

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

**S.27A Landlord & Tenant Act 1985 as amended**

**S.94(3) Commonhold & Leasehold Reform Act 2002 as amended**

**DECISION AND REASONS**

Case Number: CH1/21UD/LTS/2008/0046

In the matter of 19 Charles Road, St. Leonards on Sea, East Sussex, TN38 OQH

Applicants: 19 Charles Road RTM Co. Ltd C/O Arko Property Management

Respondent (Landlord): Oakdene Estate Management Ltd

Date of Application: 4<sup>th</sup> November 2008

Tribunal Members: Mr. S Lal LL.M, Barrister (Legal Chairman)  
Mr. J.N Cleverton FRICS  
Mrs. J. K Morris

**Representation:**

Applicants: Mr. Okines (Arko Property Management)  
Mr. Richard Smart, Accountant  
Mr. Humphreys (Lessee of Flat 9)

Respondents: None attended

Date of Decision: 10<sup>th</sup> February 2009

**Application**

1. The Applicants applied to the Tribunal on the 6<sup>th</sup> November 2008 under section 27A of the Landlord & Tenant Act 1985 (as amended) ("the Act") to determine their liability to pay service charges in respect of 19 Charles Road, St. Leonard's on Sea, East Sussex, TN38 OQH ("the property") for the year 2004, 2005 and 2006. Specifically the Applicants wished a ruling as to whether certain aspects of the service charge for the above years were fair and reasonable within the meaning of the Act. The identity and liability of the parties to pay the service charges are not in dispute.

2. Directions were issued on the 19<sup>th</sup> November 2008. It was decided at this point to expand the scope of any future hearing so as to determine the issue of accrued uncommitted service charges due back to the RTM company within the meaning of s.94 of the Commonhold & Leasehold Reform Act 2002.

### **Preliminary**

3. The Tribunal were informed by way of letter dated 29<sup>th</sup> January 2009 by Denton Wilde Sapte, Solicitors that the Respondents had gone into administration on 23<sup>rd</sup> January 2009. The solicitors advanced the argument that no legal proceedings may be continued against the Respondents except with the consent of the Administrators or the High Court. They suggested that proceedings before the LVT cannot be continued.
4. The Solicitors for the Administrators did not attend the hearing and no further submission was received from them. The Tribunal were of the view that as an expert Tribunal it was entitled to discharge its statutory function to determine the reasonableness of any service charges within the meaning of the Act and also the matters under CLARA 2002. How that ruling would or could be enforced against the Respondents was a matter for the courts at which point the submission advanced by Denton Wilde Sapte may well become relevant consideration. The Tribunal were unable to accept that it was precluded from determining the issues before it as to reasonableness and therefore the matter would proceed.

### **The Law**

1. The statutory provisions primarily relevant to applications of this nature are to be found in section 18, 19 and 27A of the Act. The Tribunal has of course had regard in making its decision to the whole of the relevant sections as they are set out in the Act, but here sets out what it intends shall be a sufficient extract from each to assist the parties in reading this decision. Section 18 provides that the expression "service charge" for these purposes 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 relevant costs."

**“Relevant costs” are the cost or estimated costs incurred or to be incurred by the landlord in connection with the matters for which the service charge is payable and the expression “costs” includes overheads.**

**2. Section 19 provides that :**

**“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 reasonable standard**

**and the amount payable shall be limited accordingly.”**

**3. Subsections (1) and (2) of section 27A of the Act provide that :**

**“(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 to whom it is payable**
- b. the person by 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.**

### **The Inspection**

- 4. The members of the Tribunal inspected the property on the 10<sup>th</sup> February 2009. The property was built around 1880 and comprises a substantial corner end terrace house with lower ground floor. The building is constructed of probably solid brick walls fully rendered on all side. Externally the building is in a relatively poor condition.**

## **The Applicant's Case**

5. Mr. Okines in oral submission developed his arguments as contained in the Applicants bundle served in accordance with Directions.
6. He said that in respect of the management fee for 2006, the service charge demand showed a figure of £1917.00. He stated that the terms of the lease entitle the lessor to claim 15% of the expenditure. The expenditure totals £8060.00 which even as a disputed figure would not result in a management fee of £1917.00 but would instead amount to £1209.00.
7. He stated that in respect of the 2006 accounts it was not fair and reasonable for the lessees to pay £528.75 to Austin Rees to prepare a closing balance statement because the landlord decided to take over the management of the property as the accounts are inaccurate in any event.
8. In respect of building works in 2006 for the sum of £3395.75 he submitted that these works were carried without s.20 notices or consultation and therefore each of the flats should pay no more than £250 each for the works.
9. In respect of 2006 he disputes the reasonableness of legal fees in the sum of £1573.00 incurred in trying to recover service charges from someone who has died.
10. In respect of buildings insurance for the years 2004, 2005 and 2006, he submitted that the combined total of £5306.66 was wholly unreasonable as Arko were able to insure the property at a cost of 90pence per thousand which would give an equivalent premium for the three years in question of £2749.95. Further for each of the years the cleaning costs are unreasonable and that a fair and reasonable cleaning cost would be for a once monthly clean of the common parts at the rate of £25 per month as opposed to the twice monthly cost actually incurred. The once a month cost would entail a yearly expenditure of £300.
11. In respect of each of the above years he queried the cost of the door entry system on the basis that when Arko took over the management of the property they were assured that no long term contracts were in place. He did admit that Arko had in fact continued with the same company but could not recall what the current rental was.

12. He stated that the accounts for 2004 and 2005 showed a loan to the landlord of £1000 and he does not understand why this has been made when the account showed a healthy balance.
13. In respect of the issue of accrued uncommitted service charges due back to the RTM company within the meaning of s.94 of the Commonhold & Leasehold Reform Act 2002, Mr. Smart took the Tribunal's to his written Report (AR1-3 of the Applicants Bundle) and the supporting financial breakdown at A14 and A17. This showed that by the time the Creditors had been paid as of 31<sup>st</sup> December 2006, a balance of £4468.56 plus a £270.97 refunded to the landlord by a utility supplier was due to Arko, amounting to £4739.53

### **The Tribunal's Decision**

14. The Tribunal on the basis of the evidence before it, the written and oral submissions advanced and exercising its own independent expertise determined the following. The service charge demands in respect of management fees revealed clear mathematical errors in that they did not amount to 15% of the overall expenses as provided by the various leases. The Tribunal were also satisfied that the insurance premiums were excessive and unreasonable. The figures cited were beyond a reasonable margin of quotations in respect of a building of this type and the rates presented by Mr. Okines of 90 pence per thousand were a reasonable one. This would give a rate of £970 per year on the figure presented by Mr. Okines. This was what the property was being insured for at present.
15. The Tribunal were further satisfied that it was unfair to expect the lessees to pay closing balance account to Austin Rees in 2006. These accounts are so obviously incorrect in their method and conclusion.
16. Likewise the building work incurred in 2006 was without any notice and the Tribunal is not aware of any application to dispense with the same. In the circumstances each flat can only be liable to pay £250 each. This would entail a liability therefore of £2500 for building repairs carried out in 2006.
17. The sums demanded in respect of legal fees in order to recover arrears from a deceased lessee were wholly unreasonable. The Tribunal were at a loss to understand how this amount arose when the actual process is relatively simple and entails the provision of contacting the estate.

18. The cleaning bill was also excessive. The Tribunal were able to note on inspection that the common parts were carpeted and considering the number of flats in the property, considered it excessive and unreasonable for the property to be cleaned twice a month.
19. The Tribunal were not satisfied by the submission in respect of the door entry system. The complaint seems to be that Arko were not told of long term contracts but clearly they are happy to continue with the same provided. No evidence was presented that the amounts paid were excessive or unreasonable in any event and Mr. Oakines was unable to point to a lower present comparable.
20. The loan amount showing of £1000 was also a matter that the Tribunal was not prepared to determine as being unreasonable as there was no evidence that this was in fact ever paid.
21. In respect of the accrued uncommitted service charges, the Tribunal found the evidence of Mr. Smart compelling. The Tribunal saw no good reason to depart from the breakdown of the figures that he provided as they were consistent in showing the amount owing to the RTM company and how that amount had accrued.
22. The Tribunal therefore determined the following as the correct service charge amounts for the years in dispute. They represent those items that have been unchallenged and those items that the Tribunal has decided to either delete or reduce for the reasons above.

**Year 2004**

Building Insurance	£970
Electricity for Common Ways	£59.32
Cleaning of Common Ways	£350
General Repairs	287.10
Door Entry Phone	£58.75
Audit Fee	£182.83
Management Fees	£286.20
<b>Total</b>	<b>£2194.20</b>

### **Year 2005**

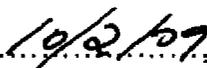
Building Insurance	£970
Electricity for Common ways	£150.34
Cleaning of Common Ways	£350
General Repairs	£403.77
Management plaque	£29.38
Door Entry Phone	£200.93
Audit Fee	£182.83
Management Fee	£343.08
Total	£2630.33

### **Year 2006**

Building Insurance	£970
Electricity for Common Ways	£36
General Repairs	£1443
Cleaning of Common Ways	£350
Door Entry Phone	£163
Audit and Accountancy Fee	£242
Management Fee	£480
Total	£3684

23. In respect of the issue of accrued uncommitted service charges due back to the RTM company within the meaning of s.94 of the Commonhold & Leasehold Reform Act 2002, the Tribunal is satisfied as to the evidence presented to it by Richard Smart in his written Report (AR1-3 of the Applicants Bundle) and the supporting financial breakdown at A14 and A17. This showed that by the time the Creditors had been paid as of 31<sup>st</sup> December 2006, a balance of £4468.56 plus a £270.97 refunded to the landlord by a utility supplier was due to Arko, amounting to £4739.53. The Tribunal accordingly finds that the amount of £4739.53 is the amount due back to the RTM company under the terms of s.94 of the Commonhold & Leasehold Reform Act 2002.

Chairman..........

Date..........