



HM Courts  
& Tribunals  
Service

7887.

LEASEHOLD VALUATION TRIBUNAL  
Case no. CAM/00KC/LSC/2012/0030

Property : 1 Acacia Villas,  
Icknield Street,  
Dunstable,  
Beds. LU6 3AE

Applicant : Darryn Lewis

Respondent : Acacia Villas Freeholders Ltd.

Date of Application : 14<sup>th</sup> March 2012

Type of Application : To determine reasonableness and  
payability of service charges

The Tribunal : Bruce Edgington (lawyer chair)  
David Brown FRICS MCI Arb

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## DECISION

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1. The Tribunal finds that the amounts claimed on account of service charges for the years 2011/12 and 1012/13 to be reasonable and payable by the Applicant.
2. No order is made pursuant to Section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") preventing any costs of representation in these proceedings being included within any future service charge.

### Reasons

#### Introduction

3. The subject property is a basement flat in a block of 8 flats. The maintenance provisions as set out in the documents provided for the Tribunal seem to cover these 8 flats and also 2 freehold houses. The Tribunal has no idea how the contributions from the freehold owners are calculated but all the lessees, including the Applicant, seem to accept the regime.
4. From correspondence seen by the Tribunal from 2007, when the Applicant appears to have bought his property, it seems that the freeholder was then the Respondent company. The leases provide for a management company (Primeopen Property Management Ltd.) to undertake the maintenance of the building and collect a service charge with each of the lessees being a shareholder. For some reason which is not clear the management company referred to in the leases is said to have "ceased" but the freeholder then set up Maple Leaf 65 Ltd. as the new management company with each lessee being a

shareholder.

5. There is no indication in the papers about the liability of Maple Leaf 65 Ltd. to any party as this company is not mentioned in the lease but as sales and purchases of flats presumably continue, one must infer that purchasers' conveyancers satisfy themselves about this.
6. The Tribunal was also provided with a copy of an Order made by Deputy District Judge Quin in the Luton County Court on the 28<sup>th</sup> February 2012 which has stayed a claim being made by the Respondent and Maple Leaf 65 Ltd. against the Applicant. The stay is on the basis of the Applicant bringing matters to this Tribunal for determination. The Tribunal has been given no idea as to exactly how much has been claimed in that court action.
7. This application is in respect of the years 2011/12 and 2012/13. A subsequent letter written to the Tribunal on the 23<sup>rd</sup> March 2012 identifies his Application to be in respect of claims for payments on account of service charges as follows:-

"£800 for unexpected/unallocated – 2011/2012 Accounting Year  
£737 for unexpected/unallocated – 2012/2013 Accounting Year  
£1,600 Surplus in final account (no explanation) – 2011/2012 Accounting Year"

He also asks why the external decorating costs (agreed as reasonable at £2,725) were not taken from the reserve fund.

8. The Applicant makes the statement that the lease does not provide for claims to be made for unexpected/unallocated amounts and he is therefore not liable to pay his one eighth share of these claims.
9. The Respondent's reply is to say that the leases do make provision for a contingency fund to be kept and that the majority of the decorating costs were taken out of reserves which were then exhausted.
10. A Procedural Directions Order was made on the 20<sup>th</sup> April 2012 timetabling this case to a determination with the filing of evidence etc. It expressed the opinion that this case could be dealt with on a consideration of the papers without an oral hearing. If the parties agreed, then no decision would be made before 23<sup>rd</sup> May 2012. This was subsequently extended until 30<sup>th</sup> May. The parties were told that if either wanted an oral hearing, one would be arranged. No request for an oral hearing was made.

### **The Lease**

11. The Tribunal was shown a copy of the original lease. It is dated 15<sup>th</sup> January 1990 and is for a term of 99 years from the 29<sup>th</sup> September 1989 with an increasing ground rent. It was of some concern to the Tribunal that part of the 4<sup>th</sup> Schedule was quoted by the Respondent in its reply to the application as being from a "later lease". The quote was not the same wording as in the lease for the subject property. All the Tribunal can do is consider the terms of the lease provided to it.

12. There are the usual covenants on the part of the landlord to insure the building and for the management company to maintain the structure of the property and the common parts. Clause 3(a)(ii) is a covenant by the lessee to pay the service charge in accordance with the 4<sup>th</sup> Schedule. Under clause 5(l) the management company is required:-

*"To set aside (which setting aside shall for the purpose of the Fourth Schedule hereto be deemed an item of expenditure incurred by the Company) such sums of money as the Company shall reasonably require to meet such future costs as the Company shall reasonably (sic) expect to incur of (sic) replacing maintaining and renewing those items which the Company have (sic) hereby covenanted to replace maintain or renew".*

13. Thus, the Applicant's assertion 'that the lease does not provide for claims to be made for unexpected/unallocated amounts' is partially true in the sense that the Company cannot just stockpile money without explanation. However, what is clear is that there is a positive obligation on the company to set money aside for future anticipated outgoings.

### **The Law**

14. 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 landlord's costs of management which varies 'according to the relevant costs'. Relevant costs includes estimated costs to be incurred.
15. 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 so, whether it is payable.

### **Conclusions**

16. As it is only payments towards the sinking fund which are being challenged by the Applicant, it is relevant to set out the history of this from the papers. The Tribunal has been shown a copy of the accounts prepared by Holmes Wild LLP, accountants, for the year ending 31<sup>st</sup> March 2011 which show a "provision for future maintenance activity" of £1,600. The same accounts show a 'nil' balance in the 2010 accounting year for this fund.
17. These accounts also show a figure for "cash at bank and in hand" of £3,146. However, this must not be confused with a sinking fund. It undoubtedly includes that figure of £1,600, but the maintenance of a building does need cash to pay for such things as insurance and other potentially large items of expenditure. A prudent property manager should never start off a year with a nil bank balance. Bearing in mind the level of expenditure involved in managing this building, a 'working' bank balance in the region of £1,500 (£3,146 - £1,600) would appear to be reasonable in the view of the Tribunal.
18. The draft account provided by the Respondent for the year up to 31<sup>st</sup> March 2012 is also in the bundle provided for the Tribunal. This shows an actual expenditure of £8,588 to include the exterior decoration costs of £2,725. The management company has then added a contribution to future anticipated

expenditure of £1,000 making a total claim of £9,588. The old contingency fund of £1,600 has then been deducted to partly offset the exterior decoration costs leaving a balance due of £7,988 less ground rent and the contributions from the freehold house owners.

19. As to the amount of the contingency or 'sinking' fund, the Respondents say that they anticipate redecorating the outside every 4 years. The last cost was £2,725 and there was not enough in the fund to cover this. They want to build up a reserve to cover this expenditure and any other substantial expenditure anticipated. It seems clear that they want to build up a fund of £4,000 over 4 years to cover the next exterior decoration bill and other items such as internal decorations, replacement of guttering and car park improvements.
20. As a general point, a sinking fund is a good thing to have. Many old leases do not allow for them at all. The lease seen by the Tribunal imposes a positive obligation on the management company to reserve moneys for future expenditure and this is what the company is doing and it is clear what the reserve is for. Having said that, the company should comply with the Royal Institution of Chartered Surveyors' 'Service Charge Residential Management Code'. This says that whilst it is prudent to make provision in the reserve fund for unexpected items of expenditure, future contributions in respect of such provision must have regard to the total amount of the reserve fund in hand at the beginning of each year.
21. In this case, the Tribunal has noted that there have been well attended meetings of leaseholders for each of these two years and they have collectively agreed on the figures albeit with the Applicant apparently disagreeing either at the time or subsequently. The Tribunal has also noted the very clear deduction of the reserve fund of £1,600 from the cost of external decoration work in the draft 2012 account.
22. In the circumstances set out in the evidence provided and using the Tribunal's considerable knowledge and experience, it is the decision of the Tribunal that the amounts claimed from the Applicant are reasonable and payable. As a matter of comment only, it is unfortunate that the Applicant did not take his own accountancy advice because his misunderstandings clearly arise from an incorrect interpretation of the accounts and budgets.
23. As far as costs are concerned, the Applicant asks for an order that no part of the Respondent's costs of representation in these proceedings should be collected from the lessees as part of any future service charge. There has been little merit in this application and the Tribunal declines to make such an order.
24. The Respondent also asks for its expenses to be paid by the Applicant. This is more difficult. The only occasion when the Tribunal has the power to make such an order is if, in its opinion, a party has acted frivolously, abusively, vexatiously or otherwise unreasonable in connection with the proceedings themselves and, as a result, the other party has been put to additional expense. This does not mean that an order will be made if a party is found to have acted generally in that way. It has to be behaviour in connection with the actual proceedings before the Tribunal. In this case, a lessee is entitled to ask a Tribunal to decide whether a

service charge – to include an estimate of future expenses – is reasonable and payable. The Applicant has not crossed that very high threshold in this case and no order will therefore be made.

25. The Tribunal notes that the Applicant has said that he will pay towards the Respondent's expenses and it is hoped that he will honour his offer. Clearly bridges need to be built between the parties.

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**Bruce Edgington**  
**Chair**  
**7<sup>th</sup> June 2012**