

2002

Case Number: CHI/00HG/LIS/2006/0009

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

**FLAT 4
97 STUART ROAD
PLYMOUTH
DEVON
PL1 5LP**

**TRACEY ELIZABETH COURTS
(Applicant)**

and

**BLANTYRE WESTCOUNTRY PROPERTIES LIMITED
(Respondent)**

In The Matter Of

Section 27A of the Landlord and Tenant Act 1985

and in the Matter of

**The Rent Assessment Committee (England and Wales) Leasehold
Valuation Tribunal (Service Charges etc) Order 1997**

**Tenants application for the determination of reasonableness of
service charges for the years 2002, 2003 and 2004.**

**Tribunal
Robert Batho MA BSc LLB FRICS FCI Arb
(Chairman)**

DETERMINATION

Summary Decision

1. This case arises out of the tenant's application, made on 6th May 2006, for the determination of liability to pay service charges for the financial years 2002 to 2004 inclusive. Under Sections 19 and 27A of the Landlord and Tenant Act 1985 (as amended) service charges are payable only if they are reasonably incurred. The Tribunal has determined that, subject only to limited exceptions, the landlord has not demonstrated that the charges in question were reasonably incurred, and so for the most part those charges are not payable by the applicant.
2. The Tribunal allows the tenant's application under Section 20c of the Landlord and Tenant Act 1985, thus precluding the landlord from recovering its cost in relation to the application by way of service charge.

The Application

3. On 6th May 2006, Tracey Elizabeth Courts, the owner of the leasehold interest in Flat 4 97 Stuart Road Stoke Plymouth PL1 5LP, made an application to the Leasehold Valuation Tribunal for the determination of the reasonableness of the service charge costs claimed by the landlord, Blantyre Westcountry Properties Limited of 3rd Floor Suite 41-43 Broad Street Hereford HR4 9AR, for the years ended 31st December 2002, 2003 and 2004. The application referred to a failure on the part of the landlord to provide detailed information relating to the sums claimed and to the apparent unreasonableness of management charges.

Directions

4. Directions were issued on 26th May 2006. These directions provided for the matter to be heard on the basis of written representations only, without an oral hearing, under the provisions of Regulation 13 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003, as amended by Regulation 5 of the Leasehold Valuation Tribunals (Procedure)(Amendment)(England) Regulations 2004.

5. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. It was, in particular, provided (with emphasis added) that

“if the respondents wish to contest this application they shall within 28 days of receipt of the papers referred to in paragraph 3 hereof (the applicant’s statement of case and supporting documentation), send to the applicant and to the Tribunal a statement in writing saying why they contest the application and the reasons why they do so. The respondents should accompany the statement with such copy correspondence, documents or other papers as they consider relevant to the matter as issued. *In particular they shall supply copies of all receipts, invoices, schedules of work and other documents that they wish the Tribunal to see in support of their case.*”

6. Although the landlord’s are seeking payment of service charges, the documentation which they have submitted consists mainly of correspondence, rather than the invoices and other original documents on which their demands might have been based. This determination is made in the light of the documentation submitted in response to those directions.

Ownership and Management

7. 97 Stuart Road is an end of terrace property which has been divided to provide five flats. The freehold was originally held by a Mr and Mrs Dean, but when Miss Courts began the process of acquiring her leasehold interest, in November 2002, the property as a whole was owned by Hickling Property Limited of Brentford in Essex. Ownership of the freehold passed to the present landlord, Blantyre Westcountry Properties Limited, some twelve days before Miss Courts completed her purchase. The property was initially managed for them by Watson Property Management Limited but is now dealt with directly by the landlord.

Miss Courts’ Lease

8. Miss Courts holds Flat 4 under the terms of a lease dated 28th May 1989, which was made between Trevor Clive Dean and Inger Anne Dean as lessor and Alistair Stuart Blaikie as lessee. Clause 3 of the lease provides that

"the lessee shall pay to the lessor a yearly ground rent of £50.00 in advance of the first day of January a proportionate part from the date hereof being paid for the first year"

and clause 4a provides that

"the lessee covenants with the lessor to contribute and pay by way of further or additional rent from time to time one fifth of the costs incurred by the lessor in complying with clauses 7(b) (c) (d) (e) and (g) hereof."

9. Clause 7 provides that the lessor shall require every lessee to whom he shall grant a lease to covenant to observe the regulations which are set out in the third schedule, but otherwise provides that

"the lessor hereby covenants with the lessee that he will (subject to the lessee contributing one fifth of the cost incurred in relation to (b) (c) (d) (e) and (g) of this clause)

(b) maintain repair operate and redecorate

(i) the main structure of the house including the foundations up to and including the damp proof course the main outer walls and the back faced internal plaster to the external face all roofs (including the porch roofs) from the top of the plaster or their adjacent ceilings the gutter rain water pipes soil and vent pipes chimneys (but not the windows window frames and window glass of the house) (and not the external door to the flats in the house)

(ii) the common parts

(iii) the services where they are used by the lessee in common with the lessees of the other flats and (if any) the ventilation and fume flues the television and wireless apparatus of the house

(c) decorate the exterior of the house in 1993 and thereafter in every fifth year of the term in the manner in which the house was previously decorated

(d) pay all outgoings payable in respect of the common parts

(e) comprehensively insure the house for the full insurance value and if required produce evidence that this covenant is being enforced

(f) use all insurance monies received to make good the damage or destruction for which the money has been received

(g) pay any other expenses including VAT or other tax of a similar nature incurred by the lessor in and about the maintenance and proper and convenient management and running of the house and the property including the fees of any managing agents appointed by the lessor in respect of the property PROVIDED that so long as he does not employ managing agents he shall be entitled to add a sum not exceeding 15% to any of the above items for administration expenses.

10. Clause 4(c) of the lease provides that

"as soon as reasonably may be after the end of the year 1989 and each succeeding year when the actual amount of the said costs of the preceding year to that date has been ascertained the lessor shall forthwith pay the

balance due the lessee or be credited in the lessor's books with any amount overpaid"

and Clause 4(d) provides that

"the certificate of the auditors for the time being of the lessor as to the amount due under paragraph (c) of this clause shall be final and binding on the parties."

The Applicant's Case

11. Miss Courts explains in her Statement of Case that, during the pre-contract enquiries which her solicitors undertook as part of the purchase process, it was stated that the service charge payments from the tenant from whom she was purchasing were in arrears to the amount of £579.08, and that the current yearly charge for the year 1st January to 31st December 2002 was £280.00. She says that the full sum of £859.82 was paid off at the time of her purchase and that this was acknowledged by Hickling Properties Limited by their letter of 22nd November 2002.
12. She says that she subsequently received invoices from Watson Property Management in respect of service charge for the year 2002, but queried these in the light of the payments that had been made at the time of her purchase. She goes on to say that a revised service charge account for the year 2002 was then produced by the current landlord when they acquired the freehold, but that the figures specified in that account were significantly different from the original estimate and had not been justified. She refers in particular to the management charge of £323.13, saying that this is unreasonable for the six or seven weeks of 2002 for which the landlord owned the property.
13. With regard to the year ended 2003, she challenges the sums sought in respect of maintenance and gardening and sundry repairs, together with the insurance premium and the management fees. With regard to the year ended 2004 she queries the split between Watson Property Management and Blantyre Westcountry Properties Limited, but also challenges the insurance premium, the payment for cleaning of common parts, the cost of repairs and the sum claimed in respect of management.

14. It is clear from the documentation which she produces that Miss Court and those advising here have made repeated requests for detailed information. Stephens and Scown wrote to Watson Property Management on 10th February 2004, for example, raising a number of points which required detailed reply, but Mr George had to write on 9th May asking for a reply. The letter of response sent to Stephens and Scown on 5th May 2004 simply asked for more detail. In the chain of correspondence which followed further requests were made, but the detail sought was not forthcoming.

The Respondent's Case

15. The landlord confirms that they acquired the freehold in 97 Stuart Road on 7th November 2002, but explain that the management was initially undertaken on their behalf by Watson Property Management, with the function being brought "in house" with effect from 16th January 2004.
16. With regard to the 2002 service charge year, they confirm that the previously existing arrears were cleared at the time of the applicant's purchase, and that a sum of £280.00 was paid for that year, but they say that that was an "on account" payment which does not excuse her from the additional liability that became apparent following the preparation of service charge account of actual expenditure. They produce documentation in the form of estimates, works orders and correspondence relating to work done, and they say that the management fee was not, as the applicant suggests, a charge for a period of six or seven weeks but a charge relating to the whole year. They say that the figures are certified by a Statement of Service Charges prepared by Watson Property Management.
17. With regard to the service charge year 2003, the respondent landlord submits a statement of service charges, again prepared by Watson Property Management, and of which they say

"again, this has been audited by Thomas Coombs."

They admit, however, that the insurance premium was over-stated in those accounts and that they are willing to apply an adjustment.

18. With regard to the service charge year ending on 31st December 2004, they again refer to the change in management arrangements during that year. They produce invoices in respect of cleaning and repairs. They refer generally to the extensive correspondence that has taken place between them and the applicant's solicitors.

Consideration and Determination

Year to 31st December 2002

19. The Tribunal finds it clear from examination of the papers that the applicant has misunderstood the financial arrangements which were made at the time of her purchase. The service charge account statement for the year ending 31st December 2001, which she produces, clearly shows arrears of £579.82 on the account in respect of Flat 4, and it is those arrears which were discharged at the time of her purchase. It is worth noting that it was these accounts to 31st December 2001 which were produced on 20th August 2002, not the accounts to 31st December 2002, as stated in her Statement of Case: the service charge account to 31st December 2002, as produced by the landlords, is undated.
20. The 2001 service charge account also embodied a forecast for the year ending 31st December 2002 and this was dated 20th August 2002. The budget was for a contribution of £278.00 per flat and so, in these terms, an on account payment of £280.00, such as was made when the applicant purchased her interest, was not unreasonable. That figure would, however, have related to the whole year, and the final account would again have related to the whole year, rather than to the part of the year during which she had owned the leasehold interest.
21. From the landlord's point of view, any shortfall between what had been paid on account and what actually proved to be due was simply due to them from the tenant, whoever that might have been at the time. Had Miss Courts

wanted to protect herself against any claim which related to the period prior to her ownership, then she could have provided for that in the contract of purchase, enabling her to recover an appropriate proportion from the person from whom she purchased. As against the landlord, however, she would seem to have no argument against a properly substantiated claim for a balancing payment. What is in issue, therefore, is whether the actual expenditure for the year 2002, and so the balancing payment, was reasonable as a whole.

22. The landlord relies on the statement of service charges prepared by Watson Property Management. That statement simply lists items of expenditure and, despite the specific directions given by the Tribunal, the landlord has produced no supporting invoices. Furthermore, whilst the lease provides that

“the certificate of the auditors for the time being of the lessor as to the amount due (in respect of the proceeding year) shall be final and binding on the parties”

there is no documentary evidence that any such certificate was ever produced.

23. The statement of service charges which is said to have been produced by Watson Property Management (although there is nothing on its face to confirm this) embodies the footnote

“We hereby certify that our Clients Accounts are audited by Thomas Coombs, Chartered Accountants and Registered Auditors, Leeds, as part of their annual audit of our accounts in accordance with the Members Accounts Regulations 1993 of the Royal Institution of Chartered Surveyors”

but that is not at all the same thing as saying that the individual service charge account has been audited, and neither it is a “certificate of the auditors.” Further, it does not appear to meet the recommendation of the Service Charge Residential Management Code.

24. In the absence of either an auditor's certificate or supporting invoices, the Tribunal therefore finds it impossible to conclude that the charge of £85.43 in respect of electricity was reasonably incurred. A receipt for £30.00 plus VAT (£35.25) dated 22nd February 2002 is produced in respect of cleaning, but there is no evidence to support the sum of £655.00 actually claimed for maintenance and gardening, and the Tribunal therefore also finds it impossible to conclude that anything over the £35.25 has been shown to have been reasonably incurred.
25. With regard to repairs, there is an estimate from Norman Ferris dated 18th July in the sum of £64.00, together with a fax from Andrew Gordon Duff indicating that the sum has been paid, and there is a further estimate in the sum of £160.00 which also appears to have been paid.
26. Those two estimates amount to only £219.00 out of the £310.00 claimed and the Tribunal finds it impossible to conclude that anything more than £219.00 can be held to have been reasonably incurred under this head.
27. That leaves the matter of insurance, in respect of which the service charge account shows a gross payment of £1,343.56. The Tribunal notes the Axa Insurance Schedule of 10th May 2002, referring to cover on 97 Stuart Road in the name of Hickling Properties Limited for the period 1st May 2002 to 30th April 2003. It takes it as likely that this was a continuation of pre-existing insurance arranged by Hickling Properties, and that the property was accordingly insured for the full twelve month service charge period.
28. Nevertheless, there is no documentation produced by way of justification of the £1,343.56 premium said to have been paid, and no explanation of why this premium should have been slightly more than twice the £635.44 said to have been paid during the preceding year. The Tribunal cannot accept that the higher sum was reasonable but, accepting that insurance was in effect, concludes that the budget figure of £650.00 might have been justified.

29. With regard to management, the lease provides that the landlord may charge either the cost of employing managing agents or a sum not exceeding 15% of permitted expenditure by way of an administration charge. Although the landlord says that Watson Property Management managed the property from 7th November 2002, the Tribunal has seen no evidence of this, or to show that agents were employed during the earlier part of this financial year. It therefore concludes that the landlord may do no more than add 15% to the costs which were reasonably incurred. Those reasonably incurred costs amount to £904.25, to which a 15% addition amounts to £135.64.
30. In summary, therefore, with regard to the service charge year 2002, the Tribunal concludes that the landlord has shown that there was reasonable expenditure amounting to only £1,039.89 out of the £2,717.12 claimed. This is the equivalent of £207.98 per flat and, in comparison with the on account payment for £280.00, implies an over-payment on the part of the applicant in the sum of £72.02, which should be credited to her account.

Year to 31st December 2003

31. With regard to the service charge year 2003 the landlord, despite the repeated requests by or on behalf of the tenant, made in the correspondence referred to above, and despite the Tribunal's clear directions that they should produce "receipts, invoices, schedules of work and other documents" has produced no invoices and no auditor's certificate. They do produce a statement of service charges prepared by Watson Property Management but despite their statement that

"again, this has been audited by Thomas Coombs"

there is no evidence that that was actually done.

32. The Tribunal therefore finds it impossible to conclude that the charges for communal electricity, maintenance and gardening, or repairs were reasonably incurred.

33. The Tribunal finds a particular difficulty over insurance. The original sum demanded for the property for the year was £1,617.39, as set out in the very brief service charge account for the year. The landlord now says that

“the insurance premium appears to have been overstated as mentioned in our letter to Coodes solicitors dated 15th August 2005 a copy of which we enclose”

but they still do not explain how either the original or the revised figures were arrived at, and indeed they produce no evidence to show that the building was insured at all during the year in question.

34. Given that the landlords have been offered every opportunity to produce this evidence, and were directed by the Tribunal to do so, and yet have failed to do so, the Tribunal finds it impossible to conclude that the sum claimed was reasonably incurred.
35. With regard to management fees, the amount claimed is £130.00 plus VAT per flat, rather than the £55.00 plus VAT per flat claimed for 2002. The landlord indicates that management during the year was dealt with by Watson Property Management but has produced no details of their contract or charges. The Tribunal is therefore unable to conclude that their charges can have been reasonably incurred.
36. The alternative would be that the landlord might recover an administration charge of 15%, but as no sums are considered to have been reasonably incurred, no such charge arises. The Tribunal is thus forced to the conclusion that there can be no liability attached to the applicant for the financial year 2003.

Year to 31st December 2004

37. The final year in respect of which Miss Courts makes application is the service charge year 2004.

38. Here no payment is sought in respect of communal electricity, but payment is sought in the sum of £196.80 in respect of maintenance and gardening, and that total is supported by invoices. The tenant says that she has not been aware of cleaning or other maintenance work being carried out, but the Tribunal concludes that she would not necessarily have been aware of such activity, and can find no reason why it should not conclude that the sum claimed is reasonable. Similarly, the sum of £115.00 claimed in respect of repairs is supported by invoices and is accepted by the Tribunal as having been reasonably incurred.
39. The Tribunal finds a continuing difficulty over the matter of insurance. Here the sum of £1,670.22 was originally claimed to be the premium due on the building for the year, as set out in the somewhat confusing series of statements given in the service charge expenditure account for the period to 31st December 2004. This refers to buildings insurance for an un-stated period for a sum of £820.00; a refund for the period 16th February to 11th October 2004 in the sum of £401.92; an addition for insurance from the period from 13th February to 1st June 2004 in the sum of £274.39 (without there being any explanation of why the refund starts three days later than the new charge period); and finally a sum of £977.75 which is said to be for the period 1st June 2004 to 1st June 2005.
40. The landlord now says that that calculation is wrong, but does so only by reference to a letter which they wrote to the tenant's solicitors on 15th August 2005: no supporting documentation whatsoever has been produced, and the Tribunal has no confidence in the correctness of these unsubstantiated revised figures. Apart from the landlord's statements, no evidence has been produced to the Tribunal to demonstrate that the building was insured at all. Accordingly the Tribunal finds it impossible to conclude that this charge was reasonably incurred.
41. The landlord states that management of the property was taken back from Watson Property Management with effect from 14th January 2004. No invoice in respect of Watson Property Management's services for that short period has been presented, and the landlord is accordingly limited to a levying an

administration charge of 15% of the costs which were reasonably incurred. The Tribunal has determined that those reasonably incurred costs amounted to £311.80 and the appropriate management charge based on this figure is £46.77. It is again noted, however, that there is no evidence that any auditor's certificate has been produced, despite the requirement of the lease, and accordingly the Tribunal concludes that the landlord has not previously given the tenant proper ground for making any payment to them.

42. The charges which have been demonstrated to have been reasonably incurred for the year 2004 amount to £358.57, representing a contribution due from the applicant of £71.71.

General

43. The Tribunal finds it unfortunate that this matter should have had to be brought before it.
44. Whilst it is clear that the applicant originally misunderstood the financial arrangements made at the time of her purchase, it is apparent from the correspondence that attempts to seek clarification have failed. Repeated requests for copies of the invoices and other documentation which would have justified the sums claimed by the landlord have been ignored or avoided, and even the Tribunal's direction that such documentation should be produced has not produced any result. The case presented to the Tribunal simply consists of letters, unexplained statements and a very small number of invoices, which do not in any way justify the sums sought.
45. The lease sets out in quite simple terms how the service charge account should be dealt with, and yet the landlord seems to have ignored that provision completely.
46. Furthermore, section 21 of the Landlord and Tenant Act 1985 sets down a procedure whereby a tenant may seek a written summary of costs incurred, and the way in which such a request is to be dealt with. The Tribunal's reading of the correspondence is that there has been more than one such

request, but that there has been no proper response. The section provides, at sub-section (6), that where the relevant costs relate to more than four dwellings the summary shall be certified by a qualified accountant. There are five dwellings at 97 Stuart Road but, on the face of it, there has been no attempt whatsoever to meet that requirement.

47. The Tribunal has a further concern over the references in the Watson Property Management statements to a reserve fund. Whilst Clause 4(e)(i) of the lease provides for a reserve fund, there is nothing in the documentation which the Tribunal has seen which makes clear how this money may be dealt with, or how any reserve actually accumulated has been transferred from one landlord or agent to another. In practice, the applicant does not appear to have made any payment into this fund, and as far as she is concerned the matter may not be an issue, but the Tribunal's concern remains.

Section 20c Application

48. Because the applicant appears to have been forced before the Tribunal by the landlord's reluctance to respond to reasonable requests for information, the Tribunal has no hesitation in allowing her application under Section 20c of the Landlord and Tenant Act 1985. It directs that the landlord's costs in relation to this application are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge for the current or any future year.



Robert Batho (Chairman)
A member of the Southern Leasehold Valuation Tribunal
Appointed by the Lord Chancellor

Date 15th September 2006