

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00HN/LSC/2009/0050

In the matter of Section 27A of the Landlord and Tenant Act 1985 (as amended) and of the Leasehold Valuation (Procedure) (England) Regulations 2003

Re: Flat 1, 28 Westby Road, Bournemouth

Applicant Mr Peter King

Respondent Mr Graham Cherry

Date of Application 21 March 2009

Date of Inspection 9 June 2009

Date of Hearing 9 June 2009

Hearing Venue Royal Bath Hotel, Bournemouth
Appearances The Applicant in person.
 Ms G Quinton, Napier Management
 Services Limited, for the Respondent

Members of the Leasehold Valuation Tribunal:

M J Greenleaves	Lawyer Chairman
K M Lyons FRICS	Valuer Member
R T Dumont	Lay Member

Date of Tribunal's Decision: 12th June 2009

Decision

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that
 - a. The Applicant is not liable to contribute service charge in respect of the drying area shown on the plan attached to the lease of Flat 1 dated 24th June 1988, that area extending the full width of the grounds of the property known as 28 Westby Road, Bournemouth.

- b. The Applicant is liable to contribute 14.3% of the full amount of the service charges applicable to the internal communal areas shown edged blue on the said plan.
- c. Taking into account also the matters set out below as having been agreed by the parties, for the service charge years 2004/2005 to 2007/2008 inclusive, the following service charges incurred are payable in respect of Flat 1, 28 Westby Road, Bournemouth (the premises) to the extent of 14.3% of the percentage shown:

	2004/05	2005/06	2006/07	2007/08
Cleaning to internal communal areas	100%	100%	100%	100%
Electricity to internal communal areas	100%	100%	100%	100%
Decorating of internal communal areas	100%	n/a	100%	100%
Gardening, litter picking, hedges and grass cutting to external areas	25%	25%	25%	25%
Carpeting of internal communal areas	n/a	n/a	100%	n/a

2. Under Section 20C of the Act, the Tribunal makes an Order that the Respondent's costs incurred in connection with the Tribunal proceedings shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

Agreed Issues.

3. *Issues agreed by the parties are recorded for the benefit of the parties but are therefore not part of the decisions made by the Tribunal:*
 - a. That the percentage share of service charge payable by the Applicant calculated in accordance with paragraph 19 of the 6th schedule is 14.3%;
 - b. that each of the service charges incurred for each of the years in question in respect of internal communal areas relating to cleaning electricity decoration and carpeting were reasonably incurred and are of a reasonable sum;
 - c. that in respect of each of the service charges incurred for each of the years in question for the external areas coloured brown on the lease plan, the Applicant is liable to pay 14.3% of only 25% of their total (the 25% having been proposed by the Respondent's representative).

Reasons

Introduction

4. This was an application made by the Applicant Peter King for determination by the Tribunal under Section 27A of the Landlord and Tenant Act 1985 of whether certain service charge is payable in respect of the years in question referred to

above and, if it is, by whom it is payable, to whom payable, the amount payable, the dates at or by which it is payable and the manner in which it is payable. Of those issues, taking into account the matters agreed by the parties as set out above, the remaining issue to be determined by the Tribunal was whether the Applicant was required to pay towards the upkeep of parts of the whole property that he did not use. The parts that the Applicant submits that he did not use and should therefore not be required to pay a service charge towards were the internal communal areas being the hallway, stairwell and staircase serving all of the other Flats and the communal drying area forming part of the grounds at the rear of the property.

Inspection

5. On 9th June 2009 the Tribunal inspected the premises in the presence of the Applicant and the Respondent's representative.
6. The property is detached and has been converted into 8 Flats, there are 3 Flats on the ground floor, 3 Flats on the 1st floor and 2 Flats on the 2nd floor. Flats 2 to 8 inclusive share a common hallway, stairwell and staircase to gain access to those Flats. Those areas appear to be maintained in a reasonable condition for their age and character and the floors and stairs are carpeted.
7. Flat 1 has a separate external door on the eastern flank of the property. There is a footpath running from the front car parking area along the eastern flank serving the Flat 1 entrance door and continuing beyond to the drying area at the rear. That footpath is partly bounded by hedges immediately adjoining the eastern boundary wall.
8. To the front of the property is a car parking area with one space allocated to each Flat with a common access running between them.

Hearing

9. The hearing was attended by the Applicant and the respondent's representative Ms Quinton. The Tribunal heard the submissions on the issues and also took into account all the case papers so far as pertinent to the issues in the case.
10. The Applicant considered that he should not have to pay service charge towards parts of the property, internal and external, which he did not use. The Respondent's contention was that he did have to do so in accordance with the terms of the lease.

Consideration

11. On this issue the Tribunal considered the terms of the lease particularly in respect of the definition of the Reserved Property in the 2nd schedule and the service charge contribution provisions in the 6th schedule.
12. Paragraph 19 of the 6th schedule provides in terms that the lessee would pay his share of, amongst other things, the maintenance repair redecoration replacement of the Reserved Property or of any other relevant expense incurred by the Lessor relating thereto.

13. The 2nd schedule defines the Reserved Property, so far as material to the issues, as first the entrance drive and footpaths and car parking area forming part of the property and coloured brown on the site plan number 1 and any other parts of the building forming part of the property which are used in common by the owners or occupiers of any two or more of the Flats, and thirdly the entrance Hall and staircase shown edged blue on plan number 2 annexed to the lease.
14. On the plan the drying area is shown coloured brown but the definition of the Reserved Property as set out above does not refer to the drying area. This leaves some ambiguity. The Tribunal considered that the reference to the brown colouring on the plan did not add any area on to the areas specifically referred to in the 2nd schedule as being part of the Reserved Property: it might have been otherwise if the phrasing had read "the entrance drive and footpaths and car parking area forming part of the property or coloured brown...". The Tribunal also bore in mind that as Flat 1 has its own enclosed garden there was no particular reason why it should also need an additional drying area. It is settled law that any ambiguity must be construed against the Lessor and for the above reasons the Tribunal concluded that the Reserved Property as defined in the Applicant's lease did not include the drying area so that he did not have to contribute service charge towards it.
15. In relation to the communal internal parts, the definition of Reserved Property is clear and it is as set out above. While it seems illogical that Flat 1 should contribute towards the cost of maintaining something which the Applicant has no need to use, the terms of the lease are clear: the lessee is required to contribute service charge towards the upkeep of the Reserved Property: this plainly includes the internal communal areas. He is therefore liable to contribute his share towards the full cost of its upkeep including cleaning, decorating and carpeting. (In respect of carpeting, there had been carpeting of the hall and staircase previously so that the Tribunal considered that cost of renewal was not an improvement in law. If it had constituted an improvement, it would not have been covered by the service charge provisions).
16. Section 20C costs. It appeared to the Tribunal that there was no provision in the lease which would enable the landlord to charge to service charge his costs of these proceedings. However, for certainty, the Tribunal decided to make an order that he could not anyway do so.
17. The Tribunal made its decisions accordingly.



Chairman

A member of the Leasehold Valuation Tribunal
appointed by the Lord Chancellor