CHI/29UN/LIS/2009/0060

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER: (1) SECTION 27A OF THE LANDLORD & TENANT ACT 1985 (2) SECTION 24 OF THE LANDLORD & TENANT ACT 1987

Address:	12 Royal Road, Ramsgate, Kent, CT11 9LE
Applicants:	(1) Mrs Crampton (Flat 1) (2) Mr Cullen (Flat 3) (3) Mr Burgess (Flat 4) (4) Miss Ashton (Flat 5)
Respondent:	Three Keys Properties Ltd
Applications:	5 June 2009
Inspection:	19 October 2009
Hearing:	19 October 2009

Appearances:

Tenants

Mr Cullen	Leaseholder
Miss Ashton	Leaseholder

For the Applicants

Landlord

Did not attend and was not represented

For the Respondent

Members of the Tribunal
Mr I Mohabir LLB (Hons)
Mr C. Harbridge FRICS
Ms L. Farrier

IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/29UN/LIS/2009/0060

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

AND IN THE MATTER OF SECTION 24 OF THE LANDLORD & TENANT ACT 1987

AND IN THE MATTER OF 12 ROYAL ROAD, RAMSGATE, KENT, CT11 9LE

BETWEEN:

(1) MRS P CRAMPTON
(2) MR R CULLEN
(3) MR P BURGESS
(4) MISS ASHTON

Applicants

-and-

THREE KEYS PROPERTIES LTD

Respondent

THE TRIBUNAL'S DECISION

Introduction

1. The Applicants make to applications in this matter. The first application is made under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for determination of their liability to pay and/all the reasonableness of various service charges claimed by the Respondent in the 2007 and 2008 service charge years.

2. The second application is made under section 24 of the Landlord and Tenant Act 1987 (as amended) for the appointment of a manager in respect of the subject property. However, at the hearing this application was withdrawn by the Applicants.

3. The Applicants are the present lessees of their respective flats which they hold under long leases granted variously on are about 1974 for a term of 99 years. The Tribunal's understanding is that the leases of the five flats in the subject property were granted on the same terms. It is not the Applicants' case that the service charge costs in issue are not relevant service charge costs recoverable under the terms of their leases. In other words, the Applicants do not deny their contractual liability to pay a service charge contribution for the disputed service charge costs. Instead, the Applicants contend that the service charge costs are either not reasonably incurred or reasonable in amount. It is, therefore, not necessary to set out the relevant lease terms that gives rise to their contractual liability to pay a service charge contribution in each year. It is sufficient to note here that their contribution is one fifth of those costs incurred by the lessor pursuant to the obligations set out in the Fourth Schedule. The lessees are also required to contribute towards three tenths of the cost of decorating and carpeting the communal internal corridors and stairways.

The Disputed Service Charges

4. The service charges challenged by the Applicants in their statement of case are:

   (a) the fire escape stair costs (2007 and 2008)

   (b) the electrical survey charge. Although this issue was raised by the Applicants, it appears that this cost had been incurred by the Respondent in the 2006 service charge year for carrying out an electrical survey which recommended the replacement of all of the electrical circuits in the common parts. When it was explained to the Applicants that this cost fell outside the service charge years being considered in this application, they abandoned this specific challenge,

but instead relied on it as an example of a series of management failures as part of the challenge to the management fees.

(c) asbestos survey fee (2008)

(d) buildings insurance (2007 and 2008)

(e) management fees (2007 and 2008)

Each of these issues is considered in turn below.

The Relevant Law

5. 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.

6. 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."*

Inspection

7. The Tribunal inspected the subject property on 19 October 2009. It is a five storey Grade II listed Georgian terrace house constructed with yellow stock bricks with white colourwash rendering, beneath a pitched roof clad in slate

incorporating dormer windows At the rear is a three storey addition, built in 1970's, constructed with brick elevations beneath a flat bitumen roof.

Decision

8. The hearing in this matter also took place on 19 October 2009. Save for Mr Burgess, the Applicants appeared in person and were represented by Mr Cullen. The Respondent did not attend and was not represented. The reason for the Respondent's non-attendance will set out in a letter to the Tribunal dated 15 October 2009 in which it states that it had incorrectly diarised the hearing date and, constantly, it did not have a representative to attend the hearing. Nevertheless, the Respondent's position in this matter is set out in its statement of case filed pursuant to the Tribunal's Directions.

The Fire Escape Stair Costs

9. In the 2007 service charge account, the Respondent claims the sum of £220 for the cost of emergency repairs to the external steel staircase, apparently carried out in December 2006. In addition, the Respondent also claims the sum of £302.50, being surveyor's fees to undertake an inspection of the staircase, arranging emergency repairs to loose steps and oversee the emergency works.

10. In the 2008 service charge account, the Respondent claims the sum of £220, being surveyor's fees relating to an initial inspection of the property with a view to major works being undertaken. The relevant invoice relating to this cost appears at page 73 of the trial bundle. This states that this cost was incurred by the surveyor in having to review the file and prepare a schedule of repairs for the rear steel staircase for the Respondent's approval.

11. At paragraph 1(i) of its statement of case, the Respondent states that clause 5(11) and of the Fourth Schedule of the Applicants' leases requires it to, in every fifth year, to also redecorate the fire escape stairs at the rear of the property. It acquired the freehold interest in the subject property on 4 April 1996 and the decoration of the fire escape stairs fell due in 1996, 2003 and 2008.

12. The Respondent maintains that redecoration of the fire escape stairs was carried out in February and March 2000 and in early 2003. In accordance with the terms of the leases, the next redecoration cycle was in 2008. However, by a letter dated 16 October 2006, Thanet District Council identified a number of defects present in the fire escape stairs. On 17 October 2006, the Respondent wrote to a Mr Mark Pledger at Thanet District Council stating that it was going to thoroughly investigate the matter and obtain professional advice as to whether it was viable to repair the fire escape stairs.

13. The Respondent then wrote to its surveyor, Mr Paul Hasling of Range Property Consultants to request his advice. Mr Hasling visited the subject property on 21 November 2006 and set out his findings in a letter of the same date. Essentially, Mr Hasling recommended immediate urgent repairs be carried out to make it safe. In addition, he recommended that the entire staircase be refurbished with around 25 treads needing to be replaced along with three landings.

14. The Respondent asserts that the emergency step repairs were carried out shortly thereafter and Mr Hasling advise them of the completion of its work on 27 November 2006. The emergency step repairs were carried out by the contractor known as Bromley Freeholder Services at a cost of £220. Mr Hasling's costs of carrying out the inspection of the staircase, reporting to the Respondent and inspecting the completed works were £302.50. These amounts are claimed by the Respondent in the 2007 service charge account.

15. The Respondent goes on to state that it arranged for a specification to be prepared to include all further necessary repairs required to be carried out to the fire escape stairs. However, as the stairs were deemed safe following the emergency repairs that were carried out, it was decided to postpone the additional repairs until the next picking season in 2008. The cost of preparing the specification by Range Property Consultants was £220 and is claimed by the Respondent in the 2008 service charge account.

16. Mr Cullen, for the Applicants, asserted that no welding repairs have been carried out as part of the emergency repairs in 2006. He said that the contractors were present for no longer than 30 minutes and may have carried out some work but, having regard to the present condition of the stairs, he submitted that any work carried out had not been of a reasonable standard. Mr Cullen accepted that the emergency repairs to the fire escape stairs had been necessary. However, any repairs that had been carried out not readily obvious and, therefore, the cost claimed in the 2007 service charge year was excessive. In relation to the 2008 service charge year, Mr Cullen submitted that the cost of the further inspection carried out was an unnecessary duplication because the staircase had already been inspected by Mr Hasling the previous year and had not been reasonably incurred.

17. The Tribunal had the benefit of carrying out a physical inspection of the fire escape stairs. The Tribunal is an expert tribunal and its composition included a chartered surveyor. Having inspected the stairs, it was not readily obvious to the Tribunal what repairs had been carried out in 2006. Given that the repairs had only been carried out in the recent past, any steel repairs carried out should have been immediately obvious. The Tribunal noted several areas of corrosion through a number of stairs. In its expert opinion, these areas of corrosion would not have occurred in approximately 3 years in a staircase constructed of steel. Therefore, these areas of corrosion would have existed at the time the emergency repairs were carried out in 2006 and should have formed part of those repairs at the time. Having regard to all of these matters, the Tribunal concluded, on balance, that any or proper emergency repairs had not been carried out in 2006. It follows from this that the Tribunal finds that the cost of the emergency repairs in the sum of £220 had not been reasonably incurred or, alternatively, that the standard of any such repairs was not reasonable. Consequently, the Tribunal also finds that the surveyor's fees of £302.50 for inspecting the staircase, arranging the emergency repairs and supervising the works had also not been reasonably incurred. Accordingly, both amounts claimed by the Respondent in 2007 were disallowed by the Tribunal.

18. In relation to the surveyor's fees of £220 claimed by the Respondent in the 2008 service charge year, the Tribunal found that this cost had been reasonably incurred. It was accepted by the Applicants that the refurbishment and repair of the fire escape stairs is needed and, indeed, they complain that the Respondent has failed to attend to this matter. It was clear to the Tribunal that the specification had been used as the basis for having the necessary works tendered and that the Respondent was in the process of carrying out statutory consultation with the lessees with a view to having this work carried out.

Asbestos Survey Fee

19. The sum of £200 is claimed by the Respondent in the 2008 service charge year for having this survey carried out on 10 May 2008. The Applicants accepted the necessity of having to carry out the asbestos survey. However, they made three submissions in relation to the reasonableness of the cost incurred. Firstly, it was submitted that it was unreasonable for the Respondent to carry out the survey that included an assessment without having consulted the lessees in the first instance. Secondly, that the Respondent should have given the lessees the option to carry out a self-assessment because the relevant legislation only stated that a landlord *may* instruct a professional to carry out a survey. Thirdly, the Applicant submitted that the work should have been tendered locally and a local firm should have been instructed to carry out the work. Using a firm based in Plymouth was not reasonable because the cost of doing so would necessarily be higher than using a local firm. Mr Cullen and asserted that a local firm had given him a quote of £99 to carry out this work.

20. The Tribunal found that there was no statutory requirement on the part of the Respondent to consult the lessees or to carry out a tendering process for the asbestos survey. In the Tribunal's judgement, it was not unreasonable for the Respondent to exercise its absolute discretion to instruct a professional to prepare the report. The report found the presence of asbestos in two places within the common parts. Therefore, the Tribunal found that the cost of instructing a professional to carry out the survey report had been reasonably incurred. As to the cost of the report, the Tribunal also found that this was

reasonable because the Applicants had not produced any evidence to support the assertion that the work could be carried out by a local firm for £99.

Buildings Insurance

21. The total buildings insurance premiums claimed by the Respondent for 2007 and 2008 were £988 37 and £1,115.55 respectively. The period of insurance commences on 1 June in each year and ends on 1 June of the following year. The buildings insurance premium is apportioned by the Respondent to reflect the service charge year ending on 24 June of each year. Therefore, the Tribunal was required to consider the buildings insurance premiums for the years ending 1 June 2007, 2008 and 2009.

22. It seems that the subject premises are insured by the Respondent under its block buildings insurance portfolio. In its statement of case, the Respondent confirmed that its brokers, Churchill Insurance Consultants, review the market annually prior to each renewal and provide their recommendations for cover for the year. Apparently, the declared value of the subject property for insurance purposes had increased for the year ending 1 June 2009. The increase in value was as a result of an assessment of building reinstatement cost carried out on 16 May 2008 by Mr Barron of Barron Surveying Services Ltd. He recommended that the building be insured for the sum of £560,000. The declared value of the subject property for the insurance year ending 1 June 2007 was £318,448 with an overall premium of £982.04 including terrorism cover. For the year ending 1 June 2008, the declared value was £336,408 with an overall premium of £1,037.43 including terrorism cover. The declared value of the subject property for the insurance year ending 1 June 2009 was £658,000 with an overall premium of £2,225.39 including terrorism, These are the premiums upon which the Tribunal's determination is based.

23. The Respondent submitted, in terms, that the buildings insurance premiums were reasonable and relied on two earlier determinations made by the Leasehold Valuation Tribunal on 29 April 2009 (LON/00AY/LSC/2008/0537) and 12 August 2009 (LON/00AZ/LSC/2009/0217) when it was found that the

buildings insurance premiums charged by the Respondent, in respect of other properties in its portfolio, were reasonable.

24. Mr Cullen, for the Applicants, submitted that the increase in the buildings insurance premium in 2008 was significant and that the valuation upon which it was based was inaccurate because property values had decreased over this period of time. Indeed, builders' prices had remained static. Therefore, the buildings insurance premium should not have increased. Furthermore, Mr Cullen contended that a local surveyor should have been instructed to carry out the valuation so that a more accurate reinstatement value was obtained. He also contended that the premium obtained by the Respondent was not competitive because it had not "shopped around". In support of this contention, Mr Cullen relied on an insurance quote he had received from Intasure dated 21 September 2009 for £744.21.

25. The Tribunal firstly considered the insurance premiums for the years ending 1 June 2007 and 2008. These were calculated by reference to declared values of £318,448 and £336,408 respectively. It was clear from the valuation carried out by Mr Barron dated 16 May 2008 that the subject property was probably underinsured for both of these years. It follows from this that the premiums charged to the Applicants were less than the amounts that would have been charged had the subject property been properly valued for insurance purposes. Accordingly, the Tribunal found that the buildings insurance premiums for the years ending 1 June 2007 and 2008 must necessarily be reasonable.

26. As to the year ending 1 June 2009, there was no explanation offered by the Respondent why the subject property had been insured for the higher value of £650,000 given that Mr Barron had carried out a valuation less than one month before the commencement of the policy on 1 June 2008 when he reached a valuation of £560,000 for insurance purposes. Therefore, the Tribunal found that the premium charged was *prima facie* unreasonable. The Tribunal that considered what would be a reasonable premium. It found no assistance from the quotation obtained by Mr Cullen because it was a bare quotation and it was not clear if it had been based, for example, on the claims history of the

property. Mr Cullen's evidence to the Tribunal was that the property had been subject to a number of burglaries and that the basement flat was presently unoccupied, which may form part of the risk assessment carried out by the insurance company. In addition, Mr Cullen's quotation did not include terrorism cover.

27. The Tribunal, therefore, had to use its own expert knowledge and experience when deciding this issue. As a starting point, it adopted the valuation figure of £560,000 reached by Mr Barron in May 2008 and indexed this figure by 5% to reflect the period of cover to 1 June 2009 and then applied a brokers rate of 0.25%. Accordingly, the Tribunal found that a premium of £1,500 was reasonable.

Management Fees

28. The Respondent claimed a management charge of £525 and £675 for the use ended 24 June 2007 and 2008. The Applicants accepted that these management fees would be reasonable if the property had been properly managed. However, they complained that there had been a number of significant management failures during these years. These included:

- In 2008, the Respondent should have externally redecorated the property and failed to do so.
- In 2008, the managing agent failed to provide either Mr Cullen or the other Applicants with a copy of the relevant accounts.
- The Respondent had failed to properly repair and/or maintain the fire escape stairs.
- No accountant's certificate/reporter had ever been sent to the lessees.
- There had been a general failure on the part of the Respondent or its managing agent to respond to correspondence either from Mr Cullen or the other Applicants.

29. In conclusion, Mr Cullen submitted that, for 2007 and 2008, there had been no effective management of the subject property and only the buildings insurance had been arranged. Therefore, the management fees claimed by the

Respondent were unreasonable and that nothing should be allowed for this item.

30. From the documentary evidence before the Tribunal, it seems that the Respondents managing agent prepared the relevant service charge demands, carried out the appropriate accounting functions and arranged for the balance insurance in 2007 and 2008. However, it was clear but little else, in terms of the overall management of the property, had been done. Upon inspection, it was beyond doubt that general repair and maintenance of the building had not been carried out for some time and it appeared to be in a neglected condition. Accordingly, the Tribunal found that the management fees claimed for 2007 and 2008 were unreasonable. Given that the managing agent had carried out minimal management duties, the Tribunal determined that only a nominal sum of £50 plus VAT in respect of each year was reasonable.

Section 20C & Fees

31. In the originating application, the Applicants also made a further application under section 20C of the Act for an order that the Respondent be prevented for recovering all or any part of the costs it has or may have incurred in these proceedings.

32. Section 20C of the Act provides the Tribunal with a discretion to make an order preventing a landlord from being able to recover costs it had incurred in proceedings such as these were it is just and equitable to do so having regard to all the circumstances of the case.

33. In the present case, save for the issue of the cost of the asbestos survey, the Applicants had substantially succeeded on the other issues. Having done so, in the Tribunal's view, it would be in equitable and unjust to allow the Respondent to be able to recover its costs of having to unsuccessfully defend the application. Accordingly, the Tribunal does make an order preventing the Respondent from being able to recover all of the costs it has incurred in defending these proceedings. For the same reasons, the Tribunal directs the Respondent to reimburse the Applicants the sum of £300, being the total fees

paid by them to the Tribunal to issue the application and hand it heard. If those fees have been personally paid by Mr Cullen, then he is to be reimbursed by the Respondent within 28 days.

Dated the 30 day of November 2009

CHAIRMAN.....

Mr I Mohabir LLB (Hons)