

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

Case Number: CH1/00HB/LSC/2007/0110

Re: 8 Trinity Place, Merchants Road, Bristol, BS8 4PZ

In the matter of an application under Section 27A of the Landlord and Tenant Act 1985 for a determination of liability to pay service charges.

**Between:**

**Knightstone Housing  
Association Ltd**

Applicant

and

**Mr. J. Craig**

Respondent

Date of application: 5 December 2007

Date of hearing: 7 May 2008

Members of the Tribunal: Mr. J. G. Orme (Lawyer Chairman)  
Mr. S. Hodges FRICS (Valuer member)  
Mr. M. R. Jenkinson (Lay member)

Date of decision: 17 May 2008

**Decision of the Leasehold Valuation Tribunal**

**For the reasons set out below, the Tribunal determines that the service charges set out in the table below are payable in respect of the property known as 8 Trinity Place, Merchants Road, Bristol, BS8 4PZ and that they are payable to the Applicant, Knightstone Housing Association Ltd.**

<b>Service charge year</b>	<b>Annual amount due</b>	<b>Monthly amount</b>
<b>07.10.02 to 05.10.03</b>	<b>£1024.00</b>	<b>£85.33</b>
<b>06.10.03 to 03.10.04</b>	<b>£1053.65</b>	<b>£87.80</b>
<b>04.10.04 to 30.09.05</b>	<b>£1107.11</b>	<b>£92.26</b>
<b>01.10.05 to 01.10.06</b>	<b>£1269.72</b>	<b>£105.81</b>
<b>02.10.06 to 30.09.07</b>	<b>£736.92</b>	<b>£61.41</b>
<b>01.10.07 to 30.09.08</b>	<b>£988.62</b>	<b>£82.39</b>

**For the service charge year 2002-03, the Respondent, Mr. J Craig, is liable to pay that part of the service charge which is proportionate to his period of ownership during that year. For the remaining years, the service charges are payable by the Respondent. The outstanding service charges for the years 2002 –07 are now due. For the year 2007-08 a proportionate part of the service charge up to the present time is now due. The balance is payable on a monthly basis in accordance with the terms of the lease.**

## Reasons

### The Application

1. On 5 December 2007, the Applicant, Knightstone Housing Association Ltd, applied to the Tribunal under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") to determine the liability to pay service charges in respect of 8 Trinity Place, Merchants Road, Bristol ("the Property"). The Applicant sought a determination for each of the years 2002 to 2007 that the service charges that it had levied were reasonable and that the Respondent, Mr. Jon Craig is liable to pay them.
2. The Tribunal issued directions on 13 December 2007 providing for both parties to prepare written statements of case. The timetable was subsequently amended on 2 occasions. The Applicant lodged a witness statement and bundle of documents in accordance with the directions. The Respondent did not provide a written reply.

### The Law

3. The statutory provisions primarily relevant to applications of this nature are to be found in sections 18, 19 and 27A of the Act.
4. 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 the 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.*
5. 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.*
6. 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.*
- Subsections 2 to 7 of section 27A are not relevant in this application.

### **The Lease**

7. The Respondent holds the Property for the residue of a term of 126 years from 1 January 1987 granted by a lease made in 1992 under the provisions of Part V of the Housing Act 1985. The copy of the lease provided to the Tribunal is not dated. The lease was granted by the Applicant to Helen Schell and reserved a yearly rent of £10.00.
8. The lease contains the following relevant definitions:
  - 1) *"The Buildings" means the property known as Trinity Place aforesaid which is divided into 14 flats and 4 houses of which the flat is one.*
  - 2) *"The Main Structures" means those parts of the building which are not demised as flats.*
  - 3) *"The Communal Areas" means those parts of the buildings and of the estate the use of which is shared by the Lessees of more than one flat.*
9. The extent of the demised property is set out in the first schedule to the lease. It describes the first floor flat known as 8 Trinity Place and it records that it includes (amongst other items) the doors, windows and window frames solely serving the flat.
10. By clause 3 of the lease, the lessee covenanted to pay to the lessor on the 1<sup>st</sup> January in each year (such payment to be made in advance by 12 equal interim instalments on the first day of each month by bankers standing order or direct debit mandate)
 

*.... a fair proportion of the costs expenses and payments notified to the Lessee as being the amount:*

  - i. *incurred or charged by the Lessor during the previous year (including a period prior to the grant of this lease)*

- ii. *incurred or charged by the Lessor during the previous year and any year prior to that previous year the contribution to which by the lessees or tenants of the Lessor has been extended by the Lessor over a period in excess of one year (including a period prior to the grant of this Lease)*
- iii. *expected to be incurred or charged by the Lessor during that year*

*of and incidental to:-*

- a. *The maintenance repair renewal improvement upkeep decoration cleansing and lighting of the Main Structures and Communal Areas*
- b. *the maintenance repair renewal improvement upkeep and cleansing of all drains pipes wires cables and conduits for the drainage from and the supplies of water gas and electricity to the building and communal areas provided that such drains pipes wires cables and conduits serve at least one flat*
- c. *the cost of maintenance repair and replacement of any boundary walls for which the Lessor is responsible*
- d. *the rates taxes assessments and outgoings imposed on the Lessor in respect of the Communal Areas*
- e. *the insurance premiums payable by the Lessor pursuant to the covenant in that behalf hereinafter contained*
- f. *of creating such reasonable reserve against future liabilities as to the Lessor may seem prudent and desirable*
- g. *Any other sums properly incurred by the Lessor in connection with the main structures and communal areas PROVIDED ....*

11. The sixth schedule to the lease contains covenants by the Applicant:

- 1) to insure the buildings and communal areas;
- 2) to keep the main Structures and Communal Areas in good and substantial repair and condition including the renewal and replacement of all worn or damaged parts;
- 3) to decorate the exterior of the buildings and the internal communal areas.

12. The lease was assigned to the Respondent on 15 July 2003.

### **Inspection**

13. The Tribunal inspected Trinity Place prior to the hearing on 7 May in the presence of the parties. Trinity Place consists of one old building containing flats 11, 12, 14 and 15 together with a more recent building containing flats 1 to 10. The 2 buildings have been developed into a courtyard style complex. The Tribunal was told that the new building was built in 1983. Within the courtyard area there is a small car park, which is available to residents on a first come, first served basis and a garden area. There is also a small clothes drying area. Access to the

4 flats in the old building is by a communal staircase which opens onto the courtyard area. Access to the remaining flats is by 4 communal staircases which open onto the street. Each staircase serves either 2 or 3 flats. There is a more detailed description of the complex in the introduction to the witness statement of Claire Barker.

14. The Tribunal inspected all the communal areas. It observed that although the car park and garden areas were not in perfect condition, they were generally well maintained and cleaned taking account of their location in the centre of Bristol and the standard of accommodation provided. The buildings appeared to be reasonably well maintained taking into account the same factors. The Tribunal was told that the communal areas had last been decorated in 2004. There was evidence of weeds growing in some of the gutters and moss growing on some of the walls. The communal staircases are low maintenance with unplastered walls. They appeared to be reasonably clean. One light bulb was found not to be working.

### **The Hearing and the Issues**

15. Mr. Cannon of counsel represented the Applicant at the hearing. The Respondent appeared in person.
16. The Respondent did not submit any response to the Application and so the Applicant had no warning of the issues that he was likely to raise at the hearing. The Respondent was invited to outline his case at the beginning of the hearing.
17. The Applicant claims that the Respondent owes a considerable amount for service charges, having paid only £700 since the lease was assigned to him. It seeks a determination that the service charges which it has raised for the years 2002 to 2007 are reasonable so that it may take steps to recover the amount due from the Respondent.
18. The Respondent raised the following issues in support of his case;
- i. When he purchased the Property he did not have details of the service charges;
  - ii. A lack of communication by the Applicant in providing him with details of the breakdown of the charges;
  - iii. He considers that the charges are high when compared to other properties of which he has knowledge;
  - iv. He considers that it is unfair that the costs are split equally between the 14 flats irrespective of the size of the flats and notwithstanding the fact that the cost of maintenance of the older building is likely to be higher than the newer building;
  - v. He is not satisfied that all the work charged for is being done or being done to a proper standard;
  - vi. He complains that the sinking fund was established only recently.

## **The Evidence**

19. The Applicant provided a witness statement from Claire Barker, a leasehold services officer employed by the Applicant. Mrs. Barker gave further evidence at the hearing and was cross-examined. The documents attached to her witness statement show how the service charge is made up for each of the years to which the application relates.
20. The Respondent gave evidence on his own behalf and was cross-examined on his evidence by Mr. Cannon.
21. Mrs. Barker's evidence was that the service charge is made up of the following elements:
  - i. Service charge – to include the costs of cleaning, gardening, heating and lighting, maintenance agreements and a 15% management charge. Attached to her statement are copies of the contracts for gardening and cleaning services for all of the Applicant's properties in the area. The contracts specify the actual costs incurred in relation to Trinity Place;
  - ii. Administration – a standard charge of £146 per year is applied to all leasehold properties in the Applicant's portfolio to cover general administration costs;
  - iii. Day to day repairs - the cost of actual repairs carried out in the year;
  - iv. Sinking fund – this was formed in about 2001 and is a 20-year fund in which the anticipated cost of major repairs and renewals is split over a 20 year period. The amount charged for the fund is based on a 5 yearly stock condition survey. At page 79 of the bundle there is a schedule showing the calculation of the contribution to the sinking fund.
  - v. Insurance – The Applicant has a policy which covers the rebuilding cost of all the leasehold properties at Trinity Place. The premium is shared between the leasehold properties.
22. The documents attached to Mrs. Barker's statement show how much is charged under each heading in each year. As the years go by, more detail is given under each heading. She gave evidence that Mr. Keyes carries out routine inspections at Trinity Place to ensure that contractors are carrying out the work which they ought to be doing. She produced a copy of the last inspection report dated 29 February 2008.
23. On the question of apportionment, Mrs. Barker's evidence was that the lease provided for the Respondent to pay a fair proportion of the costs and that the Applicant had decided to split all the costs equally between the 14 flats with the exception of those costs which were only attributable to the old building. The documents show that the cost of maintaining the fire alarm in the old building is charged only to the flats in that building. She also gave evidence that the cost of soundproofing

had been charged only to those flats. When questioned further about the sinking fund, it became apparent that that was not the case and she agreed that the cost had been split equally between all the flats.

24. Mrs. Barker said that the correspondence shows that from 2004 onwards, details of the proposed service charge were sent to the Respondent and he was invited to comment but, as far as she was aware, he had not done so.
25. Mrs. Barker produced copies of extensive correspondence between the Applicant and the Respondent from April 2006 dealing with attempts to obtain payment of the service charge. It shows that the Respondent was saying that he thought that the service charge was too high and that he was asking for information as to how it was calculated. The Applicant provided information but the Respondent continued to ask for more information. It also shows that the Applicant tried to arrange meetings with the Respondent to discuss his concerns, particularly on 10 July 2006 and 19 January 2007.
26. In a letter dated 29 September 2006, the Respondent raised concerns about charges for repairs to a door entry system which he says that he repaired himself. He also said that he had to replace a number of light bulbs in communal areas because the Applicant failed to do so and that the door to his Juliet balcony was rotting and none of his exterior window frames had been painted or repaired. The Applicant replied on 25 October 2006 to say that the charges for the door repair related to other repairs which were required to the electrical system of the lock, that it would refund the cost of his repairs and the light bulbs on provision of receipts and that he should contact the maintenance officer (David Nelson) to discuss the repairs to door and windows.
27. In his evidence, the Respondent said that some of the doors and windows in the building had been replaced but not others. He said that some of the maintenance work had not been done properly. He said that he would not describe it as shoddy work but not done well. He said that the gutters needed cleaning and that the cleaning of the staircases was not done well and that there were small amounts of debris. He said that some of the painting of communal areas was slapdash. He was not satisfied that the garden was being maintained properly nor that all the work that was supposed to be done was actually done.
28. In relation to the door security system, the Respondent said that he had repaired the door lock and that there was no need for the Applicant to carry out further repairs.
29. In relation to the sinking fund, the Respondent said that he was concerned that the sinking fund had not been put in place before 2001 to cover the eventuality of repairs being required for the old part of the

building. He was also concerned about the amount of the sinking fund contribution.

30. In relation to the sharing of the costs, the Respondent said that the flats were a mixture of one and 2 bed flats and that it was unfair that the costs should be shared equally. It was also unfair that the costs should be shared equally when the old part of the building was likely to cost more to maintain than the new part of the building.
31. The Respondent was unable to explain why he had not responded to the letters seeking comments on the proposed service charges other than to say that he had spoken to the housing officer by telephone and that he had been away for much of the time. He said, "*by the time I got it, it was too late anyway.*" In relation to lack of communication by the Applicant, he said that this had affected him because he did not want to end up paying more than he owed.

### **Findings of Fact**

32. In relation to the repair of the door entry system, the Tribunal finds as a fact that the Applicant was entitled to charge for this item. The Tribunal accepts the evidence of the Respondent that he did on one occasion repair the door entry system but it also accepts the evidence of the Applicant that it had to instruct a contractor to carry out work to the electrical system of the lock. The Tribunal is satisfied that the witnesses are talking about 2 separate repairs. The Respondent produced no evidence to show that the repair carried out by the Applicant was not necessary nor that the work was not carried out nor that the cost was unreasonable.
33. The Tribunal finds as a fact that the services carried out on behalf of the Applicant and charged as part of the service charge were reasonably incurred and that the services supplied were of a reasonable standard. The Tribunal accepts the evidence of Mrs. Barker in this respect. Whilst the Respondent made generalised comments about the standard of work, he gave few concrete examples. The Tribunal accepts that some of the gutters need cleaning as evidenced by the weeds growing in them but there was no evidence that the gutters had not been cleaned for a long period of time. The Tribunal accepts the evidence of the Applicant that this would be dealt with in routine planned maintenance. From its own inspection, the Tribunal is satisfied that the standard of cleaning of the communal staircases and painting of the communal areas was adequate. From its own inspection, the Tribunal is satisfied that, overall, the building is well maintained for the nature of the property. Further, the Respondent put forward no evidence that any of the expenditure was not recoverable under the terms of the lease.
34. The Tribunal finds as a fact that the contributions to the sinking fund which have been requested are reasonable. The Tribunal accepts Mrs.



Barker's evidence as to the way in which the sinking fund is calculated and finds that the amounts which are being set aside for future works are reasonable. The Tribunal notes the provisions of clause 3(f) of the lease which provides that it is in the discretion of the Applicant to create "*such reasonable reserve as to the lessor may seem prudent and reasonable.*" As to the Respondent's complaint that the fund was only established 7 years ago, the Tribunal notes that this is information which ought to have been available to the Respondent had he made appropriate enquiries when purchasing the Property. The contribution to the sinking fund is a substantial amount and now accounts for over 50% of the total service charge but the Respondent effectively bought into an existing situation about which he is now complaining.

35. The Tribunal finds as a fact that it is reasonable for the Applicant to split the total costs between the 14 flats on an equal basis. The lease provides for the Respondent to pay a fair proportion without defining what that is. Bearing in mind that the communal areas are all capable of being shared equally, the Tribunal is satisfied that, in the absence of any contrary provision in the lease, it is reasonable to split the costs equally between the flats. Again, the Tribunal notes that it was open to the Respondent to make enquiries as to the basis of calculating the "fair proportion" when he purchased the lease. There is no evidence to suggest that that basis has changed since the Respondent purchased. Whilst there is some merit in the Respondent's argument that the extra costs associated with the older part of the building should be allocated to the flats in that part, such as the costs of the soundproofing, it is at the discretion of the Applicant and it is a situation into which the Respondent brought himself when purchasing the Property.

### **Conclusions**

36. In the light of the findings of fact made above, the Tribunal is satisfied that the service charges raised by the Applicant are reasonable and that they are payable by the Respondent.

37. Before turning to the precise amounts, it is appropriate to mention the other specific matters mentioned by the Respondent.

38. The Tribunal noted on its inspection the rot in the door to the Juliet balcony which was the subject of correspondence between the parties. Notwithstanding the Applicant's offer to repair the door, the Tribunal takes the view that the door forms part of the demise under the lease and, as such, it is the responsibility of the Respondent to keep the door in good repair. If the Applicant were to repair the door, it would not be able to recover the cost through the service charge. As there is no allegation that the Applicant has attempted to do so, the point does not arise.

39. As for the costs incurred by the Respondent in replacing light bulbs and repairing the door lock, that is work that the Respondent volunteered to

do when he was entitled to ask the Applicant to carry out the work. The Applicant has volunteered to pay for the work if the Respondent produces receipts for his expenditure. The Tribunal takes the view that the Applicant has acted correctly in that respect.

40. In relation to the complaint about lack of communication, the Tribunal takes the view that the correspondence shows that it is the Respondent rather than the Applicant who should be criticised for lack of communication. The Respondent has failed to respond to the Applicant's attempts to consult about the service charge since 2004. When the Respondent raised concerns about the level of service charge in 2006, the Respondent did not take up the Applicant's offers of a meeting to discuss his concerns nor did he identify how the information supplied by the Applicant was insufficient. Likewise, there is no evidence to suggest that he tried to contact David Nelson to discuss outstanding maintenance issues.
41. The Tribunal determines that the service charges set out in the table below are payable in respect of the property known as 8 Trinity Place, Merchants Road, Bristol, BS8 4PZ and that they are payable to the Applicant, Knightstone Housing Association Ltd.

<b>Service charge year</b>	<b>Annual amount due</b>	<b>Monthly amount</b>
07.10.02 to 05.10.03	£1024.00	£85.33
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01.10.07 to 30.09.08	£988.62	£82.39

For the service charge year 2002-03, the Respondent is liable to pay that part of the service charge which is proportionate to his period of ownership during that year. For the remaining years, they are payable by the Respondent. The outstanding service charges for the years 2002 –07 are now due. For the year 2007-08 a proportionate part of the service charge up to the present time is now due. The balance is payable on a monthly basis in accordance with the terms of the lease. The Applicant will have to give credit for any sums that have been paid by the Respondent.

Signed  
 Mr. J G Orme  
 Chairman  
 Dated 17 May 2008