7142

Residential Property TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 SECTION 27A

Ref: LON/00BB/LSC/2011/0285

Flats 1-5, 34 Earlham Grove, E7 9AW

Ms Venessa Jones (Flat 1)
Ms Monica Anand (Flat 2)
The Liquidator of Sterling Assets Limited (Flat 3)
Ms Omowunmi Adeniyi (Flat 4)
Mr T. Hamilton (Flat 5) **Applicants**

Seamoat Limited **Respondent**

Tribunal:	Mr M Martynski (Solicitor) Mr T Johnson FRICS Ms S Wilby
Hearing:	30 & 31 August 2011
Present at hearing:	Ms V Jones, Ms M Anand (Applicants) Mr S Tucker (Legal Support Administrator, BLR Managing Agents)

DECISION

Decision summary

1. Only the sums set out in the schedule attached to this decision are payable by the Applicants.

2. The Respondent is to pay to the Applicants the sum of £500.00 being the fees that they have paid to the Tribunal in these proceedings.

3. The Respondent is not permitted to add its costs of these proceedings to any service charge charged to the Applicants.

Background

4. The Applicants are the leaseholder owners of the five flats in 34 Earlham Grove ('the Building') which is a converted Victorian house.

5. All the Applicants were represented at the hearing by Mesdames Jones and Anand with their consent. The liquidator of the third Applicant specifically confirmed that it wished to be a party to the proceedings.

6. The Respondent has been at all material times the freehold owner of the Building. The Building has been managed (at the material times) on the Respondent's behalf by three agents; first Basicland Registrars Limited, then Temple Property Consultants Limited and finally (and at the time of the hearing) BLR Property Management Limited ('BLR')[1].

7. The Application before the Tribunal challenged service charges levied by the Respondent for the years 2001 to 2010 and the estimated charges for 2011. The service charge year for the Building is the calendar year. All the service charges levied/estimated for all years in question and the amount of those charges found reasonable and payable by the Tribunal are set out it the table at the end of this decision.

The issues and the Tribunal's decisions

Insurance

8. There were two objections to the insurance premiums charged over the years. The first objection was that the premiums were simply too high. To support this challenge, the Applicants relied upon a quote (valid until 13/2/2011) obtained from Aviva Insurance UK Limited. The essentials of the insurance provided by that quote and provided by the policy obtained by the Respondent for 2011[2] are set out below:-

Insurance risk/excess	*Applicants' quote*	*Respondent's 2011 policy*
Buildings	£500,000	£628,750
Common Parts Contents	£25,000	£25,000
Alternative Accommodation	33% of buildings sum	20% of buildings sum
Property Owners Liability	£5 million	5 million
Employers Liability	None	10 million
Excess for damage	£100	£250.00
Excess for subsidence	£1,000	£1,000

[1] In fact BLR is the same company as Basicland Registrars Limited under a different name

[2] This policy in fact runs from 25 December 2010 the cost is included in the 2010 service charge year

9. The above summary does not cover all the risks covered by the quote and the policy, it only deals with the main risks. Both the policy and the quote seen by the Tribunal contain a number of other of heads of cover and restrictions. There was no recorded claims history for the Building that was likely to affect a premium.

10. The quote (including terrorism cover and IPT) was for £1,035.41. The premium for the 2011 policy was £2374.95.

11. Mr Tucker, on behalf of the Respondent, argued that the additional cost of the policy over the quote was due to a number of reasons. First, the Respondent insured the Building as part of its portfolio. The insurance therefore had to, and did, include a wider range of risks than perhaps a private homeowner would wish to cover. This was so as to provide adequate security across the Respondent's portfolio. Further, it was argued that a freeholder insuring a portfolio had no effective control as the occupation of its properties and therefore was unable to benefit from property specific factors such as a property only being occupied by owner-occupiers. The Respondent made the point that it was, as a matter of law, entitled to insure the Building as part of its portfolio and that it is entitled to recover the costs of the policy obtained through a single broker even if that meant that premium payable by leaseholders was higher than they could achieve by just insuring a single building through alternative insurers.

12. Whilst the Tribunal accepts the law as stated above, upon closer examination of the Respondent's 2011 policy and in contrast to Mr Tucker's statements about the wide range of risks to be covered, it contained a number of restrictions, examples of which are:-

- The premises to be maintained in a good state of repair (the Building is in and has been for many years in a poor state of decoration and repair)
- No trees within 10 meters of the building (the Building has a number of trees in the front and rear garden, those in the front are certainly within 10 meters, some at the back may be within this distance)
- No more than 10% of the block of flats to be insured is ever left unoccupied
- Flats not to be let furnished, not let as student accommodation, DSS referrals or short-term leases

13. Mr Tucker, in trying to explain the above restrictions, said to the Tribunal that the broker would give specific details of each property to the insurer. There was no evidence of this in the papers before the Tribunal. The policy shown to the Tribunal clearly gave the risk address as the Building and so it was difficult to see how these exceptions did not apply.

14. The Tribunal considers that the policy quoted for and relied upon by the Applicants can be compared with the Respondent's insurance policy in force for the year 2011 and can be used to assess the reasonableness of the premium for the Respondent's policy.

15. As to the differences in the buildings reinstatement value, the difference between the amount of the insurances is not likely to increase the premium greatly. The Respondent obtained an insurance valuation for the Building in 2009, that valuation was £419,000. Explaining and justifying the actual amount of insurance (£628,750)[3] Mr Tucker for the Respondent stated that

[3] In the Respondent's policy, the Building's declared value is £503,000

iii. has failed to make it clear to leaseholders that they are using associated companies to carry out works and services at the Building for which leaseholders pay through the service charge (the Tribunal does not consider the fact that there may be reference to these sister companies on BLR's website to be sufficiently clear notice) (a breach of paragraph 12.3 of the Code)
iv. has been involved in the levying of unreasonable service charges (as per the decisions made by this Tribunal)
v. demand and collect service charges not in accordance with the terms of the lease and without the agreement of leaseholders (the lease provides for service charges to be collected on the 25th March, they are in fact demanded for and collected in January and July)
vi. failed to show objectively that it obtains best value for money in its use of contractors and professionals. BLR, at least so far as the Building is concerned, uses exclusively its sister companies, C2 Maintenance Limited and HR Surveyors in respect of works and professional services. Mr Tucker argued in the case of C2, that this company, having so much business from BLR, and being able to sub-contract so much work (C2 appeared to carry out any works maintenance given to it from tree surgery to plumbing and so would need to use outside contractors) could obtain best value from the companies and individuals that it used to carry out works. In the case of HR Surveyors, Mr Tucker argued that there was a long relationship with this company and its surveyor and BLR had to use a Surveyor that it could rely on; the consequences of getting an inadequate service from a Surveyor could be very serious for BLR and leaseholders. It was further stated that using sister companies meant that the Respondent could benefit from extended payment periods. (That benefit it seems to the Tribunal is one for the Respondent alone, not the leaseholders). Mr Tucker was unable to demonstrate any method used for testing the market and the competitiveness of these companies. The Tribunal does not accept that any agent need be tied to just one firm of surveyors. Further, in the Tribunal's view there was some evidence that these companies did not provide good value for money (more on this later in the decision).

27. The actions and failure of BLR and its predecessor, in failing to properly maintain the Building and in the misappropriation of payments made on account for works, have gone beyond mere failings of management and have positively caused loss and upset to leaseholders. Ms Jones gave evidence (producing in support a mortgage valuation) that her flat has dropped in value below the price she paid for it due, she alleges, to the poor condition of the Building.

28. Balanced against the above is the fact that a managing agent does provide basic services. For example, there are accounts for all years in question in this application. Some minor repairs and other works have been organised. Bank accounts have been maintained and service charge demands have been issued (albeit not in accordance with the terms of the lease). Although there were no inspection records, there was evidence from a letter dating from 2009 that a property manager had been to the property and had ordered some works.

29. The management fees from 2001 to 2006 amounted to no more than £164.50 (including VAT) per flat per year. That level of fee is at the very lower end of the scale for fees of this kind and recognising the basic tasks that were carried out, the Tribunal makes no reduction for these years.

30. For the later years, 2007 onwards, the fees increase to a level from £205 per flat per year in 2007 to a fee of £312 in 2011. The Tribunal finds that the only fee payable for these years is a basic £150.00 plus VAT per flat per year for the reasons given above.

31. The Tribunal notes that for the years 2009 onwards, BLR makes charges for, in addition to its management fee, bank charges and postage and stationery charges.

32. A question was raised by the Applicants in their written submission as to whether the leases[5] allowed for the employment and payment of managing agents. The leases clearly do allow this. The relevant clause in the leases is 5.(2)(e).

Electricity to common parts

33. According to the Applicants, the only electricity used in the common parts of the Building (which consist of a hallway, stairs and landings) are three strip lights (this was not contested by the Respondent). These lights, according to Mesdames Jones and Anand, are on a timer so that they automatically turn off a certain amount of time after being switched on. The charges for common parts electricity are within reasonable ranges up until 2008 when they increase to £509.41. They then increase to £1372.96 the following year and for 2010 they are £524.33.

34. The reason for the varying amounts (agreed by the Respondent) is that for a considerable amount of time, bills were not being sent to the right address for BLR. Bills were therefore going unpaid and penalty charges were being accrued. This resulted in there being much higher figures for electricity in these later years.

35. In order to try and assess what a reasonable charge for electricity is at the Building, the Tribunal looked at three bills where the readings for the periods in question were actual as opposed to estimated. The amount of electricity used for the periods July to October 2007, October 2007 to January 2008 and January 2010 to April 2020 was 246, 160 and 115 units respectively. The charge per unit in these periods was at its highest 0.1727. The bills for those periods (including standing charges but net of VAT of 5%) were £43.25, £36.30 and £69.14. Using these figures, the average amount per quarter is £49.56. Adding VAT to this brings the figure to £52.03. That average quarterly figure produces an annual figure of £208.15. One has to bear in mind that electricity prices have been subject to sharp fluctuations in recent years but it seems to the Tribunal that a figure of around £200 per year for three strip lights in the Building is about right.

36. The Tribunal applied this figure of £200 per year to all the years 2001 to 2010 which would give a total charge of £2,000. This method clearly favours the Respondent as the figures

[5] The Tribunal was told that all leases are in the same form

for the years 2001 to 2005 (when presumably there were not any problems with billing) are all well under £200 per year. The actual charges for these years in the accounts amount to a little over £3,000. On looking at the various bills supplied covering the years in question, the Tribunal found penalty and interest charges for late payment amounting to in the region of £500.

37. The failure to ensure that bills are received and paid in a timely manner is clearly a failure of management. The lessees should not have to pay for these failings. Following on from the above, the maximum charge for the actual electricity used would have been £2,500 for the period 2001 to 2010 (that is taking a total charged to the lessees of £3,000 and deducting £500 for penalty charges). Therefore the Tribunal has found that a maximum of £2,500 is payable for electricity 2001-2010 and has made adjustments for the later years accordingly. A reasonable estimate for electricity for 2011 is £250.00.

Gardening

38. The only figure challenged at the hearing was the sum of £2012.50 charged for the year 2009. The invoice is from C2 Maintenance Limited and is in respect of gardening to the front and rear gardens at the Building carried out in July 2009.

39. It is clear from a photograph on a surveyor's report in August 2009 that work was carried out to the front garden as that photograph clearly shows the trees in the front garden having been severely cut back. The Applicants disputed that any gardening had taken place. As to the back garden, the Applicants produced photographs dating from May 2010. Those photographs showed overgrown vegetation taller than a man standing in the garden. Both leaseholders present at the hearing stated that until they had paid themselves for the back garden to be attended to in July 2011, no gardening had ever been done there and the garden had been left to grow wild. They argued that the growth shown in their photographs from May 2010 was much more than would have grown between July 2009, when the gardening was supposed to have taken place and May 2010. Ms Adeniyi, the leaseholder of flat 4, sent a witness statement to the Tribunal claiming that gardening was never done in 2009 as claimed.

40. The quote for the works to the back garden included the reduction of three lime trees[6]. The leaseholders present at the hearing were unable to comment as to trees in the back garden and whether or not they may have been worked on.

41. As for the Respondent, there was no inspection report to confirm that the work was carried out. The Respondent produced an email dated 9 July 2009 from C2 Maintenance to BLR stating, in relation to '*clearance and garden works*' that '*I can confirm both works complete*'.

42. The Tribunal concludes that the works to the front garden were done and that there is no evidence to suggest that the works to the trees in the back garden were not carried out. The Tribunal is however satisfied from the evidence of the leaseholders described above that the rest of the back garden was not attended to properly.

[6] The invoice confirms the work was done as per the quote

43. The leaseholders at the hearing stated that the work that they had carried out to clear the back garden in July 2011 cost £900.00. Allowing for the fact that the 2009 work included work to the front garden and the trees in the back garden but not (or not properly) other areas of the back garden the Tribunal finds that of the £2012.50 claimed for the work, only the sum of £1,400 plus VAT (total £1645.00) is payable.

44. For 2011, the sum of £750.00 has been budgeted for gardening. Mr Tucker for the Respondent agreed that this sum was not now necessary given that the leaseholders had paid themselves to have the back garden cleared very recently.

Repairs and maintenance

45. The sum challenged was an invoice for £289.80 dated 5 August 2009 for the fitting of a light with a sensor at the basement area. The leaseholders argued that, as at 2011, the sensor did not work.

46. The Tribunal finds this sum to be payable. There is no evidence that at the time, the work was not carried out reasonably and at a reasonable cost.

Cleaning

47. The sum challenged was an invoice for £130.00 dated 23 July 2009 for cleaning of a carpet. The leaseholders produced a photograph of parts the carpet taking in 2010 showing those parts to be in a poor condition and torn. They argued that as the carpet was in such a poor condition, it needed to be replaced, cleaning it was pointless.

48. The Tribunal finds this sum to be payable. There is no evidence that at the time the work was not carried out reasonably and at a reasonable cost. The carpet at that time may have been in a better condition the time of cleaning.

49. Despite objections from the leaseholders, the Tribunal finds the estimate for cleaning for 2011 to be reasonable at £300. Whilst the common parts may require redecoration rather than cleaning, it is reasonable to provide for some cleaning which could include cleaning of windows or the disposal of rubbish.

Risk assessment report

50. The sum challenged was an invoice for £528.75 from HR Surveyors dated 7 April 2010 for producing a risk assessment report.

51. There was no doubt that it was reasonable to obtain such a report. The report involved the completion of a pro-forma form. The cost of the report is at the highest end of the range for a report of this kind. There was no evidence of any saving being achieved by the use of this sister company by BLR. However, the Tribunal finds this sum to be payable. There is no evidence that the report was not carried out reasonably and at a (just about) reasonable cost.

Insurance revaluation

52. The sum challenged was an invoice for £460.00 dated 24 August 2009, again from HR Surveyors for undertaking an insurance revaluation report.

53. Again, there was no doubt that it was reasonable to obtain such a report. Again, the cost of the report is at the highest end of the range for a report of this kind. There was no evidence of any saving being achieved by the use of this sister company by BLR. However, the Tribunal finds this sum to be payable. There is no evidence that the report was not carried out reasonably and at a (just about) reasonable cost.

Additional management fee

54. The budget for 2011 includes a provision for additional management fees of £250.00 to cover the work involved in taking action dealing with the deficit on the service charge account which now runs to several thousand pounds.

55. Clearly there may well be much additional work for the agents to do in sorting out this deficit. Whose fault this deficit is may be the subject of further argument. However for the present, the Tribunal finds that this provision is reasonable and payable as a payment on account.

Professional fees for major works

56. HR Surveyors carried out an inspection and produced a schedule of works for the Building in December 2009. The cost of this was £575.00. That cost was reasonable for the work done.

57. HR Surveyors then go on to charge £1768.08 for '*Preparing the requisite tender documents, forwarding copies of the same to Managing Agents and contractors and generally keeping all parties advised....Taking instructions from property management agents to prepare requisite contractor agreements*'.

58. The process of the major works reached the stage where leaseholders had been consulted (in accordance with the statutory requirements), tenders had been received from contractors and the successful contractor chosen. The works did not proceed due to the funding issues referred to earlier in this decision (i.e. the fact that leaseholders argued that they had already made payments on account in 2004).

59. After producing the specification therefore, the only work carried out by HR Surveyors was the sending out of a simple pro-forma tender document, the consideration of tenders liaising with managing agents and preparing, what must be, a standard contractor agreement. It has be borne in mind that the works being tendered, as per the specification, amount to no more than decoration and minor external repairs. Nothing has been produced to the Tribunal to suggest that a fee for this work of the amount claimed can possibly be justified. The Tribunal finds that only 50% of the sum claimed is payable.

Professional fees for inspection and report

60. Following a report of possible damp from Ms Jones in Flat 1, BLR instruct HR Surveyors to visit the flat and report. Ms Jones says that the surveyor was at the property for no more than a few minutes. After the visit the surveyor writes (what in reality amounts to) a one page simple letter concluding that the problem is one of condensation rather than damp. The invoice for this work dated 7 April 2010 amounts to £360.96.

61. Mr Tucker stated that the Surveyor's hourly rate was £125.00. He could not have been engaged on this matter any more than one hour. The rest of the charge can only be accounted for by travel from his base in NW9 to the Building in E7. There is no evidence here of any cost saving by the use of this sister company. Ms Jones produced evidence that a damp proof company would have come out and assessed the matter with no charge.

62. There is no doubt that this fee was unreasonably incurred. A more local surveyor could have been used or a damp proofing company could have been used at a much reduced cost. The Tribunal finds that only 50% of this cost is payable by the Applicants.

Administration fees

63. Disbursements of £88.15 were claimed by BLR in 2010 for obtaining details from the Land Registry as to the leaseholder's interests in the properties. Had proper records been kept by the agents over the years, there would be no need to pay for this information from the Land Registry and so this cost was not reasonably incurred.

Health and safety inspection fee

64. A sum of £450.00 has been estimated for 2011 for a further risk assessment report. Given that such a report was carried out in 2010 and redecoration and repair works are due to take place at the Building, a risk assessment report on the Building will not be necessary for 2011 and the sum is not therefore payable.

Reserve fund

65. Some leaseholders complained about sums being demanded from them individually for a reserve fund. There is no provision in the lease for such a fund and therefore demands for payments towards a reserve fund are not payable by leaseholders.

Payments by leaseholders in 2004

66. As referred to earlier in this decision, there is ample documentation to show that Temple Property Consultants planned to carry out works of external decoration and repair. The Tribunal saw a specification of works in respect of this and a letter from Temple to leaseholders dated 4 March 2004 advising of tenders received and announcing that the total costs of the works would be £17,316.56 (£3463.31 per leaseholder). The Tribunal was shown accounts sheets for flats 1 & 3 from Temple clearly showing that those leaseholders had paid their share of the costs of the work. Ms Anand of flat 2 says that she paid a similar sum and believed that all leaseholders at

the time had paid their shares. There was however no other proof of payment other than as stated from flats 1 and 3.

67. The Applicants argued that the sums that they paid in 2004 in respect of these works should be taken into account by the Tribunal and set-off against any other service charges found payable.

68. The Tribunal has no doubt that flats 1 & 3 and probably other leaseholders paid significant sums towards the cost of works as described above and that those works have yet to be carried out. However, the Tribunal does not consider that it has the jurisdiction to set these sums off against the amount of other service charges found payable by the Applicants. It appears to the Tribunal that, in the absence of agreement, the proper forum for the dispute over the sums paid is the County Court. In any event, the leaseholders' main remedy in any action in further proceedings may be for an injunction forcing the Respondent to carry out the works that have been paid for rather than for a set-off or return of amounts paid.

Costs and fees

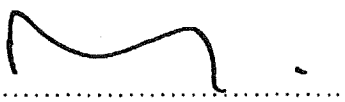
69. There is no doubt that the Applicants have been substantially successful in this application and that they have 'won'. The Tribunal has found that very significant amounts of money are not payable.

Tribunal costs

70. It is appropriate to order that the Tribunal fees of £500.00 paid by the Applicants be repaid to them by the Respondent within 28 days of the date of this decision.

Respondent's costs of these proceedings

71. For the same reasons the Tribunal considers that the Respondent should be prevented from putting its charges (said to be £800.00 plus VAT by Mr Tucker) on to the service charge. Accordingly an order pursuant to section 20C Landlord and Tenant Act 1985 is made that none of the costs incurred to date by the Respondent in connection with this application are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.



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Mark Martynski
Tribunal Chairman
8 September 2011

TABLE OF SUMS CLAIMED AND FOUND PAYABLE

The figures in square brackets are the sums found by the Tribunal to be payable – if there is no figure in square brackets, the sum shown as claimed is the sum payable

Expenditure headings	**11**	**10**	**09**	**08**	**07**	**06**	**05**	**04**	**03**	**02**	**01**
Accountancy fees	300.00	195.60	186.29	173.66	169.00	176.25	79.31	76.38	73.44	70.50	64.63
Insurance	3200.00 [1920]	2374.95 [1400.00]	3172.05 [1903.50]	2883.68 [1730.21]	2645.74 [1587.45]	2495.34 [1497.20]	2161.08 [1296.64]	2161.03 [1296.68]	2042.46 [1225.47]	1707.80 [1024.60]	2146.22 [1287.73]
Management fees	1560.00 [900.00]	1410.00 [900.00]	1150.00 [881.25]	1028.12 [881.25]	1028.12 [881.25]	822.50	793.13	763.75	734.38	705.00	705.00
Electric to common parts	500.00 [250.00]	524.33	1372.96 [872.96]	509.41 [412.81]	68.80	254.68	115.68	56.77	70.74	54.43	68.80
Gardening	750.00 [nil]	440.63	2012.50 [1645.00]					820.00		850.00	1090.00
Repairs & Maintenance	1500.00		1309.85	280.00	10.00	260.00	335.00	351.42	203.86	105.75	265.00
Cleaning	300.00		138.00								
Postage and stationary	50.00	13.00	13.00								
Bank charges	50.00	13.00	13.00								
Insurance claims										200.00	
Fire risk assessment		528.75									
Insurance re-valuation			460.00								
Non-contractual management fees	250.00										
Survey fees		575.00									
Health & Safety fees	450.00 [nil]										
Professional fees		2129.04 [1064.52]									
Roof works			253.00								
Administration fee		88.15 [nil]									
Refuse collection			149.50								