

5386

**LEASEHOLD VALUATION TRIBUNAL for the
EASTERN RENT ASSESSMENT PANEL
Landlord and Tenant Act 1985 – Section 27A
CAM/00KF/LSC/2009/0136
CAM/00KF/LSC/2010/0061**

**Property : 40 Stromness Road, Southend-on-Sea
SS2 4LQ**

Applicant : Regisport Limited Landlord

**Represented by : Mr David Bland Pier Management
Mr Dan Harrison Leasehold Legal Services
Ms Kirsty Taylor Countrywide Managing
Agents**

Respondent : Mr Hamid Mashhoudi Tenant

Represented by : Mr Mashhoudi In Person

**Date of Referrals : 23 November 2009 Case No 9SS00881
12 May 2010 Case No 9SS03978**

Date of Hearing : 3 August 2010

Date of Decision : 11 October 2010

**Tribunal : Mr John Hewitt Chairman
Mrs Evelyn Flint DMS FRICS IRRV
Mr David Cox JP**

Decision

1. The decision of the Tribunal is that:
 - 1.1 The claims to ground rent, statutory interest and court fees and court costs as set out in Appendix 1 to this Decision shall be referred back to the court for determination because this Tribunal does not have jurisdiction to determine them.

- 1.2 The claim to the cost of insurance of £253.07 demanded on 01.07.08 shall be included in the service charge accounts for the year 2008/9 which are detailed in paragraph 24 below.
- 1.3 The sums demanded on account of service charges set out in the relevant section of Appendix 1 were not payable at the time the court proceedings were issued because the demands for them were not compliant with statutory requirements.
- 1.4 Net service charges for the years 2007/8 and 2008/9 amounting to £334.01 as set out in paragraph 24 below will be payable by the Respondent to the Applicant in due course upon a compliant demand for them being given to the Respondent.
- 1.5 The administration charges claimed and set out in the relevant section of Appendix 1 are not payable by the Respondent to the Applicant for the reasons set out in paragraphs 25-29 below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Background

2. On 14 April 2009 the Applicant commenced proceedings against the Respondent in the Southend County Court Case No. 9SS00881. The Applicant claimed:

Ground rent

01.07.07 - 31.12.07	£ 50.00
01.01.08 – 30.06.08	£ 50.00
01.07.08 – 31.12.08	£ 50.00
01.08.09 – 30.06.09	£ 50.00

Insurance

01.07.08 – 30.06.09	£253.07
---------------------	---------

Administration Charges

18.09.08	Arrears Reminder Charge	£ 23.50
23.03.09	Land Registry Search	£ 13.80

08.04.09	Interest to this date	£ 30.34
08.04.09	Court Claim Fee	£ 57.50
08.04.09	HM Court Fee	£ 65.00

3. The Respondent filed and served a Defence and Counterclaim to the Claim issued by the Applicant and takes issue with the Applicant on a number of the sums claimed by the Applicant by way of service charges and administration charges. The Respondent also asserts that the Applicant has failed to provide certain services or to comply with its obligations under the lease and that in consequence he has suffered loss and damage which he seeks to recover.

4. By an order made on 11 November and dated 17 November 2009 District Judge Dudley ordered that: *"the matter be transferred to the Leasehold Valuation Tribunal for determination."*

5. On 4 December 2009 the Applicant commenced further proceedings against the Respondent in the Southend County Court (Claim No. 9SS03978). The Applicant claimed:

Arrears of service charges	£1,229.20
Interest	£ 23.49
Costs to judgment	£ 483.00
Court fee	£ 85.00
Solicitor's costs	£ 88.00

6. The Respondent filed and served a Defence and Counterclaim to the Claim issued by the Applicant and takes issue with the Applicant on a number of the sums claimed by the Applicant by way of service charges and administration charges. The Respondent also asserts that the Applicant has failed to provide certain services or to comply with its obligations under the lease and that in consequence he has suffered loss and damage which he seeks to recover.

7. By an order dated 14 April 2010 District Judge Ashworth ordered that:
“Upon the judgment being set aside, the case be transferred to the LVT for determination as to the reasonableness of the service charges being sought.”

8. The Applicant is the current landlord and the Respondent is the current tenant of the Premises.
The lease, which is dated 10 January 1989, was made between
(1) Michael Charles Brown and Kevin James Brown as landlord, and
(2) Nigel Howard Fear and Jennie Leigh Godwin as tenant.
The lease demised the Premises for a term of 99 years from 1 January 1988 at a ground rent of £100 (and rising) per annum and on other terms and conditions therein set out. The lease has subsequently been varied but the variation is not material to the matters before the Tribunal.

9. Clause 4 of (and the Fourth Schedule to) the lease impose obligations on the landlord to insure the Premises, to carry out repairs and redecorations and to provide other services as set out in the lease.

10. Clause 3 of (and the Third Schedule to) the lease imposes an obligation on the tenant to contribute 50% to the costs and expenses incurred by the landlord in carrying out its obligations. The detailed service charge regime is set out in the Sixth and Seventh Schedules to the lease. There is a provision for the tenant to pay sums on account of the liability which arises and at the year end and upon the issue of a certificate provision for a balancing debit or credit as the case may be.

11. The referrals came on for hearing on 2 August 2010.

Inspection

12. On the morning of the hearing the Tribunal inspected the Premises in the company of the Respondent and representatives of the Applicant.

Matters Agreed

13. It was agreed that the Tribunal does not have jurisdiction to determine ground rent arrears, or claims to interest pursuant to s69 County Courts Act 1984 or to court fees or costs in court proceedings and that these matters will all have to be referred back to the court for determination if the landlord wishes to pursue them.
14. It was also agreed that the four demands for on account service charges set out in Appendix 1 were not payable because the demands were not compliant with the requirements of s47 of the Landlord and Tenant Act 1987 because the landlord's name was incorrectly cited. We were told that corrected demands had been sent out some two weeks prior to the hearing but this was too late because correct demands had not been sent out prior to the issue of the court proceedings. Thus the landlord was precluded from recovering on account sums for the years in question, although, of course, the landlord will be entitled to a balancing debit in the amount of the service charges for the relevant years as determined by the Tribunal and such sums will be payable in due course upon compliant demands being sent out.

Matters in Dispute

15. In dispute were the service charges for the following years:

	2007/8	2008/9
Management fee	£352.48	£490.37
Reporting Accountants charge	£ 57.50	£ 58.75
Bank interest received	<u>(£ 1.06)</u>	
General repairs		<u>£ 46.00</u>
Net	£408.92	£595.12
50%	£204.46	£297.56

16. Mr Mashhoudi challenged the amount of the management fees and the accountant's charges. He did not challenge the amount of the general repairs.

Mr Mashhoudi also challenged the cost of insurance of £253.07 demanded on 01.07.08. He claimed that it was too high. He said that February 2007 he obtained a quote for £112.29 [197]. He did not have any more up to date information.

Mr Mashhoudi submitted that the amounts claimed were too high and often fabricated, especially as regards the administration charges claimed. He said that no services were provided.

Mr Mashhoudi did not wish to pursue any damages claim.

Insurance

17. It is unfortunate that the Applicant landlord chooses to employ two agents, one to collect ground rent and to demand sums for insurance and one to collect service charges. This causes unnecessary duplication and confusion and perhaps increases charges and costs. Also it is not compliant with the scheme or structure set out in the lease. The lease clearly provides for the cost of insurance to be part of the service charge regime, it is included in the Sixth Schedule. The service charge year is 1 July to the following 30 June. The cost of insurance should be included in the annual budget and one half of the estimated liability is payable on 1 July and the other half on 1 February following. Mr Bland accepted that it was wrong to separately demand 100% of the cost of insurance on 1 July.

18. Mr Bland took us through the steps taken by the landlord to obtain insurance cover for its substantial portfolio. No copy of the demand was available but sample documents were at [182 – 183a]. The certificate for the year was at [185].

19. Having regard to the evidence before us and bringing into account the accumulated experience and expertise of the members of the Tribunal, we were satisfied that a cost of insurance of £253.07 for the year commencing 01.07.08 was within the range of a reasonable premium obtained on a block portfolio policy basis. We therefore conclude that the sum was reasonable in amount.

Management Fees

20. Mr Harrison did his best to try and convince us that the management fees claimed for this small development on which very few services are provided were within the range of what could be regarded as reasonable. Despite his best efforts he failed. He accepted that it was difficult to justify the fees paid to the previous managing agents. We consider the fees claimed to be unreasonable in amount. We find that a reasonable fee each year in question for this development in this location is no more than £235.

Reporting Accounting Fees

21. We find that these were unreasonably incurred. The lease does not require independent audit. Paragraph 5 of the Seventh Schedule to the lease requires that a certificate of annual expenditure is given by "*...the Lessor's auditors or accountants or Managing Agents (at the discretion of the Lessor as to the amount ...*".

22. No evidence was put forward as to why the landlord had exercised its discretion to employ accountants to sign off the accounts, no duly certified or accounts signed off by accountants were provided to us and no invoices from accountants were made available to us.

23. If such costs were incurred, about which we have grave doubts, we find that such costs were unreasonably incurred. We find that given such a simple set of accounts the landlord acting reasonably should have exercised its discretion and required its managing agents to sign off the accounts and produce the annual certificate, all within the annual management fee of £235.00.

Summary of Service Charges payable

24. Subject to the giving of a demand compliant with statutory and regulatory requirements service charges are payable as follows:

2007/8

2008/9

Management fee	£235.00	£235.00
Bank interest received	<u>(£ 1.06)</u>	
General repairs		£ 46.00
Insurance		<u>£253.07</u>
Net	£233.94	£534.07

50%	2007/8	=	£116.97
	2008/9	=	<u>£267.04</u>
			£384.01
	Less paid on account		<u>£ 50.00</u>
	Balance		£334.01

Administration Charges

25. The administration charges claimed are set out in the relevant section of Appendix 1.
26. We find that the arrears reminders charges are not payable because the lease does not provide for payment of such sums, no compliant demand for them was produced to us, it was unreasonable to incur them because sending our arrears reminders letters is a routine part of a managing agents services and is or should be covered by the annual fee and because no evidence was provided by the Applicant that the costs incurred were reasonable in amount.
27. We find that the debt recovery charge of £115 is not payable. We were told that the cost had not (yet) been incurred by the Applicant. The demand for it was not compliant with statutory requirements and because we were not convinced that the sum was or might be incurred as part of a process leading up to the serving of a notice pursuant to section 146 Law of Property Act 1925. No evidence to this effect was provided by the Applicant.

28. We find that the Land Registry search fee of £13.80, the costs of £57.50 and the costs to judgment of £48 are not payable because the Applicant was unable to take us to a provision in the lease which obliges the tenant to pay such charges and no evidence was provided that the charges were reasonable in amount.
29. The claim to interest of £23.49 payable pursuant to the lease is not payable because no compliant demand for it has been given to the Respondent.

The Law

30. Relevant law we have taken into account in arriving at our decision is set out in the Schedule to this Decision.

The Schedule

The Relevant Law

Landlord and Tenant Act 1985

Section 18(1) of the Act provides that, for the purposes of relevant parts of the Act 'service charges' 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 the relevant costs.

Section 19(1) of the Act 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 are of a reasonable standard;

and the amount payable shall be limited accordingly.

Section 19(2) of the Act provides that where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction of subsequent charges or otherwise.

Section 27A of the 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-

- (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.

Landlord and Tenant Act 1987

Section 47 provides that every demand for rent, service charges or administration charges must contain the following information:

- (a) the name and address of the landlord, and
- (b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

Where a demand does not contain the required information the sum demanded shall be treated for all purposes as not being due from the tenant to the landlord, until such time as the required information is furnished by the landlord by notice to the tenant.

Commonhold and Leasehold Reform Act 2002

Schedule 11

Paragraph 1 sets out a definition of a 'variable administration charge'.

Paragraph 2 provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.


Paragraph 5 provides that any party to a lease of a dwelling may apply to a Leasehold Valuation Tribunal for a determination whether an administration 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.

No application 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.

A tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.



.....
John Hewitt

Chairman

11 October 2010