

Southern Rent Assessment Panel and Leasehold Valuation Tribunal

Case No. CHI/00ML/LIS/2008/0007

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
SECTION 27A and SECTION 20C of the LANDLORD AND TENANT ACT 1985**

Property: Embassy Court (Flats 52 & 66), Kings Road,
Brighton, East Sussex BN1 2PX

Applicant: Bluestorm Ltd (landlord)
Represented by Clifford Dann Property Management)

Respondent: Mrs S M George & Mrs M A Ishag (tenants Flat 52)
Ms R Easton (Flat 66)

Appearances: For the Applicant:
Mr M Newman of Clifford Dann
Ms E Jinks, Director of Bluestorm Ltd

For the Respondents:
No attendance

Application: 15 March 2010

Pre-Trial Review: 21 April 2010

Hearing: 28 July 2010

Decision: 02 September 2010

Members of the Leasehold Valuation Tribunal

Ms J A Talbot MA
Mr N Robinson FRICS
Ms J Dalal

Ref: CHI/00ML/LSC/2010/0031

Embassy Court, Kings Road, Brighton BN1 2PX

Application

1. This was an Application made on 15/03/2010 by Clifford Dann Property Management on behalf of the landlord, Bluestorm Ltd, of Embassy Court, Brighton BN1 2PX, pursuant to Section 27A of the Landlord and Tenant Act 1985 for a determination in relation to payability of service charges by the tenants of flats 52 (Mrs S M George & Mrs M A Ishag) & 66 (Ms R Easton) for expenditure incurred in the year ending 31/12/2009 and budget for 2010.

Background

2. A Pre-Trial Review was held on 21/04/2010. Mr Newman of Clifford Dann and Ms Jinks for Bluestorm attended. Ms Easton was added as a respondent. The Directions provided for the Applicant to produce a Statement of Case relating to the matters in dispute, and for the Respondent to produce a Statement in reply. Mr Newman produced a large bundle of invoices but no adequate Statement of Case. The Respondents did not comply. The application was amended to show Mrs George and Mrs Ishag as the lessees of Flat 52 (instead of Mr. George and Mr. Ishag).

Jurisdiction

3. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money payable by a tenant to a landlord for the costs of services, repairs, some improvements, maintenance or insurance or the landlord's costs of management, under the terms of the lease (S.18 LTA 1985). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

Lease

4. The Tribunal had a copy of the lease of flat 52. The lease is dated 22 August 1975 for a term expiring 20 June 2072 at a ground rent of £25 per year until 29 September 2006 and rising thereafter.
5. The provisions relating to the calculation and payment of the service charge are to be found at clauses 1, 4 and the fifth schedule. The tenant's proportion of the maintenance contribution is 1.41% for flat 52 and 0.92% for flat 66. By Clause 4(A) the tenant is to pay to the landlord on 1 January and 1 July each year a maintenance contribution of "*the expenditure likely to be incurred in the maintenance year by the lessor*" together with "*an appropriate amount as a reserve*". After the year end, the tenant must pay on demand the balance, or make such payment with the subsequent instalment of the maintenance contribution.

Inspection

6. The Tribunal members inspected the property before the hearing. It comprised a substantial Grade 2 listed building being a purpose built 1930's 11 storey block of flats with 72 units of accommodation, situated on Brighton seafront, with some garaging and parking spaces at the rear plus a small freeholder's office and storage area. The block was served by 3 passenger lifts and 1 service lift. The landlord employed a non-resident caretaker/maintenance person who was responsible for day to day minor repairs and redecorations, with cleaning, maintenance and security being provided by off-site contractors. Following substantial refurbishment some years ago, the property was generally considered to be in good condition with an ongoing planned maintenance programme including full external redecoration scheduled for 2011 (not the subject of this application).

Hearing

7. The hearing took place in Brighton on 28 July 2010. It was attended by Mr. Newman of Clifford Dann, managing agent, and Ms Jinks, lessee of flat 45 and a director of the landlord company. Neither of the respondents appeared or were represented, or indeed responded in any substantive way to the application.

Facts

8. On the basis of its inspection, the documents produced and submissions made by the parties at the hearing, the Tribunal found the following facts:
 - (a) By way of background, Mr. Newman and Ms Jinks explained that in previous years successful applications had been made to the tribunal in respect of the whole block, to obtain approval for the accounts as a whole, in case it proved necessary to pursue any tenants for unpaid service charges.
 - (b) This explained why, in the current application, no amounts sought as service charges from the named respondents were specified. The Tribunal explained that the application as framed required the it to determine service charges payable by the named respondents rather than a general approval of total expenditure. At the tribunal's request, Mr. Newman provided demands for flats 52 and 66. These showed that, as at 01/01/2009, in respect of flat 52, £2,467.19 was demanded in advance for 2009, and £3,300.70 in advance for 2010. There were historic arrears of £4,337.92. In respect of flat 66, £1,621.30 was demanded in advance for 2009 and £2,169.03 for 2010, with historic arrears of £3,781.81.
 - (c) It emerged at the hearing that the percentage applied to flat 52 had been 1.40% instead of 1.41%. Whilst this was a minor arithmetical error, it meant that fresh accurate demands would have to be served for the service charges to be validly demanded in accordance with the lease terms.
 - (d) The managing agent's practice was to issue demands in January and July each year based on the budget estimate for the calendar year. Instead of a balancing account for expenditure in the previous year, any amounts underspent or overspent were included in the budget for the forthcoming year. This was in accordance with the managing agent's interpretation of the lease terms (on legal advice) and the landlord's instructions.

- (e) For 2008, there was an underspend brought forward of £20,075, reflected in the service charge demands for 2009. The total budget figure for 2009 was £176,228. In 2009, the total actual expenditure was £144,242.53 with an adjusted overspend of £18,803. This was reflected in the budget for 2010 of £235,764, which was the figure used to calculate service charge demands for 2010. The budget was prepared in November for the coming year. The tenants' views were sought at meetings and letters of explanation sent with the budget and demands in January each year. The demands were correctly accompanied by the statutory summary of tenants' rights and obligations.
- (f) Despite the absence of any challenge from the respondents, the tribunal scrutinised items of expenditure in order to be satisfied that these were accurate and had been reasonably incurred in accordance with the lease terms and statutory requirements.
- (g) Working through the items of expenditure in the budget, Mr. Newman told the tribunal that insurance was arranged via a broker acting for Bluestorm, who tested the market each year and selected appropriate cover by competitive tender. The premiums were not unreasonable for a building of this size, type, location and complexity, and not opposed by the respondents.
- (h) Lift maintenance reflected ongoing charges under a maintenance contract plus additional expenditure required for specific replacement doors for the service lifts. Telephone costs serviced phone lines in the lifts and the basement office used by the freehold company and maintenance man plus internet connection. Professional and legal fees referred to legal and surveyors costs including a specialist report on windows. Fire alarms were maintained by a contract covering smoke detectors in the common parts and quarterly inspections. Security was provided by contract with a security firm with rapid response facility. CCTV was installed on every balcony and lift. Minor repairs were carried out by the maintenance man and the expenditure mainly reflected the cost of materials.
- (i) The discrepancy in some items between the budget and actual expenditure was explained. For example, window cleaning costs were omitted in error. CCTV increase was due to replacement cameras and monitors excluded from the annual contract. Lift maintenance overspend referred to the cost of special replacement doors required by the insurers.
- (j) Finally, the tribunal saw copies of demands for Ms Jinks's flat which showed that the demands were accompanied by the necessary summary of tenant's rights and obligations, and the landlord's name and address for service of notices.

Decision

9. The tribunal carefully considered the evidence given by Mr. Newman and Ms Jinks, as set out above, in support of the 2009 budget, 2009 actual expenditure, and 2010 budget. Having done so, it was completely satisfied that the costs both incurred and projected were properly explained and reasonably incurred. It appeared to the tribunal that the property was being adequately maintained with a pro-active and reasonably costed maintenance plan.
10. There was an error in the computation of service charges for flat 52 in that the proportion of 1.40% had been used instead of 1.41%. This could be easily remedied by the serving of fresh service charge demands. The demands for flat 66 were correct. Otherwise, all the sums demanded were properly calculated in accordance with the lease terms and statutory requirements.

Determination

11. **The tribunal therefore determines** in accordance with its powers under Section 27A of the Landlord and Tenant Act 1985, that the following sums are payable by the respondents to the applicant within 14 days of the date of this Decision:

2009: total £176,228

Flat 52 x 1.41%	£2,484.81
Flat 66 x 0.92%	£1,621.30

2010: total £235,764

Flat 52 x 1.41%	£3,324.27
Flat 66 x 0.92%	£2,169.03

Dated 2 September 2010

**Signed
Ms J A Talbot
Chairman**