

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

Case No: CHI/00HN/LSC/2009/0055

Re: Flat 1, 4 Crabton Close Road, Bournemouth, Dorset BH5 1HL

Applicant	Mrs D. Tomson
Respondent	Long Term Reversions Limited
Date of Application	21 <sup>st</sup> March 2009
Date of Inspection	9 <sup>th</sup> July 2009
Date of Hearing	9 <sup>th</sup> July 2009
Venue	Royal Bath Hotel, Bournemouth
Representing the parties	The Applicant in person Mrs S. Wisdom, Leasehold Legal Services, for the Respondent
Also attending	Miss S. Moon, Countrywide Managing Agents
Members of the Leasehold Valuation Tribunal:	
	M J Greenleaves                      Lawyer Chairman
	Miss R B E Bray BSc MRICS        Valuer Member
	Mrs J Herrington                      Lay Member
Date of Tribunal's Decision:	20 <sup>th</sup> July 2009

**Decision**

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that, for Flat 1, in each of the accounting years 2007/2008 and 2008/2009:
  - a. the service charge demands of £214.67 per half year are not payable;
  - b. The management fees are reasonable only to the extent of £75 + VAT (at the appropriate rate) per year
2. Under Section 20C of the Act, the Tribunal makes an Order that the Respondent's costs incurred in connection with the Tribunal proceedings shall not be regarded as relevant

costs to be taken into account in determining the amount of any service charge payable by the Applicant.

3. Under Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 the Tribunal requires the Respondent to reimburse to the Applicant one half of the fees paid by the Applicant in respect of the proceedings, the one half being the sum of £110.

### **Reasons**

#### **Introduction**

4. Application was made by the Applicant to the Tribunal under Section 27A of the Act to determine whether certain service charges for the years 2007/2008 and 2008/2009 are payable and, if they are, by whom they are payable, to whom, the amount, the date at or by which they are payable and the manner in which they are payable.
5. In respect of each of the two years in question, half yearly advance of service charge on account had been made in the sum of £214.67 each half year.
  - a. For the year 2007/2008 the charges had been based on the provision of electricity for communal parts, general maintenance and repairs, audit and accountancy and management fees. Of those items the Applicant challenged the general maintenance expenses of £1,000 and management fee of £1,234.
  - b. for the year 2008/2009, the Applicant challenged the same items and amounts.

#### **Inspection**

6. On 9th July 2009 the Tribunal inspected 4 Crabton Close Road, Bournemouth (the Property) in the presence of the Applicant, Miss Moon and Mrs Wisdom.
7. The Property is a detached house, constructed under pitched roofs, converted into 6 self-contained flats, with parking to the front and the rear. There are large trees at the front.
8. The property is in poor condition for its age and character. While the roof itself appears to be sound, there are externally, cracked cills, a blocked drain, a settlement crack at the rear and a substantial part of the rear soffit has broken away and appears to be used by doves/pigeons for access to the roof space. The exterior does not appear to have been decorated for many years. At the northern vehicular entranceway is a pillar which has broken horizontally and is slightly displaced.
9. The communal internal areas again have not apparently been painted for many years, they are dirty, the carpet is old and dirty. The fire alarm system and emergency lighting apparently do not work.
10. Overall the property gives the appearance of significant long-term neglect.

#### **Hearing & Representations**

11. A hearing was held the same day, those attending being noted above. Evidence and submissions were received by all those present and the case papers were considered so far as material to the issues in this case.
12. There did not appear to be many differences between the parties as to the history of the matter and the evidence may be summarized as follows:
  - a. At all material times the Respondent has been the freeholder of the property.

- b. Until October 2008, the freeholder had employed DGA as the managing agent in respect of the property. In October 2008 Countrywide had taken over the management.
- c. DGA had, in or about 2003, raised service charges with a view to carrying out major works to the property but the work had not been done. In 2008 they had issued an initial consultation notice with a view to carrying out major works but there had been no activity by them since. The amount of the service charges held by them were thought by the Applicant to be about £15,000. However, when Countrywide took over the management they received a sum of £2,406.65 in the reserve account and it is their understanding that DGA may have withheld in error a further sum of £4,574.90. When this is sorted out, Countrywide expect to be holding £7,934.38 in the reserve account in respect of repairs.
- d. Other than works which had been paid for under insurance claims, no repair or maintenance work or cleaning, decorating etc. had been carried out to the property during the two years in question or indeed for some years before that.
- e. The Applicant and most of the other lessees wanted work to be carried out and expected to be charged for it but they considered that the past and present managing agents had done very little if anything towards proper management of the property and did not see why they should be expected to pay more service charges referred to above when past and present managing agents, as agents for the freeholder, already held substantial sums. In particular the Applicant considered that the management fee being charged was high just for paying electricity bills and accountancy fees and queried what else was done for that fee.
- f. The Applicant was not aware of any visits on behalf of the past or present managing agents, had not been made aware that any visits were being made and had not seen any report resulting from any such visits. She had contacted Countrywide in the past, speaking to Phil Flynn, their local Property Manager, about outstanding work, but had had no responses. While one of the lessees continues to pay service charge demands to avoid proceedings, all the lessees simply want active management to be carried out to avoid their continuing embarrassment about the state of the building. She said that the property had got into such a severe state of disrepair, she could not imagine what the cost would be to put it in proper condition now.
- g. In relation to the items covered by the service charge for the two years in question, the Applicant considers it reasonable to pay for the electricity bill and for accountancy fees. In relation to management fees she considered a reasonable sum would be £100 per year for the entire block to be divided between the six flats.
- h. The Respondent's case may be summarized as follows: -
  - i. The budget set for the year prior to Countrywide taking over the management had been prepared by DGA and Countrywide had adopted the same budget for the present year.
  - j. Accounts have not been prepared for any period in question so they had prepared expenditure accounts for the two years in question which suggested surpluses for

the two years and those surpluses would be "credited to the tenants in accordance with the terms of the lease".

- k. It was accepted that a significant amount of work needs to be undertaken to the property and they hoped to be able to start that in the year commencing 1 September 2009. The delay starting carrying out significant work resulted from no funds coming in and the difficulty about receiving funds from the previous agents.
- l. They had only been managing the property for a short period of time and have had significant delays in handover of documentation and hoped tenants would see a significant improvement in services shortly. They also hoped to install a cleaner at the property and they would budget for necessary tests and fire/smoke alarms. They also outlined the items which would appear in a new budget for the year 2009/2010 but that it depends on funds coming in; that all funds held by them or the previous agents were reserve funds ring fenced for repairs so they were not available for other purposes.
- m. Management fees. It was considered that the management fees to be charged for the two years in question were reasonable for work done. That work was for issuing and processing invoices, collating invoices for the accountant, preparing budgets and chasing arrears of service charge. Also included were the cost of the property manager as a point of contact, quarterly site visits, reports and liaising with Pier Management and also dealing with solicitors queries. In the first year in question the management fee charged is £175 plus VAT per flat. This compares with an average in the Bournemouth and Brighton areas of £170 /180 plus VAT. For 2008/2009 there would be an increase to a rate of £1,100 plus VAT per year which would work out at £183 plus VAT per flat. This would be reasonable, annual increases being reasonable.
- n. They agreed with the Tribunal there was no provision for a reserve fund in the lease.
- o. In reply to the Applicant, they said that Phil Flynn carried out the first inspection soon after Countrywide took over the management, there had been another inspection three months ago and the next was due in a few weeks time. They did not know the dates of his inspections and had not got any record of the outcome of those inspections but were satisfied that they had taken place.
- p. They had no written evidence that service charge demands for the years in question had been accompanied by required notices as to tenants' rights. The only ones in the documents of such a nature related to administration charges. They were confident however, that the requisite notices had accompanied the demands.
- q. The Applicant's claims in respect of costs and fees. The Tribunal explained that of the costs incurred by the Applicant or the Respondent or Tribunal fees, the Tribunal did not have jurisdiction to award the Applicant any costs. In respect of the Applicant's Section 20C application and for repayment of fees, the Respondent submitted it would not be just and equitable to order the Respondent to repay fees or to prevent it from claiming its costs under service charge.

### Consideration

13. The Tribunal took into account all the evidence given at the hearing, the documents to which it had been referred and its inspection.
14. Relevant terms of the Lease:
- a. Clause 4. 2 provides that subject to the contribution and payment provided for by the lease, the lessor will carry out works and services set out in detail in the succeeding provisions which cover the issues in this case
  - b. The Applicant covenants to pay the service charge set out in the Fourth Schedule.
  - c. The Fourth Schedule contains provisions for:
    - i. half yearly payments on account,
    - ii. preparation of accounts by the Respondent,
    - iii. payment by the Applicant of any deficit appearing on a service charge statement,
    - iv. payment of interim service charge instalment in such reasonable sum as the lessor may in its discretion determine.
    - v. Also, there is reference to the service charge excess but oddly nothing to say what should happen in the event of there being any such excess.
  - d. There are also provisions for payment of interest and administration charges in the event of late payment.
15. We were satisfied on the evidence that the previous managing agent DGA had completely failed to carry out repairs and maintenance which have been required to the property since 2003 notwithstanding that they had held a significant sum of money to carry out such work. Countrywide have been managing agents since October 2008 and they too have failed to carry out repairs and maintenance which had plainly been needed. They say they have only been managing for a short time, they say they had not had complete documentation and also that the previous agents are still holding something over £4,500 of service charges paid by the lessees, Countrywide themselves holding over £2,400. They say that Phil Flynn has inspected the property on two occasions since October 2008. They did not produce any satisfactory evidence about that, they did not call Phil Flynn to give evidence and even if there had been any such inspections, they have not assisted the provision of any much needed work beyond the very limited services provided by the previous agent. Countrywide say that the situation should change in September 2009. Part of their case as to why nothing has been done in the way of repairs and maintenance during Countrywide's appointment is that they have not had all the funds held by the previous agent so that the work that they could do would be limited.
16. We find that, whoever holds the service charge funds, they hold them on behalf of the freeholder and it is the freeholder who is liable on the landlord's covenants. It follows that on the available evidence, at all material times, there had been funds totalling not less than £7,900 available to the freeholder to comply with its covenants. Countrywide submit that

that is not all available for any works or services covered by service charges as it was received, and therefore ring fenced, for repairs so that they could not be used to cover such items as electricity, accountants fees, management fees.

17. We suspect there is an omission from the Fourth Schedule of the lease because it does not specifically provide that in the event of there being a surplus, it should be paid to the lessees. We think that was probably intended but it is unclear and we do not make that assumption.
18. However, as referred to above, there is provision for the lessor to demand such a reasonable sum on account of service charge as the lessor may in its discretion determine. As outlined above, managing agents for this property had been holding very substantial sums of service charge and it appears that they have largely, or perhaps exclusively, been provided historically for repairs and maintenance. That work has plainly not been carried out by the previous managing agents and Countrywide had taken no steps themselves to carry out such work.<sup>1</sup> For that reason we cannot accept that all this money should be ring fenced for a substantial period of time when it is simply not being used. There is no provision for a reserve fund to justify any reserve or "ring fenced items" being ignored in exercising discretion. So we could not find that it would be a reasonable exercise of the lessor's discretion to seek yet further service charges from lessees whilst holding such a large sum on their behalf.
19. For the above reasons we came to the conclusion that none of the service charge payments on account in the two years in question should have been demanded at all.
20. Furthermore, we found there is no satisfactory evidence from the Respondent or its managing agent that any of those service charge demands were accompanied by the statutory information as to tenants rights. There are two instances of the equivalent information being given in relation to the payment of administration charges but none in relation to these service charge demands. In their absence, we found that even if it had been a proper exercise of the lessor's discretion to seek further charges, the Applicant was entitled to withhold payment. It also follows from that that any interest charges or administration charges arising from alleged failure to comply with its "demands" would not be recoverable either.
21. The Respondent submits that the management fees charged for the two years in question are reasonable. We disagree for the following reasons: --
  - a. We have noted above the work which Countrywide submit is covered by the management fee. In our collective experience the general level proposed by Countrywide is indeed reasonable for the nature and size of this property.
  - b. However, any such charge would be expected to cover all the items set out in the relevant code of practice issued by the Royal Institution of Chartered Surveyors which, so far as material to the issues in this case, has been approved by the Secretary of State. There are two editions of that code: the first edition applied to

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<sup>1</sup> They had not put into place even cleaning of the interior or replacement of the carpet or carried out any statutory requirements for tests. We found no reason at all why they should not have done so.

all periods in issue in this case until superseded by the second edition which became effective in April 2009. The work to be covered by a normal management fee in the first edition is referred to in section 2.5 and in the second edition in section 2.4. It is plain to us that both of the managing agents in this case were carrying out little of the work provided for by the relevant edition of the code to justify the management fees claimed.

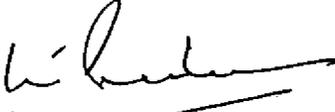
- c. We did not accept the Applicant's contention that the agents should be paid £100 per year for work done. On the other hand the work done in both years falls far short of that required by the codes to justify the full fee. If Mr. Flynn has actually inspected the property twice as Countrywide submit, with the state of the property as we found it, we would have expected those inspections to have had at least some impact on the standard of management in the last nine months. As it is, we are satisfied from the evidence and our inspection there has been no change whatsoever, They had not put into place even cleaning of the interior or replacement of the carpet or carried out any statutory requirements for tests. We found no reason at all why they should not have done so. We concluded that either he has not actually inspected at all or that the inspections were completely inadequate for want of any worthwhile outcome. Accordingly we found that the appropriate rate of management fee, for the work actually done, for the two years in question per flat per year is £75 plus VAT at the appropriate rate.

22. Section 20C. The Tribunal found that the provisions of the lease do not allow the Respondent to recover as service charge its costs in connection with these proceedings, but in case it is wrong about that, in all the circumstances of the case as noted above, it made an Order preventing the Respondent from doing so.

23. Reimbursement of Fees. We have power to order reimbursement of fees under Regulation 9 mentioned above. We do not generally do so. However, we have no doubt at all that the Applicant was forced to make this application for want of any worthwhile activity by Countrywide and that it would not be just or equitable for the Applicant for her to bear all those fees.

24. The Tribunal made its decisions accordingly.

25. Note. For the purposes of making our decisions, we did not need to consider whether the managing agents between them hold, or should be holding, any sums beyond the total of £7,934.38 mentioned above. That is an accounting matter beyond the Tribunal's jurisdiction.

  
Chairman

A member of the Leasehold Valuation Tribunal  
appointed by the Lord Chancellor