

**RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL**

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**Residential
Property
TRIBUNAL SERVICE**

LANDLORD AND TENANT ACT 1985 ('the 1985 Act')
Re: 2-8 Althelstan Road, Cliftonville, Margate, Kent CT9 2BF
Case Number: CHI/29UN/LSC/2011/0128

DECISION AND REASONS

Applicant	Ms S. Tamiz (Landlord)
Representation	Mr A. Redpath-Stevens of counsel (instructed by Judge and Priestly, solicitors) with Mr L. Perry of Prospects Managing Agents
Respondent	Mrs H. Bedford (leaseholder)
Representation	In person
Hearing Date	19 January 2012
Inspection Date	19 January 2012
The Tribunal	Professor James Driscoll, LLM, LLB Solicitor (Lawyer Chair), Ms Carolyn Barton BSc, MRICS and Mr Peter Gammon MBE, BA
Decision Date	18 April 2012

Decisions summarised	<ol style="list-style-type: none"> 1. None of the costs referred to in the invoices submitted by TML are recoverable as service charges 2. The reasonable costs of employing managing agents is the sum of £150 per flat 3. The costs of the works undertaken Fireguard were reasonably incurred 4. The leaseholder's share of the costs is the sum of £63.25 5. In lights of these determinations the landlord may only recover interest of the sums that have been determined by the tribunal as reasonable 6. Under section 20C of the Act recovery of the landlord's legal costs is capped at £500
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Introduction

1. The tribunal convened on 19 January 2012 to consider two applications for determinations of service charges in relation to Flats 5 and 6 at Althelstan Road, Cliftonville, Margate, Kent. In the event the application concerning Flat 5 was settled on the morning of the inspection which took place prior to the hearing later that day. As a result we had to deal only with Flat 6 and Mrs Bedford who is the leaseholder of that flat. The landlord is Mrs Tamiz.
2. The leaseholder does not live in the premises as she owns the flat as an investment and it is occupied by an assured shorthold tenant.

3. This application follows a county court claim brought by Mrs Tamiz claiming that the leaseholder owes her £2,716.58 in service charges (including interest). She (the landlord) also seeks costs including the court fee. The proceedings started in the Northampton County Court but were later transferred to the Clerkenwell & Shoreditch County Court. On 24 August District Judge Stary ordered the transfer of the claim to this tribunal (under claim number 1XZ70849).
4. We were told that there have been other proceedings between the landlord and some of the leaseholders including an application for a manager to be appointed under the provisions in Part II of the Landlord and Tenant Act 1987.
5. For this application and following transfer by the court, this tribunal gave directions on 17 October 2011 and fixed a hearing date for 19 January 2012. A bundle of documents was prepared by the landlord's solicitors. The bundle includes a copy of the lease, various invoices, copies of correspondence and emails, as well as papers relating to the transferred court proceedings. The lease requires the leaseholder each service charge year to pay an interim maintenance charge of £400 and a maintenance charge representing 1/26th of certain expenditure and 1/10th of other expenditure. These service charges relate to the landlord's covenants in relation to insurance, repairs, common parts and so on.
6. The explanation for the two sets of service charges is as follows. The building is described by the parties as being in two phases. Phase I, which contains Flat 6, consists of 10 flats all of which have been sold on long leases. There are 16 flats in phase 2 which are retained by the landlord and let under assured shorthold tenancies. Thus the leaseholders in phase 1 contribute equally to the landlord's recoverable costs of that section of the building and they contribute to overall costs incurred by the landlord in relation to the whole building.
7. These matters are contained in the 6th Schedule Part 1 which are set out on page 20 of the lease and refer to a 1/26th share of repair and decoration of the structure of the whole building and in the 8th Schedule, a 1/10th share of costs as defined relating to Phase 1 only - that is to say flats 1 - 10. The latter included at paragraph 9 the costs of employing a 'Managing Agent or Surveyor'.
8. The terrace in which the subject flat is situated may originally have comprised a series of 4 storey town houses, but the subject section has been converted into 26 self contained flats. The development is divided into 2 sections - Phase 1/Block 1 (end terraced) on the Northern side contains flats 1 - 10 and Phase 2/Block 2 (mid terraced) contains flats 11 - 26. The latter section is believed to have been a hotel at some time in the past and more recently converted to flats.

The inspection

9. On the morning of the hearing the tribunal and its case officer, accompanied by the landlord (and her son Mr P. Tamiz), her counsel, Mr Parry (managing agent), the leaseholder and her husband (Mr Clearly) carried out an external inspection of the building containing the flat, including the communal rear yard area and the paved area at the front. The internal

communal areas of both sections of the development (phases 1 and 2) were also inspected by all the parties.

10. Althelstan Road is in a well-established and densely developed part of Margate and the property numbered 2 - 8 is built at the northern (seaside) end of it. The building is arranged over four storeys, including lower ground floor accommodation, and it comprises part of a terrace of generally similar property. The walls are of brick construction and the roof structure is of pitched, ridged and gabled design, with interlocking concrete tile coverings. Windows in the building are of the replacement uPVC framed double glazed type construction. We were told that 7 of the flats in the development are held on long leases and the remainder are retained by the Applicant.
11. There are sets of steps up from the pavement on Althelstan Road at the front of the building to communal entrance doors at raised ground floor level. These lead to communal stairways and hallways serving flats in the separate parts of the building. There is also a shared pedestrian right of way to the left hand (northern) side of the building which allows access to a paved enclosed yard or patio area to the rear of the flats comprising phase 1. There are communal bin storage facilities in this area.
12. The front boundaries to Althelstan Road comprise ornamental concrete block-work walls with coping stones on top and there are paved areas within these boundaries to areas in front of the lower ground floor windows.
13. The internal communal areas are covered in carpet and there are communal lights and fire alarm systems. The stairways have painted timber bannisters installed. However, the carpet is threadbare and sections of the bannisters are missing. There is also damage and cracking to the internal walls of the landing area adjacent to the entrance door to Flat 6. There are also signs of damage to the door frame to Flat 6 itself. There were also the remains of electrical wires apparent to hallway walls at high level which were said to have served a CCTV survey system. The managing agent explained that this had been removed by occupants of the flats shortly after it had been installed.
14. The exterior of the property was found to be in generally fair order only, as there was some pooling of water on the pavings at the rear, and many of the gutters were leaking, some were blocked and overflowing, and others were poorly fixed.
15. Flat 6 is a 2 bedroom split level flat at first floor level and at the rear of the Northern section of the block (that is phase 1). It is currently tenanted and was not inspected internally by the tribunal.
16. The exterior of the building both front, back and left hand side, the communal rear yard area and the paved areas at the front were inspected by the tribunal and we also inspected the communal internal areas in the adjoining phase 2 of the development.

The application

17. It is common ground that the claim relates to charges the landlord says she incurred during the service charge year 2009 to 2010 (the service charge year runs from March to March the following year). The leaseholder paid the interim charges but takes issue with many of the specific service charge items as she contends are not supported by invoices.
18. At the hearing counsel for the landlord produced a spread sheet showing the service charge items which have been agreed and those that remained in dispute. The following matters remained in dispute:
 - a. The management charges
 - b. All invoices relating to works and services undertaken by a company by the name of TML
 - c. The costs of works to the blocked drains
 - d. Fire safety costs
19. The remainder which included the costs of insuring the building, the costs of supplying electricity to the common parts, certain repairs to the exterior of the building, the legal fees, the costs of using a surveyor and the costs of using an accountant are not in dispute. As these matters were agreed we did not have to make determinations as to the reasonableness of those charges.
20. The parties agreed with that the ground rent element in the landlord's claim is not within the jurisdiction of the tribunal.
21. The hearing took place at the premises of Canterbury Christ Church University in Broadstairs, Kent. The landlord was represented by counsel and her managing agent and members of her family were also present. Her sister Mrs Lloyd also attended in the afternoon of the hearing. Both the landlord and Mrs Lloyd gave evidence and counsel prepared a schedule showing the items in dispute. Mr Tamiz also spoke about his involvement with the property. The leaseholder gave evidence. Both she and counsel made closing submissions.
22. The leaseholder is generally dissatisfied with the standard of maintenance and conduct of the landlord in managing and administering affairs at the block. She adds that Mrs Tamiz spends a lot of time out of the UK. The main area of dispute were the costs of a number of items relating to cleaning and repairs said to have been undertaken by a company by the name of TML. According to the leaseholder the company does not exist and she alleges there are no authentic or valid invoices for these items.
23. Both the leaseholder and her sister gave us the following account in oral evidence on the circumstances under which these items arose (summarised also in a statement prepared by her solicitors dated 9 January 2012 included in the bundle starting at page 185). The leaseholder also elaborated on her doubts as to the authenticity of the receipts.

24. Mrs Lloyd clarified matters relating to the statement she signed on 9 January 2012. She told us that she and her husband (Mr Terry Lloyd) had owned a post office in Margate for some 22 years until late 2009. From 2004 they rented a space in the post office to a Mr Ron Bradford who ran a business from the premises called 'Care in the Community' employing staff who carried out building and maintenance work in the local community.
25. Later, her sister that is the landlord, met Mr Bradford and asked him to carry out works at Althelstan Road. When he carried out the works either Mrs Lloyd paid him or the landlord did. She added that Mr Bradford arranged for one of his employees named 'Robert' to undertake the works.
26. Mrs Lloyd told us that when her sister is abroad she paid Mr Bradford. She did this sometimes by handing him cash and sometimes by writing him a cheque or a combination of both. Her sister would then reimburse her for this on her return. Mr Bradford did not give her any receipt for these payments. However, Mr Bradford, who she says maintains a book keeping system would later give her an invoice from TML. 'TML' are the initials for her husband's name (that is Mr Terry M. Lloyd). She confirmed that the address on these invoices is the address of the property she and her husband live in.
27. She recalls receiving a letter dated 11 November 2011 from the leaseholder seeking information on TML. On 23 November her husband received a telephone call from the leaseholder's husband and a further call on the same date. They also had a visit from the leaseholder's husband on 10 November 2011 making enquiries. She says that she found this distressing. She has had no contact with Mr Bradford for many years. He left the post office and for a time rented a space in a local taxi company. He no longer rents this space and she is unaware of his current whereabouts.
28. Ms Tamiz told us that her sister's account for the payments when she is abroad is accurate. On other occasions when she was presented with a bill for works she would also pay either in cash or cheque or a combination of both (or whatever suited Mr Bradford). She does not know of Mr Bradford's current whereabouts either. She denied that this way of paying for some of the works is in any way unsatisfactory.
29. On other matters Ms Tamiz told us that she considered the works and services for which the leaseholder has been charged are of reasonable quality. She also told the tribunal that many of the flats are sublet and that many or most of the tenants are in receipt of benefits and that in her experience they are often poorly behaved and that there have been complaints of excessive noise. In addition she alleges that some of the tenants have damaged both the internal and the external common parts.
30. The leaseholder also gave oral evidence in which she elaborated on the matters set out in her statement a copy of which is contained in the bundle starting at page 22. Appended to this statement are various invoices and the total number of pages runs to 161. She made several allegations, many of them serious. For example, she told us that she does not accept that there is a company called TML. Neither she nor her husband have found such a company registered either with a business name, nor as a registered company.

31. She also alleges that two invoices for works carried out by a company called Fireguard (London) Limited are forgeries. In support of this allegation (which in answer to our question she agreed are serious allegations) she spoke to a Mr Milton, the managing director of the company, on 27 May 2011. She says that he told her that the two invoices were false and he sent her duplicate invoices which he told her are genuine.
32. Copies of the invoices from Fireguard (London) Limited appear on pages 41 to 50 of the bundle whilst copy invoices from TML appear at pages 52 to 58 of that bundle. We note that the TML invoices contain no names or any registration details. Their address is given as the address of the home occupied by Mr and Mrs Lloyd. Nor do any of these invoices contain full particulars of the works or services.
33. In submissions counsel for the landlord urged us to determine that the charges made by TML were reasonably incurred even though he accepted that there are shortcomings in the documentation. The leaseholder proposes that there is insufficient evidence of this expenditure being incurred.
34. Despite the valiant submissions by counsel we prefer the leaseholder's contentions. We reach this conclusion for several reasons. First, there are no receipts for the cash and cheques the landlord said were handed to Mr Bradford. Whilst we have no reason to doubt the veracity of the evidence given at the hearing or in their statements by the landlord and her sister, the explanation for how this expenditure was incurred is far from the expectations one should have for a professional landlord who has appointed both managing agents and solicitors to advise her.
35. They are unable to produce proper receipts and we consider this to breach the very spirit of the provisions in the Landlord and Tenant Act 1985 as they were amended by Part 2 of the Commonhold and Leasehold Reform Act 2002. We also consider that this failure to keep proper accounts with receipts is in breach of the RICS code on leasehold management ('Service Charge Residential Management Code, 2nd ed). In other words, there is no proof that these items of expenditure were actually incurred. In these circumstances we have little alternative but to determine that these charges claimed are not recoverable as service charges. Thus the charges claimed for the costs of cleaning, communal repairs, lighting repairs, paving, letterboxes, and two sets of works to blocked drains are not recoverable as service charges.
36. We turn next to the Fireguard invoices dispute. Neither party was able to give us a convincing explanation for the complications with these invoices. The leaseholder alleges that some of these are fabrications or forgeries. She was unable in our view to fully substantiate these most serious allegations. As counsel for the landlord pointed out, although the landlord produced a statement purportedly from Mr Milton of the company this could not be validated and indeed contained information that led us to question his integrity. However, the allegations could not be substantiated and that we did not have direct evidence in the form of a witness from Fireguard who could be cross examined on the matter. On the balance of probabilities we do not think that the leaseholder has proved that any of these documents are forgeries. We therefore determine that these costs were reasonably incurred and recoverable in full from the leaseholder.

37. Turning to the managing agents, their services are charged out at a rate of £200 plus VAT per flat, although the VAT element is not expressed on their invoices. We were told that there is no contract in place and the managing agents work on an open-ended verbal agreement. The leaseholder questioned exactly what she got for her money and disputed that proper management oversight was being undertaken by the managing agent.
38. The tribunal notes that the managing agents have had to deal with problems arising from the behaviour of some of the tenants who are subletting. However, they do not appear to have done much else and they have had a limited role in managing the property. We determine that a reasonable charge is £150 per flat.
39. The other matter relates to the blocking of drains. The leaseholder argued that her contribution should not be 1/10th but should be 1/26th. We examined the lease (including the sixth schedule, Part II) and determined that it should be 1/10th and that she should pay £63.25 as these are costs occasioned under paragraph 1(b).
40. The landlord is entitled to recover interest if rents and other sums are unpaid (see paragraph 6 of the lease (at page 4 of the lease). The actual sums claimed will have to be recalculated in light of these decisions.
41. Those advising the landlord should prepare revised statements (mainly reductions) of the charges on the basis of our determinations. We express the hope that these figures can be agreed so that there will no longer be the need to incur additional costs by this matter being transferred back to the Court. If, however, such an agreement cannot be made the matter will have to be returned to the Clerkenwell & Shoreditch County Court for further action.
42. On the issue of costs and section 20C of the Act we have concluded that no order should be made under section 20C. The landlord was entitled to be legally represented. However given our determinations we have decided that it would only be reasonable to allow the landlord to recover a maximum of £500 in her professional costs. However, we make no findings as to whether there is power in the lease to recover costs.

Signed

JAMES DRISCOLL, LLM, LLB, Solicitor

Lawyer Chair

20 April 2012