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**HM Courts  
& Tribunals  
Service**

**LEASEHOLD VALUATION TRIBUNAL**

**Sections 19 and 27A of the Landlord and Tenant Act 1985 (as amended)  
("the Act")**

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| <b>Case Number:</b>                         | <b>CHI/00ML/LIS/2012/0067</b>  |
| <b>Property:</b>                            | <b>Second Floor Flat<br/>15 Goldsmid Road<br/>Hove<br/>East Sussex<br/>BN3 1QA</b>   |
| <b>Applicants:</b>                          | <b>Simon Spencer<br/>Margaret Rodney<br/>Lindsay Pickles</b>   |
| <b>Respondent:</b>                          | <b>Mr Wayne Russell</b>  |
| <b>Date of hearing</b>                      | <b>11<sup>th</sup> January 2013</b>  |
| <b>Tribunal:</b>                            | <b>Mr R T A Wilson LLB (Lawyer Chairman)<br/>Mr N Cleverton FRICS (Surveyor Member)<br/>Mr T Sennett MA MCIEH(Professional Member)</b> |
| <b>Date of the<br/>Tribunal's Decision:</b> | <b>29<sup>th</sup> January 2013</b>  |

## Application

1. The application had been transferred to the Tribunal by the Brighton County Court to make a determination under S.27A of the Act of the Respondent's liability to pay service charges for service charge years 2009, 2010, 2011 & 2012.

## Summary of Decision

2. The service charges recoverable by the Applicant are as follows (credit being allowed for any monies paid by the Respondent towards his service charge liability for these periods):

| Year | Amount payable |
|------|----------------|
| 2009 | £2,254.06      |
| 2010 | £1,367.44      |
| 2011 | £792.21        |
| 2012 | £3,198.29      |

## The Lease

3. The Tribunal had before it a copy of the lease for Flat 4 dated 9<sup>th</sup> January 1986 and was told that there were similar leases for the other three flats in the building. The lease is for a term of 99 years from the 25<sup>th</sup> December 1984 with an annual ground rent of £50 rising.
4. The relevant provisions in the Lease relating to service charge may be summarised as follows:
  - (a) The Respondent is liable to pay 27.10% (this figure being calculated by reference to the rateable value of the flat) of the annual total expenditure incurred by the landlord in the performance of its obligations as landlord under the Lease and in particular in the performance of its maintenance and insurance obligations set out in clause 5(5) of the lease.
  - (b) On-account interim service charge payments based on an estimate of expenditure for the year are payable by the Respondent on the 25<sup>th</sup> June and 25<sup>th</sup> December in each year.
  - (c) As soon as practicable after the end of each accounting period, the Applicant or their agents shall send the Respondent a signed certificate containing the following information (a) the amount of the total expenditure for the accounting period, (b) the amount of the interim charge paid by the Respondent in the previous year together with any surplus from the previous accounting year (c) the amount of the service charge for that year and of any excess or deficiency of the service charge over the interim charge.
  - (d) If the service charge so calculated exceeds the interim charge paid, the Respondent shall pay the excess within 28 days of service of the certificate.

## Inspection

5. The Tribunal inspected the subject property immediately before the hearing in the presence of the parties. It comprises an inner terrace Victorian building arranged over three floors and basement and now converted into 4 flats, one on each floor. The exterior is painted stucco with a rendered façade in reasonable decorative condition. The windows are all of a wooden variety with bays to the front save for the lower ground floor flat which has UPVC windows. There is a balcony to the first-floor flat and a small front garden appears to be part of the freehold not part of any flat. The Tribunal's attention was drawn to the following defects:-
  - a. The interior of the flats all of which were affected by water penetration,
  - b. The hand rail on the entrance steps,
  - c. The condition of the front garden,
  - d. The condition of the balcony serving the first-floor flat.

## Representation, Evidence and matters to be decided.

6. Ms Pickles represented the Applicants, assisted by Margaret Rooney the owner of the lower ground floor flat and Simon Spencer the owner of flat 3. Mr Russell represented himself at the hearing.
7. The evidence was largely oral as the Respondent had failed to properly comply with the directions of the Tribunal. The documentary evidence consisted of the County Court pleadings, service charge accounts for 2009, 2010, 2011 & 2012 with copies of supporting invoices, and a statement from Mr Russell filed shortly before the hearing and a response to that statement from the Applicants.
8. After the Tribunal had explained to the parties the extent of its jurisdiction, the Respondent accepted that there were just three items of expenditure which he challenged and that all the other items of expenditure set out in the accounts and contained in the hearing bundle were agreed by him. Accordingly the Tribunal heard evidence from the parties in respect of each contested item and its findings are set out below.

## The Law

The relevant parts of the provisions in the Act are as follows:

### **18. Meaning of "service charge" and "relevant costs".**

*(1) In the following provisions of this Act "service charge" means an amount payable by a 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 landlord's costs of management, and*

*(b) the whole or part of which varies or may vary according to the relevant costs.*

*(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*

(3) For this purposes—

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

**19. Limitation of service charges: reasonableness.**

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

**20B. Limitation of service charges: time limit on making demands.**

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

**20C. Limitation of service charges: costs of proceedings.**

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

**27A. Liability to pay service charges: jurisdiction**

(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 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.

*(2) Subsection (1) applies whether or not any payment has been made.*

*(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—*

- (a) the person by whom it would be payable,*
- (b) the person to whom it would be payable,*
- (c) the amount which would be payable,*
- (d) the date at or by which it would be payable, and*
- (e) the manner in which it would be payable.*

*(4) No application under subsection (1) or (3) may be made in respect of a matter which—*

*(a) has been agreed or admitted by the tenant ...*

*(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*

## **The Evidence**

9. The Respondent complained that he had not been sent annual accounts, which set out with any clarity the payments that he had made during the challenged years. In particular a payment of £500 had not been properly credited to his account for some four months. He also contended that when he had acquired the flat there had been a balance in his favour, which the Applicants had not given him credit for.
10. In respect of the challenged items he contended that the garden charges incurred in 2011 were excessive. The standard of the work had been poor and the work had not been carried out in accordance with the agreed specification. In addition the contractors had charged the freeholders for parking fees, which was unusual. Bearing in mind the poor standard of workmanship he considered that a charge of £50 was more than adequate for the work carried out.
11. He challenged the work carried out to the door closure mechanism in the year ending 2012 on the grounds that the freeholders had been charged for labour twice and that the service charge account should receive a credit of £160.
12. He further challenged the cost of the new external guard railings on the basis that they did not comply with building regulations, were poorly designed and were dangerous. He considered £185 was more than sufficient for the work carried out and he invited the Tribunal to reduce his liability accordingly.
13. The Applicants accepted that the work to the garden was not satisfactory and for that reason the Applicants had secured a reduction on the quotation for the work, which had been £299. In the event the total amount paid was £173.71 which they contended was reasonable for the work carried out. The Applicants estimated that two people had been engaged on the garden for a day and a half.
14. The Applicants did not accept that the new railings were in breach of building regulations. They told the Tribunal that the building officer had attended the property on two occasions in the last year and had not raised any issues with the railings although it was fair to say that the attendance was in respect of other issues. The

Applicants agreed that they would have liked to have had the new railings to be of Victorian style but the cost would have been in excess of £2,000 so was not a viable option. They pointed to the railing next door which was very similar in design and invited the Tribunal to uphold the figure of £460.

15. The new door closure had been fitted to ensure that the door was not accidentally left open and to improve traffic flow through the building. The work included fitting a new door closing mechanism, cleaning the locks, fitting a wider letterbox and a new draft flap. This is why the amount paid had exceeded the tender supplied by the Respondent for the original work. The Applicants contended that the price paid was fair and there had been no double charging. They invited the Tribunal to uphold the full amount charged to the service charge account.
16. The Applicants denied that the annual accounts were inconsistent or unsupported by invoices. The Respondent was invited to the annual meeting every year where he could review the service charge documentation, but he chose not to do so. The Applicants told the Tribunal that as the freeholders were not a limited company there was no obligation to have the service charge accounts audited and it seemed unnecessary for an organisation of their size to go to this expense. They contended that all expenditure tallied with the accounts which had been given to the Respondent and which in turn matched the freeholders bank statements. On being questioned by the Tribunal they confirmed that they had not served on the Respondent a certificate in each year conforming with paragraph 6 of the Fifth Schedule of the lease.

#### **The Determination – General Points**

17. The evidence before the Tribunal suggests that the service charge provisions of the lease have not been properly followed in that the Applicants have not served on the Respondent an annual certificate certifying the amount payable by the Respondent for each year. This certificate together with annual accounts are requirements set out in paragraphs 5 and 6 of the Fifth Schedule of the Lease and are prerequisites of the service charge being recoverable.
18. Having regard to the above the Applicants should take immediate steps to prepare, sign and send service charge certificates for each contested year conforming to the lease provisions whereupon the outstanding sums due from the Respondent will become payable.

#### **The Determination – The challenged items**

19. The Tribunal inspected the front garden and noted the work carried out namely the removal of foliage and the application of a shingle covering. The area is small and the finished product did not, in the judgement of the Tribunal, look very attractive. Nonetheless there is evidence that some work has been carried out to this area and new materials supplied. The Tribunal considers that the final cost of £173.71 paid by the Applicants was not unreasonable and upholds the figure.
20. The Tribunal noted the door closure mechanism and saw that a new letterbox had been fitted. Having scrutinised the invoice for the work, a copy of which was included in the hearing bundle, the Tribunal accepted the Applicant's assurance that there had been no double charging and the Tribunal was satisfied that the overall amount charged of £289.06 was reasonable for the work carried out. The Tribunal noted that the Respondent had raised no issues relating to the quality of the work. The charge is upheld.

21. In respect of the railings the Tribunal noted that quotations for the work were circulated to all lessees with no response being received from the Respondent. The Respondent lead no evidence to support his contention that the rails do not comply with building regulation approval and he adduced no evidence that the price paid was too high. The charges are upheld.

Signed..... **SIGNED** .....  
RTA Wilson LLB (Chairman)

Dated: 29<sup>th</sup> January 2013