

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/24UF/LIS/2009/0037

Application under Section 27A of the Landlord and Tenant Act 1985

Re: 68 Mantle Close, Rowner, Gosport, PO13 9QT

Applicant Rodney Court (Gosport) Management Co Ltd

Respondents Mr & Mrs Balfour

Date of 24th April 2009
Application

Date of Inspection 6th August 2009

Date of Hearing none

Members of the Leasehold Valuation Tribunal:

M J Greenleaves Lawyer Chairman
P Turner-Powell Valuer Member
FRICS

Date of Tribunal's Decision: 18th December 2009

Decision

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that for the service charge years 2003 to 2008 inclusive
 - a. the following are reasonable sums for actual expenditure and the following are reasonable sums for budgeted expenditure for 2009 and
 - b. 1.205% of those sums is payable in respect of 68 Mantle Close, Rowner, Gosport (the property):

	Reasonable Sum incurred	Reasonable sum budgeted
2003	56,165.00	
2004	32,975.00	
2005	34,007.00	
2006	36,195.00	
2007	35,865.00	
2008	46,026.87	
2009		77,972.00

- The Tribunal makes no determination that the sums are payable having received no evidence of issue of proper demands for payment.

Reasons

Introduction

- This was an application made by Rodney Court (Gosport) Management Company Limited (the landlord) for determination by the Tribunal under Section 27A of the Landlord and Tenant Act 1985 of the reasonable sums payable in respect of service charges for the accounting year 2003 to 2008 (actual expenditure) and 2009 (budgeted expenditure)

Inspection

- On 6 August 2009 the Tribunal inspected the exterior of premises comprising the block in which the subject property is situated and the 4 other blocks in the development.
- The entire development affected by the service charges in question comprises 83 maisonettes in 5 blocks: 1-20 Williams Close, 93-107 Williams Close, 1-16 Mantle Close, 45-64 Mantle Close and 65-76 Mantle Close. The blocks were originally constructed for service personnel about 50 years ago. Access to a upper floors are by means of external stairwells and external walkways. The blocks appear to be in fair condition for their age and character. The walls are of panelled construction under flat roofs. The grounds are

largely laid out to grass. The access roads within the development are unadopted.

Representations

6. No representations were received from the respondents. The applicant produced a statement of case dated 6 July, 2009 prepared on its behalf by Now Professional Property Management, its current managing agent, which was appointed on 1 January, 2009. In their statement they told us that they did not have any invoices or papers relating to the property from the previous agents other than accounts for the years in question up to 2008. In addition to the submissions in that statement they produced to us:
 - a. invoices and other papers to support the 2008 accounts;
 - b. a copy of the grounds maintenance contract commencing 1 March, 2009;
 - c. a specification and tenders for re-roofing the roofs of each of the 5 blocks. The specification is dated 6 May, 2008. The tender for 45-64 Mantle Close totals £19,435, for 93-107 Williams Close £12,627.
 - d. An e-mail dated 4 November, 2009 from the previous managing agents indicating the insurance was through Brit for the period 08/09 and the premium was £40,182.61 plus interest, a total premium of £41,548 £82 although this seems to have been reduced in the course of that insurance year by £640.54.
 - e. The copy invoices from Brevent Insurance dated 14 February, 2008 showing a premium of £40,182 £61.
 - f. An insurance policy from Zürich insurance commencing 12 February, 2009 for the 5 blocks at a premium of £5625.56. This policy covers material damage, property owner's liability, directors and officers liability and legal expenses
 - g. A letter from Royal and SunAlliance dated 7th August 2007 referring to a direct debit instruction with 5 payments through the year totalling £26,157.32.
7. Relevant submissions may be summarised as follows:
 - a. the total charges are divided equally between the 83 properties at a rate of 1.205% each, resulting in fractionally more than 100%;
 - b. Auditor's Remuneration. Past years accounts referred to auditor's remuneration and accountancy but it is thought that these have subsequently been brought together under one heading of accountancy;

- c. Management Fees. These have increased from £70.51 per property in 2003 up to 2008 at a rate of £104.49 per property;
- d. Legal and Professional Fees/Provision for Bad Debts/Survey Fees. Legal fees were incurred with solicitors Bramsdon & Childs for pursuing arrears in respect of 2 maisonettes;
- e. Bank charges "will include the costs they [the bank] charge for transactions such as cheques and standing orders for 2003 to 2006"; it seems from 2007 to 2008 the managing agents did not incur bank charges by agreement with the bank; Now Professional are now charged £20 per month on average;
- f. External Redecoration 2003. It is considered that this charge is at the high end of reasonable;
- g. insurance. In 2003 the premium was £20,367, increasing in 2004 to £34,730 with increases in subsequent years. The premium now budgeted for is £5,700. It is understood that the increase in 2004 results from a serious fire in one of the buildings and that many insurance companies refused to insure the building for a number of years, despite an excess of £10,000. Now Professional have obtained quotations through their broker and received 2 quotes in the region of £5,000 with the excess remaining at £10,000. Now Professional attempted to obtain help regarding "the previously high premiums charged".
- h. Property Repairs Etc. They understand that the high cost in 2006 was by reason of internal redecoration;
- i. Cleaning, Public Way Cleaning, Miscellaneous. Now Professional put the work out to tender and will do so annually now;
- j. Sundry Expenses include copying and postage and some directors' expenses;
- k. Refuse Collection. This can be a weekly occurrence on site;
- l. Health and Safety. They referred to the emphasis on this in recent years which may be why the item does not appear until 2007;
- m. Emergency Assistance Insurance. This was only taken out for 2008 and was then cancelled as it had not been sufficiently used;
- n. Directors and Officers Insurance. Directors can be personally liable and this is justified.
- o. Reserve. The budgeted sum for 2009 is modest due to intended capital expenditure.

p. Major works. This relates to roof works. 2 roofs were recovered in 2008 and the cost of re-covering all 5 roofs will be in the region of £120,000. Any of the buildings may need plastic cladding and external redecoration at a cost of £15,000-£20,000.

8. No party had requested a hearing.

Consideration

9. The Tribunal has been asked to determine as reasonable, charges made for the previous 6 years while there are only invoices for the last of those years: 2008. In addition the Tribunal is asked to consider the budgeted charges for 2009.

10. The Tribunal does not criticise Now Professional who are evidently in considerable difficulty in providing evidence for charges which are wholly unsupported for the first 5 years. They try to assist us in some respects but there is no real evidence, although we are inclined to accept that there was a fire which resulted in the substantial premium increase in 2004.

11. Therefore, for the years 2003 to 2007 we largely have to rely on our own expert knowledge and experience, while also taking as a significant guide the costs incurred in 2008 subject to the findings we made in respect of the costs for that year. Our approach therefore was to consider the 2008 year to achieve a benchmark and to work backwards from there and also for the 2009 budget year.

12. Our findings as to reasonable sums are set out in the schedule to these reasons. The items claimed which we have reduced to a reasonable sums are shown in bold italics. The reasons set out below explain on what basis we have found certain charges to be unreasonable and therefore what total sums we allow under each head as being reasonable

13. Other than those items, we found the charges incurred and budgeted for to be reasonable sums.

2008 items.

a. Electricity supply. Item 2.9 (a reference to the breakdown of 2008 accounts supplied) for £19.65. There is no evidence of payment so the total is reduced to £2,023 04.

b. Building insurance. For all years from 2003 to 2008, the premiums are excessive in our experience and this is supported by the fact that the insurance is now in place with reputable insurers at a premium of £5625.56. It is inexplicable how premiums in past years have been £20,367 as a low point and £41,894 at the highest. We are inclined to accept the understanding that there was a fire which led to the jump in the premium in 2004, but since then the annual premium has

risen further, only falling slightly in 2008. We consider that a reasonable sum for this year would be a maximum of £8,000

- c. Emergency Assistance Insurance. We have not seen evidence of the cover provided but from our knowledge and experience in other cases, we do not regard such insurance as being recoverable within the service charge provisions of the lease; we note that it has not been renewed. We consider it not to be chargeable.
- d. Electrical repairs. Item 9.1 in the breakdown. The invoice shows no indication of the work done other than in addition supplying, and fitting 2 time switches. We reduced that item to £200 total. Item 9.11: again there is no detail to explain the purchase of replacement bulbs at a cost of £284.81. That sounds excessive and we reduced that invoice to £100 in total. This results in a total for this heading of £1063.75.
- e. General repairs. Item 10.5. We do not know how many taps were re-instated. The overall cost of £2,878.75 seems to us very high and we reduced this item to £1,410. This results in a total for this heading of £5,513.93.
- f. Legal fees. Item 14.2 relates to recovery of arrears. As such it is an administration charge not a service charge and is not recoverable as such. Accordingly we reduced that invoice to zero and took into account also the payment of £23.50 to the solicitors. Therefore we only allowed Invoice 14.1 under this heading in the sum of £101 05.
- g. Sundry expenses. Item 15.2 refers to an office copy entry. We doubt very much it relates to service charge; it may be an administration charge that is not recoverable as service charge. Item 15.5 relates to the emergency assistance insurance and for the reasons stated in that respect above we reduced it to zero. Item 15.6, 15.8 & 15.9: postage costs should be covered by management fees and are not chargeable as an extra. 15.14: this refers to an arrangement fee for contractors to remedy a garden and fencing. This is covered by the normal management fee and is not chargeable as an extra. Under this heading there is also reference to an invoice from 2007 previously charged to 76 Mantle Close. We had no evidence about that and therefore reduce it to zero. This results in the a total under this section of £480.82

2009 budget.

14. Working from the 2008 benchmark we found 3 items were not reasonable:

- a. electrical repairs. The budgeted sum is a significant increase and we considered £1500 to be reasonable;
- b. general repairs. The budgeted sum is a significant increase and again we considered that £7,000 was reasonable.
- c. Accountancy. The budgeted sum is £600 as compared with 2008 of £345. We found that £400 would be reasonable.

15. Years 2003 to 2007. Working from the 2008 benchmark we found the following were not reasonable:

- a. Buildings insurance. The premiums charged are inexplicable. The premiums we have found to be reasonable in each year, without any evidence to the contrary, are based on the current premium benchmark, allowing £5000 in 2003 and a significant increase to £8000 for the subsequent years taking account of the suggestion about the fire so that subsequent premiums might reasonably have been at a significantly higher level than 2003.
- b. General repairs/repairs and maintenance. We have no evidence as to the internal redecoration in 2006 to justify the relatively high amount of this item. As far as we are aware, the only internal parts of these buildings are the flats themselves which are the liability of the lessees and not the landlord. In the absence of evidence justifying the exceptional charge in this year, we reduced it in line with other years to the reduced reasonable figure of £8500.
- c. Surveyor's fees. There is no evidence as to the purpose of any survey or its extent. We disallowed it.
- d. Legal fees . There is no evidence as to the purpose of this expenditure; it could have related to a administration charges. In the absence of any evidence we disallowed it.
- e. Company secretarial fees. In the absence of any evidence we reduced it to £400.
- f. Auditor and accountancy. The submission is that the auditor's fees, relating to the years 2003 to 2005 are additional to Accountancy, and have subsequently all been included in the Accountancy charge. We found the Accountancy charge £345 in 2008 be reasonable and that that was an appropriate figure for accountancy in all previous years. Furthermore, it seems that auditors' fees in addition are no longer required and we have no evidence that in 2003 to 2005 that they would have been required as an additional charge. For that reason we have reduced all auditor's fees to zero.

- g. Annual return /late filing fee. We consider the annual return should be covered by the level of Accountancy charge we have found reasonable in the previous paragraph. We also find there is no justification for late filing and incurring a fee. We accordingly reduced the item to zero.
- h. The submission makes an assumption as to why bank charges were incurred in the years 2003 to 2006 but we have no evidence. We have noted that bank charges have not been incurred for 2007 or 2008 and that Now Professional have agreed with their bank that there should now be no charges. We see no reason, let alone evidence, as to why bank charges have been incurred in the past and for those years we found them to be entirely unreasonable.
- i. Bad debt provision. We have no evidence about this item. It is stated to be "provision" so there is no identified bad debt. In the absence of evidence we found it to be entirely unreasonable.
- j. In the absence of evidence to the contrary, we considered, using our own knowledge and experience, that the charges in the accounts for years we have shown as reductions in the schedule for the following headings were significantly out of line with other years and unreasonable and we reduced them accordingly:
 - i. public Way cleaning/cleaning/misc
 - ii. Garden and grounds maintenance
 - iii. Refuse collection
 - iv. management fees
 - v. sundry expenses

16. The Tribunal made its decisions accordingly.

(signed)

M J GREENLEAVES

Chairman

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

Schedule

	2003	2004	2005	2006	2007	2008	2009
	Reasonable sum	Reasonable sum	Reasonable sum	Reasonable sum	Reasonable sum	Reasonable sum	Reasonable budget sum
Water supply		0.00	20.00	21.00	12.00	29.14	30.00
Electricity supply/light & heat	1,042.00	1,113.00	838.00	925.00	1,201.00	2,023.04	2,000.00
Public way cleaning/cleaning/misc	5,755.00	4,000.00	6,000.00	6,463.00	4,247.00	6,266.60	2,500.00
Building insurance	5,000.00	8,000.00	8,000.00	8,000.00	8,000.00	8,000.00	5,700.00
Insurance valuation fee						528.75	0.00
Emergency assistance insurance						0.00	0.00
Garden & grounds maintenance	2,274.00	2,500.00	2,500.00	2,785.00	2,500.00	2,448.67	2,500.00
Refuse collection		0.00	1,076.00	1,200.00	1,268.00	909.74	1,000.00
Electrical repairs						1,063.61	1,500.00
General repairs/ repairs & maintenance	7,462.00	8,486.00	8,583.00	8,500.00	8,995.00	5,513.93	7,000.00
External decoration	28,435.00						
Health & safety				0.00	636.00	587.50	600.00
Management fees	5,852.00			7,656.00	8,000.00	8,671.52	8,672.00
Surveyors fees		0.00	0.00			117.50	
Legal fees	0.00	0.00	0.00			101.05	
Sundry expenses		1.00	306.00	300.00	261.00	480.82	760.00
Company secretarial fees				0.00	400.00	411.25	300.00
Auditor	0.00	0.00	0.00				
Accountancy	345.00	345.00	345.00	345.00	345.00	345.00	400.00
Other/management co. expenses		6,530.00	6,339.00			28.75	0.00
Provision for reserve						8,500.00	4,500.00
Annual return/late filing fee		0.00	0.00			0.00	30.00
Professional fees							200.00
Directors & officers insurance							280.00
Bank charges	0.00	0.00	0.00	0.00	0.00		
Bad debt provision	0.00						
Major works							40,000.00
Totals	56,165.00	32,975.00	34,007.00	36,195.00	35,865.00	46,026.87	77,972.00