



**Residential
Property**
TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: CHI/24UL/LIS/2009/0012

**THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER
SECTION 27A of the Landlord and Tenant Act 1985**

Applicants Sandford Court (Aldershot) Management Company Ltd

Respondent: Richard Fuller

Premises: 2 Sandford Court, Aldershot, Hampshire, GU113AH

Hearing 1 June and 3 August 2009

**Appearances for Applicants: Mr Brown MIRPM hmlAndertons
Mr Owlett (1 June only)**

Appearances for Respondent: None

**Leasehold Valuation Tribunal: Mrs B. M. Hindley LL.B
Mr P.D. Turner-Powell FRICS
Mrs M. Phillips**

Date of Tribunal's Determination: 10 August 2009

PRELIMINARY

1. This application, requiring a determination under Section 27A of the Landlord and Tenant Act 1985, was transferred to the Leasehold Valuation Tribunal from Guildford County Court (Case Number 8TT00536) by order of Judge Trigg, dated 2 September 2008.
2. Directions were issued on 6 March 2009 and a hearing was set for 1 June 2009.
3. On the morning of the hearing the Tribunal inspected the subject premises in the company of Mr Owlett, the estate manager. The Tribunal found the estate to comprise three individual blocks comprising a total of sixteen flats, set in grounds of lawn, shrubbery and flower beds and having some parking spaces. Neither the blocks nor their grounds were in pristine condition.
4. At the hearing the applicants were represented by Mr Brown MIRPM and Mr Owlett of hmlAndertons, the managing agents. The respondent was not present or represented. He had responded on the last possible day, 24 July 2008, to the allocation questionnaire sent by the court, but otherwise took no part in the proceedings.
5. It was established at the hearing that the applicants had sought from the court £1789. 25p, being their calculation of the respondent's contribution to the service charges demanded for the years 2003 – 2006 inclusive, £720 for the year ending 2007 and £419 59p for the half year ending 2008.
6. It emerged that the leaseholders had managed the property themselves from 2003 until the end of 2006 when they had begun to receive help from Mr Harrison BScHons, FNAEA of Harrisons. He had managed the property in 2007 until he had been taken over by hmlAndertons in May 2007, although he had continued to be concerned with the management until the court application in May 2008.
7. The hearing was then adjourned because the applicants were not in possession of sufficient supporting evidence to enable the Tribunal to determine whether the service charges for the years in question were reasonable, reasonably incurred and, therefore payable. Directions were issued.

THE LEASE

8. The respondent holds under a lease dated 10 February 1984 for a term of 99 years from 10 February 1984 paying ground rent of £50, £100 and £150 for each succeeding 33 year period.
9. Attached at Annex 1 are photocopies of clauses 5 and 6 of the lease and the Fourth Schedule which set out the service charge obligations. Essentially the service charge year is a calendar year and the lessee is required to contribute (6.25%) to the service charge expenses incurred by the management company in carrying out their responsibilities under the terms of the lease.

HEARING ON 3 AUGUST 2009

10. At the hearing the applicants were represented by Mr Brown. The respondent was not present or represented and sent no written representations.

11. Mr Brown, in compliance with the Directions had previously sent a file of documents containing the accounts of the management company for each of the years in question and available supporting invoices.
12. The Tribunal went through each of the years in question and examined the available invoices.

Year ending December 2003

13. A total of £5,600 had been demanded for service charges but the schedule to the profit and loss accounts of the management company showed that the service charge costs had amounted to £5,296. No supporting invoices were available.

Year ending December 2004

14. A total of £6,072 had been demanded for service charges but the schedule to the profit and loss accounts of the management company showed that the service charge costs had amounted to £3,922. Some supporting invoices were available.

Year ending December 2005

15. A total of £5,761 had been demanded for service charges but the schedule to the profit and loss accounts of the management company showed that the service charge costs had amounted to £4,800. Rather more supporting invoices were available.

Year ending December 2006

16. A total of £7,680 had been demanded for service charges but the schedule to the profit and loss account of the management company showed the service charge costs had amounted to £5,877. Most supporting invoices were available.
17. The fee for accountancy @ £856 was significantly higher than in previous years (£564 – 2003, £470 – 2004, £564 – 2005) but it was explained by Mr Brown that a catch up exercise had been necessary to bring the accounts into a more appropriate format and a new accountant – Jones and Co - had been appointed.
18. The sundries item also increased significantly to £501 from that of previous years(£15 – 2003, £115 – 2004, £3 – 2005). Mr Brown drew to the Tribunal's attention to a Late Filing Penalty Invoice in the sum of £500.

Year ending December 2007

19. A total of £11,520 had been demanded for service charges but the schedule to the profit and loss account of the management company showed the service charge costs had amounted to £13,732. Almost all of the invoices were available.
20. The costs for this year had increased substantially because of the employment of managing agents at a cost of £150 per unit (£2,500 for the year) and their

employment of cleaning and gardening contractors at a cost of £1,405 and £2,343 respectively. Mr Brown said that the cleaning, which included bi monthly interior and exterior cleaning of the windows in the common parts, was carried out fortnightly. He said, and produced the invoices in support, that the monthly gardening costs were increased because of the charges imposed by the Council for rubbish disposal.

21. Mr Brown explained that hmlAndertons had continued at the same cost the management which Mr Harrison had begun, but like Mr Harrison they had no contract with the management company. They sent their terms of business annually charging a flat fee for day to day management with additional charges being levied for postage and work such as pursuing unpaid service charges.
22. The Tribunal asked to be supplied with a copy of the terms of business and Mr Brown promised to provide it shortly after the hearing.
23. The terms of business were received shortly after the hearing in the form of a very detailed schedule of charges set out in a small brochure covering all aspects of property management.

Year ending December 2008

24. A total of £13,427 had been demanded for service charge costs but the schedule to the profit and loss account of the management company showed the service charge costs had amounted to £13,000 Almost all of the invoices were available.
25. Postage, stationery and printing were shown as £182 (nothing having been charged the previous year).
26. Mr Brown explained the sundry expense of £316 (£113 the previous year) by calling attention to a number of charges for pursuing unpaid service charges which were charged to the management company until paid by the leaseholder concerned, and a number of invoices from solicitors – Bell Denning - dealing with similar issues..

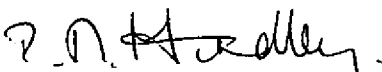
.SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

27. Section 27A of the Landlord and Tenant Act provides that 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 :-
 - (1) the person by whom it is payable
 - (2) the person to whom it is payable
 - (3) the amount which is payable
 - (4) the date at or by which it is payable, and
 - (5) the manner in which it is to be paid.

THE DETERMINATION OF THE TRIBUNAL

28. Having examined each of the items for each of the years in question and, in the absence of any specific challenge to any of the costs from the respondent, the Tribunal was satisfied that the costs were reasonable, reasonably incurred and, therefore, payable.

29. The Tribunal came to this conclusion, despite the production of only some of the supporting invoices, for a number of reasons.
30. Firstly, the Fourth Schedule to the lease makes it quite clear that lessees are responsible for the costs incurred by the management company in carrying out all the obligations contained in clause 6 of the lease (see Annex 1) and the Tribunal was satisfied that the costs shown in the accounts were incurred by the management company in the performance of those obligations.
31. Secondly, looking at the costs for 2003 the Tribunal was satisfied, from their inspection of the property and their own knowledge as an expert Tribunal, that the costs for the individual heads of expenditure were reasonable.
32. Thereafter the costs either increased year on year or varied as might be expected - e.g the insurance £2,664 – 2003, £2,970 – 2004, £3,245 – 2005, £3,879 – 2006, £3,699 – 2007, £3,841 – 2008.
33. Thirdly, other costs requiring clarification, such as those in respect of repairs or as set out above, were explained to the Tribunal's satisfaction by Mr Brown and were mostly supported by relevant invoices.
34. Accordingly, the Tribunal determines as reasonable, reasonably incurred and, therefore, payable by the respondent service charge costs in the sum of £2,507.94p for the period 2003 – June 2008. The accounts for the year ending December 2008 were not available at the time the application was made so although the Tribunal has determined service charge costs of £812.50p for that year, only £406.25p is included as presently payable for the purposes of this transferred application.

Chairman 

Date 10/8/09.

SERVICE
CHARGES

5. (i) The Owner hereby covenants with the Lessor and the Management Company to contribute and pay such proportion of the total costs expenses outgoings and matters mentioned in the Fourth Schedule hereto as the rateable value of the Demised Premises bears to the total rateable value of the flats comprised in the Estate

(ii) The contribution under paragraph (i) of this clause for each calendar year shall be

estimated by the Management Company or their managing agents (whose decision shall be final) as soon as practicable after the beginning of the year and the Lessee shall pay the estimated contribution by two equal instalments on the 25th March and the 29th September in that year

(iii) As soon as reasonably may be after the end of the year of 1985 and each succeeding year the actual amount of the said costs expenses outgoings and matters for the year shall be ascertained and the Lessee shall forthwith pay the balance due to the Management Company or be credited in the Management Company's books with any amount overpaid

(iv) The certificate of the auditor for the time being of the Management Company as to the amount due under paragraph (iii) of this clause shall be final and binding on the parties

(v) Subject to paragraph (iv) of this clause in the event of any dispute between the parties arising out of this clause or the Fourth Schedule hereto the same shall be referred to an independent arbitrator being a Chartered Surveyor appointed by the President for the time being of the Royal Institute of Chartered Surveyors

(vi) The Owner shall pay the sum of One Hundred Pounds (£100) on the signing hereof as an estimated contribution towards the costs expenses outgoings and matters mentioned in the Fourth Schedule hereto for the period until the 31st day of

(vii) The Owner shall pay in addition to the sum referred to in Clause (vi) above on the signing hereof the first annual premium in respect of the insurance of the flat

MANAGEMENT
COMPANY

6. The Lessor having agreed to grant to the Management Company full right to enter the Building and the Estate for the purpose of performing its functions and subject to the payments in Clause 5 hereof covenanted to be made by the Owner and Management Company hereby covenants with the Lessor and (as a separate covenant) with the Owner as follows :-

(1) To pay the amount of the premium from time to time for insuring and to insure and keep insured the Building in the names of the Lessor and the Management Company and in such Company as shall be nominated by the Lessor against loss or damage (other than in the case of war invasion or other similar cause) by fire lightning aircraft and articles dropped therefrom and such other contingencies as the Lessor may require in an amount equivalent to the reinstatement value of the Building and all professional fees and charges and that it will in the event of the Building being damaged use its best endeavours to apply all moneys received under or by virtue of any such insurance in rebuilding or reinstating the Building

(2) To maintain and repair and (as necessary) renew as follows :-

(a) The foundations main (external) walls

Structure (including all floor joists) roof
and roof structure of and in the Building

(b) All pathways within the Estate

(c) The communal television aerials (if any)
serving the Building

(d) The driveway garden area and parking
area

(e) The fence marked 'T' inwards on the
attached plan

(3) In the year 1986 and subsequently in every
third year to wash stop and paint with three coats
of good paint the surface of all parts of the
exterior of the Building originally painted SO THAT
the colours and materials used shall be the same
as those originally applied or as approved by the
Lessor

(4) To maintain and repair and (as necessary)
renew all sewers drains pipes cables wires and
appurtenances in under or upon the Building or
elsewhere on the Estate which are enjoyed or used by
more than one owner or lessee of the flats in the
Building

(5) To maintain and repair and (as necessary)
renew any other installation or other thing forming
part or attached to the Building which is enjoyed
or used by more than one owner or Lessee of the
flats in the Building

(6) To keep the Lessor the Management Company
and each of its Members insured in such Company
and through such agency as shall be nominated

by the Lessor against all liability arising out of any claim made in respect of injury to persons or property (whether in or on any part of the Estate or adjacent property) resulting from the condition of anything forming part of the Building or any other part of the Estate at any material time or from the negligence of any person employed by the Management Company

(7) To produce whenever reasonably required to the Lessor and the Owner the Policies of Insurance and proper evidence of the payment of the current premium in respect of any insurance covenanted to be affected by the Management Company and to ensure so far as is possible that the Insurance Company effecting such insurance will on request note the interest of the Owner and his mortgagee (if any) in the Flat on the Policies of Insurance

(8) To pay all rates taxes or other outgoings assessed or charged on any part of the Estate other than on individual flats where the individual flat owner or Lessees are responsible for payment under their Leases

(9) Not without the consent of the Lessor to cause or permit any alterations or additions to be made to any part of the Estate or of the Building

(10) To indemnify the Lessor against any sum expended in remedying any failure in the observance of the Management Company's covenants herein and against any loss incurred through any such failure

(11) Not to withhold membership of the Management Company from the Owner or from any person under contract to take an assignment of the Owner's interest in the Demised Premises

THE FOURTH SCHEDULE hereinbefore
referred to

SERVICE CHARGES

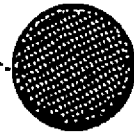
1. The expenses and costs incurred by the Management Company (or the Lessor if appropriate) in carrying out all the obligations contained in Clause 6 of this Lease
2. All other expenses (if any) incurred by the Management Company (or the Lessor if appropriate) in and about the maintenance and proper and convenient management of the Estate or any part thereof including in particular (but without prejudice to the generality of the foregoing) any interest paid or any money borrowed to defray any expenses incurred and specified in this Schedule and any legal or other costs bona fide incurred by the Management

Company in taking or defending proceedings (including any arbitration) arising out of any Lease of any part of the Estate or any claim by or against any Lessee or Tenant thereof (other than a claim for rent alone)

3. The fees and disbursements paid to any Managing Agents appointed by the Management Company in respect of the Estate and to any Auditor for the purpose of this Lease and in particular Clauses 5 6 and 8 hereof

4. Any administrative and clerical expenses incurred by the Management Company in order to properly and efficiently carry out its obligations under this Lease

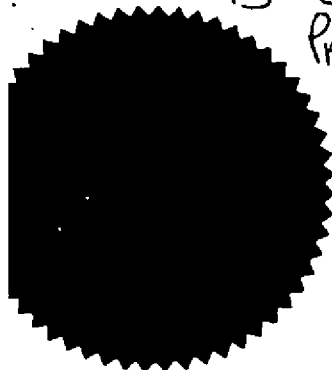
SIGNED, SEALED and DELIVERED by the said LEONARD EVAN EGGINTON in the presence of:



J. B. WARD

J. Wood

13 CUMBERLAND HEATHSIDE CAMBERLEY
PARTNER



THE COMMON SEAL of SANDFORD COURT (ALDRSHOT) MANAGEMENT COMPANY LIMITED was hereunto affixed in the presence of:

Director

Secretary

