

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



**Residential
Property
TRIBUNAL SERVICE**

S.27A Landlord & Tenant Act 1985 (as amended) ("the 1985 Act")

| | |
|-----------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| Case Number: | CHI/00ML/LSC/2009/0153 |
| Property: | 68 Denmark Villas Hove East Sussex BN3 3JT |
| Applicants: | A. Sewell B. Cox S. Daykin S. Hampson A. Devine-Rattigan |
| Respondent: | R. Raggio |
| Appearances for the Applicant: | Jeremy Donegan Solicitor |
| Appearances for the Respondent: | Charles Seymour of PPS Management |
| Date of Inspection/Hearing | 22nd March 2010 |
| Tribunal: | Mr R T A Wilson LLB (Lawyer Chairman) Lady J Davies FRICS (Surveyor Member) Ms J Dalal (Lay Member) |
| Date of the Tribunal's Decision: | 26th April 2010 |

THE APPLICATION.

1. This was an application pursuant to section 27A of the 1985 Act by the lessees of the property for a determination of their liability to pay service charges in respect of the period from 24th June 2007 to 3rd June 2009.
2. The tribunal is also required to consider pursuant to regulation 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 whether Mr Raggio should be required to reimburse the tribunal fees incurred by the applicants in these proceedings.

THE DECISION.

3. The tribunal determines that the service charges payable by the applicants in respect of the items before the tribunal are as follows:-

| | | |
|-----|------------------------------------------|----------------|
| 3.1 | Lighting Common ways | £97.85 |
| 3.2 | Cleaning | £369.50 |
| 3.3 | 24 Hr Service Charge | Nil. |
| 3.4 | Management Fees | £1,167 Inc vat |
| 3.5 | Accountancy Fees | Nil |
| 3.6 | 2007 External maintenance and decoration | £1,000 |

JURISDICTION.

4. The tribunal has power under Section 27A of the 1985 Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when service charge is payable.

5. By section 19 of the 1985 Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

THE LEASE.

6. The tribunal was provided with a copy of the lease relating to the first floor flat and was told that all four leases in the property were in similar form.

7. There is no suggestion that the service charge expenditure is not contractually recoverable under the terms of the leases and it is therefore not necessary to set out the relevant covenants in the leases giving rise to the applicants' liability to pay a service charge contribution.

INSPECTION.

8. The tribunal inspected the property prior to the hearing in the presence of the parties' representatives. The subject property is a middle of terrace building circa 1900. Construction is brick under an interlocking roof. The rear elevation is rendered. The front elevation is in fair condition, whilst the rear of the property is in poor order with evidence of badly peeling paintwork. The common ways are carpeted and generally clean.

BACKGROUND AND PRELIMINARY MATTERS.

9. The applicants had set out their position on the issues in the form of a statement from Angela Sewell, the lessee of Flat 3 at the property. The respondent had failed to comply with the tribunal's directions to file a statement

of reply. Instead he had sent to the tribunal and the applicants a large bundle of copy invoices and miscellaneous documents relating to the property.

10. At the hearing the tribunal was told that the following items claimed in the service charge account for the period ending 3rd June 2009 were disputed:-

| | |
|----------------------|---------------------|
| Lighting Common ways | £148.99 |
| Cleaning | £9,942.37 |
| 24 Hr Service Charge | £391.60 |
| Management Fees | £3,217.23 |
| Accountancy Fees | £859.76 |
| External Works | Final price Unknown |

Each of these disputed items is considered below.

THE APPLICANT'S CASE.

Lighting of the common ways £148.99.

11. The applicants' case is that the respondent has disclosed only one invoice for electricity totalling £30.85 inclusive of VAT and in the absence of any further invoices the claim for lighting should be capped to this sum.

Cleaning £9,942.37.

12. The applicants' case is that the claim for cleaning is extortionate and probably an error. The cleaning invoices disclosed all come from a Mr P. Coleman and total £422.30. Two of the charges have been duplicated and deducting the duplicated charges gives rise to invoices totalling £369.50 and the cleaning costs should be capped at this figure.

24-hour service charge £391.60

13. The applicants' case is that the respondent has failed to disclose any vouchers or invoices to support the sums claimed and in the absence of an invoice the sum should be disallowed in full.

Management fee £3,217.23.

14. The applicants' case is that the respondent has failed to disclose any vouchers or invoices to support the sum claimed. In the absence of vouchers the applicants contend that this expenditure should be disallowed in full. In the alternative they claim that the sum claimed is excessive. They contend that most local agents charge an annual routine management fee of between £150-£200 per flat. Taking a midway point of £175 per flat would give a total charge of £700 plus VAT per year and management fees should be capped to this figure pro rata.

Accountants fee £859.70

15. Again the applicants contend that as the respondent has failed to disclose any vouchers or invoices for the expenditure the whole of the accountant's fee should be disallowed. They also contend that as the closing account was produced not by an independent accountant but by the managing agents then an accountancy charge cannot be justified. They contend that the preparation of these accounts should be included in the routine annual management fee charged by the agents.

External works undertaken in autumn 2007.

- 16 The applicants' contend that part or the entire sum claimed for cleaning probably related to these works. They say that on 28th July 2006 the freeholder's managing agents sent a specification of external works to all of the lessees. The managing agents instructed Stuart Radley chartered building surveyors to organise the works and details of the works and estimates were sent to all lessees on or about 30th October 2006. The cheapest estimate was from United Builders and came to a little over £15,000 plus vat. The applicants allege that the respondent failed to serve formal consultation notices under Section 20 of the Landlord and Tenant Act 1985 in respect of these works. Furthermore the works did not start until October 2007 and were undertaken by a different building company not involved in the tendering process and not all the work detailed in the original specification was completed. The applicants say that their solicitors have asked the management company on numerous occasions for copies of the priced specification and any certificates issued by the surveyor, but this information has not been disclosed.
17. The applicants also allege that some of the work undertaken was carried out to a poor standard. They allege that a site meeting took place on 23rd November 2007 with the managing agents when it was agreed that additional work was required to the re-pointing on the front elevation to bring it up to standard. They allege that this remedial work has never been carried out.
18. Therefore in summary, the applicants' case is firstly that as no vouchers have been produced for the work then no part of the cost should be recoverable as service charge. In the alternative they contend that as the respondents have failed to properly consult the lessees then the amount recoverable in respect of this work is limited to the statutory limit, currently £250 per flat. Finally they claim that as not all the work was done to a proper standard, an allowance should be made for the faulty workmanship.

Reimbursement of the tribunal fees

19. The applicants invite the tribunal to make an order directing the respondent to repay the issue fee of £350 and the hearing fee of £150. They contend that if the tribunal finds substantially in their favour then it is just and equitable that these fees should be repaid. The applicants contend that countless letters have been sent to the managing agents asking for the documents relating to the external building works but these have not been forthcoming. As a consequence they were left with no alternative but to bring these proceedings.

THE RESPONDENT'S CASE.

20. Mr Seymour appeared on behalf of the respondent and told the tribunal that he was an employee of the freeholders managing agents P.P.S. Management. He had not previously been involved in this case although he had been in the employment of PPS Management at the time that the external works were carried out in 2007. He was not familiar with the tribunal's directions and had only been given the file today and therefore had only a very limited knowledge of the facts or the issues. He was not able to offer the tribunal an explanation as to why the respondent had failed to comply with the tribunal's directions to file a reply/defence to the allegations made by the applicants and he accepted that this failure resulted in the application coming before the tribunal unopposed.
21. In respect of the lighting of the common ways he was able to furnish the tribunal with a further electricity invoice for £67 and he invited the tribunal to allow this sum in addition to the other invoice totalling a little under £31.
22. He was not able to assist the tribunal in relation to the cleaning charges of just under £10,000 but he considered that this figure was probably an error. However he had no other information to give the tribunal in relation to the amount claimed for cleaning and he offered no defence to the points made by the applicants' representative.
23. Neither was Mr Seymour able to offer assistance in relation to the 24 hour service charge totalling £391.60. He told the tribunal that he believed PPS Management had a contract with a third party company who would take calls from lessees outside of hours. Usually PPS Management charged each lessee £20 per annum plus VAT for this service. He had no idea how the figure in this case had reached £391.60 and was not able to point to a clause in the lease which enabled the landlord to provide this service and recover the cost as a service charge item.
24. Mr Seymour was not able to assist the tribunal as how the management fees of £3,217.23 had been calculated. He accepted the applicants' contention that the average fee for routine work was £150 plus VAT per flat but he could not explain why his company had failed to disclose invoices or a management contract giving rise to the figure claimed.
25. Neither could he explain why there was no invoice or voucher supporting the accountancy fees claimed of £859.76. He accepted that the accounts had been prepared in house and not by an independent accountant.
26. Mr Seymour confirmed that he was an employee of the managing agents at the time that the external works were carried out in 2007 but he was not involved in the tendering process. He looked through the file that he had been given for the hearing and confirmed that it contained no documentation relating to lessee consultation. He could not find evidence of interim invoices or a closing statement of account from the builders who had carried out the work. He recalled an on-site meeting which took place after some of the work had been carried out and he accepted that it had been agreed that some of the re-pointing work was defective and needed to be redone. Mr Seymour also accepted that from his visual inspection earlier in the morning it did not look as if any of the re-pointing work had been made good. He had no comment to make on the applicants' contention that the Section 20 consultation had not been correctly followed.

Repayment of tribunal fees.

27. Mr Seymour accepted that if the applicants were largely successful in their case then it followed that they should be entitled to have the tribunal fees repaid and he offered no defence to the applicants claim for reimbursement of the tribunal fees.

THE TRIBUNAL'S CONSIDERATION.

Common way Lighting.

28. Lighting is supplied to the common ways of the property and the tribunal had with its papers two electricity invoices for the common ways, one for £30.87 and the second for £67. We therefore determine that a total of £97.87 can be claimed as service charge for lighting the common ways for the period 24th of June 2007 until 3rd June 2009.

Cleaning.

29. The tribunal agrees with the applicant that the figure claimed for cleaning of £9,942.37 is extortionate and is probably an error. The copy cleaning invoices contained in the hearing bundle all come from Mr P Coleman and total £422.30. The tribunal accepts that two of the weekly charges have been duplicated namely the weeks ending 29th February and 26th December 2008. Deducting the duplicate invoices leaves a charge of £369.50 and the tribunal determines that the cleaning costs for the period 24th of June 2007 until 3rd June 2009 should be capped at this figure.

24-hour service charge.

30. There are no invoices in the hearing bundle to support this charge. Mr Seymour was able to explain that the service amounts to a 24-hour call centre which the lessees are able to call in the event of an emergency. The applicants claim that they were never made aware of this service and found it hard enough to contact the agents during the day let alone the evening. Whether or not the service was provided the tribunal could find no clause in the lease allowing the landlord to provide this service and reclaim the cost as a service charge and for this reason the figure of £391.60 is disallowed in full.

Accountancy fees.

31. The tribunal noted that the hearing bundle contained no invoice supporting the charge of £859.76. Furthermore the closing service charge account has not been prepared by an accountant but by PPS Management in-house. The tribunal accepts the applicants' case that an additional charge for the preparation of the annual service charge account could only be justified in the event of independent accountants being utilised. As this has not happened the figure of £859.76 is disallowed in full.

Management fees

32. The tribunal agrees with the applicants that most local agents charge an annual routine management fee of between £150-£200 per flat. Taking a midway point

of £175 per flat inclusive of vat would give a total charge of £700 plus VAT per year for the subject property. The tribunal is satisfied that there has been evidence of some management activity all though not to the value of the amount claimed. In addition the management fees are to be restricted to the period ending the 23rd February 2009 when the freeholder sold the property.

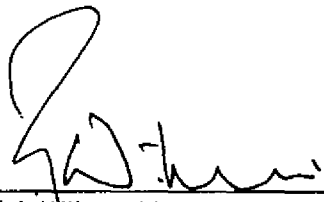
33. In the absence of any justification to a higher fee than the normal rate stated above the tribunal determines that management fees should be capped to a figure of £175 per flat per year on a pro rata basis. This gives rise to the following calculation £175 per flat per year shown at the monthly rate = £14.58. This figure multiplied by 20 (months) = £291.67 per flat X 4 (flats) = £1,166.66 rounded up to £1,167.

External works undertaken to the block in 2007.

33. The tribunal first considered if the respondent had complied with the statutory consultation procedure in respect of these works. The Commonhold and Leasehold Reform Act 2002 lays down a procedure for consultation in respect of qualifying works, that is to say works involving a service charge of more than £250 per lessee. This procedure involves a two stage process. First a landlord must serve a notice of intention which describes in general terms what works are to be carried out and the reasons why the landlord thinks that the work should be carried out. The notice must invite written observations. Furthermore the notice must contain an invitation for the nomination of persons from whom the landlord should obtain estimates. Second the landlord must issue a statement setting out the estimated cost of the work from at least two estimates, a summary of the observations received and his response to them. The regulations call this a paragraph B statement. The paragraph B statement must be sent out to each lessee with a notice inviting each lessee to make written observations on any of the estimates and the statement must specify the consultation period (at least 30 days) and the end date.
34. On the evidence before it the tribunal was not persuaded that the respondent has complied with these requirements in respect of the external works carried out to the building in 2007. Mr Seymour was not able to point either to a notice of intention or a paragraph B statement in the respondent's bundle of documents. There is a letter sent from PPS Management to Angela Sewell one of the lessees enclosing copies of the estimates and stated that the work would commence in the spring of 2007. This is the only document which might perhaps be considered to amount to a paragraph B statement. However the letter does not tell the recipient of their right to make observations or contain any time limits. Nothing else in the hearing bundle comes anywhere close to constituting either a notice of intention or a paragraph B statement.
35. In the circumstances the tribunal finds on the facts that the statutory consultation was not carried out in respect of the 2007 external works, which means that the maximum amount recoverable from each applicant is limited to £250.
36. Mr. Donegan, on behalf of the applicants, points to the absence of vouchers and contends that in the absence of invoices none of the cost of the 2007 work should be recoverable. The tribunal does not agree with this assertion. It is clear that significant work was carried out to the exterior of the building and indeed it is admitted by the applicants that the value of this work exceeds £1,000. It is therefore reasonable that the respondent should be able to recover some of his expenditure subject to the statutory capping provisions.

37. The tribunal noted that some of the pointing to the front elevation appears to be of a poor standard but overall it satisfied that work to at least the value of £1,000 has been carried out. The tribunal therefore determines that the respondents may recover £1,000 from the lessees collectively in respect of the major works carried out to the building in 2007.
38. Finally the tribunal considered the application that the respondent repay the applicants' tribunal fees. The applicants have been overwhelmingly successful in their case and the tribunal considers that it would be just and equitable for the respondent to repay the tribunal's fees incurred by the applicants namely £350 for the issue fee and £150 for the hearing fee. In arriving at this decision the tribunal bore in mind the fact that the respondent failed to comply with the tribunal directions and the application came to the tribunal unopposed.

Chairman



R.T.A. Wilson LLB

Dated 26th April 2010