge”) to be calculated in accordance with the provisions set out in Part Five of the Schedule for each and every year of the term and proportionately for any part of the year by one instalment in advance on the first day of January and each year the first of such payments to be £75.00 and to be paid on the execution hereof

(ii) for the purposes of this clause “the service charge year” shall mean the period from the first day of January to the 31st day of December in each year.

6. Clause 6 of the lease in each case contains the Landlord’s covenants with the Tenant and these include

“(2) subject to the payment of the service charge previously mentioned to maintain repair cleanse repaint redecorate and renew the common parts of the property as and when necessary so as to keep the same in good and substantial repair and condition”

and

"(5) to keep the whole of the building comprehensively insured with an insurance company of repute in the full rebuilding value thereof against any loss or damage caused by fire or any other normally insurable risks including the costs of architects and surveyors fees incurred in the supervision of the reconstruction of the building in the event of the building being damaged or destroyed by reason of any of the risks insured against and will if required by the tenant endorse upon such policy the interest of any mortgagee of the tenant and will whenever required produce to the tenant (though not more than once in any year) the policy or policies of such insurance and the receipt for the last premium for the same and in the event of the flat (or building of which it forms part) being damaged or destroyed by fire as soon as reasonably practicable lay out the insurance monies received in the repair rebuilding or reinstatement thereof"

7. The Schedule to the lease in each case provides a description of the flat in question at part one; a description of the common parts at part 2; a list of rights in favour of the tenant that are included in the lease at part 3; and a list of rights in favour of the landlord that are excepted from the lease at part 4. Part 5 deals with the calculation of service charge and reads as follows:

"1. The service charge shall be the sum the Landlord or his authorised agents estimate and certify in writing to be the reasonable costs and expense to the landlord of (a) performing his obligations under Clause 6 and (b) collecting the ground rent and service charges in relation to all the flats in the building.

2. The amount of the service charge for each year shall be certified by certificate (herein after called "the Certificate") signed by the Landlord's accountants acting as experts and not as arbitrators annually and as soon after the end of the relevant year as may be practicable.

3. A copy of the Certificate for each such Service Charge Year shall be supplied by the Landlord to the Tenant on written request and without charge to the Tenant.

4. The certificate shall contain a summary of the said expenses charges costs and outgoings incurred by the Landlord during the service charge year to which it relates together with a summary of the relevant details and figures forming the basis of the service charge.

5. If an so far as any monies received by the Landlord from the Tenant in any year by way of contribution to the said expenses and outgoings are not actually expended by the Landlord during that year nor otherwise dealt with so as to be an allowable expense in calculating the Landlord's income for tax purposes in that year the Landlord shall hold the monies upon trust to expend them in subsequent years in pursuance in his obligations under this Lease and subject thereto upon trust for the Lessee time to time absolutely

6. The Tenant shall on the first day of January in each year pay to the Landlord such annual sum in advance and on account of the Service Charge as the Landlord or his Accountants or Managing Agents (as the case may be) shall specify at their discretion to be a fair and reasonable interim annual payment such a sum not to be less than £75.00 per annum until otherwise specified

7. As soon as practicable after the signature of the Certificate the Landlord shall present to the Tenant an account of the service charge payable by the Tenant for the year in question due credit being given therein for all interim payments made by the Tenant in respect of the said year and within fourteen days of the presentation of such account there shall be paid by the Tenant to the Landlord the amount of the service charge or any balance found payable.

8. It is hereby agreed and declared (a) that in regard to the commencement of the term hereby granted the Service Charge shall be duly apportioned in respect of the period from the date hereof to the ensuing thirty first day of December, (b) that the provisions of this clause shall continue to apply notwithstanding the expiration or sooner determination of the term hereby granted but only in respect of the period down to such expiration or sooner determination of the said term."

The Landlord's Case

8. In his evidence, Mr Knapper first explained the relationship between the various parties referred to in the documentation, and the way in which the property had been managed, something which was largely influenced by the reluctance of two tenants in particular to pay the sums due from them. As he went on to explain in more detail, some works to the property had been arranged by the tenants themselves, although payment contributions had been channelled through the service charge account maintained by the managing agents. He went on to say that this service charge account was a trust account so as to ensure the security of the leaseholders' money.

9. Mr Knapper referred to a management agreement in respect of the property, prepared following the guidelines set down in the RICS Management Code, although by his admission the document to which he referred (and a partial copy of which he provided) was in the name of a previous management agency which is no longer trading and which, although it appeared to have been signed on behalf of the freeholder of 22 Walker Terrace, had not been signed by that company. Mr Knapper stated that the current management contract continued on similar lines and the Tribunal accepted that.

10. Mr Knapper did not produce anything which, on the face of it, could be identified as a "certificate ... signed by the Landlord's accountants acting as experts and not as arbitrators" in substantiation of any of the figures to which he referred. Mr Knapper said that the presentation of figures followed a historic pattern established by the accountants, although it was one with which he was not entirely happy. The present agents, who had been appointed relatively recently, were adopting new methods which, he hoped, would produce a more acceptable result.
11. Whilst the Tribunal members would have preferred to see something which at least bore the accountants mark by way of letter head or other device, they decided after consideration that the documents to which Mr Knapper spoke would have to be taken at face value and in the light of his assurances as to their accuracy.
12. The service charge demands produced in evidence by Mr Knapper sought payment in respect of ground rent, cyclic expenditure, a sinking fund, insurance, management fees and repairs. The ground rent is a matter separately reserved under the leases and not a matter for determination by the Tribunal but Mr Knapper provided further details of the other items.
13. Agents' fees have been charged at the rate of £150.00 per flat per annum, subject to the addition of VAT. Mr Knapper explained that this was a standard unit management charge made by the agents in respect of all flats which they manage in the city, and although it was at the lower end of the range of charges applied by agents generally in this sort of management contract it had remained unchanged for a number of years. The Tribunal concluded as a matter of fact that the charge was reasonable.


14. Cyclic expenditure was, as the name implied, a sum in respect of the routine care, maintenance and lighting of the common parts of the property as provided for in the lease, although in practice a part of the money so collected had had to be used to fund other costs where the tenants had failed to pay their contributions.
15. The members of the Tribunal concluded as a matter of fact that the sum of £100.00 per annum sought from each tenant under this head could be held to be reasonable.
16. The service charge demands also include contributions to a sinking fund. This would normally be seen as a fund which would grow in order to set up a provision for any major works that may be required in the future, and as such may be seen as a prudent provision. In his evidence before the Tribunal Mr Knapper said that, in practice, the monies paid by the leaseholders under this head over the past two or three years had been used to meet contribution shortfalls, in order to balance the service charge account on a temporary basis.
17. The Tribunal is satisfied that the wording of the lease allows the freeholder to seek payment into a sinking fund. The members therefore concluded that such a payment was recoverable and that, given the size and nature of the building, the sums sought were reasonable.
18. In respect of insurance, Mr Knapper gave evidence that, under the previous management arrangements, the building had been insured under a block policy maintained by the agents, and that the premium under this policy had been affected by a large claim made in respect of another building which it covered. The new agents had been able to arrange cover under a separate policy at a significantly reduced cost.

19. Although this reduced premium might be taken as implying that previous charges had been high, the Tribunal accepts that the risk spread of a block policy can be beneficial, even though that it carries the potential disadvantage of increased premiums for all if a significant claim is made. That does not, in itself, make the premiums payable unreasonable, and it was the Tribunal's view that even the higher rates could be seen as having been in line with what might have been expected for a property of this age, size and character: it was not the high rate which was unreasonable, but the current lower rate which offered particularly good value. The Tribunal therefore determined as a matter of fact that the sums charged were reasonable in the circumstances.
20. This then left the matter of repair costs. The evidence was that in March 2007 there had been storm damage to the terrace roof at the rear of the property. The cost of repairing this damage had been met by insurance, but as the works were being done the need for further works, not covered by insurance, was revealed. Quotations were obtained by the leaseholders themselves, but notices as required under s20 of the Landlord and Tenant Act 1985 were served as it was considered expedient to recover the contributions due from two of the tenants, to the money paid out by the third, through the service charge mechanism. In practice, the process was one of recompensing one tenant for costs incurred by agreement between the tenants, the tenants themselves having obtained the quotations and engaged the builders.
21. The Tribunal readily accepts the reasonableness of such a process and its outcome. There is no suggestion that the work is other than of a reasonable standard and from the description given the costs were reasonable and accepted as such by the tenants.
22. Since the application had been made it had come to light that there was a major leak in the water supply to the property. That had given rise to an insurance claim, but there would be other costs incurred, currently estimated

at £500 per tenant. These works were not covered by the application and the Tribunal could make no judgement on them.

Summary Determination

23. In summary, therefore, the Tribunal concluded that the service charge payments demanded for the years 2007, 2008 and 2009, as set down in the service charge demands produced in evidence, were reasonable and payable by the respective tenants. This determination excludes the costs associated with the recently discovered water leak which was outside the terms of the landlord's application and in respect of which no evidence was submitted.



**Robert Batho MA BSc FRICS FCI Arb
Chairman**

13th July 2009