

RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL

Property : "The Cottage",
13a Langton Road,
Worthing,
BN14 7BY

Applicant : Ellen M D Brilly

Respondents : (1) Trust Property Management
(2) G & O Securities Ltd

Case number : CAM/45UH/LSC/2009/0098

Date of Application : 12th August 2009

Type of Application : To determine reasonableness and
payability of service charges (Ss. 19 and
27A Landlord and Tenant Act 1985 ("the
1985 Act"))

The Tribunal : Bruce Edgington (lawyer chair)
Marina Krisko BSc FRICS
David Cox

**Date and venue of
hearing** : 14th December 2009
Chatsworth House Hotel, Steyne, Worthing,
West Sussex BN11 3DU

DECISION

1. The Tribunal finds that reasonable service charges claimed by the Respondents are £318.83 for the year ending 25th December 2008. These have been paid.
2. No decision is made on the reasonableness of costs to be incurred for the year ending 25th December 2009 upon the grounds that such costs are likely to have been incurred and they are therefore not assessable under Section 19(2) of the 1985 Act.
3. An order is made pursuant to Section 20C of the 1985 Act (a) preventing the Respondents from collecting any costs in connection with these proceedings from any tenants other than the Applicant and (b) limiting such costs recoverable from the Applicant to £50.00 plus VAT.

- No costs are payable by the Applicant pursuant to Schedule 12, Paragraph 10 of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act").

Reasons

Introduction

- This application relates to a property which is semi-detached to and newer than a larger house. The larger house, known as 13 Langton Road, was converted to flats in 2005 or thereabouts and the whole building was let at the same time as 8 units. It seems that subsequently, flats 6 and 7 were converted into three 1 bed roomed flats and a studio apartment, thus making a total of 10 residential units.
- In her application form the Applicant challenges the amount of some service charges but then goes on to say that she does not use some of the facilities being claimed for and she is being asked to pay for one eighth rather than one tenth. She challenges the 'current' claim and future claims. The Tribunal inferred that this meant the claim for years ending 25th December 2008 and 25th December 2009.
- The first Respondent is the managing agent and the second Respondent is the freehold owner. The first Respondent represented both Respondents in this application and provided a written statement from Andrew Haycock AIRPM. That statement suggests that the other long lessees in the building should have been made parties to this application. The Tribunal did not think that this was necessary because it would have been disproportionate bearing in mind the issues, and would have incurred unnecessary expense and worry for the other tenants.
- The Applicant was directed in an Order to file and serve a statement attaching the service charge demands/accounts referred to in her application with an explanation as to why they are being challenged. The Applicant has submitted one statement for 2008 claiming service charges totalling £318.83 as follows:-

<i>Electricity</i>	<i>159.07</i>	
<i>Gardening</i>	<i>18.00</i>	
<i>Management fee</i>	<i>1,092.50</i>	
<i>Accountancy fees</i>	<i>460.00</i>	
<i>H & S fire risk assessment</i>	<i>362.25</i>	
<i>Asbestos survey</i>	<i>458.85</i>	
	<u><i>2,550.67</i></u>	<i>(one eighth payable - £318.83)</i>

- There is then a much more detailed claim for amounts on account of service charges claimed for 2009 which are:-

<i>Cleaning</i>	<i>650.00</i>
<i>Window cleaning</i>	<i>140.00</i>
<i>Door entry 'phone system</i>	<i>250.00</i>
<i>Buildings insurance</i>	<i>3,000.00</i>
<i>Electricity</i>	<i>250.00</i>

<i>Repairs and maintenance</i>	<i>900.00</i>
<i>Gutter clearing</i>	<i>200.00</i>
<i>Gardening</i>	<i>200.00</i>
<i>Management fees</i>	<i>2,070.00</i>
<i>Bank charges</i>	<i>150.00</i>
<i>Accountancy fees</i>	<i>360.00</i>
<i>Sinking fund</i>	<i>900.00</i>
	<u><i>9,070.00</i></u>

The Applicant's share of this is said to be one eighth i.e. £1,133.75.

10. The Applicant's explanation for challenging the charges is that the cleaning, the door entry system and the electricity are nothing to do with her because the common parts which consume this expenditure are common only to the main house. She has a separate entrance onto the street and does not have access to these other common parts. Having said that, she does specifically challenge the insurance and complains generally about what she feels is a massive increase in the annual costs since she acquired this lease 3 years ago. The other point she makes is that she pays one eighth whereas some other flats pay less.
11. Mr. Haycock's statement assumes that the Applicant is only challenging the cost of items she does not use and the percentage of total service charges she is being asked to pay.

The Inspection

12. The members of the Tribunal inspected the outside of 13 Langton Road and the entrance to the property in the presence of the Applicant and Mr. Haycock.
13. 13 Langton Road appears to be an Edwardian property of brick construction under a slate roof consisting of 2 storeys and a loft area. The property i.e. The Cottage is a modern addition. The exterior of the whole is in need of decoration and some window frames are clearly in need of repair. On this issue, the Tribunal was concerned to note Mr. Haycock's comment that the landlord was considering simply a decoration of the exterior. The neglect of some of the window frames needs to be dealt with before re-decoration. The frames are demised to the tenants but the landlord should take action if the tenants do not honour their covenants in case damage is caused to the fabric of the building.
14. It is clear that the Applicant has an entirely independent means of access to her property and is without an entry 'phone system. She has no access to her property through the common parts which consist of the entrance door, hall, stairs and landings in number 13. Having said that, Mr. Haycock explained that she should have access to get to the alarm system and electricity meters in the entrance hall.

The Lease

15. The Tribunal was supplied with what appeared to be a copy of the lease. It was unstamped but appears to have been executed by the then lessor. It is dated 21st August 2006 and is for a term of 99 years from 25th December 2005. Of

relevance to this application are the following clauses:-

Recitals

"The Lessor is registered at H M Land Registry as Proprietor with absolute title of the freehold property known at 13 Langton Road, Worthing, West Sussex BN14 7BY (hereinafter called "the Building") edged blue on the site plan annexed hereto consisting of 8 flats as the same is comprised in the Title above mention".

Clause 3.1

"The Lessee shall pay to the Lessor 12.5 per cent of the Annual Maintenance Cost (as hereinafter defined) in the manner hereinafter providing"

The First Schedule (The Demised Premises)

"ALL THAT flat ("the Flat") on the ground and first floors of the Building to be know as The Cottage, 13A Langton Road, Worthing, West Sussex BN14 7BZ...."

16. Clause 3.5 then defines *the Annual Maintenance Cost* by way of a list of categories of expenditure "...in connection with the management and maintenance of the Building...". It is clear that, subject to reasonableness, all the claims by the first Respondent on behalf of the second Respondent are included within that definition.
17. Thus, it is clear that the building includes the entrance hall and other common parts and that the Applicant agreed to contribute one eighth of the costs of managing and maintaining the building.

The Law

18. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlords' costs of management which varies 'according to the relevant costs'. Clearly, the claims by the landlord which are the subject of this application come within that definition.
19. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. A Leasehold Valuation Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if it is, as to the amount which is payable. In addition, if a service charge is to be incurred, such a Tribunal has the power to assess the reasonableness of a payment on account.
20. Section 153 of the 2002 Act was brought into effect and applies to all service charge demands sent after 1st October 2007. It says that "A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges". This must be in a prescribed form and the Section also provides that a tenant may withhold payment of a service charge if the demand is subject to this section and the information has not been provided and "...any provision of the lease relating

to non-payment or late payment of service charges do not have effect..." until the notice has been provided.

21. Of relevance to this application is the decision of the Lands Tribunal in **Southend-on-Sea Borough Council v Skiggs and others [2006] 21 EG 132**, which decided, as a matter of principle, that where a Leasehold Valuation Tribunal was considering the payability of service charges under a lease, it had no power to override a specific provision in the lease.
22. Section 20C of the 1985 Act enables a Tribunal to prevent a landlord recovering all or any part of its costs of representation in connection with an application from a tenant.
23. Schedule 12, paragraph 10 of the 2002 Act enables a Tribunal to make what is sometimes called a wasted costs order against a party which has acted "*...frivolously, vexatiously, disruptively or otherwise unreasonably in connection with the proceedings.*" up to a limit of £500.00.

The Hearing

24. The hearing was attended by the Applicant and Mr. Haycock. At the outset, the chair explained to the Applicant that she had agreed in the lease to pay one eighth of the costs of maintaining etc. the building which included the common parts in question. As this was not an application to vary the leases, the Tribunal therefore had no jurisdiction to change that situation.
25. It then started to go through the individual parts of each service charge demand. The Applicant said that she had paid all demands although she had reserved her position on liability. Mr. Haycock said that all other tenants had also paid without such reservation.
26. Of particular relevance to this exercise were the following facts:-
 - (a) There was little evidence in Mr. Haycock's statement to justify the demands and it was soon made clear that he had little relevant paperwork with him to answer any questions of the Tribunal on issues of quantum and reasonableness.
 - (b) The 2008 demand had some obvious omissions such as insurance charges. Mr. Haycock explained that although the demand was on his firm's headed paper, the information was simply made up from vouchers provided by the outgoing landlord. Both the landlord and the managing agent had changed during this period. The omissions simply meant that they were not handed any vouchers for those items and they had therefore either not been incurred or were not collected.
 - (c) There was no sinking fund and Mr. Haycock said that this meant that they had to build up some funds reasonably quickly.
 - (d) The total of all service charge shares was a fraction under 100% i.e. if the Applicant paid less than her share then the landlord would be out of pocket.
27. As far as the 2008 charges are concerned, the Tribunal was not really able to examine those in detail because Mr. Haycock did not have the papers to back up

the claims. It was also clear that the Applicant was not really challenging the amounts of this demand, merely her liability for those items which she did not use and the amount of her share.

28. In respect of the 2009 charges, the Tribunal was disappointed with the managing agents because they clearly had not attended with the intention of assisting the Tribunal with any detail. This was a claim for monies on account for a period which was just over 10 days from finishing. Yet there was no evidence of even approximate final figures to justify what had been requested. On the individual claims, Mr. Haycock's evidence and the Tribunal's conclusions were:-

Cleaning – this had not been included before and involved the cleaning of the common parts once a month to include vacuuming the carpets, dusting the stair rails, changing any light bulbs etc. for £650.00 for the year i.e. £54.17 per month. The Tribunal took the view that this is excessive. The normal rate for cleaning nowadays is about £10 per hour and the work involved should not take more than 1-1½ hours and the Tribunal considered that £250.00 per annum would be reasonable.

Window cleaning – this was for cleaning the outsides of all the windows at the property quarterly. The leases provide for the tenants to clean the windows. If they did not, then it is unlikely that the building would become so unsightly that the value of the property would be reduced. In these circumstances, the Tribunal could not see that it would be reasonable for the landlord to take this over even if there were technical breaches of the leases.

Door entry 'phone system – the £250 claimed was simply a reserve in case any repair work necessary. No evidence was provided that any work had been undertaken.

Buildings insurance – the claim was £3,000.00 based on the demand in the bundle from Genavco for the period 24th June 2008 to 24th June 2009 for £2,854.47. Mr. Haycock was clear about this claim. It was the landlord who effected insurance and the managing agent just passed this on. He had no information about the claims record for this building, about whether competitive quotes had been obtained or about how this premium had been calculated apart from the Genavco invoice for insurance with AXA. The Tribunal had 3 criticisms i.e. (a) the premium of nearly £3,000 for what appears to be just a large house appears excessive on the face of it (b) the premium cost per square metre appears excessive and (c) there is no information about whether any commission is being shared with the landlord. It is within the experience of the Tribunal members that AXA have been known to pay substantial commissions and that insurance agents have been known to share this with a landlord. If this had happened in this case, it would mean that the landlord would be making a secret profit out of the tenants which could well affect a Tribunal's view about whether the net cost of the premium payable by the tenants was 'reasonable'.

Electricity – This was a claim for £250 for electricity used in the common parts. The ultimate figure will depend on the meter readings but the claim is substantially above the only previous figure known. By any objective measure it

would appear to be excessive unless electricity was being wasted by e.g. not having timer switches, low energy light bulbs etc. If that is the case, then this needs to be addressed by the Respondents.

Repairs and maintenance – this was a claim for £900.00 in anticipation that there may be items of repair and maintenance. However, there appeared to be no program of works and, as was seen on inspection, the exterior decoration is still in need of attention. Mr. Haycock could give the Tribunal no information about any works which had been undertaken during 2009.

Gutter clearing – the Applicant accepted that her gutters needed clearing. However there was no evidence that this had been done and £200.00 would appear to be a great deal of money just to clear gutters.

Gardening – this is a claim for £200.00 for gardening which Mr. Haycock said involved maintaining the pebble/gravel parking area, the bin area and a small piece of garden to the front of the property. All the rear gardens are demised to the tenants. The Applicant said that she was maintaining the small amount of vegetation and all the remainder would require on a routine basis was perhaps a spray with weed killer a couple of times a year. A cost of £50 would appear to be more realistic and reasonable.

Managing agents fees – these are estimated at about £200.00 for each residential unit including VAT. Whilst this amount is not unreasonable, there are question marks over the level of service being provided.

Bank charges – a claim of £150.00 was included because there was a nil balance on the service charge account when the freehold was transferred. As all applications for monies on account have been paid and there is no evidence that the budget has been exceeded, the Tribunal concludes that these have not been incurred.

Accountancy fees – the claim of £360.00 is less than previous years and appears reasonable.

Sinking fund – the claim of £900.00 appears reasonable.

Conclusions

29. The Tribunal should say at the outset that it has some sympathy with the points being made by the Applicant. She is saying, in effect, that the terms of the lease are unreasonable in that she is being asked to pay towards things which she does not use such as the expense of the telephone entry system and the cleaning and electricity for the common parts.
30. This is not an application to vary the terms of the lease. If it were, and all the leases were being considered for variation, then a Tribunal could well come to the view that it is unreasonable for a lessee to pay for things which are of not benefit to that lessee. On the other hand such Tribunal may well decide that as it was the Applicant who agreed to pay for these items as the original lessee, the provision should stand. Having said all of that, this is not the issue to be

determined by this Tribunal on this occasion. It must also be remembered that there are very often anomalies with these charges e.g. flats on the ground floor of a building having to pay towards the maintenance of a lift which is a quite frequent occurrence.

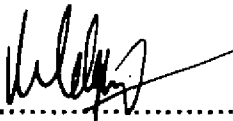
31. The Applicant also says that the structure of the main part of the building has altered so that there are now more units than when the lease was drawn and she should now be paying a tenth rather than an eighth. The Tribunal cannot interfere with that. When the lease was drawn and agreed, the Applicant covenanted to pay one eighth of the services charges for the building and that is what she must pay. The Tribunal is satisfied that the landlord is not making a profit from the service charges by claiming more than 100% of the total cost except for the issue over insurance premiums referred to above.
32. As far as the 2008 charges are concerned, it is difficult for the Tribunal to assess them properly and, furthermore, it is at least arguable that the Applicant has "*...agreed or admitted...*" such charges which would take them outside the Tribunal's jurisdiction. Such charges do not appear to be unreasonable on the face of it and the Tribunal concludes that they are reasonable and payable.
33. On the subject of the 2009 claim on account, Section 19(2) of the 1985 Act allows the Tribunal to say whether service charges payable before the charge itself is incurred are reasonable. In this case, the demand for monies on account covers a 12 month period up to 25th December 2009, which is almost concluded. The only inference which can be drawn is that this claim is no longer for a period "*...before the relevant costs are incurred...*".
34. In these circumstances, the Tribunal has no jurisdiction which is reflected in the decision. However, the Tribunal also has the overriding objective of trying to reduce future conflict and future costs.
35. Doing the best it can, on the limited evidence available, it provides the guidance as set out above to both parties on the issue of what may be reasonable for the claim for actual costs incurred. If the Applicant has any complaint about the reconciling statement of account for actual costs which will presumably arrive in the new year, she may make a further application to this Tribunal. Having said that, it is hoped that the managing agents will reply to correspondence in the future to try to avoid any necessity for further litigation. It is also hoped that both parties will be reasonable and pragmatic.

Costs

36. On the question of costs there are 2 decisions for the Tribunal to make. As far as Section 20C is concerned, it is clear that the main part of this application is misconceived. Having said that, it is not acceptable for the managing agents just to refuse to respond to letters. In this case such letters were sent by recorded delivery and the Applicant was able to provide copies of the receipts for payment of the extra postage involved.
37. After the application was made, the agents did write a full letter of explanation to the Applicant on the 20th August 2009 which was, perhaps, a case of too little,

too late.

38. Mr. Haycock said that he considered it would be unfair for any other tenants to have to pay towards the costs of representation which must be right. The question, therefore, is whether all or part of the costs of representation can be recovered from the Applicant. The Tribunal takes into account the obvious i.e. that the 2009 accounting period is almost finished and yet Mr. Haycock failed to bring any information to the hearing to assist the Tribunal in assessing whether the claims were reasonable.
39. Taking all the factors into account, it is the Tribunal's conclusion that the only fair way to deal with this is to say that the Applicant should pay for the managing agents to respond to the application with their statement but that no further costs should be recovered. The statement only says, in effect, that the Applicant is bound by the terms of the lease and the Tribunal assesses those costs at £50.00, to which VAT can be added, and this is all that can be recovered from the Applicant in any future service charge.
40. On the matter of the claim under Schedule 12 of the 2002 Act, the Tribunal cannot see anything in the Applicant's behaviour in connection with these proceedings which would bring her within the defined categories of behaviour which would warrant an order being made.



Bruce Edgington
Chair
16th December 2009