



Residential  
Property  
TRIBUNAL SERVICE

4944

**LEASEHOLD VALUATION TRIBUNAL**

**LANDLORD AND TENANT ACT 1985 SECTION 27A**

**Flat 1, 45 Pigott Street, London E14 7DH**

**Ref: LON/00BG/LSC/2009/0719**

**Mr Alex Furness**

**Applicant**

**Farrance Street Management Company**

**Respondent**

Tribunal: Mr M Martynski (Solicitor)  
Mrs J E Davies FRICS  
Mrs R Turner JP BA

Representatives: Mr Alex Furness and Mr Leon Furness  
Mr Sullivan (Counsel for the Respondent)

Dates of hearing: 1 & 2 March 2010

**DECISION**

**Summary of Decision**

1. The service charges challenged, being: (a) costs paid to Louise Harris and Chancery Solicitors, and; (b) management fees paid to Rendall & Rittner, are reasonable and payable.
2. The apportionment of the management fees and cleaning costs is reasonable and accordingly those costs are payable as apportioned.
3. No order is made pursuant section 20C Landlord and Tenant Act 1985.

4. No order is made in respect of reimbursement to the Applicant in respect of fees paid to the Tribunal.
5. No other order is made in respect of costs.

### **Background**

6. The subject property, of which the Applicant is the leaseholder, is a flat within a development containing 71 flats. Those flats are spread across a Victorian conversion containing 46 flats and three terraced new buildings containing 25 flats. The Applicant's lease obliges him to pay a 6.8% contribution to the service charge for the development.

7. In order to fully understand the position as it stood before the Tribunal, it is important to set out some of the legal details on and the history of the development and to comment in detail on some of the evidence presented to the Tribunal during the course of the hearing.

8. The Respondent company is a party to the leases between the freeholder and the various leaseholders. It is obliged to run the development. Its shareholders are the leaseholders in the development. It has no other source of funding other than the service charges that are paid by leaseholders.

9. In January 2005, the then board of the Respondent company, whose members included the Applicant, appointed Lynx Property Management Company ('Lynx') as the managing agents. This company was recommended to the Board by the Applicant. In evidence to the Tribunal, the Applicant was unable to be specific as to the grounds on which he recommended the company.

10. Although the Applicant maintained that there was a tender process in respect of the appointment of a managing agent at this time, he was not able to give full details of that in evidence nor did he produce any documentary evidence of such a process over the course of the two-day hearing.

11. An annual return, completed in 2007, recorded the Applicant as having been a shareholder in Lynx since 2003. In evidence, the Applicant stated that this return was a mistake. The Applicant did however admit that he became involved with Lynx during its management of the development. The detail on this, as was the case with much of the evidence given by the Applicant, was scant. From the overall evidence given by the Applicant and from subsequent events (more on which below) the Tribunal is of the view that the Applicant, may well have been involved in Lynx at the time of appointment and was certainly heavily involved with that company for a substantial amount of the time that it was the appointed manager for the development.

12. It was put to the Applicant that the only property ever managed by Lynx was the subject property. The Applicant did not answer the question. It is clear on the evidence available to the Tribunal that Lynx and the Applicant were ill equipped to manage the development in question or any property. The company was not a member of the Association of Managing Agents and the Tribunal was not told that anyone involved with the company had any relevant qualifications or experience.

13. The way in which the Applicant dealt with the issue of the makeup and experience of Lynx was typical of much of the evidence that he gave in the hearing. Only when pressed did the Applicant concede that Lynx consisted of no more than the Applicant and one other

person. The Applicant at one stage referred to an 'in house' surveyor, when pressed he said that this 'in house' surveyor was in fact only a 'contact' of the other director of Lynx.

14. By 2008, according to evidence given by leaseholders Mr Heather and Ms Harris, they and other leaseholders had concerns regarding the management of the development. Those concerns included leaseholders having difficulty in contacting Lynx and the standard of decorative works undertaken in the latter part of 2007. As the concerned leaseholders did not believe that they were getting sufficient information from Lynx and the Respondent's then board members, they arranged for a general meeting to be called in July 2008. At that meeting, Mr Heather and others got themselves voted on to the Board so that they could take part in the management of the development.

15. Soon after this meeting, and indeed in the same month, Lynx resigned as managing agents. Subsequently, the Applicant arranged to become a director of Lynx and put the company into liquidation. Lynx's only debtor, by his own admission, was the Applicant. The Applicant put the failure of Lynx down to the failure to secure any other properties to manage. The obvious inference to draw from the liquidation of Lynx (from the circumstances of that liquidation given that the only creditor was the Applicant) is that the company was liquidated to avoid legal action being taken against it. The Applicant was unwilling or unable to present the Tribunal with any other reasonable explanation for the liquidation.

16. After the resignation of Lynx, the Board undertook the process of procuring alternative managing agents and of securing the immediate financial position, further details regarding this appear below.

17. It is clear to the Tribunal from correspondence produced to it by the parties and evidence given by Mr Heather, Ms Harris and Mr Rittner of Rendall and Rittner (the managing agents appointed in place of Lynx) that the Respondent, by requests made by its leaseholders, its new managing agents and its solicitors to Lynx, sought essential information from Lynx after its resignation. Whilst the Applicant produced evidence of *some* response to the requests, it is plain that essential and basic information was never provided and there was no reasonable or rational excuse for this failure on the part of Lynx and the Applicant.

18. By way of example, Lynx failed to provide statements of account for the individual leaseholders. All that was provided was a single figure for each leaseholder said to be the leaseholders' balance. To this day, the Respondent, due to Lynx's failure, has no individual statements of account for leaseholders prior to the service charge year beginning April 2008.

19. A further example given by Mr Rittner of the failings of Lynx (which must also be the failings of the Applicant) is that Lynx not only failed to respond to any request for a meeting to discuss the handover of management, but also failed to complete and return a questionnaire seeking basic details about the development and its management. Mr Rittner, in giving his evidence, clearly conveyed his professional dismay and disappointment at the behaviour of Lynx and the Applicant and it was his opinion (based on substantial experience of property management and of taking over the management of various properties from other agents) that had the necessary information been forthcoming, the Respondent would have been saved untold time and trouble.

20. An example of the wholly reprehensible behaviour of Lynx is illustrated in its letter dated 21 July 2009 in response to a letter from the Respondent's solicitors. Already by this time Lynx had failed to respond fully to the requests of Rendall and Rittner for information.

The Respondent's solicitors wrote to Lynx by letter dated 9 June 2009. That letter, running to five pages contained a very detailed request for information and documents regarding the management of the development. That letter states in particular;

....the material provided by you in Your Letter (the "Additional Information") has now been reviewed by our client and its advisers and discussed with Rendall and Rittner.

The Additional Information is wholly inadequate and does not satisfy the eleven numbered information requests set out in Our Letter.

21. In response to this, Lynx sent a holding reply dated 22 June and then there is its substantive reply of 21 July 2009 which is in the following terms;

Further to your recent letter, we have carried out an initial review of the extra information requested. The administrative time required to review this case is estimated to be £420.00. We do though reserve the right to amend this figure should more queries be forthcoming.

Please advise if your client would proceed on this basis so we invoice for this amount.

22. Not only therefore was Lynx unable or unwilling to comply with its contractual (and indeed, in the circumstances, moral) obligation to supply all relevant documents and information reasonably required, it wanted to charge for the provision of that information.

23. It had become apparent at a fairly early stage after the resignation of Lynx that there were very serious and worrying issues concerning the accounts for the development. One of these issues concerned a payment of £30,000 which had come from the reserve account, through to the ordinary account and was paid out from there. The Tribunal was told that, to this day, there is no explanation as to who this money was paid to or what it was for.

24. Another issue concerned the external decoration works carried out in 2007. A sum of over £42,000 was paid in respect of those works. From the relevant bank accounts two payments were identified by the Respondent amounting to the total cost of the works. There was however no information as to whom these payments were made to. There was no evidence that a proper consultation process was ever carried out regarding the works. There was a letter sent to all leaseholders dated 12 June 2007 describing the proposed works, there was no follow up letter to continue or complete the consultation process. One of the payments identified by the Respondent as making up the costs of the works was dated 7 June 2007 indicating that the work had already been booked prior to the consultation letter of 12 June. The Applicant's answer to this, given very unconvincingly in evidence, that contractors had to be pre-booked, is simply not credible. Further, there was no evidence of any specification or detailed tender documentation for the works. A survey obtained by the Respondent subsequent to the works being done suggests that those works were poorly executed and that further decorative works will be necessary.

25. Another financial irregularity was the fact that it became apparent that Lynx was using its own account in which to hold leaseholders' money, no separate account had been set up for the development.

26. The financial irregularities eventually led to the accounts for the service year ending in April 2009 to be qualified by the Respondent's accountants. The accountants reported that movements on the reserve bank account could not be verified. They could not verify how lessee balances had been reflected in handover information. The accountants found an unknown credit of £1,165. The Applicant relied on this latter fact to question, given that there

was a credit rather than a debit, what all the fuss was about. Such a comment demonstrates either ignorance and/or a worrying level of financial naivety on the part of the Applicant.

### **The costs of Louise Harris**

27. At the time of Lynx's resignation, the Respondent's Board engaged the services of one of the leaseholders and shareholders of the Respondent company, Ms Harris, to provide consultancy services.

28. Ms Harris is a Solicitor and is on the Roll of solicitors. At all relevant times, she did not possess a practicing certificate and accordingly was not authorised to provide the usual sort of legal services and advice that would normally be provided by solicitors. The Board instructed her for a number of reasons. First, she agreed to undertake work for £50.00 per hour, a figure that no professional service could be bought for. Second, she had relevant experience gained in a high profile firm. Third, given the situation that the Board found itself in upon the resignation of Lynx and its concerns about that company, it felt that it needed someone who could spend a very large amount of time to take control of the situation.

29. Ms Harris, up to July 2009, carried out a variety of work for the Respondent. The total cost of her services was a little under £15,000. The work carried out by Ms Harris can be broken down into the following broad categories; First, she had to deal with a situation between July (when Lynx resigned) and the end of September 2008 (when Rendall and Rittner were appointed) where there was effectively no managing agent. The Applicant maintained that there was management provided by his company and that the resignation given in July gave notice lasting until September. Given however the financial and other irregularities and the difficulty that the Respondent's witnesses said that there were contacting Lynx, the Tribunal is satisfied that there was effectively no management. During this period there was a flurry of necessary activity. Much work was done finding solicitors who could set up and operate an escrow account which could be used to pay leaseholders' service charges into given the financial concerns about Lynx and given the fact that Ms Harris told the Tribunal that in the months preceding the resignation some leaseholders had been reluctant to pay service charges to Lynx and the fact that Lynx had no proper separate account for leaseholder's money. She contacted all leaseholders to explain what was going on and to try and encourage payment to the escrow account. She took care of some day to day management issues. She started to try and sort out the records for the management and accounts of the development.

30. Second there was work that involved considerable liaison with the new managing agents and supplying them with information that was essential to them. Third there was ongoing work in the investigation of the accounts and previous management. Rendall and Rittner had not been told very much about the previous management problems and were instructed very much on an ongoing basis rather than on the basis that they had to sort out the historic financial and management problems. Had they had to try and sort out those problems, Mr Rittner said that their hourly charge would have been £75.00.

31. Fourth, there was, what Ms Harris described as 'para-legal' work. She did a lot of the leg work in putting together information for the solicitors instructed in the legal action taken against Lynx and the Applicant. Finally, there was work done on specific issues relating to the development such as problems with the demise of the common parts, a claim in respect of defects to a roof, issues concerning the proposed sale of the freehold, assisting solicitors regarding forfeiture proceedings for one flat and some work reviewing reports and contracts for the board.

32. In relation to all this work, the Tribunal first considered whether there was power under the lease to charge this type of work to the service charge. In the Tribunal's view, clause 5(o) of the lease which allows remuneration of managing agents, surveyors, solicitors and accountants, could not be relied on. Ms Harris, because she did not have a practising certificate, was not allowed to provide legal advice or most kinds of legal services. This clause of the lease can only allow the payment of solicitor's fees if the work done by the solicitors was of a kind normally carried out by them, that is work that is principally carried out by solicitors entitled to practice as such or by persons supervised by such solicitor.

33. The Tribunal is satisfied however that the Respondent instructed Ms Harris, not to carry out legal work, but to assist it generally on the basis that as a person who had qualified as a solicitor and who had formerly practised as such, she had the relevant skills to give such general assistance.

34. Such work can, in the Tribunal's view, be charged for by way of a service charge in accordance with clause 5(k), the relevant part of which reads;

..... provide such additional services as it may consider necessary or beneficial to the residents of the Development from time to time and without prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as in the absolute discretion of the company may be considered necessary or advisable for the proper maintenance safety amenity and administration of any or all of the Building the Development or the Common Parts

35. It may be that some of the work done fell at times into the category of managing agent work or strayed near to the direct provision of legal advice. It may also be that at times there was some overlap of work done between Ms Harris and managing agents or lawyers. It could also be that some of the work carried out by Ms Harris took more time than one would normally expect.

36. What was reasonable must be viewed within the context of what had happened to the Respondent. It had been left in an appalling position by Lynx where potentially large amounts of money were at risk and where the situation could easily have spiralled out of control. The Respondent was anxious to try and manage the position that it found itself in and to limit its exposure to loss, damage and expense and, in the circumstances, did not have the time or the full overall picture of what was happening to put precise limits on the work done by Ms Harris. The Respondent felt, quite reasonably in the Tribunal's view, that it needed assistance of a general professional nature in the short to medium term by way of a intermediary between it and professionals instructed on its behalf.

37. It is all too easy to criticise the work done and the time taken to do that work with the benefit of cool hindsight within a Tribunal hearing. It may well be that the employment and remuneration of Ms Harris now (where the situation has been stabilised and where there is firm and experienced management) on similar very general terms probably would not be reasonable, but that does not mean that it was not a reasonable expenditure at the time.

#### **Legal fees**

38. The Respondent instructed lawyers principally to; (a) set up the escrow account, and; (b) pursue litigation against Lynx and the Applicant for the recovery of management documents and information.

39. There can be no question that the costs of setting up the escrow account were reasonably incurred given the circumstances described above. The other litigation costs are however not so easy to deal with.

40. On advice from Counsel, an application was made in the High Court against Lynx, the Applicant and others for pre-action disclosure; that is a court order ordering them to produce management documents to the Respondent. It was thought by the lawyers that such an application would be more time and cost effective than full blown proceedings. Once the documents had been obtained, or it had been established what documents were in existence, a view could be taken as to whether any further legal action against Lynx and others would be useful or beneficial.

41. Unfortunately things did not go to plan. The Judge hearing the Respondent's application considered that the application was deficient. He felt that the Respondent had not clearly set out what documents it required and the reason for requiring those documents. It was said (although this was not confirmed in any way so that the Tribunal could place any reliance upon it) that the Judge considered that there was a strong case for full blown proceedings against Lynx and the Applicant. The Judge adjourned the hearing of the application in order to allow the Respondent to deal with the deficiencies he had identified and ordered that the costs thrown away in that hearing be paid by the Respondent to the Applicant. The Respondent's lawyers later withdrew the application. The Tribunal was told that the Respondent was now considering whether to issue fresh legal action. The solicitors did not in fact make a charge for the costs of the hearing in question.

42. When dealing with the reasonableness of the legal charges, it is not a simple question of whether or not the legal action taken was successful. The real issues are first, was the action taken a reasonable course of action to take in the circumstances. The second question is whether or not the legal charges in themselves (regardless of the reasonableness of the action) were out of the ordinary range of legal charges or otherwise of an amount such as to be unreasonable. In answer to these questions the Tribunal finds that, in the circumstances and given the history described above, the litigation was reasonable. The Tribunal in looking at the legal fees saw nothing in them that appeared unreasonable. The Tribunal finds therefore these legal costs to be payable.

### **Management fees**

43. There were two objections to the fees. First it was said that the fees, being higher than the fees charged by Lynx, were unreasonable. Second it was argued that the fees should be split equally amongst all flats rather than as per the percentage set out in the lease.

44. As to the level of the fees, the fees payable are charged by the current managing agents at £275.00 per flat. Given that the service provided by Lynx was fundamentally defective, any argument that the current managing agent's fees are unreasonable because they are higher than Lynx's is bound to fail. In the Tribunal's experience, the fees are at the higher end of a scale of reasonableness but not unreasonable, especially given the Respondent's need for experienced and sound management.

45. The Applicant pointed out (correctly) that there is power in the lease to apportion service charges differently from the percentage set out in the lease. The Applicant was concerned that, in terms of management, his flat was no more difficult or involved no more work than any other flat but because his share of the management fee was based on a percentage figure (as was his share of the rest of the service charge), the amount he paid was

significantly higher than other flats and more than he would pay if the charge was spread equally between all flats.

46. The Tribunal's view is that whilst there is some merit in this point, it would be unreasonable to expect the Respondent to depart from the percentage basis share set out in the leases just for one element of the service charge. If it tried to do this, there would undoubtedly be objections from other flats and it would make the administration of the service charge more complex. There may then be demands to treat other elements of the service charge in different ways leading to more confusion.

47. The Tribunal notes, with disapproval, that this point was pursued by the Applicant despite the fact that, when he was managing the development, he appears to have taken no steps to apportion the management charge in any other way. This leads the Tribunal to suspect that, especially in the light of the history of this matter, the Applicant's application is motivated to a greater or lesser extent by a desire to create mischief rather than to pursue genuine grievances.

### **Cleaning**

48. The Applicant did not have any objection to the amount of the cleaning charges, he was concerned with the way that they were split which was equally between the two blocks. He demonstrated that the common areas to be cleaned in each block were unequal and accordingly the charges should be apportioned according to the size of each area to be cleaned, which was the way it was done when he was managing the block. During his time of management, the Applicant said that he had split the charges according to size and he had been told by the cleaners at the time that more time had to be spent on one block than on the other.

49. Witnesses for the Respondent said that although there were differences between the sizes of the common parts, the smaller common parts were more tricky to clean and so required as much time as the larger common parts and the current cleaners apportioned time equally between the blocks.

50. The Tribunal finds that, if the current cleaners are of the view that both blocks take the same time, then it is not unreasonable to split the costs equally between the two blocks.

### **Costs and fees**

#### *Fees*

51. Given that the Tribunal has not found for the Applicant on any of the points he raised, no order is made in respect of the fees that he has paid to the Tribunal.

#### *Costs*

52. Both parties argued that the Tribunal should make a costs order against the other party on the ground that that party had been guilty of conduct that could be described as;

frivolous, vexatious, abusive, disruptive or otherwise unreasonable in connection with the proceedings.

As for the Applicant, whilst the Tribunal has found against him and although there has been much criticism of his behaviour whilst managing the property and in his dealings with the other leaseholders and the new managing agents, most of the points he raised in this



application were reasonably arguable and his behaviour, in connection with these proceedings, does not come within any of the above categories.

53. As for the Respondent, there is no question of it behaving unreasonably in the proceedings. Accordingly, no costs orders will be made in respect of either party.

*Costs of proceedings and the service charge*

54. Section 20C of the Landlord and Tenant Act 1985 contains the following provision;

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

55. The Applicant made an application of the kind described in section 20C. The Tribunal declines to make such an order. If the Applicant's lease allows the Respondent's costs of these proceedings to be placed on the service charge and charged to him in accordance with his share of the service charge, the Tribunal will not make an order preventing such a course of action given that the Respondent has been wholly successful in this application.



Mark Martynski, Tribunal Chairman

15 March 2010