

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



**Section 27A Landlord and Tenant Act 1985 (as amended)
Application for a determination of liability to pay service charges**

DECISION AND REASONS

Case Number: CHI/18UE/LIS/2009/0113

Property: Flat 6, The Old Picture Hall, Northfield Road, Ilfracombe, Devon, EX34 8AL

Applicant: The Old Picture Hall Management Co. Ltd

Respondent: Ms C Savvas

Date of Application: 16 November 2009

Date of Hearing: 26 February 2010

Tribunal Members: Mr T E Dickinson BSc FRICS (Chair)
Miss S Casey (Lawyer)
Mr M Wright FRICS FAAV

Date of Decision: 02 March 2010

SUMMARY OF DECISION

1. For the reasons set out in detail below the Tribunal decided that the total figure of £326.75 should be paid by the Respondent to cover service charges up to 24 December 2009

INSPECTION

2. Prior to the Hearing the Tribunal, accompanied by its clerk, inspected the exterior of the block, the common parts and the interior of Flat 6. The Applicant was represented by Ms M Turner of Turner's Property Management Ltd.
3. The property, a recently converted block of residential flats, is understood to have been originally built around 1905 with conversion

works to form 6 flats completed about 2 years ago. The property is situated to the north-eastern side of Northfield Road within about 200 metres of the High Street. The property is constructed principally of solid stonework walls with pitched slated roof coverings.

4. The Tribunal were able to inspect the common parts of the building which is arranged on four floor levels. Flats 1 and 2 are situated on the Ground Floor, Flats 3 and 4 on the First Floor, with Flats 5 and 6 accessed off the Second Floor landing. The subject flat has two floor levels with accommodation including Lower Level Entrance Hall, Lounge/Dining Room, Kitchen, Bedroom with En-Suite Shower/WC and Cloakroom. Upper Level: Front Bedroom, Small Bedroom or Study, Bathroom/WC.
5. The windows to the building are softwood double glazed units some of which are sliding sash windows and some, Velux windows. There is an Entryphone System and a mains fire detection system. The subject flat has a gas fired central heating system.
6. In the Communal Entrance Hall is a cupboard containing electricity meters, a fire alarm control panel and a fire safety log book. To the rear of the Hallway is a cupboard/bin store with the stopcocks for the mains water supplies.

BACKGROUND

7. Directions were issued on 15 December 2009, the target date for the hearing being Friday 26 February 2010. At paragraph 5 of the Directions it was stated that 'unless either party has asked for a pre-trial review hearing by 30 December 2009, the case will be heard on 26 February 2010, or as near to that date as can be conveniently arranged'.

THE LAW

8. The Tribunal's jurisdiction is contained in section 27A of the Act. Section 27A is set out below:

S27A Landlord and Tenant Act 1985

Liability to pay service charges: jurisdiction

(1) 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.*

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

- (a) the person by whom it would be payable,*
- (b) the person to whom it would be payable,*
- (c) the amount which would be payable,*
- (d) the date at or by which it would be payable, and*
- (e) the manner in which it would be payable.*

(4) No application under subsection (1) or (3) 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.*

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

- (a) in a particular manner, or*

*(b) on particular evidence,
of any question which may be the subject of an application under subsection
(1) or (3).*

*(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of
any matter by virtue of this section is in addition to any jurisdiction of a
court in respect of the matter.*

HEARING

9. The Chairman welcomed the parties and introduced the Members of the Tribunal. The following persons were in attendance at the Hearing:

Ms M Turner	Turners Property Management Ltd Representing the Applicant.
Ms C Savvas	The Respondent.

10. The Chairman read out the relevant law and the procedure for the Tribunal Hearing which commenced at approx. 11am at the Merlin Court Hotel, Ilfracombe.

APPLICANT'S CASE

11. Ms Turner stated that she was seeking payment of monies due and any other charges. She made reference to the statement of account dated 25 November 2009 at page 8 of the bundle with an outstanding value of £431.75. 'That' stated Ms Turner 'is the amount claimed'.

12. When questioned concerning the first item in the statement of account '01/02/2009 service charge amount £271.50' Ms Turner explained that when Turner's Property Management took over the management of the block around mid January 2009 those were the arrears outstanding at that time. Ms Turner was unable to provide any paperwork for the Tribunal regarding the composition of that sum and what it exactly related to.

13. When questioned concerning item reference 34990 dated 24 April 2009 Ms Turner explained that the sum of £38 was a payment received from the Landlords Moreturn. This represented service charges paid to the landlords and not transferred into the new account.
14. Ms Turner stated that included in the demand was reference number 39763, the Leasehold Valuation Tribunal fee of £50 which had been paid. Additionally, the Management Company's charges for preparing the case for the Tribunal had been charged out at £35 plus VAT totalling £40.25. Ms Turner explained that this was the charge for the first hour's work and related to the preparation for the Applicant's bundle.
15. When questioned on the costs of normal management Ms Turner explained that normal charges were levied at £10 per flat per month excluding VAT. When questioned on the auditing Ms Turner responded by saying that accounts had been prepared by Accountants each year, copies were held at their offices and provided to the Company Directors.
16. When questioned on the subject of Directors, Ms Turner stated that the only current director was Matt Simpson of Flat 3, although paperwork had been prepared for another director to join the Board, whose name was Dickon Berryman. Every leaseholder has the opportunity to become a Director of the Company, but there had not been many volunteers. A copy of the Accounts were available at the Office to any Leaseholder to examine if they so wished.
17. When questioned on the subject of service charge expenditure, Ms Turner advised that this related to a number of items including cleaning of the common parts (on a monthly or more regular basis), maintenance of the fire alarm and emergency lighting systems, maintenance of a fire safety log, occasional disposal of refuse, lighting of the common parts on a Landlord's meter, external painting of the front windows and re-staining of the front door, accountancy and management costs. The building's insurance premium was also

included in the service charges. The entry phone system would additionally be maintained, although no faults had been reported for the system in the past year.

18. Ms Turner stated that some of the leaseholders had paid their service charges for the past year in full and some were paying on a monthly basis. Accounts for the 2008/2009 year had been audited by a London company and the accounts for the 2009/2010 would be audited by a local firm APB accountants.
19. With regard to building's insurance, Ms Turner confirmed that the premium for the year commencing 9 November 2009 was a total sum £1358.94. No records were available for the previous year as this was prior to the time of Turner's taking over the management, but Ms Turner thought that the building had been continuously insured.

RESPONDENT'S CASE

20. Ms Savvas stated that when she first purchased the Flat in April 2008, she set up a standing order of £38 per calendar month, but had not been advised by the Managing Agents of the monthly shortfall and did not find out about her arrears in service charges until the arrears had mounted up. She did increase the standing order to £55.50 per month.
21. Ms Savvas explained to the Tribunal her unfortunate personal circumstances. She had lost both her father and mother and didn't have the money to pay the outstanding arrears at the present time. Ms Savvas admitted that it was all her own fault. She had a shortfall in her monthly outgoings and had had to cancel Direct Debits.
22. Ms Savvas confirmed that it would be her intention to pay off all amounts outstanding in full. She wished to make a fresh start and monies would shortly be forthcoming following grant of probate.

23. When questioned on the past ownership of the Flat, Ms Savvas explained that she was the first occupier when she purchased the flat in April 2008.
24. When questioned on the old debt of £271.50, reference 33677 and dated 1 February 2009, Ms Savvas stated that she presumed the amount was correct. She explained that each leaseholder had their own account and apologised again for arrears accumulated.
25. In summing up Ms Savvas, the Respondent stated that she would be happy to pay off all of the arrears including the Leasehold Valuation Tribunal fee of £50 and the additional management charges of £40.25, when funds were available.
26. In a brief closing statement Ms Turner for the Applicant stated that her main concern was to keep the building clean and safe. The arrears needed to be cleared and she did not wish to have to make arrangements to stop the cleaning of the common areas.

FINDINGS OF FACT

27. The lease for Flat number 6, Old Picture Hall has covenants with both the Landlord and Management Company for the payment of service charges.
28. The Application to Leasehold Valuation Tribunal dated 16 November 2009 at section 7 specifically lists the year 2009 for which a determination is sought and the accounting year commences on the 25 March each year.
29. The statement for account at page 8 of the bundle prepared on 25 November 2009 does not include the service charge payable for the fourth quarter of the 2009/2010 year. That is the quarter commencing 25 December 2009.

30. In accordance with the provisions with the Sixth Schedule of the lease at paragraph 6-2.6 there is a requirement for the lessee to pay to the Landlord on account of the service charge. That sum must be paid in advance by equal instalments on the usual quarter days, the first instalment day on the quarter day immediately before the commencement of the financial year in question. In respect of the 2009 year that quarter day would be the 25 December 2008. The service charge due for the quarter commencing 25 December 2008 would have been £166.50
31. The Applicant was unable at the hearing to produce any documentation whatsoever as to the makeup of arrears claimed in the sum of £271.50 under reference number 33677 on page 8 of the bundle and dated 1 February 2009. The Tribunal therefore finds that it hasn't received a satisfactory explanation as to the make-up of arrears.
32. Because not contested, this Tribunal accepts the sum of £166.50 per quarter is the correct service charge and indeed in the 'Definitions Interpretation and General' section of the lease at paragraph 1.1.7 'THE INITIAL PROVISIONAL SERVICE CHARGE' means the yearly sum of £666.
33. Also in the 'Definitions, Interpretation and General' section of the lease at paragraph 1.1.17, the rent provided for means the yearly payment of a peppercorn (if demanded).
34. The lessee's obligations to the Landlord and the Management Company and the lessees of the other flats are set out in part 2 of the Fourth Schedule of the lease including at paragraph 4.18 in relation to service charges and services the following wording 'the lessee must observe and perform his obligation contained in Schedule 6'.
35. The Landlord's covenants are set out in Schedule 5 and at paragraph 5-2.1 reference is made to the provision of services 'if the lessees pays the service charge and observes his obligations under this lease, the Landlord must use all reasonable endeavours to provide the services

(as listed at the date of this lease in Schedule 6 paragraph 6-3 and subject to the provisions of paragraph 5-2.3 below). In accordance with the provisions of paragraph 5-2.3 of the Fifth Schedule, the Landlord may add to withhold or vary services if, acting reasonably, he considers it desirable for the convenience of the lessees in the building even if it increases the Landlord's expenses so long as the lessee's enjoyment of the Flat is not materially impaired, or if he is required to do so by a competent authority.

36. Schedule 6 of the lease refers to the service charges and services with specific reference at paragraph 6-1.2 to a financial year. This is taken to commence on 25 March in any year and ending in 24 March in the following year.
37. Schedule 6 also sets out full details of the services. At paragraph 6-3 on pages 38 and 39 of the bundle.


DETERMINATION

38. With reference to the statement on page 8 of the bundle prepared on 25 November 2009 and reference 33677 dated 1 February 2009; for the very reason that at the hearing the Applicant's representative was unable to explain in any detail the composition of the arrears this Tribunal finds that not all of that amount shall be allowable.
39. The Tribunal's decision is that part of that amount claimed should be excluded for the following reasons:
 - i) Part of that amount did not relate to the 2009 year as originally referred to in the application
 - ii) No clarification was provided as to the composition of the arrears.
40. In accordance with the terms of the lease, however, at paragraph 6-2.6 of the Sixth Schedule there is a provision for the lessee to pay the Landlord on account of the service charge. Such sum as is reasonable

having regard to likely amount of the service charge. That paragraph states 'that sum must be paid in advance by equal instalments on the usual quarter days, the first instalment to be paid on the quarter days immediately before the commencement of the financial year in question'. Thus, it is determined that the sum of £166.50, forming part of the arrears of £271.50, should be payable.

41. Over the course of the inspection and through the evidence produced at the hearing, the Tribunal finds that there was nothing to suggest that the service charge costs for the financial year commencing 25 March 2009 had been unreasonably incurred. In fact the Tribunal received evidence regarding the cleaning of the common parts, maintenance of the emergency lighting and fire alarm system, outside decorative works including re-varnishing the front door and buildings insurance details. The Respondent didn't contest any of these costs but she simply said that she did not have the ability at this point in time to pay. She didn't challenge any of the service charges items or the Leasehold Valuation Tribunal application fee or agent's costs for the preparation of the Application to the Tribunal.
42. It is therefore concluded that all relevant costs have been reasonably incurred apart from the net arrears of £105 which were not evidenced either in the bundle or at the hearing.
43. This Tribunal thus determines that a total figure of £326.75 should be paid by the Respondent to cover service charges and costs up to and including 24 December 2009.

Signed


T E Dickinson BSc FRICS IRRV
(Chairman)

A Member of the Leasehold Valuation Tribunal appointed by the
Lord Chancellor

Dated

02 March 2010