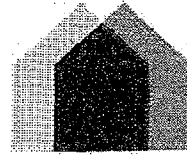


3356



**Residential
Property**
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LON/LON/OOAF/LSC/2007/0271

Premises: Landau House, 67 Croydon Road, Keston , Kent
BR2 6EH

Applicants: Ms F Mansouri, Mr T Hughes, Mrs A Worth, Mr G
Worth

Represented by:

Respondents: McCulloch Homes Ltd

Represented by: Ms M Hulls, Management Company Secretary,
Mr M Rutherwood, Consultant

Tribunal: Ms E Samupfonda (LLB Hons)
Mr R Humphrys FRICS

Date of Hearing: 24/09/07

Date of Decision: 01/10/07

In the leasehold Valuation Tribunal
Ref: LON/00AF/LSC/2007/0271

Applicants	Ms F Mansouri, flat 1 Ms T Hughes, flat 2 Mrs A Worth, flat 3 Mr G Worth, flat 4
Respondents	McCulloch Homes Ltd
Represented by	Ms M Hulls, Management Company Secretary Mr M Rutherwood, Consultant
Premises	Landau House, 67 Croydon Road, Keston, Kent BR2 6EH
Tribunal	Ms E Samupfonda (LLB) Hons Mr R Humphrys FRICS

1. This is an application under section 27A Landlord and Tenant Act 1985 (the Act) for a determination of the reasonableness and liability to pay service charges. The Applicants are long leasehold owners of flats in the above named premises. The Respondent is the freehold owner. Landau House is said to be a pub converted into 4 flats situated on a development with 5, 3 bedroom terraced houses known as Landau Terrace, owned by Town & Country Housing Group (TCHG), a social landlord. The Applicants have also made an application under section 20C of the Act for an order preventing the Respondent from recovering the cost of these proceedings through the service charge.
2. Directions for the future conduct of the application were made on 3rd August 2007. The Tribunal identified that the issues to be determined were whether the budget for the service charge year 2007/8 contained reasonable sums and whether the contribution from TCHG are reasonable.
3. The hearing of the application was held on 24th September 2007. The Applicants notified that tribunal that they would not be attending by letter and by a telephone call on the day of the hearing. Ms Hull, management company secretary and Mr Rutherwood, consultant attended and represented the Respondent. Ms Hull confirmed that the budget sums were as follows:-

Cleaning, including common parts, grounds & windows	£2,100.00
Insurance	£870
Electricity	£250

Water	£160
Accountants	£500
Admin/management	£457.20
Sinking fund	£457.2
Sewage pump maintenance	£290

4. She explained that following receipt of the electricity and water bills, it became apparent that the budget figures were insufficient to cover the cost hence the revised figures.

Ms Hulls explained that the service charges are divided equally between the 4 flats. The tribunal drew her attention to the fact that the lease is not specific on the question of apportionment. Clause 1 of the Fifth Schedule provides that "the Landlord to recover from the Tenant the Tenant' due proportion of all expenditure overheads and liabilities...." It makes reference to the tenants' proportion being set out in Part III of this schedule but this was not available. Ms Hulls said that the missing part stipulated the apportionment at 25% each. Whilst not entirely satisfactory to apportion the cost equally, it seems to be a reasonable and common sense approach to adopt in the circumstances.

5. Set out below is our findings of relevant facts and decision. Attached hereto is the tribunal's revised estimated budget for the year 2006/7.
6. Determination

Cleaning, grounds and windows (£2100)

Ms Hulls disputed the Applicants' complaints regarding the level of cleaning. She said that she had visited the premises on a number of occasions and she had found them to be spotless. The Respondent is only now responsible for cleaning Landou House. Payments are made monthly for cleaning the common parts, windows, grounds up keep and weeding. She understood that the Applicants' main complaints had been about the use of the bin store area by the housing association tenants and this has been resolved by providing the tenants with individual bins in their gardens and by locking the bin stores area and providing a key to each lessee. The tribunal is satisfied that the estimated cost for cleaning, grounds and windows is reasonable as it is based on the actual cost incurred.

Insurance (£870)

Ms Hulls said that the landlord obtained this soon after the building was completed, it was already in place when the first Applicant moved in in October 2006 and it was due for renewal in October 2007. The premises are insured with Norwich Union. As no evidence was submitted challenging the reasonableness of this cost, the Tribunal finds that the cost is reasonable as the premises are insured with a reputable firm and the cost does not appear to be out of keeping with the market norm. The Tribunal noted that provision has not been made in this budget for the premium due in October.

Electricity and water (£250 & (£160)

Ms Hulls explained that she had apportioned the cost of the electricity at 2/3 to the Applicants and 1/3 to TCHG based upon the fact that there is 1 light at the rear of the car park at Landau Terrace and 1 lamppost at each end of Landau House and that the rest of the electricity is used in the communal areas. She informed the tribunal that there is 1 external stand pipe. Following receipt of bills, she sought to increase the budget figure to £250 for the electricity and £160 for the water. Initially the tribunal queried the water cost as it appeared to be on the high side. However, having regard to the evidence, the tribunal acceded to her request and considered the revised figures were reasonable as they were based upon actual consumption.

Accountants (£500)

Ms Hulls said that the Respondent operates under the umbrella of another company that employs an independent accountant to deal with all the accounts at the year end. This cost has not yet been ascertained as accounts have not been produced. The tribunal considered that this cost was rather on the high side in the light of the number of flats involved and size of the building. It is likely that if the accounts were properly produced by the management team, the accountant's fees would be relatively small. In the circumstances, the tribunal does not find that this cost is reasonable and has accordingly reduced it to £150.

Sinking Fund (£457.20)

Landau House and Landau Terrace share the crossover, entrance and driveway and a sinking fund has been set up to cover the maintenance costs as well as decoration of the common parts internally and externally. Ms Hulls apportioned the cost maintaining the crossover, entrance and driveway as 1/3 contribution from the Applicants and 2/3 from TCHG. The estimated cost is approximately £2800-3000 and works are anticipated in 5-7 years time. The lease provides for a sinking fund at it is in our view reasonable to accumulate funds for large expenditure and the anticipated costs for the crossover, entrance and driveway appears to be reasonable. The tribunal drew to Ms Hulls' attention to the fact that no provisions have been made to cover the cost of day to day maintenance and regular redecoration of the external and common parts.

Sewage Pumps (£290)

With the tribunal's agreement, Ms Hull added the cost of the sewage pump to the estimated budget. The Applicants had challenged this item on the basis that they had not been previously informed that the pumps would require servicing bi-annually. Landau House has exclusive use of 2 sewage pumps. Ms Hulls had sought and obtained quotes from Flowmech (£290) and KGN (£900) for servicing and maintaining them and she had accepted the lower quote. Therefore, we find that £290 to service 2 pumps twice a year is reasonable.

Admin/management fee

Clause 5 (f) (iv) of the lease entitles the landlord to charge a management/administration fee of £15% which in our view is reasonable.

Costs


The tribunal does not have a general power to award inter parties costs other than in the circumstances set out under Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002 and the amount is limited to £500. It is our view that in order to recover legal costs associated with the application to the tribunal through the service charge, the lease must make express and unambiguous provisions. We are satisfied that the lease does make express recovery of legal costs.

The tribunal takes the view that it has a wide discretion to exercise its powers under s20C of the Act in order to avoid injustice to tenants. Section 20C provides that a tribunal may "make such order on an application as it considers just and equitable in the circumstances." In the Lands Tribunal case of Tenants of Langford Court v Doren Ltd LRX/37/2000, His Honour Judge Rich QC set out the principles upon which discretion should be exercised. We accept that in exercising our discretion, we must have regard to what is just and equitable in all the circumstances and that the circumstances include the conduct and circumstances of all the parties. In this case, it is our view that had the landlord resolved the issues by responding to the complaints about the bin stores, apportionment of costs and clarifying the Applicants queries regarding the sewage pumps sooner, this application may not have been brought. In the judgement of the tribunal that failure makes it just and equitable to decline to make an order that the landlord recovers the whole of the costs claimed through the service charge and instead limit the amount that it may recovered to £150.

Conclusion

The tribunal determines that each lessee is liable to contribute £344.60 per quarter to the estimated service charge (see attached estimated service charge calculations)

Chairman



Dated

3/10/07

Leasehold Valuation Tribunal's Decision

Landau House
67 Croydon Road
Keston
Kent BR2 6EH

Estimated Service Charge 1st April 2007 – 31st March 2008

Cleaning including common parts, grounds and windows	2,100.00
Insurance	870.00
Electricity	250.00
Water	160.00
Accountant	150.00
Pump maintenance	580.00
	<u>4,110.00</u>
Less Housing Association contribution	368.00
	<u>3,742.00</u>
Management fee 15%	561.30
	<u>4,303.30</u>
VAT @ 17.5%	753.07
	<u>5,056.37</u>
Reserve fund	457.20
	<u>5,513.57</u>
Total estimated expenditure	5,513.57
Total per flat	1,378.39
Total each quarter	344.60