CHI/29UN/LSC/2009/0121

Residential Property
TRIBUNAL SERVICE

SECTION 27A OF THE LANDLORD & TENANT ACT 1985 (AS AMENDED)

LEASEHOLD VALUATION TRIBUNALS (PROCEDURE) (ENGLAND) REGULATIONS 2003.

Correction Certificate under Regulation 18(7) of the above Regulations:

Re: Flats 3-5, 38-40 Surrey Road, Margate, Kent, CT9 2LA

1. **As Chairman of the Leasehold Valuation Tribunal that determined the above case I hereby correct an error in the decision of the Tribunal dated 8 February 2010.**

2. **At paragraphs 4 and 22, the decision stated that the buildings insurance premium is £172.90 for 2008.**

3. **I hereby correct that error and certify that the decision should be read and construed as follows:**

   That the buildings insurance premium for 2008 is £172.98.

Chairman's signature: I. Mohabir **Date: 23 March 2010**

Chairman's name: Mr I Mohabir LLB (Hons)

CHI/29UN/LSC/2009/0121

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT ACT 1985

Address:	Flats 3-5, 38-40 Surrey Road, Margate, Kent, CT9 2LA
Applicants:	Mr and Mrs Carter
Respondents:	(1) Mr J. Mir (2) Mrs Chick
Application:	21 August 2009
Inspection:	9 December 2009
Hearing:	9 December 2009

Appearances:

Landlord

Mr Carter — Freeholder

Mr Annandale — For the Applicants

Tenant

Mr Mir

Mrs Chick — For the Respondents

Members of the Tribunal

Mr I Mohabir LLB (Hons)

Mr C. Harbridge FRICS

Ms L. Farrier

IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/29UN/LSC/2009/0121

IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT 1985

AND IN THE MATTER OF FLATS 3-5, 38-40 SURREY ROAD, CLIFTONVILLE, MARGATE, KENT, CT9 2LA

BETWEEN:

MR & MRS M. CARTER

Applicants

-and-

(1) MR J. MIR
(2) MRS G. CHICK

Respondents

THE TRIBUNAL'S DECISION

Introduction

1. This is an application made by the Applicants under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination off the Respondents liability to pay and/or the reasonableness of various service charges claimed in the 2007, 2008 and 2009 service charge years.

2. The Applicants are the freeholders of 38-40 Surrey Road, Cliftonville, Margate, Kent, CT9 2LA ("the subject property"). The Respondents are the joint leaseholders of Flat 3 and 5 in the subject property. The Second Respondent, Mrs Chick, is also the present leaseholder of Flat 4. The current managing agent appointed by the Applicants is Amak Property Services.

3. It is the Tribunal's understanding that the leases in respect of the flats held by the Respondents were granted in the same terms. The Respondents did not contend either that they did not have a contractual liability under the terms of their leases to pay the service charges in issue nor that various service charges were recoverable as relevant service charge expenditure. It is, therefore, unnecessary to set out the relevant lease terms that give rise to their service charge liability. It is sufficient to note that the service charge liability of each flat is 1/6 of the total service charge expenditure in each year, being an equal contribution paid by the lessees of the six flats in the building. The present service charge regime,, operated by agreement, is that the lessees pay their service charge contribution in arrears at the end of each service charge year when the actual service charge expenditure is known.

The Issues

4. At the pre-trial review, the Tribunal identified the following service charges as being in issue.

2007

£19.81 per flat in respect of common area electricity.

2008

£249.20 per flat comprised of:
common area electricity (£24.64)
roof repairs (£51.66)
buildings insurance premium (£172.90)

2009 (January to July)

£374.40 per flat comprised of:
management fee (£70)
servicing safety lighting and smoke alarms (£31.16)
weed clearance to frontage (£10)
removal of rubbish from frontage (£15)
buildings insurance premium (£194.07)

Both Respondents agreed that the individual sum of £54.17 for the cost of replacing the hallway carpet claimed in the 2009 service charge year was reasonable and payable by them.

The Relevant Law

5. The substantive law in relation to the determination of this application can be set out as follows:

Section 27A of the Act provides, *inter alia*, 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 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."*

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges.

6. Any determination made under section 27A is subject to the statutory test of reasonableness implied by section 19 of the Act. This provides that:

> *"(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 are incurred on the provision of services or the carrying out works, only if the services or works are of a reasonable standard;*
> *and the amount payable shall be limited accordingly."*

Inspection

7. The Tribunal inspected the subject property on 9 December 2009. The subject property is a three storey double-fronted terraced house, built in about 1900, which was converted into six self-contained flats in about 2002. External walls are of solid construction with red brick and colour-washed rendered elevations, beneath a pitched mansard roof clad in concrete tiles incorporating

two dormers windows at the front of the property, and by a flat felted roof at the rear.

Hearing

8. The hearing in this matter also took place on 9 December 2009. Mr Carter appeared in person for the Applicants and was accompanied by Mr Annandale of Amak Property Services, the managing agents. Mr Mir and Mrs Chick also appeared in person.

2007

Communal Electricity

9. This was agreed by the Respondents as being reasonable and payable by them.

2008

10. It was accepted by Mr Carter that no service charge account had been prepared in relation to the 2008 service charge year. However, it seems that two separate service charge demands dated 3 and 14 February 2009 respectively had been served on the Respondents. The former demand was in relation to the buildings insurance premium for the sum of £172.90. The latter demand included the sum of £24.64 for communal electricity and the cost of replacing the lead flashing on the dormer roof in the sum of £51.66.

11. As a general point, the Respondents contended that the demands for this year had not been served by the Applicants, as they are obliged to do, containing a summary of the tenants' "rights and obligations". In addition, the Applicants had also failed to serve the tenants with a valid notice either under sections 47 and 48 of the Landlord and Tenant Act 1987 (as amended) ("the 1987 Act"). They submitted, therefore, that the service charges claimed for this year were irrecoverable unless and until the Applicant had complied with their statutory obligations in this regard.

12. It reply, Mr Carter asserted that the summary of tenants' rights and obligations under section 166 of the Commonhold and Leasehold Reform Act 2002 appearing at page 16 of the Applicants bundle had been served with the

demand dated 14 February 2009. Moreover, the Notice of Transfer served by the Respondents' solicitors dated 1 March 2007 on Amak Property Services, who act on their behalf, was sufficient to satisfy the requirements of sections 47 and 48 of the 1987 Act. In any event, the demand dated 14 February 2009 expressly provided the relevant notice under section 48(1) of the 1987 Act.

13. Section 47 of the 1987 Act provides *inter alia*:

> *"(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely-*
>
> *(a) the name and address of the landlord...*
>
> *(2) Where-*
>
> *(a) a tenant of any such premises is given such a demand, but*
> *(b) it does not contain any information required to be contained in it by virtue of subsection (1)*
>
> *then... any part of the amount demanded which consists of a service charge... shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.*

Section 48 of the 1987 Act provides *inter alia*:

> *"(1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices... maybe served on him by the tenant."*

Subsection (2) goes on to impose the same sanction for non-compliance under section 47(2) above.

14. In the Tribunal's judgement, the statutory obligations imposed by sections 47 and 48 of the 1987 Act are clear and unambiguous. The language is mandatory. In relation to section 47(1), a landlord when serving a demand for service charges, must provide his name and address of the demand and the provision of a name and address of a third party does not satisfy this requirement. It seems, however, that the requirement under section 48(1) is only to provide an address at which notices may be served by the tenant. Therefore, it appears that a landlord may provide the address of a third party at which notices may be served by the tenant. They sanction for non-compliance

with either or both obligations is that a landlord may not recover, for example, service charges claimed unless and until he has done so.

15. In the present case, the service charge demands served on the Respondents dated 3 February, 14 February and 8 June 2009 only provide the name and address of Amak Property Services. To this extent, it only satisfies the requirement of section 48(1). It does not satisfy the express requirement contained in section 47(1) and therefore, save for the communal electricity cost for 2007 and the cost of replacing the hallway carpet in 2009, which are agreed by the Respondents, the other disputed service charges claimed by the Applicants for 2008 and 2009 are irrecoverable unless and until a valid section 47(1) notice has been served on the tenants. The Tribunal's determination below is, therefore, subject to this qualification.

Communal Electricity

16. The Respondents simply contended that the unit price for electricity charged in one of the flats in the building is 14.62p whereas the Applicants have calculated the consumption at a unit rate of 25p.

17. Mr Carter said that at the relevant electricity invoice was for the period April to June 2008 and electricity rates increased later that year. He confirmed that the electricity cost did not contain an element for a standing charge. He accepted that varying tariffs for electricity could be obtained. He did not have a copy of the relevant invoice and said that he was trying to resolve an issue with the supplier at the time.

18. The Respondents accepted that there is a supply of electricity to the common parts of the building. The only issue was whether the cost of the electricity has been reasonably incurred having regard to the tariff applied. The Respondents relied on a unit rate contained in an EDF invoice relating to other flat in the building. Mr Carter had given evidence as to the unit rate he had adopted but this was not supported by any other evidence. The Tribunal found the case advanced by either party to be unsatisfactory. Therefore, it adopted the unit rate for 2007, which was rounded upwards, and applied approximately

10% for inflation to this figure. The Tribunal then multiplied the (unchallenged) number of units consumed by the resulting figure which produced a total cost of £147. This is the figure the Tribunal found to be reasonably incurred. Accordingly, the individual liability for each of the lessees for the cost of the communal electricity in 2008 is £24.69.

Roof Repairs

19. The Respondents put the Applicants to proof that the roof works had in fact been carried out and the cost incurred. If so, they were prepared to accept the necessity for the works but submitted that the cost was excessive because the work had not been carried out to a reasonable standard and, therefore, only the sum of £150 should be allowed.

20. Mr Carter said that the roof works were carried out to the cheeks of the dormer window and involved replacing the stolen lead and broken slates caused by the theft at a total cost of £310. He referred the Tribunal to the relevant invoice dated 29 January 2008 at page 20 in the Applicants' bundle. The work had been carried out by a contractor known as Cavalier Services. Mr Annandale confirmed that this was his firm and that he had in fact carried out the roof repairs. Mr Carter said that the internal water stains to Flat 5 had been caused by the ingress of water before the roof repairs had been carried out. He had not been informed of any subsequent problems.

21. Having inspected the roof, the Tribunal was satisfied that roof repairs involving the replacement of the lead flashings, slates and associated work had been carried out. The Tribunal was also satisfied that the work had been carried out to a reasonable standard having regard to the overall cost of the work. Accordingly, the Tribunal found that the overall cost of £310 to be reasonable, for which the individual liability of each lessee is £51.66.

Buildings Insurance (2008 & 2009)

22. The Applicants claim an individual service charge contribution of £172.90 and £194.07 for the buildings insurance premiums for 2007 and 2008 respectively.

The Respondents challenge the cost incurred in both years and they can conveniently be considered together here.

23. The Respondents submitted that the buildings insurance premiums had not been reasonably incurred because the Applicants had prevented them from making a claim against the policy in relation to water ingress to Flat 4 and they had derived no benefit from it. Therefore, they should have no liability to pay a service charge contribution for the buildings insurance premiums.

24. Mr Carter explained that on 3 August 2009 he had to the Respondents about the water ingress to Flat 4. He informed them the Applicants would carry out the necessary repairs because of the potential increase in the excess and premium payable for the buildings insurance policy as a result of any claim being made. The cost of carrying out was less than the £100 excess payable for each claim. This was not accepted by the Respondents. In addition, Mr Carter said that the flooding to Flats 4 and 58 January or February 2008 had been caused by a leaking boiler it Flat 6 and this did not fall within the buildings insurance policy.

25. The Respondents had accepted that the buildings insurance premiums were reasonable *per se*. They sought to challenge the reasonableness of the premiums on the basis that the Applicants had prevented them from making a claim under the policy. This challenge does not go to the reasonableness of the premiums claimed and does not allow the Tribunal to make a finding that they are unreasonable. Where a potential claim arises from a failure on the part of a landlord to repair and/or maintain a property, a tenant may bring a claim against the landlord for a breach of covenant whether or not to be repairs may be the subject matter of an insurance claim. Accordingly, the Tribunal found the buildings insurance premiums to be reasonable and allowed them as claimed.

2009

Management Fee

26. Mr Carter said that the previous managing agents had charged a management fee of £200 per month for one visit to the property each month. The increase in the management fee now claim was because a greater management of management was now required, for example, the change in the account system done by agreement and the requirement to provide numerous invoices to support the service charge expenditure incurred. Mr Annandale said that he drove past the subject property 2-3 times a week and carried out an internal inspection every 7-10 days. Mr Carter accepted that the management was largely responsive and relied on the tenants informing him or Mr Annandale of anything that need to be attended to.

27. The Respondents contended that the significant increase in the management fee was a reasonable because no effective management of the subject property occurred. Their maintenance was being carried out on a regular basis and Amak Property Services only visited the property rarely. One of the management failures they complained of was a complete failure on the part of managing agent to respond to requests for information and relevant documentation regarding various items of service charge expenditure. They submitted that a reasonable management fee was £70 per annum.

28. The Tribunal accepted the Respondents submission that the degree of management carried out by Amak Property Services was minimal. The only management duties that appeared to be carried out was the arranging of the buildings insurance policy and dealing with any responsive repairs at the behest of the tenants. The Tribunal, therefore, found that the management fee claimed by the Applicants had not been reasonably incurred. Having regard to the minimal level of management carried out, it determined that a management fee of £70 per year was reasonable and allowed this sum.

Servicing of Safety Lighting and Smoke Alarms

29. Mr Carter told the Tribunal that this work had been subcontracted out to a firm known as St James Electrical Services at a cost of £187. The work undertaken is set out in their invoice dated 31 March 2009.

30. The Respondents submitted that this cost was not reasonable because the contractor did not appear to be suitably qualified or registered with the NIECC to carry out such work. Moreover, they submitted that the cost had not been reasonably incurred because no timer switches were damaged or lights not operating. In other words, the electrical system had not been defective in any way.

31. It reply, Mr Carter said that he was not aware of when this work had been carried out save to say that it had been done over a number of months. He asserted that the contractor was qualified to carry out the work and does not need to be registered with the NIECC to certify the work. Mr Annandale did this because he was so registered.

32. On balance, the Tribunal accepted the Applicants' evidence that the work had been necessary and had been carried out. Apart from an assertion otherwise, the Respondents had not adduced any evidence that the work had not been necessary. They did not content with that of the actual cost of the work, if required, was excessive and the Tribunal allowed the cost claimed as being reasonable.

Weed Clearance and Removal of Rubbish

33. The Applicants had arranged for a contractor known as All Clear Service to carry out weeding and spraying and to remove domestic rubbish at the front of the subject property. The cost of doing so was £60 and £90 respectively. Mr Carter referred the Tribunal to a photograph showing the domestic rubbish dumped by the Respondents' tenants who had not removed it went requested to do so. He said that this task fell to the Applicants and they had to pay a commercial rate to have the rubbish removed. He submitted that the costs had been reasonably incurred.

34. The Respondents accepted that the Applicants had removed the domestic rubbish. However, they submitted that the cost was excessive for what was no more than a "20 minute job" and £25-30 was a reasonable figure. As to the weeding, they could not be certain when this had been carried out but, in any event, any weeds at the front of the property had effectively been destroyed. Therefore, the cost of £60 for weed clearance had not been reasonably incurred.

35. The Tribunal accepted the evidence of Mr Carter in relation to the weed clearance and the approval of the domestic rubbish at the front of the property. From the relevant invoices, the costs incurred were as a result of one separate visit by All Clear Service to carry out each task. The Tribunal found that the costs had to be reasonably incurred and were not inherently excessive. Accordingly, they were allowed as claimed.

Costs & Fees

36. Mr Carter told the Tribunal that he had incurred legal costs of £575 and had paid total fees of £250 in bringing this application. He had also incurred further financing costs. Mr Carter said that he was not claiming his legal costs through the service charge account. Instead, he made an application that the Respondents should pay a maximum contribution of £500 under Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002. He submitted that the Respondents had acted unreasonably by failing to pay any service charges for the preceding three years which necessitated him making this application. Furthermore, they had not even paid the costs that had been agreed at the pre-trial review. This was not accepted by the Respondents who said that they had previously set out their position in correspondence with the Applicants solicitors.

37. The Tribunal did not grant the application to award costs against the Respondents under Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002. Such award was, in effect, a punitive award of costs and the Tribunal did not consider that the Respondents had acted unreasonably in opposing the application. They had, to a degree, succeeded

on some of the issues. In addition, the Tribunal was of the view that the Applicants could have avoided the necessity of having to make this application if there had been greater transparency by providing the information and/or documentation requested by the Respondents. The statutory obligation to do so is now embodied in section 21 of the Act. For the same reasons, the Tribunal does not make an order directing the Respondents to reimburse the Applicants any fees paid by them to issue this application and to have it heard.

Dated the 8 day of February 2010

CHAIRMAN.....

Mr I Mohabir LLB (Hons)

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