

Southern Rent Assessment Panel and Leasehold Valuation Tribunal

Case No. CHI/21UC/LSC/2009/0048

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
SECTION 27A LANDLORD AND TENANT ACT 1985**

Property: Flat 5, 12 Grassington Road, Eastbourne
East Sussex BN20 7BP

Applicant: 12 Grassington Road (Eastbourne) Management Ltd
(landlord)

Respondent: Mr M A Godin (tenant)

Appearances: For the Applicant:
Mr Cooke of Stephen Rimmer LLP

For the Respondent:
No attendance

Application: 23 March 2009

Directions: 25 March 2009

Hearing: 07 September 2009

Decision: 21 October 2009

Members of the Leasehold Valuation Tribunal

Ms J A Talbot MA
Mr N I Robinson FRICS
Mr T W Sennett MA MCIEH

Ref: CHI/21UC/LSC/2009/0048

Flat 5, 12 Grassington Road, Eastbourne, East Sussex BN20 7BP

Application

1. This was an application made on 19 March 2009 by the landlord, 12 Grassington Road (Eastbourne) Management Limited, for a determination in respect of service charges payable by Mr M A Godin, tenant of Flat 5, for the accounting years ending 31 October 2007 and 2008.
2. Directions were issued on 25 March 2009 requiring the applicant to provide a statement of case together with all documents upon which it intended to rely, and for the respondent to provide a statement in reply giving his reasons for opposing the application. The applicant complied with the directions but the respondent did not respond at all to the application or the directions.
3. The applicant had previously obtained a determination dated 30 April 2007 from a differently constituted tribunal in respect of service charges for the years 2004 – 2006. At that stage the lease of flat 5 was still registered in the name of Albert Godin (deceased). By the date of the current application, the office copy entry of the leasehold register showed Mr Martin Ashley Godin as the registered proprietor from 3 April 2008.

Jurisdiction

4. The tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes and uncertainties. Service charges are sums of money payable by a tenant to a landlord for the costs of services, repairs, some improvements, maintenance or insurance or the landlord's management costs, under the terms of the lease (section 18 Landlord & Tenant Act 1985). The tribunal determines whether a service charge is payable, and if so, by whom, to whom, how much and when. By section 19, a service charge is only payable if it is reasonably incurred and the works and services to which it relates are of a reasonable standard.

Lease

5. The tribunal had a copy of the lease of flat 5. It was dated 6 January 1989 and was for a term of 99 years from 24 June 1988 at an initial ground rent of £50 and rising thereafter.
6. Under clause 4(2) and fourth schedule of the lease, the tenant is required to pay a service charge contribution of 14.56% (rateable value proportion) towards the landlord's costs and expenses of maintaining and repairing the structure and exterior of the property. These obligations are found at clause 5(3),(4) and (5). The cost of insurance is excluded from the service charge, but is recoverable as an additional insurance rent, whereby the tenant is liable for one fifth of the lessor's expenditure "in affecting the insurance of the building".

7. It would appear from the Office Copy Entry of the Land Charges Register for the leasehold title that a deed of variation in relation to flat 5 was entered into on 14 July 1989. However the tribunal was given no copy of this deed or any information as to its contents.

Inspection

1. The members of the tribunal inspected the property before the hearing, accompanied by Mrs Winson, tenant of flat 1. Mr Godin did not attend. The property comprised a substantial detached double-fronted Edwardian villa, of brick construction under a pitched tiled roof with tall chimneys, converted into 6 flats. External decorations were in reasonable condition. The front garden and main entrance door were used exclusively by flat 1 which took up most of the ground floor. Flat 5 was a smaller studio flat to the rear, accessed by a pathway to the left of the property. The rear window to flat 5 was rotten. There was a small grassed area behind flat 5 apparently used exclusively by that flat.
2. To the right of the property was a driveway leading to a bin area and garage block. A gate to the side of the garages led to a patch of communal garden but the tribunal members were unable to enter as the gate was jammed. The pathway had a garden border planted with shrubs. The entrance to the other flats was at the side of the property with a small lobby area and staircase leading to flats 2 and 3 on the first floor and 4 and 4a on the top floor. This was probably originally one flat later divided into two. The common parts were in good decorative order. The tribunal members did not inspect any flat internally and were unable to gain access to flat 5.

Hearing

3. A hearing took place in Eastbourne on 7 September 2009. It was attended by Mr Cooke, solicitor, from Stephen Rimmer & Co, for the landlord. Mr Godin did not attend and was not represented. A statement of case and subsequent witness statement was provided by Paula King, company secretary, who was unable to attend the hearing.
4. Mr Cooke submitted that the sums due from Mr Godin were supported by the landlord's accounts prepared for the years ending 31 October 2007 and 2008. The total expenditure for 2007 was £8,447 plus bank charges of £62, from which the insurance cost of £1,611 was deducted as this was not a service charge item. This left expenditure of £6,898 of which Mr Godin's 14.56% share was £1,004.58 which had been demanded on 17 July 2008 and 1 February 2009.
5. The total expenditure for 2008 was £4,978 plus bank charges of £80, from which £1,619 was deducted for insurance, leaving expenditure of £3,439 of which Mr Godin's share was £500.57 demanded on 1 February 2009. Mr Godin was also in arrears of ground rent of £275 unpaid since 2003.
6. The headings of expenditure for each year were the same: insurance, light & heat, repairs, gardening, post & stationery, household & cleaning, sundry expenses, accountancy and legal fees. Bank charges were also added. The tribunal scrutinised these items.

7. The single largest item by far for each year was "repairs to property". For 2007 the accounts showed £5,782. These were not broken down in the accounts, but a separate breakdown was provided by Mrs King. This showed that for 2007 the only items of actual repair were roof repairs of £280, alarm maintenance contract of £352.50 and drain repairs of £149.81. This totaled £782.31. The rest of the claimed repair costs was stated to be a "reserve for future costs" of £5,000. For 2008, the accounts repairs figure was £2,316 but separate breakdown showed a series of 9 repair items together with a "reserve" of £1,626.05. The largest items were drain and roofing repairs at £2,096.20 and £2,296.55 respectively.
8. In answer to questions from the tribunal, Mr Cooke was unable to explain why the accounts were presented in this way and why the reserve was set at £5,000 for 2007 and the surprisingly exact sum of £1,626.95 for 2008. He submitted that the lessor was entitled to raise a reserve under paragraph 3 of the fourth schedule as "reasonable provision for anticipated expenditure".
9. The tribunal pointed out that as the contribution from each tenant for the drain and roof repairs was over £250, the statutory consultation procedure under Section 20 of the Landlord & Tenant Act 1985 should have been followed; and also that as the invoice from Clarke Roofing for £2,296.55 was dated 18 May 2009, this cost was not incurred in the year ending 31 October 2008. Mr Cooke submitted that the drain and roof repairs were urgent in that sewage was bubbling up and the roof was leaking. No application was made to dispense with the consultation requirement as the cost of so doing was disproportionate. He was unable to explain why the roof repair cost was in the 2008 accounts but submitted that these costs were reasonable incurred, that the tenants had benefitted from the works, and that they had all paid their service charges apart from Mr Godin.
10. Regarding post and stationery, Mr Cooke submitted this was a management cost and that the £100 charged in 2007 was for 2 years (as no cost had been made for 2006). He did not know how the sum had been arrived at. Cleaning costs had risen from 2006 as the number of visits had increased from once to twice per month. There were no cleaning or gardening invoices and Mr Cooke did not know how the cost of £200 for each year was arrived at. The legal fees related to Companies House filing fees and were thus a company expense. Mrs King in her statement accepted these were not recoverable as service charges. Bank charges were raised by the bank against the management company bank account. Mr Cooke was unable to show that these were recoverable under the terms of the lease. Accountancy costs were fees for producing the accounts.
11. Mr Cooke was given the opportunity to take further instructions to clarify the issues raised by the tribunal but was unable to contact Ms King. Generally, he submitted that the service charge expenditure was reasonably incurred and that Mr Godin had not raised any dispute or challenged the accounts. He had made no payments and had not responded in any way to the service charge demands, correspondence from Mrs King, or to the application before the tribunal.

Decision

12. The tribunal carefully considered the written evidence from Mrs King and oral submissions from Mr Cooke. The tribunal generally had some concerns over the accounts and the evidence submitted in support of the items of expenditure. The inclusion of the "reserve" in the "repairs to property" heading was at best confusing and at worst misleading. The accounts were not service charge accounts, but company profit and loss accounts required for filing at Companies House by the management company. They were unaudited, and not certified as required by the RICS Code and the Landlord & Tenant Act 1985. From the evidence before the tribunal, it would appear that some claimed expenditure costs were unsupported by invoices or documentary evidence, such as postage & stationery, cleaning and gardening. For these reasons the tribunal disallowed the accountancy fees.
13. Indeed there were no invoices in relation to any of the claimed repair costs for 2007 and 2008, apart from the drain repairs of £2,096.20, and this invoice from Blockbusters was in fact dated 31 October 2008, the very end of the accounting year used by the landlord. As noted at the hearing, the roof repair cost of £2,296.55 was incurred after that year end and is not recoverable as a service charge for 2008. It should properly appear in the accounts to the year end 31 October 2009. This cost was therefore beyond the scope of the application. In relation to both these items, the landlord is in any event unable to recover the full cost as it has failed to carry out the statutory consultation procedure or to apply for a dispensation. In relation to the drainage cost, Mr Godin's contribution is therefore capped at £250.
14. Regarding the other repairs, according to Mrs King's breakdown, there were only 3 relatively small items in 2007. On the face of it and in the absence of any evidence to the contrary the tribunal was prepared to accept that these costs were reasonably incurred. For 2008, the actual cost of repairs was considerably greater than the figure of £2,316 in the accounts suggested because of the way the £5,000 "opening reserve" was treated. The tribunal removed the £2,296.55 roof repair costs as explained above and inferred that £220 for plastering was ancillary to the roof repair. On balance and in the absence of any challenge or evidence to the contrary, it was prepared to accept that the remaining £1,076.35 was reasonably incurred.
15. Turning to cleaning, gardening, and heat & light costs, the tribunal could see from its inspection that the common parts were clean and lit, and that gardening was carried out to the grassed areas and to the shrub border by the pathway. Again in the absence of any challenge or evidence to the contrary it was prepared to accept that these costs were reasonably incurred, despite the lack of invoices. From its collective knowledge and experience the sums demanded were not unreasonable. As to post & stationery, the sums of £100 and £20 appeared somewhat arbitrary but not unreasonable. The tribunal noted that under the terms of the lease at paragraph 2 of the fourth schedule, the landlord would be entitled to charge 10% of the actual expense if managing the property itself, and inferred that the management company had chosen to charge only for incidental expenses. Legal fees and bank charges were disallowed as explained above and accepted by Mr Cooke and Mrs King.

16. On the question of the reserve provision, the tribunal as already explained had some concerns about the treatment in the accounts, but accepted that the landlord was entitled under the terms of the lease to raise a charge for anticipated future expenses and that this was a reasonable course of action to take given the nature of the property and need for ongoing maintenance and repairs. £5,000 was not an unreasonable figure for 2007. The figure of £1,626.95 was oddly specific and unexplained but was still not unreasonable. Both these sums were therefore allowed.
17. Ground rent is not within the jurisdiction of the tribunal but it was noted that Mr Godin was in arrears of £275. He is strongly recommended to pay ground rent as there is no defence to non-payment. Should the landlord seek to recover contributions towards the insurance cost, the tribunal noted that this is payable by the tenants as an additional insurance rent.

Determination

18. The following service charges are payable immediately by Mr Godin to the landlord: £954.26 for the year ending 31 October 2007 and £753.52 for the year ending 31 October 2008.
19. This is calculated as follows:

Allowed service charge expenditure

	<u>2007 £</u>	<u>2008 £</u>
Light & heat	136	179
Repairs	782	1,076.35
Gardening	200	200
Postage	100	20
Cleaning	<u>336</u>	<u>356</u>
	1,554	1,831.35

Plus cost of drain repair contribution capped at £250 (2008)

Reserve	5,000	1,626.95
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Mr Godin's share @ 14.56%: 2007	£954.26
2008	£753.52

Dated 21 October 2009

Signed
Ms J A Talbot
Chairman