RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/29UN/LSC/2009/0169

Re: Apt. 9, St Clements, 67 St Mildreds Road, Westgate-on-Sea, Kent, CT8 8RL

Applicant: St Clements Management Company Limited
Respondent: David Michael Worrow

Tribunal
Mr D. R. Hebblethwaite BA (Chairman)
Mr C. White FRICS
Ms L. Farrier

DECISION

1. This matter comes before the Tribunal on a transfer from Dartford County Court in claim number 9DA05066 in which the Applicant (as Claimant) brought a claim against the Respondent (as Defendant) for unpaid service charges. On 12 November 2009 District Judge Glover made an order in the following terms:

   Upon reading the Particulars of Claim

   IT IS ORDERED THAT

   The case be transferred to the Leasehold Valuation Tribunal to determine whether the charges claimed are payable by the Defendant.

2. On 4 December 2009 directions were made for the conduct of the application and these were complied with. The matter was then listed to be dealt with on 31 March 2010, with an Inspection at 10 a.m. to be followed by a Hearing at 11 a.m. Late in the afternoon of 30 March the Tribunal's clerk was contacted by the Respondent to say that he was going to have to attend his doctor on the following morning and might have difficulty in getting to the hearing (he lives in Surrey). Fortunately the Tribunal members were able to gain admission to the building so that the Inspection was effective. The Tribunal convened at the Hearing venue at the Holiday Inn Express near Kent International Airport where the Applicant's agent and counsel appeared. There was a series of communications by text/phone between the Respondent and the Tribunal's clerk until it became apparent that the Respondent was not going to be

able to attend. The Tribunal took the view that the Respondent was not at fault and that his absence was unforeseeable and that it would be unfair to proceed with the Hearing in his absence and so, at some time after 12 noon, adjourned the Hearing. This was subsequently listed for 4 May 2010 at Merevale House, London Road, Tunbridge Wells, Kent, TN1 1XX at 10 a.m.

3. On inspecting the building on 31 March the Tribunal was able to see the internal common parts, the exterior of the building itself and the curtilege, mainly comprising a car park to the rear. It was not necessary to view any individual flats, of which there are sixteen. The property was converted from an old people's home in 2006. The general impression of the Tribunal was that the common parts were clean and appeared well looked after. There was a slight degree of peeling paint on the outside. The car park was empty and tidy. There were two lifts. One was out of order. A member used the other one but found that the light didn't work.

4. At the Hearing the Applicant was represented by Miss Jennifer Lee of counsel, with Mr Jonathan Sunderland from Fell Reynolds, the agents employed by the Applicant. The Respondent appeared in person. Miss Lee handed up a set of accounts for the year ended 30 June 2009 certified by the Applicant's accountants on the basis that the actual expenditure is evidential in considering the disputed service charges, all of which were payments on account in accordance with budgets. She then took the Tribunal through the relevant clauses in the lease to establish the obligation on the Respondent to pay charges for services to be provided by the Applicant as set out in clause 4. She went through the demands, accounts and budgets (all in the Bundle) and chronologically the correspondence with the Respondent. She commented on the Respondent's statement of case and submitted that the "counterclaim" part of it was not within the jurisdiction of the Tribunal, whose concern was whether the services had been provided and the standard of the work was reasonable.

5. Mr Worrow complained about demands being sent to the property address when he had notified the Applicant's original agents that he did not live there. He told the Tribunal that the property is one of a number of residential properties that he owns for letting. He was then asked to go through the sub-clauses of clause 4 of the lease where, in his statement of case, he complained of lack of, or poor standard of, work by the Applicant. In so doing he referred to a set of photographs which he stated his letting agent had taken in September 2008. By reference to sub-clauses:

4.1.2 There was a scruffy and unsafe communal area.

4.1.3 The lift had gaffer tape holding the control panel together for over two months in 2008.

4.1.4 The common parts were not kept clean. At this point Mr Sunderland informed the Tribunal there were no cleaners employed at the time referred to because the Applicant had no money as virtually no service charges were being paid. Fourteen of the sixteen flats were owned by one person who had not paid. These were gradually being repossessed by mortgagees who were in turn clearing service charge arrears.

4.1.5 The windows were not being kept clean. This was also explained by the lack of cleaners at the time.

4.1.6 The management of the building was poor. It is not good enough to rely on the obligation of tenants to notify the Applicant under the obligation imposed by clause 3.1.14 if there is disrepair etc. Other management companies that Mr Worrow deals with are typically on site once a week. Mr Worrow notified the Applicant's debt collection company in an email dated 5 May 2009 of various defects he had discovered in August 2008. He said that during the intervening period "I left it with my agent", a reference to his letting agent for his flat. Mr Sunderland explained that the contract for the maintenance of the lifts provides for a two monthly service unless the engineers are called out in between. The difficulties are ongoing as the lifts were inherited from the old people's home and one of them requires access to a flat for repairs to be carried out.

Mr Worrow accepted that 4.1.8 and 4.1.9 were not relevant to his complaints, and he said that he would drop 4.1.10.

6. The Tribunal asked Mr Worrow to comment on the budget upon which the demands that he disputed were based. His comments and those of Miss Lee/Mr Sunderland will be referred to in para. 8 below where the Tribunal's consideration is set out. When both sides had said all that they wished to say the Hearing was closed and the Tribunal members went on to consider their decision.

7. The relevant law for these purposes is in section 19 of the Landlord and Tenant Act 1985 which states:

(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 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.

All three disputed demands in this case were payable before the relevant costs were incurred (or so it seems). There was no evidence of subsequent adjustments. They were based on a budget for 2008-2009. This was used for three consecutive half yearly demands, on 1 January 2008, 1 July 2008 and 1 January 2009, i.e. the demands disputed in this case.

8. The Tribunal considered the parties' representations on the budget concerned. It also decided that it would, where appropriate, take into account the actual expenditure evidenced by the accounts for the year to 30 June 2009 referred to in para. 4 above. Whilst the Tribunal thought that it was not unreasonable on the face of it to budget £1,500 for cleaning it would be illogical and unfair to approve this amount when it was known that in fact there was no expenditure on cleaning in the event; to put it another way it would in the present analysis be unreasonable to allow any amount. The Tribunal does add a *caveat* that with cleaning in place (as the Inspection showed it now is) this will have to be paid for in the service charges, and a reduction of the on account figure now will lead to larger demands in future. Mr Worrow accepted that the next three items were not unreasonable and the Tribunal agrees, namely:

Electricity	**£500**
Fire alarms maintenance	**£100**
Fire risk assessment	**£200**

The Tribunal agreed with the Respondent that the budget for Lift maintenance of £2,000 was unreasonable. Clearly on the Tribunal's own experience there is an argument that the lift maintenance is not of a reasonable standard. In any event the accounts show (including lift insurance) just under half the amount as actually spent. The Tribunal finds **£1,000** to be a reasonable amount. The Respondent believes that the buildings/terrorism insurance premium in the budget is too high at £3,200. The Applicant stated that the Landlord has reserved the right to arrange the insurance and it is out of the Applicant's hands. Certainly there is no covenant on the part of the Applicant in clause 4.1. to insure. At first glance the lease seems silent on any obligation until you realise that page 16 of the lease is missing from the copy supplied to the Tribunal. But even so, the Applicant is collecting the premium as part of the service charge and it is subject to section 19 of the Act quoted earlier. On that basis the Tribunal noted that in the event the actual cost was over £5,500. The Respondent did not produce quotes as part of his case but referred to a bracket of £2,500 to £3,500. In the circumstances the Tribunal finds that the amount in the budget of **£3,200** is reasonable. The management fee of **£2,480** works out at £155 per unit and the Tribunal considers this reasonable. There

were some shortcomings in the management in 2008 although the huge non-payment of service charges affords mitigation to the Applicant, and so the Tribunal does not find that the services were not of a reasonable standard. The VAT of **£434** is payable. The figure of **£750** for repairs is felt to be on the low side – in the event it was just over £2,500 – and the accountant's fee for certifying the accounts is reasonable at **£150** – another one that was higher in the event.

9. The figures that the Tribunal considers reasonable in this budget for the year 2008-2009 total £8,814. The share attributable in the lease to the Respondent's flat is 6.25%, i.e. £550.87 or £275.44 per half year. Accordingly, pursuant to section 27A of the Landlord and Tenant Act 1985 the Tribunal finds that £275.44 for each of the three half years for which demands were issued, as set out above in the last sentence of para. 7 is payable. The total is **£862.32**. In the Particulars of Claim there is an additional item of £204.38 for administration fees. The Tribunal was told that this relates to the costs of pursuing the Respondent including the debt collector's fees. The Tribunal's view is that this is potentially a contractual liability under the lease but is outside the jurisdiction of the Tribunal.

10. It is directed that a copy of this Decision be served on the parties and then the case transferred back to Dartford County Court.

Decision dated 21 May 2010

Signed

David Hebblethwaite
Chairman