

**IN THE MATTER OF
26B WEST STREET, ST PHILIPS, BRISTOL, BS2 0BH**

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

CASE NO: CHI/00HB/LIS/2009/0080

**AND IN THE MATTER OF AN APPLICATION UNDER SECTION 27A OF THE
LANDLORD & TENANT ACT 1985 AS AMENDED ("THE 1985 ACT")**

DECISION

Applicant : Mr Peter McCleery

Respondents : Sterling Estates Management

Premises : 26B West Street, St Philips, Bristol, BS2 0BH

Date of Application : 11th September 2009

Date of Directions : 18th September 2009

**Date of Inspection
and Determination :** Tuesday, 12th January 2010

**Members of the Leasehold
Valuation Tribunal:** Mr A D Mc Gregg, (Chairman)
Mr M J Ayres FRICS

Determination

This matter was dealt with by way of a paper determination following an inspection of the premises and consideration of written representations from both parties.

1 Inspection of the Premises

1.1 The members of the Leasehold Valuation Tribunal inspected the premises (external inspection only) at 9.45 am on Tuesday, 12th January 2010 in the

presence of Mr Kevin Cooper the cleaner and maintenance manager for the premises.

- 1.2 26B West Street, St Philips, Bristol is a flat situated on the second floor of phase 2 of this development.
- 1.3 Access to the premises is gained via electronic gates operated by an external keypad and which, if closed properly, prevent persons gaining access.
- 1.4 There is no car-parking at the premises.
- 1.5 Having gained access to the premises the Tribunal noted the individual post boxes for each of the flats in the covered archway.
- 1.6 Off the covered archway there is a communal bin and rubbish store and the Tribunal noted a number of the bins which are apparently emptied on a weekly basis together with certain items of broken furniture including a mattress that has been thrown out.
- 1.7 Adjoining the bin store is a bicycle shed provided for the use of the residents.
- 1.8 At the rear of the premises there is a small garden area (approximately 6 yards x 36 yards) and the Tribunal were informed that it was almost impossible to grow anything in this area due to the shaded nature of it. The Tribunal noted that there were many weeds growing in the small lawn area of the communal garden and there was a border with some deciduous plants growing in it. The right-hand end of the communal garden has clearly been used by smokers who deposit their cigarette ends in the garden.
- 1.9 Access to flat 26B is gained via a communal hallway and staircase to the second floor of phase 2 of this development.
- 1.10 The hallway is carpeted and the stairs form part of a glazed structure on the external wall of the building. Whilst lighting is provided for these areas there was no heating.
- 1.11 The Tribunal noted that there were no CCTV cameras in place and that there had been no internal redecoration to the communal parts.

2 The Issues

- 2.1 The issues to be determined by the Tribunal relate to certain items of the service charges payable by the Applicant for the year 25th December 2008 to the 24th December 2009 and as are more particularly set out in a letter dated the 30th October to the Residential Property Tribunal Service (document no. 1 in the Applicant's bundle) namely:

(a)	the charge for gardening	£5,000
(b)	the door entry system	£750
(c)	waste disposal	£400
(d)	cleaning	£8,000
(e)	major works	£12,000

- 2.2 Both parties had made written representations to the Tribunal and directions had been given that the issues in dispute should be resolved by way of a paper determination and without an oral hearing.

3 Relevant Liabilities Under the Lease

- 3.1 The Applicant's liabilities (covenants) are set out in the Lease dated the 8th December 2006 and made between Lindstrom Investments Limited (Lessor) and Jeremy John Deeley (Lessee).
- 3.2 Specifically, clause 5.01 to 5.04 inclusive sets out the liability to pay the service charge and in particular "the service charge percentage specified in paragraph 9 of the Particulars (hereinafter called "the contribution") of the reasonable costs and expenses incurred by the Lessor in compliance with its obligations under clause 7.01 hereof and of all other costs and expenses reasonably incurred in the proper management of the building ..."
- 3.3 In paragraph 7.01 of the Lease the Lessor covenants, amongst other things, to maintain and keep in good and substantial repair and condition the various parts of the building and premises as specified in that clause.

4 The Law

- 4.1 Section 27a of the Landlord and Tenant Act 1985 ("the Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and if it is, determine

- 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
 - e) the manner in which is payable
- 4.2 For the purpose of the Act a service charge is defined in Section 18(1) as "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, improvement 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 (including overheads).
- 4.3 "Relevant costs" are defined as costs or estimated costs incurred or to be incurred by or on behalf of a landlord or superior landlord in connection with the matters for which the service charge is payable.

- 4.4 Section 19(1) of The Act deals with the test of reasonableness and the only costs that shall be taken into account in determining the amount of the service charge are those that are:
- a) Reasonably incurred and
 - b) Where they are incurred on the provision of services or carrying out of works if those services or works are of a reasonable standard.

5 The Determination

- 5.1 Prior to the Determination as well as inspecting the external parts of the premises the Tribunal had considered all the documentation provided by both parties to the Tribunal and in particular the representations made by both parties.
- 5.2 Having done so, the Tribunal came to the following conclusions.
- 5.3 **Gardening £5,000** – The Tribunal noted that no invoices had been provided by the Respondents for this item. There was no information as to the contractors who had been chosen to carry out the gardening works. There were no details of instructions given to the contractors and there was no information as to whether this item had been put out to tender.

Clearly however, some gardening had taken place and the Tribunal had been told by Mr Cooper, the caretaker, of a proposal to cover the whole “grassed” area with gravel in order to make it easier to maintain.

The Tribunal was of the opinion that little or no work was necessary to maintain a small area of this size and in particular in the winter none was necessary other than the clearance of litter.

Accordingly the Tribunal was of the view that a figure of £4,968 per annum for gardening was not merited (£360 plus VAT per month) and that a more appropriate and reasonable figure was £180 plus VAT per month.

This item is accordingly reduced to that figure, namely £2,538 per annum at the current VAT level.

- 5.4 **The Door Entry System £750** – The Tribunal was of the view that the door entry system as installed was important for the security of the building and of all the tenants. It is electric in operation and therefore has to be checked and serviced every year and the key pads regularly maintained.

However, again no information or invoices had been provided with regard to this item and no details of the service contract that presumably exists with an electrical contractor.

However, the Tribunal gives the benefit of the doubt to the Respondents in this matter and makes no reduction with regard to this specific item.

The Tribunal does however recommend that invoices and full service details are made available in the future.

- 5.5 **Waste Disposal £400** – The Tribunal had inspected the bin store and noted that apart from the weekly bin collections (currently every Monday) there were frequently other items of discarded furniture and detritus that would have to be disposed of. The Tribunal, for example, noted an old mattress that was awaiting disposal and the Tribunal accepts that inevitably there will be a cost of disposing of these items.

In all the circumstances the Tribunal was of the view that the sum of £400 per annum was reasonable and no deduction was made in respect of this item.

- 5.6 **Cleaning £8,000** – The Tribunal inspected the communal areas which whilst being clean and tidy were very basic. Again no information or invoices or service contracts had been provided with regard to this item and the Tribunal therefore came to the conclusion that a charge of £8,000 per annum (£640 plus VAT per calendar month) was excessive.

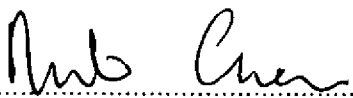
The Tribunal therefore concluded that a reasonable figure would be £320 plus VAT per calendar month, namely £4,512 per annum at the current VAT rate.

- 5.7 **Major Works £12,000** – The Tribunal noted that there was no CCTV installation and that the premises had not been redecorated. Whilst the Tribunal accepts the benefits from such items as the installation of CCTV and regular redecoration, the correct way to put forward a proposal for these items is to go through a consultation process before going out to tender and agreeing a figure. None of this had been done.

It was appear that the Respondents are confusing this item which would infer works already done and carried out and a reserve or sinking fund in the annual accounts.

The Tribunal also noted that the Respondents have already asked for the sum of £4,000 for a reserve fund for this year in their budget as well as the sum of £12,000 for major works.

Since there was no evidence of any major works having been carried out this item was totally disallowed.

Signed 

Andrew Duncan McCallum Gregg

(Chairman of the Panel appointed by the Lord Chancellor)

Dated the 24th day of February 2010

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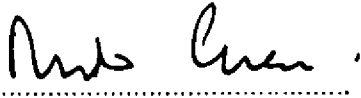
**AND IN THE MATTER OF AN APPLICATION UNDER SECTION 27A OF THE
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**RESPONSE TO THE RESPONDENTS REQUEST FOR PERMISSION TO APPEAL AGAINST
THE DECISION OF THE LVT DATED 24 FEBRUARY 2010**

- 1) The residential property tribunal service has received a request from the respondent for permission to appeal against the decision of the LVT given 24 February 2010.
- 2) That request is dated 17 March 2010.
- 3) The request is made on the grounds that the tribunal "has not fully inspected the whole of the property i.e. all communal areas relating to the 37 residential units that make up Midland Mews Phase 2".
- 4) The notice of appeal reiterates points 2.1, 2.2, and 2.3, as set out in the respondent's response to the applicants original statement of case.
- 5) The respondent goes on to state that "the full extent of the property in question has not been surveyed, and therefore the figures contained within the determination are not an accurate reflection of the needs and requirements of the whole estate".
- 6) Additionally the respondent has now produced the end of year of accounts which were not available to the tribunal on the date of their inspection and determination namely 12 January 2010.
- 7) The tribunal takes note of the reasons that form the basis for the grounds of appeal.
- 8) With regard to the point concerning the inspection of the whole property the tribunal carried out a detailed inspection of all the communal areas surrounding and relating to flat 26B West Street St Phillips Bristol in the presence of, and under the direction of, Mr Kevin Cooper the cleaner and maintenance manager for the premises and the tribunals findings are set out in paragraph 1 of the decision.

9) With regard to the end of year accounts the tribunal had the benefit of the accounts that had been produced to them up to and including Tuesday 12 January 2010 and accordingly no other documents produced subsequent to that date could be considered by the tribunal.

10) In view of the above, the tribunal refuses permission for leave to appeal against the decision of 24 February 2010.

Signed.....
Andrew D M Gregg a Chairman of the
Panel appointed by the Lord Chancellor

Dated 31.03.2010