

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

**Case number:** CHI/40UC/LIS/2010/0045

**In the matter of:** Escott Court, Chilton Street, Bridgwater, TA6 3HU

**And in the matter of:** an application under Section 27A of the Landlord and Tenant Act 1985 (as amended) for a determination of liability to pay service charges and under Section 20C of that Act.

**Between:**

**Mr. Anthony Andrews**

Applicant

and

**Grason Investments Limited**

Respondent

Date of application: 27 April 2010  
Date of hearing: 25 August 2010  
Members of the Tribunal: Mr. J G Orme (lawyer chairman)  
Mr. S J Hodges FRICS (valuer member)  
Date of decision: 7 September 2010

**Decision of the Leasehold Valuation Tribunal**

**For the reasons set out below, the Tribunal determines that:**

- 1. The following sums are payable by way of service charge by the Applicant, Mr. Anthony Andrews, to the Respondent, Grason Investments Limited in respect of Flat 11, Escott Court, Chilton Street, Bridgwater, TA6 3HU:  
for the year ended 30 September 2007, the sum of £280.14;  
for the year ended 30 September 2008, the sum of £279.67;  
for the year ended 30 September 2009, the sum of £325.40. Credit is to be given for any money paid by the Applicant on account of those sums.**
- 2. The Tribunal makes no order pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended).**

## Reasons

### The Application

1. On 27 April 2010, Mr. Anthony Andrews ("the Applicant") applied to the Tribunal to determine the service charges payable by the Applicant in respect of Flat 11, Escott Court, Chilton Street, Bridgwater ("the Flat") for the 3 years ended 30 September 2007, 2008 and 2009. The specific items of service charge challenged by the Applicant are set out in the application.
2. Escott Court ("the Property") is owned by Grason Investments Limited ("the Respondent"). It consists of 13 flats, 4 of which (including the Flat) are let on long leaseholds. The remaining 9 flats are let on assured shorthold tenancies. H Management Services Limited ("H Management") acts as managing agent of the Property on behalf of the Respondent.
3. The Tribunal issued directions on 14 May 2010 providing for the parties to prepare written statements of case. The parties have complied with those directions. In the Applicant's reply dated 29 June 2010, he challenged some further items of service charge.
4. The Application included an application for an order to be made pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended) ("the Act").

### The Law

5. The statutory provisions primarily relevant to matters of this nature are to be found in Sections 18, 19, 20C and 27A of the Act.
6. Section 18 provides:-
  - 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 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 purpose-*
    - 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.*

7. Section 19 provides:-

*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 provision 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.*

8. Section 27A provides:-

*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.*

Subsections 3 to 7 of Section 27A are not relevant in this application.

9. Section 20C of the Act provides:-

*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 ... leasehold valuation tribunal ... 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.*

*2) ...*

*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.*

## **The Lease**

10. The Applicant submitted with the application a copy of a lease dated 18 January 1991 ("the Lease") relating to The Ground Floor Flat, Flat 6, Escott House, Chilton Street, Bridgwater. At the hearing, it was agreed by the

parties that the Lease is the lease of the Flat, the flats having been renumbered at an unknown time.

11. The Lease was granted by Escott House (Bridgwater) Management Company Limited to Doris Susan Eileen White. It demised the Flat (including a parking space) to the lessee for a term of 99 years from 1 September 1989 at a yearly rent of £40. The Respondent is now the landlord under the lease and the Applicant is now the lessee.
12. The covenants by the lessee are set out in the sixth schedule to the Lease. Paragraph 19 provides "*The Lessee shall contribute and shall keep the Lessor indemnified from and against a due proportion of all costs and expenses incurred by the Lessor in carrying out its obligations under and giving effect to the provisions of the Seventh Schedule hereto including clauses 9 to 13 inclusive of that Schedule after deducting interest if any received by the Lessor on cash in hand or on deposit.*" Paragraph 21 provides for the lessee to make payments on account of the annual service charge. Paragraph 22 provides for a balancing payment to be made once the lessor has served a notice setting out the lessee's share of the actual service charge.
13. The covenants by the lessor are set out in the seventh schedule to the Lease. The paragraphs which are relevant to this application are paragraphs 4, 7 and 9, which read as follows:
  - "4. *The Lessor shall keep the reserved property and all fixtures and fittings therein and additions thereto in good and tenantable state of repair decoration and condition including the renewal and replacement of all worn or damaged parts provided that nothing herein contained shall prejudice the Lessor's right to recover from the Lessee or any other person the amount or value of any loss or damage suffered by or caused to the Lessor or the reserved property by the negligence or other wrongful act or default of the Lessee or such other person.*
  7. *The Lessor shall keep the halls stairs landings and passages forming part of the reserved property properly cleaned and in good order and shall keep adequately lighted all such parts of the reserved property as are normally lighted or as should be lighted.*
  9. *The Lessor shall employ and engage such servants agents and contractors as it considers necessary or desirable for the performance of its obligations under this Schedule and pay their wages commissions fees and charges.*"Additionally, the lessor is under an obligation to insure the property, to keep proper books of accounts and to prepare service charge accounts to 30 September in each year which are to be audited by a competent Chartered Accountant who shall certify the proportionate amount due from the lessee in each year.

## **The inspection**

14. The Tribunal inspected the Property on 25 August 2010 in the presence of the Applicant and Mr. Bithrey, the managing director of the Respondent and Mr. Arney, an employee of H Management.
15. The Property consists of an old house of indeterminate age which has been extended and converted so that it now consists of 13 self contained flats. The flats are served by 2 accessways. Access to flats 6, 7, 8, 12, 14 and 15 is through a door, which is capable of being locked, into a hallway and stairs ("the Hallway"). The Hallway is carpeted and the walls have been plastered and painted. Beneath the stairs there is a meter cupboard and a locked cleaning cupboard which contains an electricity socket for use by cleaners. There is a fire alarm panel, lighting and emergency lighting. Access to flats 9, 10, 11, 16, 17, 18 and 19 is by means of a covered walkway and stairs which are not enclosed ("the Covered Walkway"). The floor of the Covered Walkway is concrete and the walls are unpainted render. There is lighting on each floor, emergency lighting and a fire alarm call button in this area.
16. The building is surrounded by an area of paved parking and gardens, mostly laid to lawn. There is a bin area to one side of the parking area. There is a low boundary wall around the Property.
17. The Property appeared to be maintained and cleaned to a reasonable standard in keeping with the neighbourhood. The Applicant pointed out a downpipe at the rear of the Flat and another to the side of the Flat which he said caused problems when they were broken or overflowed. He also pointed out cracks in the boundary wall and brambles between the rear of the building and the adjoining property.

## **The hearing and the issues**

18. The hearing took place at the Bridgwater and Albion Rugby Football Club on 25 August 2010. The Applicant appeared in person. The Respondent was represented by Mr. Bithrey and Mr. Arney.
19. The application and the Applicant's reply dated 29 June 2010 challenged the following items of service charge:
  - a. Communal electricity charges in each of the 3 years;
  - b. Cost of repairs in each of the 3 years;
  - c. Charge for removal of bulk waste in 2008/09;
  - d. Cost of management charges in 2008/09;
  - e. Cleaning charges in 2007/08.

20. The Applicant's reply also complained about other matters, including long delays in effecting repairs to boundary walls, failure to clean drains in the parking area and interference with mail. The Applicant's main complaint was an allegation that the downpipe to the rear of the Flat was of inadequate size to cope with the volume of water causing it to overflow and cause dampness inside the Flat. The Tribunal explained that it had no jurisdiction to deal with these matters except in so far as they affected the service charge.
21. Within the correspondence shown to the Tribunal was a copy of a letter written by the Applicant to Mr. Bithrey in which he tendered payment of £167.60 in settlement of outstanding service charges taking account of his claim for damages arising out of dampness in the Flat. Mr. Arney confirmed that the Respondent was not seeking to rely on that agreement to prevent the Applicant from challenging the amount of the service charges.

### **The Evidence**

22. Mr. Arney had filed with the Tribunal copies of audited service charge accounts for each of the years ended 30 September 2007, 2008 and 2009. Each account was accompanied by copies of the relevant invoices. Mr. Arney and Mr. Bithrey gave further oral evidence at the hearing and the Applicant gave evidence in reply. Each item will be dealt with in turn.

### **Electricity**

23. Mr. Arney produced copies of the invoices for electricity charges and said that they covered the cost of electricity for lighting and emergency lighting in both the Hallway and the Covered Walkway, the fire alarm systems, the socket in the cleaner's cupboard and the external light by flat 6. Mr. Arney had negotiated a fixed rate contract for 5 years. The amounts claimed were £94.35 in 2007, £96.41 in 2008 and £107.33 in 2009.
24. The Applicant said that he used only the 1 light and the emergency light outside the Flat. He accepted that the lights were illuminated throughout the hours of darkness. He alleged that the electricity was used to clean the flats in the main house but he had not seen that happening.

### **Repairs**

25. Mr. Arney produced invoices to support the amounts claimed. The Respondent expended £542.62 in 2007 on roof repairs and an annual fire safety check. It spent £345.50 in 2008 on repairs to emergency and general lighting, rebedding coping stones on the boundary wall and £10 on removal of bulk waste from the bin area. Mr. Arney was unable to identify the provision in the Lease which entitled the Respondent to charge removal of bulk waste to the service charge. The Respondent spent £734.39 in 2009 on repairs and inspection of the rainwater system and internal decoration of the Hallway. Mr.

Arney said that he was very careful to obtain a separate invoice if any work was done which related to an individual flat rather than the communal areas. Mr. Bithrey said that the fire alarms are tested annually and are in working order.

26. The Applicant said that there was no glass in the fire alarm call button outside the Flat and that it had been missing for 10 years. He alleged that the fire alarm system had not been checked. He accepted that the roof repairs had been carried out. The Applicant said that he knew who had damaged the coping stones on the boundary wall but he was not prepared to tell Mr. Bithrey for fear of reprisals. He agreed that the work to the rainwater system had been carried out to a good standard but said that the downpipes were not large enough and the downpipe at the side of the Flat had come away again 2 weeks ago. In relation to the internal decorations, he alleged that the invoice covered the cost of redecoration in one of the flats.

#### **Bulk Waste**

27. Mr. Arney said that a settee and bed or mattress had been left by the bin area at the Property and he had arranged for Mr. Douglas, who tends the gardens at the Property, to remove them as the council would not do so. The Respondent did not know who had left the items. The cost of removal was £100.

28. The Applicant said that the bulk waste was not produced by the privately owned leasehold flats and that it was not fair that they should have to contribute towards the cost of removal. He said that he saw one of the occupants of another flat leaving the waste. He did not know the name of the individual. He alleged that it was just one bed which could be broken up and put in a car. He challenged the cost as being excessive.

#### **Cleaning**

29. Mr. Arney said that in view of the small area involved, the Respondent does not employ a cleaner but he or Mr. Bithrey do what is necessary as and when they visit. The Respondent had spent £83.98 in 2008 on the purchase of a vacuum cleaner and bags which was used to clean the carpet in the Hallway. He said that they sweep leaves and other debris from the Covered Walkway but that the wind quickly blows more in.

30. The Applicant complained that the Covered Walkway is not kept clean and he thought that the vacuum cleaner is used to clean the flats in the main house.

#### **Management charges**

31. Mr. Arney explained that H Management is a wholly owned subsidiary of the Respondent set up to manage the properties owned by the Respondent. It made a flat rate charge of £875 per year for managing the Property. That

figure had been agreed at least 6 years ago and had not increased since. At the time, Mr. Bithrey made enquiries of other companies and found that they charged much more. The charge includes all accountancy fees including preparation of the audited service charge accounts. The charge includes the cost of a monthly visit by Mr. Arney when he makes a visual inspection of the Property, picks up litter, cleans the communal areas if required, vacuums the Hallway carpet, brushes the Covered Walkway and does any other necessary jobs. The charge also covers the cost of administration including keeping books, paying bills, instructing contractors, arranging insurance and general administration.

32. The Applicant said that he very rarely sees Mr. Arney or Mr. Bithrey and that if he asks for a job to be done, he gets very little reaction.

### **Section 20**

33. The Applicant said that he has a limited income and he considers the service charge to be high enough. He is dissatisfied with the fact that work does not get done to rectify problems such as the rainwater downpipes.

34. Mr. Arney said that the Respondent did not think that it could recover costs.

### **Conclusions**

35. Having heard the evidence and considered all the documents submitted, the Tribunal concludes that all of the charges which have been challenged by the Applicant, with the exception of the 2 charges for removal of bulk waste, were reasonably incurred, were reasonable in cost, related to services provided to a reasonable standard and are recoverable under the terms of the Lease.

The Applicant did not put forward any satisfactory evidence to the contrary in relation to any of those items and the Tribunal found that the Respondent's explanations were satisfactory.

36. That conclusion applies equally to the management charges. The Tribunal considers that an annual fee of £875 is reasonable, particularly as it included all accountancy charges. There was no evidence available to show that the service could be provided at a lesser cost.

37. In relation to removal of bulk waste, the Tribunal accepts that, in the absence of information from the Applicant, the Respondent did not know who deposited the waste and that it was good practice for the Respondent to arrange for it to be removed. The Tribunal finds that the cost incurred by the Respondent was reasonable. However, the Tribunal concludes that there is no provision in the Lease which entitles the Respondent to recover that cost from the Applicant through the service charge. Paragraph 7 of the seventh schedule is very specific and places an obligation on the Respondent to clean



*“the halls stairs landings and passages forming part of the reserved property.”*

The Tribunal does not consider that that definition includes the exterior areas including the parking areas and the bin area. There is no obligation to keep such areas clean and in good condition. The Applicant's obligation under paragraph 19 of the sixth schedule is to contribute towards the Respondent's costs of carrying out its obligations in the seventh schedule. In the absence of an obligation, the Respondent is unable to claim a proportion of the cost from the Applicant.

38. The Tribunal accepts that it may seem nonsensical that if rubbish is left in the halls, stairs, landings or passages, then the Respondent may recover the cost of removal through the service charge but not if it is left in the bin area. However, the terms of the Lease are clear and the parties are bound by it.
39. As a consequence of that conclusion, the sum of £10 claimed under repairs for 2008 and £100 claimed in 2009 must be disallowed. That reduces the total recoverable charges in 2008 to £3,635.67 and in 2009 to £4,230.26. The Applicant's 1/13<sup>th</sup> share of those totals is £279.67 and £325.40 respectively. The charge of £280.14 for 2007 remains unchanged.
40. As has already been indicated, one of the Applicant's main concerns appeared to be the alleged failure of the Respondent to properly address his concerns about damp in the Flat. That is not something that this Tribunal is able to address.
41. **Section 20C:** The Tribunal is not required to determine whether the terms of the Lease allow the Respondent to recover its costs of proceedings through the service charge and it makes no finding in that respect. The Tribunal concludes that it is not appropriate to make an order under Section 20C preventing the Respondent from recovering the costs which it has incurred in these proceedings through the service charge if the Lease does entitle it to do so. The Respondent has prepared proper service charge accounts and provided copies to the Applicant. The Applicant has failed to effectively challenge those accounts with the exception of one small item. It, therefore, would not be just and equitable to make an order.

Signed

J G Orme

Chairman

7 September 2010