

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

S.27A Landlord & Tenant Act 1985 as amended

DECISION AND REASONS

Case Number: CHI/29UG/LSC/2010/0011

In the matter of Flat E, 1-3 Lansdowne Square, Gravesend, Kent, DA11 9LX

Applicant: Ms. Naznin Khan

Respondent: BM Samuels Finance Group represented by Hurford Salvi Carr,
Property Consultants for the Mortgagee in Possession

Date of Application 19th January 2010

Tribunal Members: Mr. S Lal LL.M, Barrister (Legal Chairman)
Mr. R Athow FRICS
Mr. P. Gammon MBE

Date of Hearing: 30th June 2010

Date of Decision: 4th July 2010

Application

1. The Applicant applies to the Tribunal under section 27A of the Landlord & Tenant Act 1985 (as amended) ("the Act") to determine the reasonableness or otherwise in respect of service charge years 2009-10, and 2010.
2. Directions were issued on 20th January 2010. On that occasion, the Respondent was listed as Riverview Square Limited. The Tribunal were informed that that company was no longer in existence and that Hurford Carr Salvi were now instructed to act for the mortgagee in possession, namely BM Samuels Finance Group. The matter was set down on a revised timetable in March 2010 to allow Hurford Carr Salvi to take proper instructions.
3. Both parties to the proceedings were invited to send to the Tribunal written representations to include Statements of Case. They have both now done so and these documents are referred to below in so far as relevant to the Tribunal's decision.

The Hearing

4. The Applicant appeared in person at the hearing. The Respondent was represented by Mr. J. D Thornton, Managing Director of Hurford Carr Salvi.

The Inspection

5. The members of the Tribunal inspected the property in particular the common areas, such as the communal garden area, the car parking and roads and the rubbish area as well the communal hall way and stairs of the subject premises. The subject property is one 32 flats in four separate buildings on one site. The flats are described as broadly being of the same dimensions. The buildings are surrounded by a grass area, the whole site being demarcated by iron railings. The buildings were built circa 150 years and overlook the River Medway in Gravesend.

The Law

6. The statutory provisions primarily relevant to applications of this nature are to be found in section 18, 19 and 27A of the Act. The Tribunal has of course had regard in making its decision to the whole of the relevant sections as they are set out in the Act, but here sets out what it intends shall be a sufficient extract from each to assist the parties in reading this decision. Section 18 provides that the expression "service charge" for these purposes 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 relevant costs."

"Relevant costs" are the cost or estimated costs incurred or to be incurred by the landlord in connection with the matters for which the service charge is payable and the expression "costs" includes overheads.

7. Section 19 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 or works are of reasonable standard

and the amount payable shall be limited accordingly.”

8. Subsections (1) and (2) of section 27A of the Act provide that :

“(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 to whom it is payable
- b. the person by 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.

Preliminary

9. The only matter in dispute is the reasonableness of the service charge for 2009-10 and 2010. There is no dispute by the Applicant that she is not liable to pay the service charge nor that part of the service charge would cover the upkeep of the communal areas.
10. At the outset of the hearing, both parties agreed that the sums in dispute for 2009-10 was £1483.68 (based on non-certified accounts) and for 2010 (interim amounts demanded up to the 30th June 2010) was £669.65, making a total of £2153.33. The figures reflected a reduced amount demanded by the Respondent because the ground rent element had either been removed from the total amount and or in respect of 2010, already paid.
11. The starting figure is important because during the hearing, Mr. Thornton in response to a query made by the Tribunal had faxed to the hearing venue certified accounts for 2009. This would have implications in respect of the Tribunal's eventual decision below.

The Case for the Applicant

12. Miss. Khan said that she had a number of areas where she queried the reasonableness of the service charges as demanded. These were as follows;

(a) Gardening

In respect of the common parts gardening, she submitted that the work done (there is an invoice in the Respondents bundle (page 54) dated 4th July 2009 for £1518 and one dated 1st November 2009 (page 67) which relates to grass cutting in August 2009 for the sum of £120, as well as the interim estimated amount for the whole of 2010, to be excessive in that she submitted that the grass had not been properly treated (no “feed and weed”) and was generally excessive.

(b) Cleaning of Common Parts

She submitted that the common parts cleaning was poor and that she had seen no evidence of the same and the subject premises were in a poor state. The Invoices record bi-weekly cleans of the grounds at the rate of £140 per session from July 2009 onwards. The Applicant disputes these.

(c) Window Cleaning

The Applicant says that the windows have never been done and produces a number of written statements from tenants that record either no window cleaning or sporadic and inadequate window cleaning.

(d) Bin Hire

For the first time at the hearing (it does not appear in the original s.27A application, the Applicant raised the issue of wheelie bin hire, saying that she could not understand why this was the case and that the local authority would collect the rubbish in any event.

The Case for the Respondent

13. The Respondent stated the following;

(a) Gardening

The Respondent took over the subject premises on behalf of the mortgagee in possession in 2009 and started work in about mid 2009 when they had had an opportunity to go through the previous freeholders records which were described as woefully inadequate. The gardening charge in July 2009 and August 2009 and the subsequent charges were necessary to deal with the very poor state of the communal areas, nothing apparently having been done to these areas for a number of years.

(b) Cleaning of Communal Parts

Mr. Thornton pointed to the invoices and the various reporting procedures that his company ran in order to deal with problems as and when they arose. He maintained that they had received no complaints about the cleaning. He stated that he thought that up to 40% of the flats are not owner occupied but are let on assured shorthold tenancies.

(c) Windows

Mr. Thornton conceded that the lease did not oblige the landlord to clean the windows and that as a matter of principle in any event, his company no longer engaged in window cleaning because of technical difficulties in respect of cleaning beyond ladder height.

(d) Bin Hire

These are more accurately described as Paladin type wheeled units in which refuse sacks are placed. He said that he had not known that this was in dispute so could not directly address the Tribunal on this but thought that the particular local authority made this charge. He was unable to assist further.

The Tribunal's Decision

14. The notion of something being reasonable has been held to mean that the landlord does not have an unfettered discretion to adopt the highest standard and to charge the tenant that amount; neither does it mean that the tenant can insist on the cheapest amount. The proper approach and practical test were indicated in *Plough Investments Ltds v Manchester City Council* [1989] 1 EGLR 244 that as a general rule where there may be more than one method of executing in that case, repairs, the choice of method rests with the party with the obligation under the terms of the lease.
15. Further the tenant cannot insist on the cheapest method and a workable test is whether the landlord himself would have chosen the method of repair if he had to bear the costs himself. Ultimately it is for the court or tribunal to do decide on the basis of the evidence before it and exercising its own expertise. In that regard the LVT is an expert tribunal and is able to bring its own expertise and experience in assessing the evidence before it.
16. Applying the above principles the Tribunal makes the following findings.

Gardening

17. In respect of this matter, the Tribunal accepts that the invoices supplied by the Respondent in respect of grass cutting and gardening are reasonable amounts. The Tribunal accepts that the subject premises were almost certainly in a poor state in mid 2009 with no work carried out in these areas for a number of years. Both parties agreed that what had been described as potentially a "nice" development had deteriorated as a result of no or poor work.

18. The Tribunal thought the description of the subject premises at the time and its own observations in respect of the physical area of grass to be cut, made the sum appear to be a reasonable one. It is not about the cheapest or the best but rather what may be deemed reasonable. The Tribunal allows the gardening amount in full in respect of the invoices for 2009 and that element of the 2010 estimate which relates to gardening. In that regard the Applicant does not succeed in her submissions as regards the reasonableness of the service charge element in respect of gardening.

Cleaning of Communal Parts

19. The Tribunal noted that there are 32 flats, 8 in each of the 4 blocks that comprise the development. The Tribunal, relying on its own experience and knowledge and also the submission made that perhaps just under half of the flats maybe sublet, was of the view that the cleaning invoices were reasonable for this type of development. They represent, in effect one day's work, every fortnight in respect of a development, where because of the nature of the occupiers there is a high level of usage and probably turn over. The Tribunal therefore finds that the cleaning invoices for 2009 at the rate of £140 per clean as well as the estimated amount for 2010 represents a reasonable amount. In that regard the Applicant does not succeed in her submissions as regards the reasonableness of the service charge element in respect of communal cleaning.

20. The Tribunal does note by way of comment that the reporting chain used by the Respondent to deal with communal area issues seems rather convoluted and perhaps they ought to have a greater day to day control in respect of this issue as this lack of communication seems to have given rise to some of the problems.

Windows

21. The starting point for the Tribunal's analysis was its assessment of the lease. Mr. Thornton conceded that the lease does not oblige the landlord to clean the windows and indeed his company does not do so if they do not have to. Therefore the Tribunal finds in favour of the Applicant, there is no liability to pay for window cleaning in any event.

Bin Hire

22. This was raised for the first time by the Applicant and it placed the Respondent in the difficult situation of being able to deal with it "on the hoof" as it were. The Applicant did not provide any evidence other than asserting it to be the case that the service was free. The Tribunal is mindful that the burden of proof is on the Applicant to the civil standard and finds that it cannot rely on the assertion that this is a free service and therefore the Applicant does not succeed in respect of the issue of bin hire.

Summary

23. In summary the Applicant does not succeed in establishing that the service charge element in respect of gardening, bin hire and communal area cleaning is unreasonable for the service charge years in 2009-10 and 2010, but she does succeed in respect of window cleaning as the latter is not an obligation under the lease in any event.

24. The Tribunal were prepared to break down the agreed amount in dispute to reflect its findings above, however the production at the hearing of the certified accounts for 2009 and the acceptance by Mr. Thorncroft that the 1/32 proportion over all of the 32 flats on the development would itself be modified to reflect the fact that the 6 basement flats did not have communal hallways, meant that the Tribunal decides that the Respondent recalculate the 2009 service charge based on the certified accounts to reflect the Tribunal's substantive decision as to what is reasonable or not. In respect of the 2010 estimates, the Tribunal requests that that too be reworked to reflect the correct proportion (1/32 of the total amount but to reflect the basement flats) so as to exclude window cleaning. The Tribunal finds in any event that the Respondent is entitled to interim service charge payments.

25. The Tribunal makes no further Order.

Chairman.....

Date.....