

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/00HN/LIS/2009/0107

Re: Flats 1, 2, 3 & 4 Glen Fern Road, Bournemouth BH1 2LX

Applicant Philip Clarke, Ryan Lockett and Paul Keating

Respondent Castleford Management Ltd and Rayner Homes Limited

Date of Application 23 November, 2009

Date of Inspection 3rd March 2010

Date of Hearing 3rd March 2010

Venue Royal Bath Hotel Bournemouth

Representing the parties The applicants in person.
Mr A Ford, Managing Director of Castleford Management Ltd; accompanied by Mrs M Timbs

Members of the Leasehold Valuation Tribunal:

M J Greenleaves	Lawyer Chairman
K M Lyons FRICS	Valuer Member
Mrs J Herrington	Lay Member

Date of Tribunal's Decision: 16 March 2010

Decision

1. Rayner Homes Ltd having been named in the application as landlord and as such being the company liable under the landlord's covenants in the leases of the Flats of the property, is joined as a party to the application.
2. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that for the accounting years 2005/2006 to 2008/2009 inclusive, the reasonable and payable sums for the following items in the service charge account for those years are as follows:

Item	2005/2006	2006/2007	2007/2008	2008/2009
Establishment cleaning	£50	£80	£120	£110
Window cleaning	£165	£168.32	£200.65	£167.98
Electricity	£19.38	£19.38	£19.38	£19.38
Gardening	£10	£24.50	£37.50	£31

Management fees	£352.50	£235.20	£282	£387.60
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Reasons

Introduction

3. This was an application made by Philip Clarke, Ryan Lockett and Paul Keating for determination whether certain service charges for the years 2005/2006, 2006/2007, 2007/2008 and 2008/2009 were reasonable and payable.
4. It appears that Justin Pain was unable to join in the application only because he is away serving in HM Forces and was therefore unavailable to sign the application or apply to be joined as a party to it.
5. The items of service charge in question were those for the accounting years and items referred to in the decision.

Inspection

6. The Tribunal inspected the internal common parts and external common parts of the property containing the Flats 1, 2, 3 and 4 Glen Fern Road Bournemouth (the property) in the presence of Mr Keating and Mr Clarke.
7. The property is semi-detached, comprising Flat 1 in the basement, having a separate side entrance and Flats 2,3 and 4 having a communal hall and stairway. There is a driveway to the side leading, through electrically powered gateway to a parking area at the back, part of which is for use by the Flats in the adjoining property.
8. The property appears to be in need of proper care and maintenance. It is built of brick under a tiled roof. The internal communal areas need cleaning, painting and probably new carpets. At the foot of the stairs is a rubbish filled box. Externally, there are shrubs to the front garden, to the side is a drive way and gateway and the parking area at the rear is tarmac. In the parking area there is a pile of tyres, a bicycle and old refrigerator. All external areas are unkempt. The electric gates are operated by key fobs in the possession of the tenants.

Hearing & Representations

9. A hearing was held the same day, those attending being noted above. So far as relevant to our consideration and decision we note the evidence and submissions below.

10. Generally.

- a. The Applicant's case generally is that on various occasions in the past they had complained to the managing agents about a lack of work and they had given up complaining and taken it on themselves to carry out work such as cleaning. Castleford produced some records up to November 2008 of conversations with tenants. Mr Ford said that they had a 6 monthly inspection schedule, inspections being carried out by Tom Woodley and Mr Pollard but did not produce any records of those inspections or action taken as a result, nor did they call any evidence to substantiate those inspections; nor had Castleford been in touch with the contractors or produced evidence to assist the tribunal. Mr Ford submitted that the tenants should have continued to complain if they did have any concerns.
- b. The tenants told us that because of lack of work from their point of view, at least 2 of the them had not paid their service charge in full. One had paid

up to date but they were uncertain about Mr Pain's situation. Mr Ford told us that as a result, the service charge fund was being depleted and there were no reserves and for that reason they had ceased to instruct contractors to carry out gardening in March 2009 and cleaning in September 2009. He considered that the landlord was only required to carry out work if the service charge was all paid up.

- c. Our overview of the situation relating to this property was that there was a substantial lack of evidence from Castleford of any proper inspections; the lack of proper care and maintenance when we inspected it; the admitted failure to continue to comply with covenants and failure to consider whether high electricity bills should be paid. For those reasons we were not surprised that the tenants had ceased to complain and decided to do some work themselves and some of them had ceased paying service charge.

11. The relevant terms of the lease (the lease of Flat 1 dated 20 February, 2002 was produced to us and we understand that its provisions, so far as relevant to this application, are in similar terms to the other Flat leases):

- a. Under Paragraph 5 of the Fifth Schedule "the Lessee of the bottom floor flat shall be solely responsible for the beams and timber under his floor"
- b. maintenance charge is payable within 21 days of receipt of a demand;
- c. the maintenance charge per Flat is 25% of all items except that it is 12.5% in relation to the driveway and forecourt, the bin store and the gates;
- d. in the 4th Schedule, the lessor covenants to carry out the work and provide the services the subject of this application. There are no conditions attached such that the landlord would only be required to carry out such work and provide such services if the service charge was paid. Even if there had been such a condition, the landlord would have been required to comply with these covenants in relation to the one tenant who has paid up to date regardless of not having received full payment from all the tenants.

12. Establishment cleaning

- a. Apart from Mr Ford's assertion, there was no evidence of checking that work had been carried out. They assumed that it had been carried out, there had been no complaints beyond November 2008 and they had simply paid the bills. We do not know if cleaning would have been more evident had it not stopped in September 2009 but the condition that we saw suggests that there had been, at best, little effective cleaning for an extended period of time and that the box of rubbish at the foot of the stairs should have been removed by the cleaners but remained.
- b. The cleaning bills produced to us started only in September 2005 so that year's bills are significantly fewer. The tenants' evidence was that cleaning had taken place on very few occasions over the years. We did not consider that the standard of work, on all the evidence, justified the charges incurred and we therefore reduced each year in question by two thirds.

13. Window cleaning. We had no evidence that either the window cleaners or gardening contractors had access through the electric gates. We are prepared to accept that some window cleaning may have been carried out to the windows fronting the road but we had no reason to think that there had been any window

cleaning at the rear for any of the years in question, if only for want of access. Accordingly we reduced each year by about two thirds.

14. Gardening. We accepted the tenants' evidence that they had carried out some work and that little if any work had been done by the Gardening contractor to the rear, if only for want of access through the electric gates. However, there was no evidence that gardening had been carried out to the front areas either, but that could appear to be the case simply because gardening stopped in March 2009. We considered that the value of gardening work carried out to the property in the years in question was not more than 10% of the sums charged and we reduced each year accordingly to that amount.

15. Electricity.

- a. The electricity supply serves only 2 or 3 bulbs in the internal common parts and the electric gates. We consider it unlikely that a prudent managing agents might believe that electricity bills received in the service charge years 2005/2006 and 2006/2007 could really be correct. The bills in those years range from £240 to £360. The size of those bills ought to have put the agents on notice that perhaps they were incorrect. Inspection would have confirmed that. However, the agents simply paid the bills and it was not until the accounting year 2007/2008 that they obtained a refund of £753.
- b. Furthermore, the 4 tenants in this property had been charged the full amount of bills: no allowance has been made for the proportion of electricity used in respect of the gates by the adjoining property owners.
- c. Mr Ford made a written statement for the tribunal in which he said that as a result of that refund of £753, "over the last 5 years their electricity bill has been £156 in total, i.e. about £31 a year."
- d. We accept that for the internal common parts and electric gates, £31 per year would be appropriate, subject to a deduction for use of gates by the adjoining property. Mr Ford considered that 10% of the bill would be attributable to the gates, while the tenants thought it would be about 90%.
- e. We considered that the appropriate proportion of the electricity bill attributable to the gate would be 75% which, on an average bill of £31 a year, would be £23.25 of which one half, i.e. £11.62, should be paid by the adjoining owners. This would leave the 4 Flat owners in the property to pay the balance of £19.38 per year. That would seem to deal with the accounting years in question other than 2008/2009 where there is an electricity charge of £115 which, again, seems very high on the basis of Mr Ford's average of £31 a year. It seemed reasonable to us to apply the same reasoning to this last year in question as to the previous years.

16. Management Fees.

- a. Mr Ford considers that the fees charged are justified by the level of work carried out by Castleford. It will be apparent from what we have said above that we do not consider the level of management provided by Castleford has been up to an acceptable standard. At best they have arranged for some repairs, have paid insurance premiums, paid bills and they also have their own office expenses. There is no evidence of inspection or any other proactive steps; they have not troubled to check whether bills received are justified and payable.

- b. We assume that as Castleford comply, on their evidence, with the ARMA management code, their charges are intended to cover full compliance with it. We found they had in fact fallen substantially short of compliance. For that reason we consider that for each year in question a reasonable charge would be 40% of the sums set out in the service charge accounts.
- c. However, there is another aspect for the accounting year 2007/2008 in which year the management charge is shown as £ 881. During that year there had been a problem with damp to the floor of Flat 1. Castleford had supervised that work but did not make a separate charge. They had not taken that work through to a conclusion and estimated that the cost of their supervision was 20% of their total management charge for that year.
- d. While we have not been asked by the applicants to consider the cost of that work itself, we do have to consider whether the management charges applicable to it are reasonable and payable. As noted at paragraph 11 above, the Flat floor appears to be the tenant's responsibility and not the landlord's responsibility. It appears to us therefore that it is inappropriate for the landlord's agents to charge their related fees to service charge. On Mr Ford's evidence, 20% of their fee related to that work so their general management fee would have been £705. As in the case of the other years, we reduced the management charge to 40% of that shown in the service charge accounts, leaving a chargeable management fee at a reasonable sum of £282.

17. We made our decisions accordingly.

[Signed] M J Greenleaves

Chairman

A member of the Tribunal
appointed by the Lord Chancellor