

**CHI/29UK/LSC/2009/0031**

**DECISION OF THE LEASEHOLD VALUATION  
TRIBUNAL ON APPLICATION UNDER SECTION 27A OF  
THE LANDLORD & TENANT ACT 1985**

Address: 9 the Terraces, Dartford, DA2 6BX

Applicants: Mr and Mrs Turpin

Respondent: Mr M. Pariser

Application: 19 February 2009

Inspection: Not applicable

Determination: 30 June 2009

Appearances:

**Landlord**

Not applicable

For the Applicant

**Tenant**

Not applicable

For the Respondent

Members of the Tribunal

Mr I Mohabir LLB (Hons)

Mr C. White FRICS

**IN THE LEASEHOLD VALUATION TRIBUNAL**

**CHI/29UK/LSC/2009/0031**

**IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT  
1985**

**AND IN THE MATTER OF 9 THE TERRACES, DARTFORD, KENT, DA2  
6BX**

**BETWEEN:**

**MR & MRS TURPIN**

**Applicants**

**-and-**

**MR M. PARISER**

**Respondent**

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**THE TRIBUNAL'S DECISION**

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***Introduction***

1. This is an application made by the Applicants pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of their liability to pay and/or the reasonableness of various service charges.
2. It appears that the Applicants have made an earlier application (Ref: CHI/29UD/LSC/2008/0105) seeking a similar determination in relation to service charge costs claimed by the Respondent for building repairs and management fee for the year ending September 2009 ("the previous decision"). Those service charges were demanded on behalf of the Respondent by its managing agent, Circle Residential Management Ltd

("Circle"). By a decision dated 26 November 2008, the Tribunal reduced both items of service charge costs to £100 plus VAT.

3. On 15 September 2008, the participating lessees, by means of a Right to Manage company, acquired the management of the property.
4. In the present application, the Applicants seek to challenge the reasonableness of the following service charges:

Management Fee

Y/E: 2006 - £85.68

Y/E: 2007 - £ 176

Building Repairs

Y/E: 2007 - £ 277

5. As the Tribunal understand it, the Applicants do not contend that they do not have a contractual liability under the terms of their lease to pay the service charges in issue. The Applicants case is limited to the issue of the reasonableness of those service charges. It is, therefore, not necessary to set out the relevant lease terms that gives rise to the Respondent's contractual entitlement to claim service charges.

***The Relevant Law***

6. The substantive law in relation to the determination of this application can be set out as follows:

Section 27A of the Act provides, *inter alia*, that:

*"(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.*

*(2) Subsection (1) applies whether or not any payment has been made."*

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges.

7. Any determination made under section 27A is subject to the statutory test of reasonableness implied by section 19 of the Act. This provides that:

*"(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 works, only if the services or works are of a reasonable standard;  
and the amount payable shall be limited accordingly."*

#### ***Decision***

8. On 1 April 2009, the Tribunal issued Directions in this matter and allocated to the Paper Track. The Applicants have complied with those directions and their evidence is set out in their statement of case dated, which is supported by the relevant disclosure. The Respondent, through its managing agent, eventually filed a statement of case on 29 June 2009.
9. The Tribunal's determination took place on the 30 June 2008. There was no oral hearing and the parties did not attend. The Tribunal's determination is based solely on the documentary evidence before it. The Tribunal did not consider it necessary to inspect the subject property.

#### ***Management Fee***

10. The management fee of £85.68 claimed by the Respondent for the year ending September 2006 is for the preceding period of four months when Circle were appointed as the managing agent. Their tenure continued in the following service charge year ending September 2007. The apportionment of the management fee for each of the service charge years represents this position.
11. The Applicants contended that the management fee is not reasonable because no evidence has been provided of any work undertaken or monies expended

by Circle in carrying out its obligations since its appointment in May 2006. The Applicant complains that the statements of service charge estimates served by Circle only provide minimum detail. In addition, no accountant's certificate has been provided by Circle to support any of these documents, as required by section 21 of the Act, despite requests in writing to do so. The Applicants invite the Tribunal to follow the findings made in the early decision regarding this item of cost.

12. Circle state that the actual management fee charged for the year ending September 2006 was £685.42 inclusive of VAT. The net charge was £583.33. The property comprises eight residential units and the management fee per unit was, therefore, £72.91. It was submitted that the management fee was reasonable and is at the lower end of Circle's management fee expectations. Indeed, it relies on an earlier decision regarding Ground Floor Flat, 33 Townsend Road, London, N15 4NT (LON/00AP/LSC/2008/0340) where a similar finding was made by another Tribunal.
13. As to the management fee claimed for the year ending September 2007, it was stated by Circle that this sum was claimed as part of estimated interim service charges totalling £3,278.70 for that year. It was submitted, therefore, that the issue for the Tribunal is not whether the items of cost have been reasonably incurred by the Respondent within the meaning of section 19(1)(a) of the Act. Instead, the issue was whether no greater amount than is reasonable is so payable within the meaning of section 19(2) of the Act. It was further submitted that this provision refers to total amount payable by tenants rather than costs per item. Moreover, the test of reasonableness must be applied at the time the interim service charge demand was made and not at some point in the future even if the actual expenditure is known.
14. Dealing, firstly, with the management fee claimed for 2006, the Tribunal in the earlier decision (at paragraph 12) found *"that the management required would be minimal. The block is modern and we could not see that there were any common parts inside the building. We found as a fact that these two factors should reduce the work of management and consequently the cost of*

*management*". The Tribunal went on to allow the sum of £100 plus VAT as being reasonable for the management fee for 2008 and 2009. Given that there had been no material change in relation to the management functions or duties carried out by Circle prior to these years, the Tribunal followed the findings made in the early decision and for the same reasons. Allowing for indexation, the Tribunal found about a management fee of £90 per flat was reasonable. Apportioned to reflect the four month period of management in 2006, with this equates to a figure of £30 per flat.

15. Turning to be estimated management fee of £176 claimed for 2007, it is perhaps convenient to deal with the legal submissions made regarding the correct test of reasonableness to be applied in relation to these costs. It was correctly submitted on behalf of the Respondent that the correct test for the Tribunal to apply when dealing with estimated service charges is the statutory test of reasonableness under section 19(2) of the Act. However, the Tribunal does not accept the submission that, when applying this test, it is not entitled to have regard to individual items of cost. Section 19(2) makes no such distinction. Indeed, at the same submission was made by Circle in the earlier decision and rejected by that Tribunal on the basis that *"it is difficult to calculate an overall service charge budget without having regard to the individual items for which provision is being made"*.
16. The Tribunal also rejected the submission made that the test of reasonableness had to be applied at the time the interim service charge demand is made and not at some point in the future even if the actual expenditure is known. That submission is plainly wrong. The Tribunal in the early decision appear to implicitly also reject the submission. The test of reasonableness is to be applied when the Tribunal determines the application. If at the time any such determination is made and the actual costs incurred in relation to any particular item of service charge expenditure is known, then it seems, inevitably, that the Tribunal must have regard to that matter when making a finding of reasonableness. If the Respondent's submission was correct, it would lead to the rather curious position of tenants having to pay an interim

service charge demand comprised of one or more estimated items of expenditure which were never incurred.

17. As to the estimated management fee, the Tribunal found, for the same reasons set out in paragraph 14 above, a sum of £100 plus VAT per flat was reasonable.

### ***Building Repairs***

18. The figure of £277 claimed by the Respondent was based on an overall estimate of £1490 for anticipated building repairs for the year ending September 2007. However, it appears from the final service charge statement that no expenditure was actually incurred for building repairs in that year. Therefore, the Tribunal found that it would not be reasonable to allow any greater amount and disallowed this cost entirely. For the avoidance of doubt, in making this finding, the Tribunal applied the same reasoning as set out in paragraph 16 above.

### ***Section 20C - Costs***

19. In the substantive application, the Applicants also made a further application under section 20C of the Act inviting the Tribunal to make an order preventing the Respondent from being able to recover all or part of the costs it may have incurred in these proceedings.
20. Section 20C gives the Tribunal a discretion to make such an order when it is just and equitable, having regard to all the circumstances of the case.
21. In the present case, the Tribunal had little difficulty in making such an order because the Applicants had entirely succeeded in the application. It would, therefore, be neither just nor equitable for the Applicants to be liable for the Respondent's costs even though they had won. Accordingly, the Tribunal makes an order under section 20C preventing the Respondent from recovering all of the costs it had incurred in these proceedings. The Tribunal understands that the Applicants did not pay any fees to the Tribunal and, therefore, it does not need to consider the reimbursement of these by the Respondent.

Dated the 20 day of July 2009

CHAIRMAN..... I. Mohabir  
Mr I Mohabir LLB (Hons)