

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

**Case No: CHI/29UH/LIS/2010/0072  
Premises: 3 Orchard Close, Orchard Street, Maidstone, Kent, ME15 6NU  
Applicant: Mr J. Rapley  
Respondent: Gillcrest Homes Ltd.**

**Tribunal  
Mr D. R. Hebblethwaite (Lawyer Chairman)  
Mr B. H. R. Simms FRICS (Valuer Member)**

**DECISION**

1. This case has been transferred to the Tribunal by an order of Maidstone County Court dated 1 September 2010 in Claim No. 9QZ10578 in which the Applicant is Claimant and the Respondent is Defendant. There is a copy of the court order with the papers and the transfer is "for determination of the reasonableness and payability of service charges from January 2007 to 1<sup>st</sup> July 2009". Directions were made on 6 September 2010, as a result of which the parties submitted their statements of case. The Hearing took place on 22 November 2010 at Lordswood Leisure Centre, Chatham, Kent and was preceded by an Inspection.
2. The Tribunal found the Premises to comprise a ground floor self-contained flat with its own front and back doors in a block of ten flats. The remaining flats are approached by a common hallway, staircase and landings and there is a shared roof terrace. Access to the site is by way of an electrically operated gate (currently inoperative) to a forecourt and round the side of the building to a parking area with spaces for ten cars. The site is restricted in size, being in the town centre adjoining older, traditional terraced housing and mixed use properties. The building was constructed in 2005 and has accommodation on the ground and three upper floors. It is probably of framed construction with elevations of self-coloured rendered panels with small projecting balustrade balconies and metal window and door frames. The roof is flat and is believed to be covered with asphalt or mineral felt. The building appears to be in good general condition but there is staining to the external rendering in many areas where there is rainwater run-off and splashing. At the Inspection the parties had the opportunity to point out to the Tribunal things that were mentioned in the statements of case and to which they would refer at the Hearing.
3. The basis on which a Tribunal must make a determination in respect of service charges is set out in section 19 of the Landlord and Tenant Act 1985, which reads:
  - (1) *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 incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;**and the amount payable shall be limited accordingly.*
  - (2) *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.*

4. At the Hearing the Applicant appeared in person and the Respondent was represented by Mr Baker and Mr Sunderland from the managing agents employed by the Respondent, Fell Richards. As mentioned above both parties had submitted statements of case. The Tribunal members had read these before the Hearing, and, of course, each party had had the opportunity to read the other's statement. At the Hearing the parties spoke, each dealing with points that they thought important and, in many cases, answering comments from the other party or dealing with questions from the Tribunal. It is not, therefore, intended to set out in full what was said at the Hearing but rather the important points, particularly those on which the Tribunal was to have to make a decision.
5. The parties were invited to go through the Applicant's series of bullet points, which appear on p. 2 of his bundle, headed "Statement to explain claim". The fourth paragraph lists what the Applicant describes as "the most notable jobs that were not being completed" from early in the second year of his residence:

- Repairs to the entrance gates

The Applicant said that the gate was only in full working order for the first six months. Mr Baker said that the lessees had never been charged for repairs as the gate was under the original contract with the developers, Gillcrest Homes. The Applicant said that Gillcrest had told him it did come under maintenance. Mr Baker said that he had tried to get this resolved by emailing Gillcrest.

- Entrance intercom system

Flat 3 is not linked to the building but is on the gate system, which like the gate doesn't work. Mr Baker accepted that there was reference to this on the budget but no charge in the actual accounts.

- Window cleaning

The Applicant said that the rear windows of the building are not cleaned. Mr Baker said that he had all the invoices of the cleaner which do say "where accessible". Windows are cleaned 9 or 10 times per year. Perhaps some of the rear windows are inaccessible because of the ivy growth (seen by the Tribunal on Inspection)

- Clearing fallen leaves and rubbish/cutting of ivy & trees/weeding

The Applicant referred to photographs that he had taken in the spring of 2009 (pp. 6-9 of his bundle). There is an item for "gardening" on the annual budget (on the basis of which service charges are demanded). The Applicant claimed that this was done irregularly and/or to a poor standard and that this also reflected poor management. Mr Baker did not agree.

- External light bulbs

The Applicant stated that these were regularly replaced for the first year. Then things slipped and at times none worked. There were no regular site visits. Response was very slow. Mr Baker said they responded to feedback from the cleaner. He said these would come under "repairs" in the accounts.

- Post boxes

The Applicant stated that these were in disrepair and numbers fell off. Mr Baker acknowledged his client's liability to repair these but said there had been no money.

- Cleaning of external render

The Applicant said that he had been told by Gillcrest on many occasions that this was a maintenance issue and should be cleaned/maintained. He thought until now that it came within "cleaning" in the accounts. He now understands that the builder Gillcrest is being held responsible and that the matter is proceeding by way of a claim to the NHBC. Mr Baker confirmed this, on the basis that the render was not installed properly.

- Bike racks

These are in disrepair. Mr Baker seemed unaware that the landlord was responsible for these.

6. Mr Baker then addressed the Tribunal, pointing out that his firm had ceased to be managing agents on 6 July 2009 (it should be said, however, that they were the managing agents for the whole period referred to the Tribunal by the court and represent the landlord before the Tribunal) and that they had no correspondence with the Applicant until June 2009. He was one of the better payers among the lessees. Mr Baker submitted that the landlord had provided fair provision even without all the money in from lessees. A budget was prepared before each financial year and quarterly charges were based on this. Three months after year end accounts were produced and certified by a chartered accountant. No charge was made for things that lessees paid for under acquisition of the flat. Gardening demand is small so included in the cleaning contract; ivy and trees are dealt with on an "as needs be" basis. They have numerous invoices for light bulb replacement, e.g. one for ten bulbs; it would be unreasonable to replace one at a time. £18,946 was spent up to their handover and certificated. He said that demands were only based on budgets and the Tribunal queried the fact that no reconciliation was done each year.
7. The accounts were then considered. There are three sets covering the period referred to the Tribunal (25.03.07 to 24.03.08, 25.03.08 to 24.03.09 and 25.03.09 to 18.08.09 (4 ¼ months)). Mr Baker explained that "cleaning" covered window cleaning and general cleaning. In 07/08 he had invoices for window cleaning (10 x £100) and general cleaning (9 x £150). The balance of the figure of £3,750 in the accounts was made up of other items which he could not particularize. The Applicant's point was that a lot was not being done (if at all) and not to a good standard. He also queried, in relation to the windows, what did "inaccessible" mean? The Applicant accepted that he could not contest the figures for electricity. On the subject of the insurance costs, he stated that he had no knowledge and accepted the figures. Mr Baker said that two premiums were put in the 07/08 accounts. It appeared that although the Applicant's flat was not connected to the fire alarm (because of its separate entrance – see para. 2 above) nevertheless he was obliged to contribute to its maintenance under the lease. Mr Baker was able to tell the Tribunal that among the amounts for "repairs" was £117.50 for lights and gate. As to "access control" which only appears in the 03-08/09 account, Mr Baker said that these had not been certified by an accountant and the Applicant thought this might be for the removal of a defunct system.

8. Management charges were then discussed. They are about £125 plus VAT per unit. Mr Baker said that this was a low figure by comparison and that the lessees were getting the benefit of the contract his firm had with Gillcrest. The Applicant told the Tribunal that all billing of charges had been on budget figures and there had never been an end of year reconciliation as required by the lease. This was a failing in management. Then there were the individual items not done. This too was a failing in management. He said he did not think that the agents had done the job and the management charges should be nil. In admitting some failings, Mr Baker said that some jobs have been undertaken and that someone has to arrange these. He said his office was on the phone and email. He suggested that some lessees get confused between a claim against the builder and service charges. He also relied on the clause in the lease at Schedule 6 2.1 which places the obligation on the landlord to provide the services "if the lessee pays the service charge". There was a high level of arrears though not specifically on the part of the Applicant.
9. When the Tribunal members came to their consideration of the referral their first decision was that the landlord cannot rely on the wording quoted at the end of the previous paragraph. There is authority from the Court of Appeal that such words will not normally be treated as making payment by the tenant a precondition for the landlord's providing services. Of course, in this as in many other cases that would be most unfair on the lessees who do pay. Also, the landlord has its own funds. The Tribunal did agree with the Respondent that the remedying of the discolouring of the wall did not come under the landlord's obligations under the lease but was the liability of the developer. On the other hand, the Tribunal finds that the Respondent is liable to repair and maintain the gate under Schedule 7 3.3 of the lease. Its approach to the gate is wrong. It must carry this out. As far as the Tribunal can see there has been nothing in the service charges to date for this, but that is for the wrong reason, i.e. nothing has been done (the right reason would be that the developer has rectified it, and it seems to the Tribunal that there is an obligation on the Respondent to rectify the gate and then obtain recompense from the developer). This does, in the opinion of the Tribunal, represent a failing in management but the management fee of £125 per unit still seems reasonable being very much at the bottom end of market rates known to the Tribunal (being an expert Tribunal). The cleaning, which seems to encompass cleaning of the internal common parts (unfortunately for the Applicant he must still contribute to this), the window cleaning, the clearing and keeping tidy the outside areas and the "gardening", is paid for and the Tribunal do not find the cost to be excessive if averaged out. The Applicant did not produce any comparable quotes. As to the standard of the service it is the Tribunal's view that the only issue that might render that standard unreasonable is the failure to clean some of the rear windows. The Tribunal perhaps echoes the Applicant's question "What does inaccessible mean?" We saw from the inspection that the gap between the back of the building and the boundary of the site is very narrow so window cleaning above the ground floor would be difficult at least. However, the Applicant said that the ground floor windows were not cleaned. This situation does need something of a sort out as the ground floor windows can be cleaned by hand by a cleaner standing on the ground and modern extended jet equipment should be available to clean the upper windows. So while there is an argument that window cleaning has not been done to a reasonable standard, to make such a finding would require more evidence about the accessibility point. The Tribunal recommends that the Respondent takes this up and, if necessary, finds a window cleaner that has equipment to clean all the windows (subject to reasonable cost).
10. The Tribunal was only supplied with one budget, that for the period 25 March 2007 to 24 March 2008; the demand for the charges on account was £170.10 x 4 (quarters) x 10 (flats) = £6,804. The demand for 08/09 was £185.10 x 4 x 10 = £7,404 and for 09/10 £186.81 x 4 x 10

= £7,472. These demands were reasonably close to the actual expenditure figures in the accounts for those years. Therefore, it is the finding of the Tribunal, taking everything into consideration, that these three sets of charges on account were reasonable. From the wording of section 19 (2) of the Act, quoted in para. 3 above, it can be seen that when dealing with charges demanded on account the Tribunal is only concerned with reasonableness of amount. Standard of service will be taken into account on an application made for a period when costs have been incurred and accounts prepared. Accordingly, the Tribunal's determination in response to the court order of 1 September 2010 is that the charges *as demanded* for the period January 2007 to 1 July 2009 are reasonable and are payable by the Applicant.

11. However, the Tribunal must add a rider to this Decision. It is extremely concerned that no end of year reconciliations have been made by the Respondents. The lease is clear on this, in Schedule 7. In 1.1 the financial year is defined as 24 March to 25 March the following year! This is an error on the face of it and, quite rightly, the Respondents have operated from 25 March to 24 March following. 2.6 provides for payments on account of

*such a sum as is reasonable having regard to the likely amount of the service charge.*

The Respondent has been demanding such payments by reference to an annual budget. 2.8 provides:

*As soon as reasonably practicable after the end of each financial year the Landlord must furnish to the Lessee with (sic) an account of the Service Charge payable by him for that financial year, credit being given for payments made by the Lessee on account. Within 7 days of the furnishing of such an account, the Lessee must pay the service charge, or any balance of it payable, to the Landlord. The Landlord must allow any amount overpaid by the Lessee to him against future payments of service charge, whether on account or not.*

The Respondent is failing to comply with this obligation and its accounts are defective; they show as income received amounts which have been demanded on account, whether or not they have been paid. What they should do is show the payments made, totalled up and divided (by 10) between the flats. Then each lessee should get a statement showing his or her liability less what he or she has paid on account, with a demand for the balance or a credit advice. The Respondent's practice of just going from one year to the next demanding payments on account against a budget, and presenting accounts almost on a "for information only" basis should stop. Moreover, the Respondent now has to rectify the past errors and bring matters up to date by going through the reconciliation exercise for each year to date, coming up with a balance that the lessee (this will have to be done for all lessees) should have paid or a credit for him/her, culminating in a running total at the present time. It would be appropriate to complete this exercise as soon as possible after 24 March 2011, after which the Respondent can act in accordance with the lease each year.

12. Unless the Respondent makes proper annual demands in accordance with the lease, provides the tenants' rights and obligations information and produces the accounts in a proper form, then it will not be entitled to receive balancing service charge payments and the charges on account will need to be reduced.

**Decision dated 20 December 2010**

**Signed**

**David Hebblethwaite, Chairman**