RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/43UC/LIS/2010/0057
Premises: 21 Temple Road, Epsom, Surrey, KT19 8EY
Applicant: Mr Sanjay Jagutpal
Joined Applicants: MRS Brothers Ltd, Mr M. Ali, Mr Y. Ali, Mr R. Goldstein and Mr J. Burgess
Respondent: Newservice Ltd.

Tribunal
Mr D. R. Hebblethwaite (Lawyer Chairman)
Mr R. A. Potter FRICS (Valuer Member)

DECISION

1. On 23 June 2010 the Applicant issued an application for a determination of liability to pay services charges in relation to his flat at the Premises, Flat 4, under section 27A of the Landlord and Tenant Act 1985 (this will be referred to in this Decision as "the Act" and a reference to a section means a section of the Act unless otherwise stated). Separate applications were issued by Mr M. Ali of Flat 2 and MRS Brothers Ltd of Flat 6, but at the pre-trial review held on 12 August 2010 they were joined to Mr Jagutpal's application, as was Mr Y. Ali of Flat 1A. Subsequently Mr Goldstein of Flat 7 and Mr Burgess of Flat 3 were also joined. The application relates to the years 2008/09, 2009/10 and 2010/11, in the latter case as to the estimated charges. The year end is 24 March. The application includes an application under section 20C.

2. Section 19 reads:

   (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 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.

   Section 20C 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 specified in the application.

   (3) The ..... tribunal ..... may make such order on the application as it considers just and equitable in the circumstances.

3. The Tribunal inspected the exterior, the grounds and the common parts of the Premises on 10 November 2010 and found the Premises to be a substantial attached house on a corner plot near the centre of Epsom, dating from about 1900 and converted into eight flats, with a basement and three floors above. The building is rendered and colour washed under a tiled roof, with double glazing. Common grounds at the front and rear all appear well maintained, and are in the main shared with the adjacent 23 Temple Road, part of the original building with a modern extension and under the same ownership and management. Divided between the front and the rear are 13 parking spaces demarked by brick paving. For 21 Temple Road its 8 parking spaces are all in the rank to the rear. Internal common parts are not extensive, comprising a small entrance hall, staircases and landings which appeared adequately decorated. Five flats share this and three have their own external front door. The front door to the common entrance was in poor condition with paint having flaked off.

4. Later the same day a Hearing took place at Ewell Court House, Lakehurst Road, Ewell, Surrey. The Applicant was present, accompanied by his father who had been the previous owner of Flat 4; also present were Mr M. Ali and a Director of MRS Brothers Ltd. The Respondent was represented by Mr E. Stanley and Mr A. Bird of Salter Rex, the managing agents. It was explained that the Respondent had acquired the freehold of the Premises at some point but had more recently gone into administration (since the Hearing the Tribunal has seen a copy of the Notice of Appointment of an administrator by which NatWest Bank appointed Malcolm Cohen and Shay Bannon of BDO Stoy Haywood LLP as administrators; the Notice is dated 11 March 2009). Mr Stanley informed the Tribunal that his firm had been appointed managing agents in late 2008 (and for 23 Temple Street in mid 2009). The position with regard to the management company that is a party to the leases, Laureate's Retreat Management Company Limited, was clarified. It had not functioned for many years and so all its obligations under the leases became the responsibility of the landlord, i.e. the Respondent. Finally, it was noted that of the eight flats only one is owner-occupied, namely that of the Applicant himself.

5. Both parties had submitted statements of case following the directions made at the pre-trial review. The Tribunal members had read these before the Hearing, and, of course, each party had had the opportunity to read the other's statement. At the Hearing the parties spoke, each dealing with points that they thought important and, in many cases, answering comments from the other party or dealing with questions from the Tribunal. It is not, therefore, intended to set out in full what was said at the Hearing but rather the important points, particularly those on which the Tribunal was to have to make a decision. Also, for convenience, reference will be made to "the Applicants" without specifying which was speaking and Mr Stanley will be shown as speaking for the Respondent, whether it was in fact him or Mr Bird.

6. The question of insurance was discussed first. Mr Stanley informed the Tribunal that the administrators deal with this and not his firm. From 2009 it is under a block policy of the Respondent covering all its properties, giving the benefit of lower premiums. He said that the figure of £4,000 in the 2010/11 estimate was too high because the actual premium has fallen due (in June 2010) in the sum of £3,038.77. The Applicants are worried about double cover for the period March to July 2009, as the administrators appear to have arranged cover from the date of their appointment to the next existing renewal date. Surely the building was covered directly by the Respondent from the 2008 renewal date for twelve months. The Applicants said that they had requested a copy of the policy and the schedule and Mr Stanley undertook to provide this.

7. With regards to building and electrical repairs the Applicants were concerned as to whether any of the items should have been the subject of insurance claims. Mr Stanley said not. Several of the charges included emergency call-out. There was criticism by the Applicants of not using local, cheaper contractors but they did not submit any quotes to the Tribunal.

8. Cleaning was the subject of lengthy discussion. The copy invoices show this to be done weekly. It is described as "commonway cleaning including basement and car parking area". There were two distinct points made by the Applicants about the cleaning. First, is weekly cleaning more frequent than is needed? Mr Stanley said that when his firm took over it was in a poor state and had to be brought up to an acceptable level. Secondly, the cleaning is not value for money; it is too expensive and, in any event, not done regularly; the gardener sweeps the passageway. Mr Stanley explained that the cleaners are engaged through a company; a husband and wife team attend. The Applicants said they were looking for ways to cut the costs and get value for money. The question of whether 23 Temple Road benefitted as well was raised and Mr Stanley did not know. It was agreed that the cost should be split if so. Indeed, Mr Stanley could say now that the item on the invoice dated 27/02/09 from Online Property Maintenance Ltd. for "removing all rubbish from site" must relate to both properties and could be halved. It was during this discussion that the question was raised of visits to site by the managing agents. The Tribunal was told that Mr Stanley and Mr Bird each visit once a quarter, separately. The Applicants had no comparable quotes.

9. On turning to gardening, Mr Stanley volunteered that all garden maintenance charges should be halved, as it was apparent that they were shared with 23 Temple Street. The gardener was described by the Applicants as "a hard working chap". Mr Stanley said that he worked on some other sites for his firm. He charges £130 a visit. The agents had tried to get quotes. The Applicants had no comparable quotes.

10. There was a lively discussion on the management fees. Mr Stanley explained that these were based on a unit cost of £225 to £250 per unit per annum which he said was the market rate. The Applicants gave instances of what they regarded as poor management; not meeting the tenants personally; arranging insufficient services; everything too expensive; calls not returned; no notification when Mr Bird took over as site manager; "nobody I've spoken to pays as much as we do" (Mr Ali). Mr Stanley raised the point that tenants buying the flats should have known of the charges through the usual conveyancing procedure. The Tribunal asked the Applicants if they were getting value for money. Their main criticisms were lack of communication and costs. Mr Stanley explained that for four or more flats they had to appoint accountants and that their fee was not in the management fees.

11. After the parties and their representatives had left, the Tribunal considered its decision. It was greatly assisted by the helpful summary contained in the Applicant's statement of reply at page 2 of 8. Starting with insurance the Tribunal is unable to interfere with the premiums, except to amend that for 10/11 from £4,000 to £3,038.77 to accord with the actual premium that has since come in. This is because it was not provided with any evidence on which to consider if the premiums were too high. However, the Tribunal does determine that the Applicants must not be charged twice for the period March to July 2009 (see para. 6 above). The onus is placed on the Respondent to show that insurance from the previous renewal date was *not* in force and if it cannot do so it must make refund to the Applicants (and indeed all the lessees). Regarding building repairs, there is no mandatory requirement for three quotes for the individual amounts charged. The Tribunal accepts for all three years that none were insurance jobs and that several were on call-out. The Applicants had not

submitted comparable quotes. The costs of keys had in the main been recovered from individual lessees. Regarding electrical repairs, it is unreasonable to include in the 08/09 service charges the bill of £90 to Maximum Electrical. This should have been recouped from the lessee of Flat 1A. The balance, and the sums for the two following years, are reasonable. The Tribunal next considered cleaning, recognizing that it was an issue which clearly concerned the Applicants deeply, concluding that it is not unreasonable for the Respondent to go to a company to provide cleaners. The rate does appear to be on the high side but it is difficult for the Tribunal to find it unreasonably so with no comparable quote produced. The Tribunal accepts the need for the "spring clean" in February 2009. The standard of cleaning was reasonable at the Inspection. Taking everything into consideration and on balance, the Tribunal finds the amounts for cleaning reasonably incurred. The concession in 08/09 is noted (see para. 8 above), thus reducing the charge by £140.89 to £1,097.87 but the remaining two years' charges are approved. This is subject to three directions/recommendations from the Tribunal. First, it must be established if 23 Temple Road benefits from any work done under the invoices charged to 21 and, if so, the charges halved (or appropriately apportioned). The Tribunal believes that this is likely to be so as the cleaning includes the car parking areas. Secondly, if requested by the lessees the Respondent should consider cleaning every other week. Thirdly, alternative quotes should be obtained for the future. The entry phone bill for £70.50 in the first year only is approved. There is no evidence linking this to a faulty installation. Terrorism insurance is, sadly, standard now for blocks of flats, and the amounts do not seem unreasonable, with no comparative quotes produced. For 10/11 the Tribunal substitutes the actual premium, now known, of £67.26. The garden maintenance is to be split with 23, so that the 09/10 figure is £705 and for 10/11 £500. With this done, the charges are not unreasonable and, once again, no comparative evidence has been produced. However, the Respondent should consider seeking alternative quotes. The figures for electricity (09/10 and 10/11 only) have not been challenged. The accountancy fees are reasonably (and necessarily) incurred and are reasonable in amount. In error they were omitted from the 10/11 estimate and the Tribunal has decided to add them in at the same amount as the previous year, £235. That leaves the management fees. The Tribunal is able to say from its own expertise that charging a sum per unit is a standard method in the industry and that £250 is within a reasonable range of charge. The Tribunal determines that the services provided by the managing agents are of a reasonable standard, but adds a comment that they should consider improving the way they arrange communication with the lessees, who perceive it as poor (see para. 10 above).

12. Applying the reductions set out in the preceding paragraph gives totals for each of the three years as follows:

08/09	£7,417.78
09/10	£11,641.26
10/11	£8,491.03

These figures are to be divided by 8 to give the charge per flat and are payable forthwith by the Applicants and the other lessees, with credit being given for payments made already. It is worth reminding the parties that the 10/11 figures remain the estimated charges and will be subject to adjustment at the end of the year in accordance with para. 13 (c) of the Fourth Schedule to the lease.

13. There is one other charge queried by the Applicant in 09/10, namely a legal fee of £85 (see top of page 8 of 8 of the Applicant's statement). However, this is not classed as a service charge but rather an administration charge and it is governed by Schedule 11 to the Commonhold and Leasehold Reform Act 2002. A separate application has to be made to the

Tribunal. In an effort to assist the Applicant and perhaps save him a further fee the Tribunal would offer an opinion that the fee would probably be found reasonable, being a fee paid to a solicitor in connection with claiming amounts owing from the Applicant.

14. Finally, the Tribunal considered the application for an order under section 20C. It is the view of the Tribunal that this application should succeed. This is on the basis that the Tribunal has made some reductions in the service charges in addition to some concessions on the part of the Respondent offered as a result of the application. The Tribunal is of the view that the Respondent should have been aware of the need to ensure that charges were apportioned with 23 where appropriate. Accordingly, the Respondent's costs in relation to the application are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge.

Decision dated 13 December 2010

Signed
David Hebblethwaite
Chairman