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**HM Courts
& Tribunals
Service**

**LEASEHOLD VALUATION TRIBUNAL
Case no. CAM/00KF/LSC/2011/0158
and CAM/00KF/LSC/2012/0013**

Property : **25 Lovelace Gardens,
Southend-on-Sea,
Essex SS2 4NT**

Applicant : **Westleigh Properties Ltd.**

Respondent : **Mr. Yusif Shohet (first floor flat)
Howard Spencer Slowley (ground floor
flat)**

**Date of receipt from
Willesden County Court** : **23rd November 2011 (first floor flat)**

**Date of receipt from
Southend County Court** : **31st January 2012 (ground floor flat)**

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

The Tribunal : **Bruce Edgington (lawyer chair)
Stephen Moll MRICS
David Cox**

**Date and venue of
hearing** : **6th March 2012
Southend Magistrates Court, Victoria Avenue,
Southend-on-Sea, Essex SS2 6EU**

DECISION

1. The Tribunal finds that in respect of the amount claimed by the Applicant from the Defendant Yusif Shohet in the Willsden County Court under case no. 1UC03941, the following are reasonable and payable. There are 2 bundles of documents and the page numbers have (G) and (1) after them to denote the bundles relating to the ground floor flat and the 1st floor flat respectively:-

<u>Date</u>	<u>Detail</u>	<u>Claim(£)</u>	<u>page</u>	<u>Decision(£)</u>
y/e Sept. 2006	insurance	406.07	127(1)	reasonable
y/e Sept. 2006	managing agent	235.00	128-131(1)	176.25 is reasonable

y/e Sept. 2006	interest	(1.16)	124(1)	agreed credit
y/e Sept. 2006	paid	(547.12)	51A(1)	agreed credit
y/e Sept. 2007	insurance	436.18	118(1)	reasonable
y/e Sept. 2007	managing agent	235.00	119-122(1)	176.25 is reasonable
y/e Sept. 2007	interest	(2.85)	115(1)	agreed credit
09.03.09	historic arrears ch.	220.60	47(1)	withdrawn
y/e Sept. 2008	fire risk ass.	176.25	31(G)	not payable
y/e Sept. 2008	insurance	471.04	34(G)	reasonable
y/e Sept. 2008	managing agent	293.76	111-113(1)	176.25 is reasonable
y/e Sept. 2008	interest	(1.80)	31(G)	agreed credit
10.10.08	historic arrears ch.	220.60	47(1)	withdrawn
y/e Sept. 2009	insurance	402.80	65(1)	reasonable
y/e Sept. 2009	managing agent	311.38	97-103(1)	172.50 is reasonable
y/e Sept. 2009	accountancy	23.50	102(1)	unreasonable
04.08.10	interest	125.39	47(1)	withdrawn
05.08.10	arrears recovery	293.75	47(1)	withdrawn
29.09.10	ground rent	100.00	47(1)	nil – no jurisdiction
10.01.11	interest	79.96	47(1)	withdrawn
10.01.11	arrears coll. ch.	180.00	47(1)	withdrawn
Sub-total		3,158.98	46(1)	
y/e Sept. 2010	insurance	400.89	64(1)	nil – not part of claim
y/e Sept. 2010	managing agent	235.00	85-89(1)	“
y/e Sept. 2010	accountancy	23.50	90(1)	“
y/e Sept. 2010	bank charges	6.00	91(1)	“
y/e Sept. 2011	insurance	415.86	63(1)	“
y/e Sept. 2011	managing agent	240.00	74-76(1)	“
y/e Sept. 2011	accountancy	24.00	77(1)	“
y/e Sept. 2011	bank charges	6.00	78(1)	“
		4,510.23		

The amount of service charges and administration charges which are therefore payable by Mr. Shohet amount to £1,864.41 plus ground rent of £100 and excluding any costs fees and interest which the court may award. That part of this matter is now transferred back to the Willesden County Court to enable either party to apply for any further order dealing with any matter not covered by this decision including enforcement, if appropriate.

- The Tribunal finds that in respect of the amount claimed by the Applicant from the Defendant Howard Spencer Slowley in the Southend County Court under case no. 0SS01203, the following are reasonable and payable:-

<u>Date</u>	<u>Detail</u>	<u>Claim (£)</u>	<u>page</u>	<u>Decision (£)</u>
y/e Sept. 2009	fire risk ass.	176.25	31(G)	unreasonable
y/e Sept. 2009	insurance	471.04	34(G)	reasonable
y/e Sept. 2009	managing agent	293.76	97-101(1)	172.50 is reasonable
y/e Sept. 2009	interest	(1.80)	31(G)	agreed credit
09.03.09	historic arrears ch.	89.00	3(G)	withdrawn
12.10.09	arrears rec. ch.	287.50	3(G)	withdrawn

09.11.09	interest	98.11	3(G)	withdrawn
26.10.10	arrears ch.	<u>176.25</u>	3(G)	withdrawn
		1,590.11	2(G)	

The amount of service charges and administration charges which are therefore payable by Mr. Slowley amount to £641.74 excluding any costs fees and interest which the court may award. That part of this matter is now transferred back to the Southend County Court to enable either party to apply for any further order dealing with any matter not covered by this decision including enforcement, if appropriate.

- The Tribunal makes an order under Section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") preventing the Applicant from recovering its costs of representation before this Tribunal from the Respondents as part of any future service charge.
- The Tribunal does not make any other order with regard to costs or fees.

Reasons

Introduction

- In 2011 the Applicant, as freeholder of the building of which the properties form part, issued proceedings in the Southend County Court against the long leaseholders of the property claiming £1,590.11 from Mr. Slowley in the ground floor flat and £3,160.74 from Mr. Shohet in the first floor flat in 'service charge and ground rent payments' plus the court fees and interest pursuant to the County Courts Act 1984.
- The Respondents filed 'defences' which do not actually amount to legally arguable defences. They are in similar terms and admit that ground rent and service charges are payable under the terms of the leases but the remainders just assert that the Applicant is put to proof of the claim and say that the amounts claimed are not payable. Requests are made for the claims to be transferred to a Leasehold Valuation Tribunal.
- By order of District Judge Ashworth at Southend County Court dated the 27th January 2012, Mr. Slowley's dispute was transferred to this Tribunal for determination. By order of District Judge Wright at Willesden County Court dated 14th November 2011, Mr. Shohet's dispute was similarly transferred.
- The Applicant was ordered to file and serve a statement justifying the claim. As to the administration fees called variously 'historic arrears charges', 'arrears recovery', 'arrears collection' etc., the Applicant was ordered to say how these fees were calculated. As to interest claims, the Applicant was ordered to say on what basis such charges were made when the leases did not provide for interest to be collected. A statement from Ben Day-Marr MIRPM from the managing agents, Gateway Property Management ("Gateway") dated the 8th June 2011 appears in the bundle of documents provided for the Tribunal.

9. The statement was not particularly helpful because it did not set out in clear terms what was actually being claimed. It also did not set out how any of the administration charges claimed have been calculated, and it did not seek to justify the interest claims.
10. The next direction was that the Respondents must identify which service charges they were actually challenging and what they would consider to be a reasonable figure. There is a statement from Mr. Shohet dated 26th January 2012 with accompanying documents and a statement from a Mr. P.M. Beech which seems to be an analysis of previous LVT decisions and a submission amounting to his opinion on the merits. As Mr. Beech is neither an expert witness nor a witness of fact, it is difficult to see the relevance of this statement.
11. Solicitors representing Mr. Slowley have written to confirm that he adopts the case put forward by Mr. Shohet. That case is, essentially, that all charges are excessive, that Section 47 of the **Landlord & Tenant Act 1987** ("the 1987 Act") has not been complied with and, in particular, the insurance premiums are excessive. It is a pity that the insurance issue was not raised before because the Tribunal would have issued directions to ensure that any alternative suggested premium was comparing like with like.
12. As to insurance, Mr. Shohet says that he would pay £225.00 on receipt of a proper demand for payment. He produces a quotation from MMA dated 24th January 2012 for £418.45 for a building consisting of 2 flats. Mr. Slowley also produced 2 insurance quotations in one document from Drayton Insurance Services but this does not suggest that this is for the property in question. The insured amount, at £187,000 is very low and the quotations are £213.63 and £251.33 but there is no information as to who the insurer is or details of the cover. To clarify, £187,000 is probably a reasonable estimate of the value of the building but it is well known that a terraced property has to be insured for more than this to reflect the fact that if a terraced property burns down there is usually much collateral damage and access for repairs is often an expensive problem. Mr. Shohet's quotation shows an insured amount of £234,000 which is much more realistic.

The Inspection

13. The members of the Tribunal inspected the front of building in which the two flats are situated in the presence of Mr. Day-Marr and a colleague. Also present were the Respondents and Mr. Beech. The Tribunal was able to go into the small communal hallway but the only way to see the rear of the property is through either flat and access could not be obtained.
14. The property is a mid-terraced converted house of part rendered brick construction under an interlocking concrete tiled pitched roof at the front. There is also a porch with a pitched, tiled roof. What the rear of the property looked like or was constructed of could not be seen.
15. The front windows appeared to have uPVC frames. The woodwork, particularly

to the gable end over the windows at the front, was in a poor decorative state. At the hearing the Respondents said that the ground floor flat is one bed-roomed and the 1st floor flat is two bed-roomed. Both are sublet.

The Lease

16. The Tribunal was shown a copy of the counterpart leases of both flats. The lease to the flat on the first floor is dated 18th July 1988. The lease is for a term of 125 years from the 25th March 1988 with an increasing ground rent. The lease to the ground floor is dated 28th October 1994 upon the same terms.
17. There are the usual covenants on the part of the landlord to maintain the structure of the property and to insure it and for the lessees to pay half the cost each of doing this as a service charge. The insurance provisions (clause 4(3)) allow the landlord discretion as to risks to be covered.
18. Of relevance to the issues in this case, the service charge provisions include the ability of the Applicant landlord to recover "*all legal and other proper costs incurred by the Lessor*" in the running and management of the building and the enforcement of covenants against both lessees. There is no contractual obligation to collect interest on late payments of service charges.

The Law

19. 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'.
20. 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.
21. Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") provides for the same conditions and jurisdiction with regard to administration charges which are defined as including payments demanded in addition to rent "*...in respect of a failure by the tenant to make a payment by the due date to the landlord...*".
22. Section 47 of the 1987 Act says that the landlord's name and address must be in any demand for payment of service charges or administration fees. If it is not, then such charge or fee is not payable. However, the name of the landlord is given in the demands seen by the Tribunal. The bundles of documents include copies of the Land Registry titles which are public documents and include the address of the Applicant as Kingsridge House, 601 London Road, Westcliff-on-Sea, Essex.
23. In the Upper Tribunal (Lands Chamber) case of **Staunton v Taylor** LRX/87/2009, decided on the 9th August 2010, the President said, at paragraph

23, *"It seems to me quite clear, however, that by the time of the LVT hearing.....the appellant had been given notice of the landlord's name and address. He was in no doubt that the claim was being pursued by the respondents and he had received correspondence from them as landlords. Since, therefore, the information had been furnished, under section 47(2) the amount demanded was no longer to be treated as not due"*.

The Hearing

24. The hearing was attended by those who had attended the inspection. Mr. Beech was asked whether he was representing the lessees and he said that he was not. However, during the course of the hearing he sought to ask questions and make representations on behalf of the Respondents. The Tribunal did not stop him because it did not want the Respondents to feel that their cases were being compromised. However, Mr. Beech should not expect such generous treatment in the future. If he wishes to establish himself as a representative, he needs to say so at the outset and then actually represent the party he seeks to represent rather than just join in the hearing as an additional spokesman. This causes confusion and takes unnecessary time.
25. Mr. Day-Marr immediately withdrew his client's claims for arrears charges and interest charges which then left the claims for management fees, insurance, accountancy fees and the fire risk assessment. As far as insurance was concerned, this is arranged by Lorica Insurance Brokers who had been asked to attend the hearing by Mr. Day-Marr and had not done so. The members of the Tribunal had in fact seen some evidence filed in another recent case where Westleigh Properties Ltd. were the landlords and this evidence was to the effect that this landlord insured with a portfolio policy, that the efforts to test the market were 'sparse', that they received a commission of 25% of the premium and that they dealt with all claims handling for this commission.
26. As to management fees, this Tribunal has dealt with this issue on a number of occasions recently with this landlord and with the managing agents involved i.e. BLR and Gateway after the handover in 2009. Mr. Day-Marr said that he did not want to add anything to his written statement. As to the fire risk assessment, the only 'evidence' of this was in the BLR computer print out. As Mr. Day-Marr had produced invoices for all the other charges now being pursued, it was odd that he had produced neither an invoice nor a risk assessment report for this item.
27. The Respondents spoke for themselves and relied, in effect, on the written representations they had put forward. Mr. Slowley, in particular, had been irritated because a county court judgment had been registered against his name because the court proceedings had been addressed to the property when he had told the managing agent that he did not live there. His tenant was abroad for the majority of the time which is why he had known nothing about the court proceedings. The judgment had now been set aside but this had obviously involved him in time and effort and expense.
28. On the question of the breach of Section 47 of the 1987 Act, it was Mr. Day-

Marr's case that they always used a 'care of' address because beforehand it had not been unknown for lessees to bang on the door of a landlord on a Sunday morning to complain about things. He thought that a 'care of' address was acceptable because of his experience in discussing this matter with colleagues when the law was introduced. He used Subsection 47(1)(b) and Section 48 to support his position because those provisions enabled a 'care of' address to be used where the landlord was not in England and Wales.

Conclusions

29. The first matter to deal with is the payability of the service charges and any administration fees bearing in mind the claimed breach of Section 47 of the 1987 Act. The demands for these fees contain the name of the landlord but not its address. They say that the address of the landlord is care of the address of the managing agent. The purpose of Section 47 appears to be to ensure that a lessee knows who is claiming service charges etc. and there is an address for service. On the face of it, it could be said that the information in the demands is sufficient to satisfy this intent.
30. However, Section 47 is clear in its wording. It is the landlord's address which must be stated, not that of a third party, even if it is the managing agent. Therefore, unless the Applicant can satisfy the Tribunal that the addresses of the 2 managing agents involved are the registered office or a trading address of the Applicant, then Section 47 is not complied with. It has not so satisfied the Tribunal. Accordingly, when the court proceedings were issued in both cases, nothing was due. In view of the principle decided in **Staunton v Taylor** (above), this defect has now been corrected.
31. As to Mr. Day-Marr's comments about Subsection 47(1)(b) and Section 48, these are provisions which apply exclusively to landlords not within the court's jurisdiction and require an address to be given within the jurisdiction. With respect to him, this is a different purpose and cannot somehow put a gloss on the express requirement to provide the landlord's name and address if that address is within England and Wales.
32. If the arrears charges and interest had not been withdrawn, the knock on effect of this is that all such 'charges' for non payment are not payable because, at the time they were levied, there was nothing payable. For the avoidance of doubt, however, even if there had been something payable, the Tribunal would not have decided that these amounts were payable. Firstly, interest is not payable under the terms of the leases. Secondly, the fees allegedly payable are not 'costs' as would be necessary to make them payable under the terms of the leases. They are just arbitrary amounts added to the account by way of a penalty. Credit control and writing reminders are all part of the management fee particularly, as in this case, where the managing agent does not have to worry about insurance.
33. In respect of the first floor flat claim against Mr. Shohet, the Applicant has attempted to collect service charges which are not claimed in the court proceedings. The court only has the power to transfer a 'question' to an LVT for

determination. The 'question' in both cases is the reasonableness and payability of service charges and administration fees claimed by the Applicant from the respective Respondents. The court has ultimate control over the case and it is not possible for the Tribunal to make decisions on issues which are not raised within the court proceedings.

34. As far as the fire risk assessment fee is concerned, there is no evidence apart from the BLR printout that such a survey was carried out. There was some evidence from Mr. Slowley that because his long term tenant is out of the country so much, it would have been impossible for any risk assessor to get into his flat. The landlord is seeking to justify the claim and has not produced sufficient evidence to satisfy the Tribunal, on the balance of probabilities, that this fee was actually incurred.
35. As far as insurance premiums are concerned, this had not been mentioned in the Respondent's defence to the court proceedings and the Tribunal only came to know about any dispute when it saw the hearing bundle. The Respondents produced what they said were competitive quotes but it was difficult for the Tribunal to be sure about this. The Tribunal used its own considerable knowledge and experience. Its view is that whilst the insurance premiums have historically been on the high side, the current binding case law dictates that they are within the bounds of reasonableness and are allowed in full. The case law is clear on this topic i.e. landlords can use portfolio policies and they do not have to obtain the cheapest quote. As long as they test the market on a reasonably frequent basis and obtain the insurance during the normal course of business, the premium is recoverable, even if a lessee could obtain cheaper insurance.
36. The Tribunal was not entirely happy about the way in which Lorica tests the market. However, the fact is that history seems to show that portfolio policies are more expensive than policies which can be obtained on an individual basis. The case law establishes that portfolio policies are approved by the courts and until someone challenges this, Tribunals are bound to accept this general principle. The Tribunal can also take judicial notice of the fact that the insurance market is volatile as the existence and success of price comparison websites makes clear.
37. As far as managing agents are concerned, there is very little outward appearance of this property having been properly managed for some years. Mr. Day-Marr did not try to persuade the Tribunal that there had been any active management or that any works were in hand. However, management is not only a matter of keeping the property in good decorative order and repair. There are a large number of statutory responsibilities imposed on a landlord for the protection of lessees and a managing agent has to undertake these. They are not immediately obvious to lessees but they do mean that staff have to be employed and costs have to be incurred as part of a regime designed to protect lessees from past generations of greedy landlords.
38. A firm of managing agents in the Southend area would, in the Tribunal's

experience, expect to recover in the region of £175-225 per flat per annum plus VAT as a management fee. This assumes a reasonable level of management including preparing legible and understandable documentation and accounts which appear to have been sadly lacking in this case, particularly from BLR.

39. As BLR has not, in this Tribunal's view, come up to the standards which a landlord could expect for a reasonable managing agent, the Tribunal decides that a reasonable fee in this particular case is £150 per annum per flat plus VAT. The lessees should not have to pay a hand over fee. If the landlord wants to pass over management from one agent to another, it is his responsibility to pay any fee incurred.
40. Taking all these matters into account, the Tribunal decides that whilst £200 per annum per flat plus VAT would be reasonable for a properly managed property, there is evidence in this case of management which was not as thorough as it should have been. Gateway has not undertaken an asbestos survey and does not appear to have any plans to sort out exterior decoration of any other work which may be needed to the rear of the property. This may well have been due, in part, to the problems encountered by Gateway in trying to catch up with the management of the freeholder's stock of property following problems in the past. However, this is the freeholder's problem and any additional cost or lack of service should not have to be borne by the leaseholders.
41. Thus, the Tribunal finds that £150 per flat per annum plus VAT is reasonable for Gateway as well. The figure for 2009 is slightly less than the earlier figures to reflect the reduction in VAT to 15% during this period. The dates do not tally exactly, but the Tribunal considers that the overall figure is fair. As far as the accounting fees are concerned, it seems that these charges are from Gateway for the preparation of very simple accounts and are really no more than an additional management fee. They are unreasonable.
42. As to the bank charges, the lease only provides for actual management expenses to be charged. Mr. Day-Marr did not provide any evidence that any specific bank charges have been allocated to this property and if such charges had been included in the court proceedings, such charges would not be 'payable' under the terms of the lease.
43. This does not, of course, prevent the Applicant from trying to convince the county court that fees, expenses and interest are payable within the court proceedings. However, it should be emphasised that in view of the initial non compliance with Section 47 of the 1987 Act, no monies were payable at the commencement of the court proceedings and no fees and costs of such proceedings or statutory interest should be payable.
44. Finally, the Tribunal comes to the question of costs. Both sides are guilty of poor preparation. The Respondents are guilty of not showing their 'hand', particularly with regard to the challenge over the insurance premiums until the very last minute. The leases do provide for the lessees to pay any costs

incurred by the landlord to enforce the lease terms. However, in view of the fact that the major concessions were not made by Gateway until the hearing itself and the Tribunal has felt it necessary to deduct a substantial part of the claims, an order is made in accordance with Section 20C of the 1985 Act preventing the landlord from including its costs of representation before this Tribunal within any future service charge demand. It considers this to be just and equitable in the circumstances.

45. As to the Respondents' claim for costs as set out in Mr. Shoheh's letter of the 7th February, the Tribunal does not accept that the landlords actions in connection with this application have been 'vexatious' as claimed. No order is made in this regard.

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Bruce Edgington
Chair
7th March 2012