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Residential  
Property  
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**LEASEHOLD VALUATION TRIBUNAL for the**  
**LONDON RENT ASSESSMENT PANEL**  
**LANDLORD AND TENANT ACT 1985**

**LON/00BJ/LIS/2010/0006**

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**Premises:** 88 Cromford Road  
London SW18 1NY

**Applicants:** Mrs K Darvell  
Ms F Watson

**Respondent:** Management Properties Ltd

**Represented by:** Trust Property Management

**Tribunal:** Mr NK Nicol  
Mr C Gowman  
Mr A Ring

**Date of Hearing:** 29/07/10

**Date of Decision:** 06/08/10

## **REASONS FOR DETERMINATION**

1. The subject property at 88 Cromford Road, London SW18 1NY is a terraced house converted into three flats. The First Applicant, Mrs Darvell, has been the lessee of the top flat, Flat C, for around 16 years. The Second Applicant, Ms Watson, has been the lessee of the middle flat, Flat B, for around 20 years. The lessee of the basement flat, Mr S Mohyuddin, has not sought to take part in these proceedings although the Applicants allege that he shares their views. The Respondent is the freeholder and has been represented in these proceedings by their agents, Trust Property Management, through the person of Mr BJC Mire BSc (Est Man) FRICS. This matter was heard on 29<sup>th</sup> July 2010 – the Applicants represented themselves but Mr Mire, somewhat disappointingly, excused his attendance by letter dated 27<sup>th</sup> July 2010 and sought to rely on the written representations he had made previously.
2. The Applicants' primary complaint is that the management of the property since at least 2000 has consisted of no more than arranging the buildings insurance and they're not even confident that that happened for the service charge year ending in 2001. The current agents listed their principal responsibilities in paragraph 5 of their letter dated 11<sup>th</sup> November 2009 to the Second Applicant but it seems they have not done much of what is set out there, including periodic inspections and regular maintenance. The Applicants have had to arrange other essential services themselves, the biggest example being works in 2009 to deal with subsidence, repairs and redecoration for which they appointed a structural surveyor, dealt with the insurers and their loss adjusters and proposed, liaised with and part-paid the appointed contractors.
3. The Tribunal is satisfied that the service provided on behalf of the Respondent has fallen significantly short of what the Applicants could expect under their respective leases and the RICS Code of Management Practice. However, that in itself is not what the Tribunal has to decide. The Tribunal must bear in mind that the Applicants have other remedies for their complaints, including an action in the county court for breach of the repairing covenants, asking the Tribunal to appoint a manager, exercising the right to manage or seeking collective enfranchisement. The Tribunal's determination here is under s.27A of the Landlord and Tenant Act 1985, the relevant parts of which read as follows:-

**S27A Liability to pay service charges: jurisdiction**

(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.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

**The Lease**

4. The Applicant's liability for service charges is contained in clause 1 of each lease:-

... contributing and paying on demand by way of further or additional rent one third of all costs charges and expenses from time to time reasonably and properly incurred by the Lessor in performing and carrying out their covenants under clause 4 hereof including all clerical administrative and management expenses

5. The Respondent's relevant obligations under clause 4 read as follows:-

- (b) To insure and keep insured during the said term with an Insurance Company of repute ... the Building ...
- (c) To maintain and keep in good and substantial repair and condition:
  - (i) The main structure of the Building ...
  - (ii) All gas and water pipes drains sewers cables ducts conduits ...
- (d) To decorate as often as reasonably required and in any event not less than every fifth year ... the exterior of the Building ...
- (e) To (if so required by the Lessees) take at the expense and cost of the Lessees reasonable steps to enforce the Lessees covenants ...

## **Limitation Period**

6. The Applicants challenged a number of service charges dating back to 2000. They are dealt with in turn below but the Respondent raised a preliminary issue. Mr Mire asserted that the Tribunal did not have the jurisdiction to deal with any of the charges raised prior to February 2004 because they were more than six years prior to the applications being received or transferred to the Tribunal and were barred under s.19 of the Limitation Act 1980:-

### **19. Time limit for actions to recover rent**

No action shall be brought, ..., to recover arrears of rent, or damages in respect of arrears of rent, after the expiration of six years from the date on which the arrears became due.

7. The main problem with the Respondent's argument is that the Applicants have not brought an action to recover arrears of rent. They could not do so since there is no arrangement between the parties by which the Applicants receive rent from the Respondent, rather than pay it to them. Their claim is to recover monies had and received by the Respondent for which the Applicants actually had no liability under their leases. It might be argued that this is an equitable remedy for which the Limitation Act 1980 does not provide a limitation period but the better analysis is that the Applicants' claim is either an action on a specialty (a deed, such as a lease, is a specialty) or an analogy may be made in equity with an action on a specialty for the purposes of limitation:-

### **8. Time limit for actions on a specialty**

(1) An action upon a specialty shall not be brought after the expiration of twelve years from the date on which the cause of action accrued.

8. The Tribunal has determined that the applicable limitation period, therefore, is twelve years, not six. This brings the whole of the Applicants' claim within the requisite limitation period and no part is barred in the way claimed by Mr Mire.

## **Management fees**

9. Management fees were included in the service charges in respect of the property for each year ending on 24<sup>th</sup> June:-

2000	£320 (equivalent to a per unit charge of £106.67, inc VAT)
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2001	£445.92	(£148.64)
2002	£445.92	(£148.64)
2003	£440.63	(£146.88)
2004	amount paid by First Applicant £76.38 (Respondent claims £130 plus VAT per flat)	
2005	£475.88	(£158.63)
2006	£440.63	(£146.88)
2007	£440.63	(£146.88)
2008	£546.39	(£182.12 – an increase of 24%)
2009	£722.25	(£240.75 – an increase of 32%)

10. There is no doubt that the service provided to the Applicants on behalf of the Respondents has been minimal at best and, as already mentioned, well short of what they could expect at worst. The Tribunal finds it astonishing that a property owner would be willing to put their asset entirely in the hands of others to maintain and repair, as the Respondent has effectively done by leaving it to the Applicants. The Tribunal can only surmise that this is a matter of deliberate policy by the Respondent in order to save money.
11. On the other hand, the Applicants exaggerated their case a little. They are clearly frustrated with the Respondent and their agents but it is not correct, as they alleged, that nothing has been done except arranging buildings insurance. Some of the Respondent's agents other work is dealt with under the further service charge headings considered below. In addition, a service charge summary was provided each year and some letters were sent out. Although this is arguably an absolute minimum as a service, it is not accurate to describe it as nothing at all.
12. Management fees per unit tend to be higher in smaller properties such as the current one. Certain costs are unavoidable and they have to be spread amongst fewer payers. However, the fees charged in this case are low from any point of view. No lessee should expect a fully comprehensive service for as little as £147 per year. The Applicants received a minimal service but they also paid accordingly. The Tribunal is satisfied that the amounts paid in management fees from 2000 to 2007 are reasonable and payable.

13. Having said that, the Tribunal has not been presented with any justification for the proportionately large increases in 2008 and 2009. The charge had been relatively stable for 7 years. No services were provided in later years that had not been covered by the existing charges. The only indication as to why there had been an increase was a statement from the agents that their contract with the Respondent allowed for an increase each year in line with the earnings index. However, that index showed annual increases of 2-4% over the relevant period, not 24-32%. Instead of the actual increases, the index would suggest an increase of around £10 in the total management fee. In the circumstances, the Tribunal has determined that a reasonable management fee would have been no more than the following:-

2008	£450
2009	£460

#### **Accountancy fees**

14. In 2000 the Applicants were asked to pay an estimated amount of £60 for accountancy. In 2009 they were asked to pay £138 for accounts prepared in-house by the Respondent's agents. No such fee was charged in any other year.
15. There is no evidence that the £60 charge was ever actually incurred in 2000. It was only ever claimed to be an estimated amount but there is no provision in the Applicants' leases for advance service charges. In the circumstances, the Tribunal is obliged to hold that the sum is not payable.
16. The Respondent's agents saw fit not to draw up formal accounts in any years other than 2009. The accounts for that year were not exceptional and showed that the service charge consisted of only three items – the insurance premium, the management fee and the accountancy fee itself. The Tribunal cannot see how the Respondent could possibly justify changing the practice adopted in every previous year and prepare full accounts for such a simple service charge. The accountancy fee of £138 is not reasonable and so not payable.

## Insurance

17. Unlike every other year, the Applicants failed to elicit from the Respondent's agents any proof that they actually paid the insurance premium in 2001. There was no service charge demand for that year but, in the following year, on 17<sup>th</sup> September 2002, the Respondent's then agents served on the Applicants a Statement of Service Charges for both the 2001 and 2002 years.
18. On the balance of probabilities, in the light of their compliance with their insurance obligations in every other year, the Tribunal is not satisfied that the absence of a certificate means that the insurance premium was not paid. Therefore, the expenditure was incurred.
19. However, s.20B of the Landlord and Tenant Act 1985 provides:-

**S20B Limitation of service charges: time limit on making demands.**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
  - (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.
20. The insurance premium is paid in advance for each year from and to 23<sup>rd</sup> June. The insurance premium for the service charge year ending in June 2001 would have been paid in June 2000. This is more than 18 months before the Respondent's agents sent any demand in respect of it. The demand of 17<sup>th</sup> September 2002 was not preceded by any estimates or demands for advance charges, which may have satisfied s.20B(2) (*Gilje v Charlegrove Securities* [2004] HLR 1), because the lease does not provide for any. Nor were there any other notifications that payment had been incurred and would be demanded. Therefore, the service charge in respect of the insurance premium for 2001 is not payable.

### **Surveyor's fee**

21. On 26<sup>th</sup> September 2003 the Respondent's agents incurred a charge of £274.95 for a surveyor's report from Langley Reiff Byers. The Applicants' objection to it was that the Respondent did not act on the advice contained in the report. This is an entirely understandable complaint and may help to found an allegation of breaches of the repairing covenants. However, the reasonableness of this expenditure cannot depend on what was later done with the report. If there is potential disrepair, it is entirely reasonable for the Respondent to obtain a report on it. The failure to act on it in no way diminishes the appropriate nature of obtaining a report in the first place. The service charge based on the surveyor's fee is reasonable and payable.

### **Health and safety report**

22. The Respondent's agents commissioned 4Site Consulting Ltd to carry out a Health, Safety & Fire Risk Assessment and their report was produced on 4<sup>th</sup> March 2008 for a fee of £343.10. The Applicants accepted that the Respondent was obliged by statutory regulation to take such action but asserted that the Respondent was not obliged to take such action under clause 4 of the lease and so could not levy a service charge in relation to it. The Tribunal rejects this allegation. There is no express provision for statutory compliance in the lease but there is express provision for repairs and maintenance. The Respondent would be unable to put contractors on site to ensure proper repair and maintenance unless satisfied that the site was safe. That means ensuring compliance with health and safety regulations. Therefore, this kind of report comes within the Respondent's obligations and the cost may be properly added to the service charge under the lease.
23. The Applicants again objected to the Respondent's lack of follow-up. However, for the same reasons as those given above in relation to the surveyor's fee, any failure by the Respondent to act on the report is a separate matter which cannot affect the reasonableness of incurring the expenditure for the report itself.
24. The Applicants also objected to the fact that the author of the report did not gain access to the communal area between the communal front door and the two front



doors of their respective flats. However, the reason he did not access it is that the Applicants themselves changed the lock to the communal door about 12 years ago and have refused since to provide a key to the Respondent or their agents. This communal area is not within the demise to either Applicant and so is retained in the Respondent's ownership. The Applicants have no right to limit access to that area to the Respondent or anyone acting on their behalf. They cannot object to a report on the basis that they have not provided access they had no right to limit or refuse.

25. The Applicants also pointed to some errors in the report, including that it stated there were two floors rather than three. However, the Tribunal is satisfied that the report was lengthy and comprehensive to such a degree that such errors do not diminish its value.
26. In the circumstances, the Tribunal is satisfied that the service charge based on the expense of the health and safety report is reasonable and payable.

#### **2010 issues**

27. The Applicants sought to raise a number of issues in relation to potential future charges:-
  - (a) The Applicants asserted that the Respondent was likely to seek to charge an unreasonable management fee for the latest year and sought guidance from the Tribunal as to what would be reasonable. However, the Tribunal's jurisdiction is limited to actual charges, either already incurred or clearly identified. The Tribunal has no power to rule on matters which are academic at this stage. The Applicants' fear may well be rational but the Tribunal cannot rule on a service charge which has yet to be levied or the amount of which has yet even to be determined.
  - (b) The Applicants also objected to a survey which the Respondent's agents indicated they wished to carry out. They claimed it was unnecessary given that works had been completed so recently. The Tribunal struggled to see what objection there could be to the report in the light of the fact that the Respondent was not directly involved in the works and would need to be apprised of the current state of the property to ensure they were complying

with their own maintenance obligations. However, the Tribunal again has no power to rule on a charge which has yet to be levied and the amount of which has yet to be determined.

- (c) The Applicants objected to an electrical test which the Respondent's agents indicated they wished to carry out. Again, the Tribunal struggled to understand the objection but, for the same reasons, cannot rule on this as no charge has yet been levied or even indicated.
- (d) The Second Applicant had objected to an administrative charge called an Arrears Management Fee which was apparently levied on the basis that the Respondent's agents had incurred the cost in chasing her for unpaid service charges. The Respondent withdrew the charge rather than defend it in these proceedings but the First Applicant has recently been charged a similar amount. The Tribunal cannot see a justification for such a charge under the lease but, in any event, cannot rule on it. Firstly, the charge was levied so recently that it was not raised in the parties' respective statements of case and so Mr Mire has not had an opportunity to address the issue. Secondly, the Tribunal was not provided with any of the relevant documentation. If the Respondent continues to attempt to levy this charge and the Applicants continue to object, then it will have to be dealt with in other proceedings.

### **Costs**

- 28. The Applicants sought an order under s.20C of the Landlord and Tenant Act 1985 that the Respondent's costs of these proceedings may not be added to the service charge. The Tribunal could not identify any provision in the lease which allows for the recovery of such costs through the service charge. Moreover, Mr Mire did not indicate any intention to try to recover any such costs. However, the Applicants are still entitled to seek such an order in case the picture changes. The test is whether it is just and equitable to make the order.
- 29. The Tribunal is satisfied that the Applicants had little choice but to bring proceedings in order to get the Respondent and their agents to engage with them. There is a consistent history of the agents failing to respond to the Applicants' correspondence and the Respondent itself made it clear in a letter dated 23<sup>rd</sup>

January 2010 that they saw nothing wrong with their agents' behaviour. The Tribunal is satisfied that it is just and equitable to make the order and does so.

30. The Tribunal also has the power to require the Respondent to reimburse the fees paid by the Applicants to the Tribunal under reg.9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003. The Applicants paid £65 and £70 respectively in application fees and they shared the hearing fee of £150. For the same reasons as the s.20C order, the Tribunal is satisfied that it is appropriate to order reimbursement.
31. The First Applicant also sought costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 on the basis that the Respondent was guilty of frivolous, vexatious or otherwise unreasonable behaviour in two matters:-
  - (a) The First Applicant began her challenge to her service charges in the county court. The proceedings were transferred to this Tribunal and a pre-trial review was held on 21<sup>st</sup> March 2009. At that PTR, Mr Mire confirmed that the First Applicant had named the wrong Defendant. The case was sent back to the county court for this to be remedied before being re-transferred back to the Tribunal. The First Applicant wanted to recover her costs of attending the wasted PTR on the basis that Mr Mire should have put her right earlier about having the wrong Defendant. However, Mr Mire has no duty to correct the litigation errors of someone suing his principal. The references in the RICS Code to the duty of a managing agent to provide advice cannot possibly extend to such a duty. Mr Mire could not be said in this instance to have acted unreasonably.
  - (b) The parties attempted mediation using the Tribunal's mediation scheme. The First Applicant alleges that Mr Mire had no genuine intention or ability to mediate on behalf of the Respondent and wasted her time and money for her attendance at the mediation. However, a mediation is entirely confidential – it cannot work on any other basis. The Tribunal, therefore, cannot receive evidence which might establish whether or not Mr Mire acted in good faith or unreasonably. It is not possible or appropriate to make a costs order in relation to a party's behaviour within a mediation.

## **Conclusion**

32. In summary, the Tribunal has determined:-

- (a) No part of the Applicants' claim is barred under the Limitation Act 1980.
- (b) The management fees for 2000-2007 inclusive are reasonable and payable but a reasonable fee for 2008 would be no more than £450 and for 2009 £460.
- (c) Neither of the accountancy fees challenged are payable.
- (d) The insurance payment for 2001 falls foul of s.20B of the Landlord and Tenant Act 1985 and so is not payable.
- (e) The fees incurred for the surveyor's report in 2003 and the health and safety report in 2008 are reasonable and payable.
- (f) The Tribunal cannot rule on other issues raised in relation to charges for the current service charge year.
- (g) The Tribunal has made an order under s.20C of the Landlord and Tenant Act 1985 that the Respondent's costs in these proceedings may not be added to the service charge.
- (h) The Tribunal has made an order that the Respondent shall reimburse the application and hearing fees incurred by the Applicants, namely a total of £140 for the First Applicant and £145 for the Second Applicant.
- (i) The Tribunal rejected the First Applicant's other costs claims.

Chairman: N.K. Nicol

Date 6<sup>th</sup> August 2010