8644.

HM COURTS AND TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

of the

NORTHERN RENT ASSESSMENT PANEL

Property	:	Flats 1, 2 and 3, 1 Devonshire Road, Prenton, Merseyside CH43 4UP
Applicants	:	Mr Simon Russell Mr Ian Turner Mr Kingsley Taylor
Respondents	:	Ground Rent Trading Liverpool Ltd Moreland Estate Management
Case number	:	MAN/00CB/LSC/2012/0122
Date of Application	:	18 August 2012
Type of Application	:	Landlord and Tenant Act 1985 Sections 27A and 20C
The Committee	:	Mr John Murray LLb Mr Ian James MRICS
Date of Hearing	:	25 February 2012

ORDER

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1. The Service Charges recoverable by the Respondents in relation to Flats 1, 2 and 3 Devonshire Road shall be limited for the years specified in accordance with the table below

	2008	2009	2010	2011	2012
Per Flat	£335.24	£274.67	£584.95	£645.27	£465
Total	£1005.71	£824	£1754.86	£1935.80	£1395

2. The Respondents shall pay the Applicants' issue fee and hearing fee totalling £350 within fourteen days of the date of this order.

BACKGROUND TO THE APPLICATION

1. This was an application to determine liability to pay and reasonableness of service charges under s27A Landlord and Tenant Act 1985 in respect of three flats situated at 1 Devonshire Road, Prenton, Merseyside CH43 4UP ("the Property") and limitation of costs under s20C of the same Act for the years 2008 – 2012.

2. The three applicants are flat owners at the Property and each sought a determination of Service charges in relation to years relevant to their respective Flats as follows:-

Flat	Owner	Service Charge Years
Flat 1	Mr Simon Russell	2009, 2010, 2011, 2012
Flat 2	Mr Ian Turner	2011, 2012
Flat 3	Mr Kingsley Taylor	2008, 2009, 2010, 2011, 2012

3. The Respondents are the Freeholder of the Property Ground Rent Trading Liverpool Ltd. and their Managing Agents Moreland Estate Management. Both share an address in Edgeware and are presumably related companies.

4. The application dated 18 August 2012 was jointly made by the three Lessee Applicants. Their respective concerns were set out in their joint application and summarised below:

5. Mr Simon Russell asked the Tribunal to determine whether the following are payable

   i. Period 1.7.09 – 31.12.09: Fees charged by the Management Agent in connection with recovery of service charge, ground rent and interest, on the basis that those monies had been paid in time, and, in the alternative that the charges of £197.06 were in the nature of a penalty charge.

   ii. Period 1.1.10 - 30.6.10: whether the sum of £409.79 was paid by electronic transfer on 23.12.09 and that no further sum was due for the period in question.

   iii. Period 2010: Fees charged by the Managing Agent in connection with recovery of service charge and rent (£212.50) : Mr Russell said that that these amounts had been paid in full before the action was taken.

   iv. Period 1.7.10 – 31.12.10: Service charge of £384.79 and Ground rent of £25: whether the service charges and ground rent can be "offset" against lost rent and cost of internal repairs which Mr Russell says he has suffered as a result of failure to manage the Property.

   v. Period 1.1.11 to 30.6.11 : Service charge of £384.79 and Ground rent of £25: whether the service charges and ground rent can be "offset" against

lost rent and cost of internal repairs which Mr Russell says he has suffered as a result of failure to manage the Property.

vi. Period 2011: Fees charged by the Managing Agent in connection with recovery of service charge and rent (£215.00). Mr Russell says that these fees should not be payable as the Agents had failed to acknowledge that earlier amounts were disputed.

vii. Period 30.12.11 – 29.6.12 : whether the sum of £1126.45 was paid by electronic transfer on 3.1.12 and that no further sum was due for the period in question.

viii. Period 30.6.12 - 31.12.12: whether the sum of £588.36 is payable in light of payment having been made for a previous period which included provision for major repairs that had not been carried out. To determine whether the landlord is entitled to interest raised where sums are disputed or previously paid.

6. Mr Ian Turner asked the Tribunal to determine whether the following are payable

   i. Period 2011: Fees charged for major works of £4300 which have not been completed. Mr Turner asks the Tribunal to consider the question of consultation.

   ii. Period 2012: Service charges for gardening and general maintenance (£560) which he says has not been carried out.

7. Mr Kingsley Taylor asked the Tribunal to determine what, if any, of the service charges payable on account are reasonable for the years 2008 - 2012, asserting that no maintenance is carried out, or not carried out satisfactorily. He lost rents from tenants who had moved out of his flat. He stated that the boundary wall had collapsed four years before, and that there had been no gardener for five years.

THE PROCEEDINGS

8. Directions were issued by a procedural chairman on 1 October 2012. The Respondents were directed to file their statement of case and supporting documents before 24th October 2012 and the Applicants to send comments on the Respondents' case by 7 November 2012. Statements of cases were received from all parties. Prior to the hearing the parties were directed to produce an agreed bundle of documents; this was not produced. The Applicants submitted individual bundles for the hearing. The Respondents did not submit any hearing bundles

INSPECTION AND HEARING

9. A Leasehold Valuation Tribunal was appointed and an inspection of the Property took place on 25th February at 10am. The inspection was attended by Mr Simon Russell and Mr Ian Turner

10. The Property comprises three self contained flats in a converted end terraced property constructed in approximately 1850. The Tribunal was told that it is Grade II listed.

11. The Tribunal inspected the exterior and common parts of the Property. Outside was a gardened area to the front, mostly laid out with shrubs and trees, with a path leading to the entrance door. To the rear was a graveled area laid out to car parking. The stone boundary wall to the roadside was in a state of collapse and in need of rebuilding. Most of the stone from the wall had been strewn over the car parking area presumably awaiting reconstruction. As a result of this, the rear of the property/car parking area was no longer private/secure. Areas of rendering were damaged and overall in a poor condition, being crazed and missing in parts.

12. Internally, the common parts consisted of entrance hall, stairwell and landings. The decoration and floor coverings were tired. Staining was noted to the walls, presumably caused by damp penetration. There was an outbreak of rot to the second floor landing, and rot affected skirting boards to the entrance. There was no evidence that carpets/walls/paintwork had been cleaned recently. Overall the impression of the exterior and the common parts was poor and showed little evidence of regular maintenance or management.

13. The substantive hearing of the application was on 25th February at 11.30am at Dale Street in Liverpool . At the substantive hearing, the three Applicants attended in person. There was no appearance on behalf of either of the Respondent companies. They were aware of the application, having filed a paginated bundle of documents, and had not notified the RPTS of any reason they were unable to attend. The Tribunal was satisfied that they were aware of the case and the hearing date and had elected not to attend. The Tribunal elected to proceed in their absence.

THE LAW

14. The relevant legislation is contained in s27A and s20C Landlord and Tenant Act 1985 which are set out at Appendix A

THE LEASES

15. Copies of all three leases were provided by the Applicants. They were originally granted by Lodgeday Properties Plc for a term of 199 years from 1989 and 1990.

16. Lease terms require the lessees to pay

(a) Reserved rent (£50 during the first fifty years of the term)

(b) One third of costs of

i. Insurance
ii. Water rates
iii. Maintenance
iv. Repairs, redecoration and renewals of the structure and communal parts of the building
v. Maintaining and cleaning car parking area
vi. Maintaining and upkeeping the garden
vii. Maintaining the garden and private pathway, railings and gardens referred to at entry 2 of the Charges Register of Title Number MS39056. (presumably this refers to number 3 Devonshire Road which shares to some extent the front garden)
viii. Fees of the Managing Agents for collection of rents and for the general management of the Property.

17. The amount of the contribution is to be ascertained and certified by the Lessor's Managing Agents on the 30th of June each year and the Lessee shall pay on the 1st January and the 1st July each year a sum equal to one half of the amount payable by Lessee for the proceeding year, and such sums as the Lessor's Managing Agents might reasonably require on account of such contribution, and pay on demand the balance or be credited with the shortfall.

18. The Respondents are obliged by Paragraph 4(1) of the lease to maintain, repair, redecorate and renew the structure of the Property, installations for the supply of utilities, communal parts, garden and the car parking areas, and by Paragraph 4(2) of the lease to keep internal communal areas clean, reasonably lit and in good repair and condition.

THE EVIDENCE AND SUBMISSIONS

The Applicants

19. Mr Simon Russell objected to interest being charged as he asserted his account was not in arrears, and felt that the fees charged by Third Party debt collectors to the Respondents were not due. He confirmed that he had had county court proceedings brought against him by the Respondents resulting in his having to apply to set aside a default judgment which had been obtained against him

following service at a wrong address. Those proceedings had been adjourned pending resolution of the current application, which had predated the Court action.

20. Mr Kingsley Taylor in his written representations (3 November 2012) stated that there was insufficient gardening, cleaning, or general property maintenance. He said that the entry iron lock is broken, there are leaking gutters, the front door is painted in undercoat only. There is dampness within the communal hallway, the boundary wall to the Property has collapsed into the street and has not been repaired after four years. He said that such works that have been carried out have not been carried out to a satisfactory standard.

21. In YE 2010, he says that render to the rear wall of the Property had fallen off resulting in the interior of flat 2 becoming damp, so that his tenant left.

22. In YE 2011, a leak through the ceiling again resulted in his tenant leaving.

23. Correspondence about charges, and about works to be carried out, went unanswered by the Respondents, who continued to send letters itemising interest due, arrears letters charged for. All three applicants confirmed that they had not been provided with any accounts until November of 2012, when consolidated accounts were prepared in connection with these proceedings.

24. Mr Ian Turner was concerned about being charged for services that had not been carried out, and the lack of consultation exercises.

25. The Tribunal asked the Applicants to comment upon the accounts provided by the Respondents at page 358 of their bundle, it being the definitive statement prepared by the Respondents to justify the service charges sought, along with the copy invoices submitted as evidence.

26. The Applicants all confirmed that they were satisfied that the Respondents had arranged insurance and that the cost of that insurance was reasonable.

27. In evidence, the Applicants were all adamant that they had seen no evidence of gardening taking place. Mr Russell said he had last trimmed the hedges approximately eighteen months previously and there was no evidence to his eyes that they had been touched since. Mr Taylor resides in the top floor flat himself (the other two Applicants let their flats) and had not seen any evidence of gardening. The Applicants thought four visits a year, at say £60 a visit should be sufficient to keep on top of the shrubbery and vegetation that exist.

28. The rendering to the back wall had taken some sixteen months to attend to, following repeated correspondence which was ignored. This resulted in serious water penetration to the interior walls of Flats 1 and 2. Tenants had moved out in the meantime, due to the dampness penetrating their homes. The Applicants accepted that the works had been carried out, but there had been no statutory consultation. There was evidence it had been subsequently painted.

29. The stone wall to the side of the Property collapsed in 2008. It had to be made safe by the Local Authority – on three separate occasions. The Applicants were unaware of why it had taken so long to repair. Had it been repaired there would not have been the need to have it made safe three times – with three invoices. A consultation process had started in 2010 – but had not progressed. The Tribunal was shown an email in 2010 whereby the Respondent's managing agents had indicated that it would be "subsidized" by an insurance claim. There were no details available as to how that claim had progressed, and why the earlier charges had not been met under that claim. Mr Russell in particular felt very strongly indeed that the £600 charged by an organisation who appeared to have come from Worcester was excessive.

30. The Applicants had no knowledge of any repairs being carried out to the roof. One of the invoices was for £825, (YE 2012). They said that there had been no consultation for those works. Mr Turner felt he would have been aware if roof repairs were necessary. The earlier roof repairs (YE 2010)had involved the hire of a cherry picker, and the Applicants accepted that such works could have been carried out from the road without the Applicants necessarily being aware of those works.

31. All the Applicants felt very strongly that the Respondents' management charges were excessive, and far from reasonable, pointing out that for the most part they simply ignored correspondence (emails, phone calls, letters) requesting that maintenance be carried out, or pointing out that accounts had been paid.

The Respondents

32. The Respondents did not attend the Tribunal. They had submitted to the Tribunal in November of 2012 a large paginated bundle running to some 425 pages, but they had made no representations in support of those documents. The majority of the documentation were computer generated statements of account delivered to the Applicants with accompanying relevant statutory notices.

33. Regrettably they have not supplied any copy correspondence that they have sent to the Applicants, other than the standard documentation as referred to above. Clearly there has been correspondence as it is referred to in the copy letters the Applicants have supplied.

34. Also included in the bundle were service charge budgets for the years 2009 through to 2013, and consolidated accounts for the period 1 July 2007 to 13 November 2012, and copies of relevant invoices. Perhaps the most pertinent of those documents is the annual accounts. The Applicants confirmed that they had not been sent any such accounts until these proceedings started.

THE DETERMINATION

35. The Tribunal confirmed at the outset of the Hearing that it's jurisdiction was limited to considering Service Charges alone. In that regard, the Tribunal had been asked to determine

    (a) Whether the charges are recoverable under the lease
    (b) If so, whether they are reasonable
    (c) Whether there is any other statutory limitation of recovery (eg. Consultation under s 20 Landlord and Tenant Act 1985)

36. The Tribunal found that the Leases permit the Respondents to recover service charges, to include administration fees of 15% of the costs of works. These are variable service charges within the meaning of the Landlord and Tenant Act 1985 and the Tribunal has jurisdiction to consider the reasonableness of the amount payable.

37. In relation to the charges levied against Mr Russell by Third Parties instructed by the Respondents, the Tribunal was of the opinion that these were Administration Charges, and fell to be determined under Schedule 11 Commonhold and Leasehold Reform Act 2002, and would need to be the subject of a separate application by Mr Russell. As the Respondents were not present at the hearing, it was not felt appropriate to widen the scope of the application.

38. The Tribunal was not able to adjudicate on the interest charges sought from the parties for alleged late payment. Such charges, which the contract provides for, are neither service charges nor administration charges, and do not fall to be determined by the Tribunal.

39. The Tribunal was asked in representations made by Mr Russell to consider allowing the Applicants "managing control" of the Property. This was not however part of the present application before the Tribunal and must be the subject of a separate application if this is sought by the Applicants.

40. In relation to those items of work costing in excess of £750 (being £250 per flat), the Respondents had carried out no consultation, and nor had it made any application under s20Z for consultation requirements to be dispensed with. Given the lack of communication on the part of the Respondents, and the failure to carry out the works it is unlikely that the Tribunal would have exercised its discretion in the Respondents' favour had such a request been made.

41. As an example, there had been no consultation for the rendering work to the rear of the Property. The invoice produced in the Respondents' evidence was far from satisfactory – it was an email and it was unclear in the absence of any explanation on what basis only 75% of the cost sought by the Contractor was paid by the Respondents. The Respondents provided no evidence that statutory consultation had been carried out in relation to works carried out in November 2010 by Mr S Guy. Mr Russell had made it clear he wanted the consultation process to be

followed, and was concerned about the delay in attending to these works which had cost him in terms of lost rental payments.

42. In relation to the roof repairs, the Tribunal disallowed the 2012 invoice in its entirety, as no evidence had been provided as to the need for such repairs; and any substantial works would have in all likelihood have been noticed by the Applicants. The earlier 2010 invoices were from two suppliers and for less substantial works, which could have been carried out without the Applicants being aware. The Tribunal allowed these charges as reasonable

43. The Respondents have failed to deliver transparent statements showing clearly where payments have been made by the Applicants as recommended by the RICS Residential Management Code (2nd Edition). Accounts should be presented so as to indicate clearly all the income received as well as receivable (10.3 of the Code)

44. Management Fees: the Tribunal found that the management of the Property had not been effective nor timely, resulting in frustration to the Applicants. In reality, there is very little management to be done, aside from collection of rents, and service charges, and arranging insurance. Such repairs that were necessary had not been attended to within a reasonable time, or at all in some circumstances. The Tribunal felt that a fee of £50 per flat per annum would be a reasonable charge.

45. The accounting documents provided by the Respondents to the Applicants, and indeed to the Tribunal were far from transparent, and it was very unclear what each Applicant had paid on account of his charges, from the documentation that the Respondents had provided. As an example, the Statement dated 4 October 2012 addressed to Mr Russell shows charges going back to May 2009 until August 2012 – setting out only service charges on account, interest charges and other fees due; it does not record payments made on account by Mr Russell, and nor are the service charges on account reconciled by accounts of expenditure incurred.

46. Taking account of the above, the Tribunal allowed the following charges for Years

1. YE June 2008

Service charges claimed were accepted in full for this year.

Total charges allowed £1005.71
Charge per Flat £335.24

2. YE June 2009

Service charge claimed were accepted for this year, save Management Fees were reduced to £150

Total charges allowed £824
Charge per Flat £274.67

3. YE June 2010

Service charge claimed were accepted for this year, save Management Fees were reduced to £150

Total charges allowed £1754.86
Charge per Flat £584.95

4. YE June 2011

Service charge claimed were accepted for this year, save

Management Fees were reduced to £150

Gardening: £240 was felt to be a reasonable amount.

Insurance Recoveries £810 – this figure was removed in full as no information was available to explain what it was for.

Rendering £1387.50 – in the absence of evidence of any consultation this was limited to £750 (£250 per flat).

Repair to boundary wall: £100 was felt to be a reasonable amount as opposed to £600. An unskilled local operative (as opposed to a contractor from Worcester) could have carried out this work. No evidence that any care had been taken over stacking stones which had been strewn over the car park.

Total charges allowed £1935.80
Charge per Flat £645.27

5. YE June 2012

Service charge claimed were accepted for this year, save

Management Fees were reduced to £150

Gardening: £240 was felt to be a reasonable amount.

Interior decoration (£795) was disallowed in full – there was no evidence that any interior decoration has been carried out. The Tribunal had queries that could have been put to the Respondents but as they did not attend they could not answer them.

Roofworks disallowed in full (£825) - there was no evidence before the Tribunal that any roof works were needed. No transparency as to what work was required, or even if it was carried out.

Total charges allowed 1334.58
Charge per Flat £444.86

6. YE June 2013 (interim service charges sought)

   In terms of interim service charges on account for the year ending June 2013, adopting the statement on Page 5 of the Respondents' bundle, the parties accepted the interim charges on account could be sought as stated:

   a. Electricity £75

   b. Gardening £240 (on basis of four visits per annum)

   c. Maintenance: £150 (on basis of £50 per unit RICS recommendations of a unit charge; there are little management requirements at the property)

   d. Insurance £430

   e. Sundries: nil

   Total £1395 per annum
   £465 per flat.

In summary the Tribunal found the Property to be poorly managed and poorly maintained. There was clear evidence of a serious lack of communication from the Respondents, further evidenced by their failure to properly engage with the Tribunal Service, having made no representations and having failed to attend the hearing.

COSTS

47. The Tribunal found no clause that enabled the Respondents to recover legal costs in relation to Tribunal proceedings in accordance with the decision in St Mary's Mansions Ltd v Limegate Investment Co Ltd & Sarruf [2003] 05 EG 146. This case approved the earlier decision in *Sella House v Mears* (1989) 21 H.L.R. 147 where Taylor LJ said: " For my part, I should require to see a clause in clear and unambiguous terms before being persuaded that that result was intended by the parties".

48. As the Tribunal found that no legal costs were recoverable under the Lease, there was no reason to make an order under s20c Landlord and Tenant Act 1985.

49. The Tribunal has considered the questions of costs and reimbursement of fees.

50. The Tribunal has power to award costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which provides:

51. '(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

52. (2) The circumstances are where—

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

53. (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

54. (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.'

55. The Tribunal did not consider that any of the prescribed circumstances arose in this particular case and concluded that it would not be appropriate to award costs to either party.

56. Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 provides:

57. '(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

58. (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).'

59. The Tribunal has reviewed all the evidence in this case and is satisfied that, as the Applicants have been substantially successful in the application, it would be fair and reasonable for the Respondents to reimburse the Applicants' fees of £350 (application fee and hearing fee) in full.

John Murray
Chairman of the Leasehold Valuation Tribunal
13 March 2013

Appendix A

s27A Liability to pay service charges: jurisdiction.

(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.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to— .

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and .

(e) the manner in which it would be payable.

s20C Limitation of service charges: costs of proceedings.

(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 court, residential property tribunal] or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, 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) The application shall be made—

(a) In the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) In the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) In the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(c) In the case of proceedings before the Upper Tribunal, to the tribunal;

(d) In the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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.