

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**LEASEHOLD VALUATION TRIBUNAL**  
**of the**  
**NORTHERN RENT ASSESSMENT PANEL**

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

<b>Dwelling</b>	:	Flat 4, 39 West Cliff, Preston, Lancashire, PR1 8HX
<b>Applicant</b>	:	West Cliff (Number 39) Management Company Limited
<b>Respondent</b>	:	Eamon McGlinchey and Eamon McGlinchey Junior
<b>The Tribunal</b>	:	Chairman : J. M. Going Valuer Member : J Faulkner FRICS

**Preliminary**

1. The Applicant applied on 19th April 2010 to the Leasehold Valuation Tribunal ("LVT") under Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination as to the liability of the Respondent to pay service charges in respect of the Dwelling for 2008, 2009 and 2010 including the question of whether or not such service charges are reasonable.
2. On 26th April 2010 a procedural Chairman of the LVT gave Directions requiring the parties to present their evidence, documents and submissions.
3. The Directions included confirmation that if either party required an opportunity to make oral representations they should indicate that in writing and on the basis that if they did not the Tribunal could decide the application without an oral hearing.
4. The directions specifically confirmed that if the Applicant sought repayment of administration charges these should be clearly identified and a full breakdown showing how calculated and copy requests provided.

5. The Applicant provided various written evidence, but neither the Applicant nor the Respondent made a request for the Tribunal for an oral hearing.
6. The Tribunal inspected the outside and the common parts of the house of which the Dwelling forms part ("the Building") on 19th July 2010. Mr C Scholefield an employee of the Applicant's Managing Agents Homestead Consultancy Services Ltd ("Homestead") was in attendance.

### **Facts and Submissions**

7. The Building is a three storey end of terrace house with a basement, built over a hundred years ago of traditional construction, and which appears to have been converted into six flats approximately four years ago.
8. The Respondent owns the Dwelling as the Lessee under a term of 125 years from 1st January 2006 created by a Lease ("the Lease") dated the 27th day of July 2007 and made between Paul James Livesey and Madeleine Megan Livesey (1) the Applicant (2) and the Respondent (3).
9. The Lease specifies in clause 2 that the Respondent shall pay to the Applicant the service charges in accordance with the Second Schedule.
10. The services are set out in the First Schedule to the Lease and the service charge provisions are set out in the Second Schedule.
11. Clause 1 of the Lease sets out various definitions confirming that the service charge means 16.66% of "all costs expenses and outgoings whatever reasonably and properly incurred by the Management Company during a financial year in or incidental to providing all or any of the services..."
12. The Applicant in the initial application asked the LVT to consider the service charges for 2008, 2009 and 2010 stating that the Respondent had not raised any issue as to the amount or necessity of any of the service charges but had simply not paid.
13. The Applicant has submitted to the Tribunal copies of statements issued by Homestead claiming a balance due at 15th April 2010 of £2,906.87 being made up as follows:-

	Date	Description	Amount
(1)	1st April 2008	Service Charge 1st August 2008/28 February 2009	£452.09
(2)	15 July 2008	Buildings Insurance 2nd May 2008/31st March 2009	£53.50
(3)	11th February 2009	Administration fee	£11.50
(4)	23rd February 2009	Service charge 1st March 2009/28th	

		February 2010	£813.75
(5)	10th July 2009	Buildings Insurance 1st April 2009/31st March 2010	£50.00
(6)	16th October 2009	Land Registry	£11.50
(7)	16th October 2009	Building Society letter Admin fee	£115.00
(8)	11th February 2010	Service charge 1st March 2010 to 28th February 2011	£1,000.00
(9)	24th March 2010	Buildings Insurance 1st April 2010/31 <sup>st</sup> March 2011	£50.00
(10)	12th April 2010	LVT fees	£100.00
(11)	15th April 2010	Surcharge – Roof repairs	£249.49

14. For the purposes of its deliberations the Tribunal divided the total amount claimed at £2,906.87 into the following component parts:

- (i) those items referred to in sub-paragraphs (1) (2) (4) (5) (8) (9) and (11) of paragraph 13 and which amounted to £2,668.87 (“the service charges demanded”)
- (ii) those items referred to in sub-paragraphs (3) (6) and (7) of paragraph 13 amounting to £138 (“the administration charges demanded”) and
- (iii) the item referred to in sub-paragraph (10) of paragraph 13 amounting to £100 (“the LVT fee”)

### **The Law**

15. Section 18(1) of the 1985 Act provides that “service charge” means an amount payable by the Tenant of a dwelling as part of or in addition to the rent:-

- (a) which is payable directly or indirectly for services, repairs, maintenance, improvements or insurance or the Landlords costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs

16. Section 27(a) of the 1985 Act provides 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 to whom it is payable
  - (b) the person by whom it is payable
  - (c) the amount which is payable
  - (d) the date at or by which it is payable
  - (e) the manner in which it is payable

- (2) Sub-section 1 applies whether or not any payment has been made.....
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason of having made any payment.

17. Paragraph 1 of Part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) provides that:-

(1) In this Part of this Schedule “Administration Charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly –

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease

(3) In this part of this Schedule “Variable Administration Charge” means an administration charge payable by a tenant which is neither –

(a) Specified in his lease, nor

(b) Calculated in accordance with a formula specified in his lease.

Paragraph 2 provides that:-

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Paragraph 5 provides that:-

(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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

18. Paragraph 9 of the Leasehold Valuation Tribunals (Fees) England Regulations 2003 (SI 2003/2098) ("the Fees Regulations") confirms that Tribunal may require any party to the proceedings to reimburse any other party to the proceedings the whole or part of any fees paid by him in respect of the proceedings.

### **The Tribunal's Reasons and Conclusions**

19. The Tribunal began its deliberations by carefully considering the terms of the Lease and in particular the provisions for the payment of the service charges and administration charges.
20. The Lease signed by the Respondent provides for the Respondent to pay a one sixth share of the service charges on the terms specified in the Lease.
21. The Tribunal carefully considered the service charge expenditure made by the Applicant and its accounts and projections for the accounting years 2008, 2009 and 2010.
22. Having inspected the Building and using its own knowledge and experience, the Tribunal concluded that there was no evidence that any of the service charge expenditure since 28<sup>th</sup> February 2008 was unreasonable, and that the service charges demanded were reasonable.
23. Since October 2007, a demand for service charges must be accompanied by a summary of rights and obligations of tenants in relation to service charges, which include the right to ask the LVT to make a determination of liability to pay service charges.
24. The particular wording and other requirements for the summary are specified in The Service Charges (Summary of rights and obligations and transitional provisions) Regulations 2007 (SI2007/1257) ("the Service Charges Regulations")
25. Sub-Sections 3 and 4 of Section 21(b) of the 1985 Act make it clear that failure to provide the appropriate summary of rights and obligations means that service charges can be withheld until the Landlord complies, and that any provisions of a Lease relating to non payment or late payment of service charges do not have effect in relation to the period for which the Tenant withholds the payment.
26. It was not clear from the papers before the Tribunal as to whether the requirements of the Service Charges Regulations have already been complied with or remain to be complied with.
27. Having regard to the jurisdiction contained in Section 5 of Schedule 11 of the 2002 Act the Tribunal went on to consider the administration charges demanded.

28. Clause 3.27 of the Lease confirms covenants by the Respondent "to be responsible for and keep the Landlord and the Management Company fully indemnified against all .....costs expenses actions demands proceedings claims.....arising directly or indirectly out of .....any breach or non observance by the Tenant of the covenants conditions or other provisions of this Lease".
29. Having carefully considered the papers before it, and without there being any statement of case evidence or response having been provided by the Respondent, the Tribunal concluded that there was no evidence that any of the administration charges expenditure was unreasonable, and that the administration charges demanded were reasonable.
30. Demands for administration charges must be accompanied by a notice summarising a tenants rights and obligations before they become payable. The particular wording and other requirements are specified in the Administration Charges (Summary of Rights and Obligations) England Regulations 2007 (SI2007/1258) ("the Administration Charges Regulations").
31. Under paragraphs 4(3) and 4(4) of Part 1 of Schedule 11 to the 2002 Act a tenant can withhold payment of an administration charge if the Administration Charges Regulations have not been complied with and the provisions of a lease relating to non payment or late payment of administration charges do not have effect in relation to the period for which the tenant withholds the payment.
32. It was not clear to the Tribunal whether the requirements of the Administration Charges Regulations have yet been complied with.
33. The Tribunal having found that service charges demanded and the administration charges demanded were both reasonable felt that it was appropriate to exercise its jurisdiction under paragraph 9 of the Fees Regulations and that the Respondent should repay to the Applicant the LVT fee.

### **The Order**

34. The Tribunal therefore finds that subject to compliance with both the Service Charges Regulations and the Administration Charges Regulations, insofar as they have not already been complied with, the Respondent is liable to pay to the Applicant the sum of £2,906.87 in payment of the service charges demanded and the administration charges demanded for the period 1st April 2008 to 15th April 2010 and which sum includes reimbursement of the whole of the LVT fees paid by the Applicant.

**Date**

28<sup>th</sup> July 2010

**Signed**

**Chairman:**

JM GOING

JMG/REN005-1/15.7.2010 Decision Flat 4 39 West Cliff