

Southern Rent Assessment Panel
Leasehold Valuation Tribunal

Section 27A and Section 20C of the Landlord and Tenant Act 1985

Case Number: CHI/45UG/LIS/2008/0041

Property: 10 Meadway Court, Worthing, West Sussex BN13 1PN

Applicant: J W Stratton Ltd (landlord)

Respondent: Mrs K Arthur (tenant)

Appearances: For the Applicant:
Mr Sissons, Counsel
Mr Watkinson, Solicitor
Mr Butler, Mrs Marshall of Countrywide Management

For the Respondent:
Mrs Arthur in person

Referral to LVT: 17 September 2008

Pre Trial Review: 3 December 2008

Directions issued: 3 December 2008

Hearing: 13 May 2009

Decision: 20 July 2009

Tribunal

Ms J A Talbot MA Cantab.
Mr D Lintott FRICS
Ms Tat Wong

Case Ref: CHI/45UG/LIS/2008/0041

Property: 10 Meadway Court, The Boulevard, Worthing, West Sussex BN13 1PN

Background

1. This was an application brought by J W Stratton in Worthing County Court on 5 June 2008 for arrears of service charges from 25/03/2005 to 22/04/2008 of £3,376.08 and ground rent of £375 plus interest and costs. Mrs Arthur put in a defence, and on 17 September 2008 the case was referred to the Leasehold Valuation Tribunal.
2. A Pre-Trial review was held on 3 December 2008 attended by Mrs Arthur. The landlord did not attend but correspondence was received from its solicitors. The following issues were identified as being in dispute, subject to Mrs Arthur giving further details once accounts for all years were provided by the landlord:
 - (i) Management fees
 - (ii) Gardening
 - (iii) Door and door entry repairs
 - (iv) Fire Extinguisher rental
 - (v) Foyer ceiling repair
 - (vi) Works to tarmac drive
3. Directions were made for the landlord to provide further documents, for Mrs Arthur to provide her statement of case and for the landlord to provide a statement in reply. Mrs Arthur did not comply with the Directions. At the hearing she told the tribunal this was due to depression. The landlord nonetheless produced a witness statement from the property manager Mr. Baker together with copies of accounts and all invoices for all the years in dispute.

Law

4. The tribunal has power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money payable by a tenant to a landlord for the cost of services provided under the terms of the lease and within the meaning of Section 18 of the 1985 Act. The tribunal can also decide by whom, to whom, how much and when a service charge is payable. A service charge is only payable insofar as it is reasonably incurred and the works and services to which it relates are of a reasonable standard. The tribunal therefore also determines the reasonableness of service charges. The tribunal has no jurisdiction over ground rent.

Lease

5. The tribunal had a copy of the lease of 10 Meadway Court. The lease is dated 22 December 1958 and is for a term of 999 from 29 September 1958. The original ground rent was £10 per year but this was changed to £150 by a Deed of Variation dated 1 October 2003.
6. The service charge provisions are to be found at Clause 2(4). The lessee is to pay 1/24 of block costs and 1/66 of estate (or property) costs, being costs incurred by the lessor in complying with its repair and maintenance covenants at Clause 4. An

interim payment of £12.50 is payable by the lessee on 25 March and 29 September each year, the balance due after the provision of certified accounts showing the lessor's actual expenditure as soon as practicable after 29 September.

7. By Clause 4(1) and (4), the landlord can recover 1/24 of costs of repairing the main structural parts of the block, plus interior and exterior decorations, and 1/66 of maintaining roads, paths and gardens, insurance and management fees.

Inspection

8. The members of the tribunal inspected the property before the hearing accompanied by the parties. Meadway Court is a purpose built 1960's development of 3 blocks, the subject flat being in the north block. It is situated in a residential area of Worthing, accessed by a tarmac drive, set in well maintained landscaped gardens. The blocks are of cavity wall brick construction under an interlocked tiled roof with replaced UPVC windows. The external decorations are in reasonable condition. Part of the driveway has been re-surfaced with tarmac.
9. The members inspected the common parts of the north block internally. There was evidence of some water ingress to the ceiling under the flat roof. Interior decorations were in good condition, having been carried out in 2008, after the period in dispute. The common parts windows were of older style but in reasonable condition. The tenant pointed out a faulty rear door handle. The tribunal noted fire extinguishers to all floors and a new entry phone.

Hearing

10. The hearing took place in Worthing on 13 May 2009. It was attended by Mr. Sissons of Counsel and Mr. Wilkinson, Solicitor, for the landlord, accompanied by Mr. Butler, office manager of Countrywide managing agents, and Miss Marshall, the current property manager. She had recently taken over from the former property manager, Mr. Baker, who was unwell but had provided a witness statement. Mrs Arthur attended in person. Although she had not complied with the Directions, she was permitted to present her case with no objection from the landlord.

Lease and arrears claimed

11. The County Court proceedings the landlord had based its claim on a schedule of service charge arrears showing service charges unpaid since 29/12/2004, being payments on account of £100 six monthly in advance, and a so-called fixed charge also six monthly in advance rising from £343.14 in 2005 to £350.35 in 2006 and £370 in 2007. According to Mr. Baker's statement, the tenants were informed of annual increases by letter accompanying the annual accounts. The tribunal pointed out that this did not accord with the lease terms of an interim charge of £12.50 per half year with a balancing charge at the end of the accounting year.
12. Mr. Sissons submitted that this made no difference to the application, in that the tenant was obliged to pay the proportion of the total sums expended over and above the interim charge, whatever that had been. He accepted that the tribunal had no jurisdiction over ground rent. In general, the landlord's case was that all the disputed items fell within the landlord's repair and maintenance obligations in the lease, that

the works and services were of a reasonable standard and the costs reasonably incurred and supported by invoices and annual accounts.

13. The landlord had provided service charge accounts for the years in issue which showed income and expenditure for the north block, with apportionments already made to reflect the different proportions payable for the block and estate costs. For example, the total cost of work to the tarmac drive was £11,569.05, but the sum appearing in the account to 29 September 2006 was £4,206.93. The proportion payable by the tenant was strictly 1/66 of the total estate cost, but in effect this was the same as 1/24 calculated as a block cost.
14. By way of background, Mrs Arthur purchased Flat 10 on 13/10/2003. According to the lease schedule she paid ground rent and service charges up to 29/12/2004. She then started to withhold payments in protest at various disputes, involving for example an insurance claim following internal damage to her bathroom, parking and clamping issues, and disrepair to the common parts. As a result she fell into arrears and eventually the landlord took legal action.

Management fees

15. Management fees were presented in the accounts for each year as a total figure inclusive of VAT. For example the charge for the year ending 29 September 2004 was £3,285.39. A supporting invoice from Countrywide to the landlord showed a monthly charge of £230.31. Fees for 2005 were £3,580, for 2006, £3,712, and for 2007, £3,898.65 (all inclusive of VAT). Mr. Butler stated that Countrywide's total charge was based on an amount per flat per annum, which varied across its developments depending on the services provided. For the year ending 2006 the rate was £130 per flat and for 2007, £140 per flat excluding VAT. It was not clear whether there was a written management contract or letter of engagement in place as required by the RICS Code. Mr. Sissons submitted that the fees were reasonable for an estate of this type with 3 blocks and fairly extensive open areas.
16. Mrs Arthur did not believe the property was being properly managed. She had reported problems to the managing agents, such as a faulty trade buzzer, and damaged foyer roof, which took over 2 years to resolve. There were unacceptable delays in responding to tenants' concerns, and telephone calls were not returned. As a result she had experience problems with her post because the postman could not gain access. In reply Mr. Butler said there was a system for recording telephone and email contacts with a target to respond within 3-4 working days. He accepted that an insurance claim regarding internal damage to Mrs Arthur's flat could have been dealt with more efficiently.

Gardening

17. Mr Sissons submitted that the costs for gardening included grass cutting, clearing debris and maintaining borders and plants in the communal grounds. This was a basic gardening contract. Gardening was carried out by contractors whose costs were supported by invoices and accurately reflected in the annual accounts. The sums claimed were: 2004, £2,239.53; 2005, £2,084.41; 2006, £2,034.79; 2007, £2,331.35 which he submitted were reasonable. Mr Butler explained that the contractors had changed from Greenland to Dominic Landscapes and then Garden

Tec. He accepted that the gardens had been in a poor state on an inspection in 2005 when Dominic were the contractors. During spring, summer and autumn the contractors visited fortnightly and monthly in the winter. He monitored Dominic's performance but when this did not improve over a period of time, they were replaced. No costs reduction was negotiated to reflect poor performance.

18. Mrs Arthur contended that the gardens had not been properly maintained for some years. She produced photographs of a small part of the garden showing weeds growing in the path and rubbish dumped in the grounds. Mr Butler said dumping of rubbish by bins and in the grounds was unfortunately a common problem but was monitored by monthly visits from the property manager.

Door repairs

19. Mr Sissons referred to invoices from V Laker & Co for £730 and £171.30, for two repairs carried out in 2006. He contended that these repairs were properly carried out and that the managing agents responded to any complaints as they arose. A new functioning entryphone system was now in place. Further invoices from V Laker and subsequently Doorcom Ltd showed an increased number of call outs, suggesting that problems were being attended to and the agent was looking at replacing the system.
20. Mrs Arthur's complaint was that in 2005 there had been three replacement back door handles of poor quality. She repeated her concern that the postman could not gain access via a trade buzzer for her section of the north block in 2006 and 2007. Her post was undelivered so that she had to use an alternative postal address. She maintained that there were unreasonable delays in dealing with these matters. Mr Butler said there had been no other complaints, but Mrs Arthur said that the other flats in her part of the north were sub-let and that she was the only owner occupier.

Fire extinguisher rental

21. Mr Sissons submitted that the landlord was obliged to provide fire extinguishers in the common parts of the block to comply with fire safety regulations. Invoices from Chubb were supplied showing rental and maintenance of fire extinguishers totaling £1,448.88 for 2006. Any insurance claim for stolen extinguishers would not appear in the accounts.
22. Mrs Arthur contended that the rental agreement should cover the cost of replacement extinguishers. She was not sure exactly when extinguishers had gone missing, but in her view this had happened because the front door was not secure and she suspected vandalism. She thought the rental agreement cost was too high but had no alternative quotations for the tribunal.

Repair to Foyer Ceiling

23. Mr Sissons submitted that appropriate repairs were carried out to the foyer ceiling as and when needed. Again there were invoices evidencing the cost of internal work to the common parts which were reasonably incurred. These were from Artisan for £220, work to damaged ceiling, and £493.50 for work to staircase, included in the list of day to day repairs in notes to the accounts for 29 September 2007.
24. Mrs Arthur contended that the cause of the damage was external, and that the flat roof above the foyer had needed repairing for some years. It was not good management in her view to carry out internal decorations without dealing with the external cause. The roof repair had only been carried out recently and was not

included in this application before the tribunal. She was unhappy about the length of time it had taken to deal with the internal damage.

Works to tarmac drive

25. Mr Sissons submitted that these major works of resurfacing to part of the driveways were carried out in the service charge year ending 29 September 2006 at a total cost of £11,569.05, as shown in an invoice from Batten Civil Engineering dated 24 August 2004. The amount in the accounts for the north block was apportioned at £4,206.93. Mrs Arthur's contribution was 1/24, i.e. £175.29 so the statutory consultation requirements under Section 20 of the Landlord and Tenant Act 1985 did not apply.
26. Mrs Arthur thought there had been a double charge in that parts of the drive had been patched up to repair potholes at a cost of £300. The area at the rear of the north block was worst affected. She did not dispute the quality or cost of the major works. Miss Marshall explained that there was a rolling programme in place to resurface the whole site, but this had to be phased to minimise disruption and spread the cost.

Decision

27. The tribunal carefully considered the submissions from both parties and the comprehensive documentation provided by the landlord. It accepted the landlord's case that all the items in dispute fell within the landlord's repair and maintenance obligations under the terms of the lease and were therefore service charge items. It noted that the interim charges demanded by the managing agents were in excess of that specified in the lease, which was only £12.50 per half year. However, for the purposes of this application, the tribunal had the power to determine the overall sums due for the years in question because of the year end balancing provisions.
28. It appeared to the tribunal that Mrs Arthur had essentially withheld service charge and ground rent payments in protest at what she saw as poor management, particularly in relation to some matters which were not within the scope of the tribunal, such as an insurance claim for damage inside her flat and parking and clamping issues. It was regrettable that she had refused to make any payments since 2004, as this had put her in arrears and led the landlord to take legal action.

Management fees

29. That said, the tribunal acknowledged the validity of some of her concerns, especially in relation to the problems with the front door leading to disruption to her post. This was a significant inconvenience to Mrs Arthur, and the tribunal found there had been an unreasonable delay by the managing agents in replacing the entryphone system. It was likely that the sub-tenants (probably short term assured shorthold) would not have direct access to the agents, but would have to take such matters up with their own landlords, so the absence of other complaints did not necessarily mean there was not a problem. The tribunal also accepted that the managing agents had not always responded promptly to Mrs Arthur's attempts to contact them. It found that their approach to the foyer ceiling repairs was unsatisfactory in that the external roof defects should have been addressed earlier.
30. The tribunal concluded that although the management fees charged per flat were not excessive for a fully efficient service, the quality of the service provided by Countrywide was not always satisfactory, for the reasons given above. In the tribunal's judgment a reduction of 10% in managing agents fees for the years in

dispute was warranted and reasonable. Applying this to the figures in the annual accounts the tribunal therefore allowed the following sums:

Y/e 2004	£2,956.85
Y/e 2005	£3,222.00
Y/e 2006	£3,341.60
Y/e 2007	£3,508.78

Gardening

31. The tribunal noted that the gardens were currently well maintained, but accepted Mrs Arthur's evidence that for the years in issue the gardening was not overall of a satisfactory standard in relation to the costs charged by the contractors. Mr Butler had admitted that the contractors were not providing a good service and had monitored them. It was unclear exactly when they had been changed, but it was probably in or after 2007, in the tribunal's view it took too long for the managing agents to address this, and it was not reasonable for the full gardening costs to be met by the service charge account.
32. For those reasons the tribunal concluded a reduction of 20% in gardening costs for each year was justified and reasonable. Applying this to the figures in the annual accounts the tribunal therefore allowed the following sums:

Y/e 2004	£1,791.62
Y/e 2005	£1,667.53
Y/e 2006	£1,627.83
Y/e 2007	£1,865.08

Door repairs

33. These repair costs were not unreasonable in the tribunal's view and the work was necessary. The invoices showed that call outs took place and necessary work was done at a reasonable cost. The tribunal dealt with Mrs Arthur's concerns in considering the management charges, as above. These costs were allowed.

Fire extinguisher rental

34. Although the tribunal noted the rental costs did vary from year to year with no obvious explanation, overall it found the cost in 2006 of £1,442.80 was not unreasonably incurred or too high for the service provided, and was supported by invoices. Mrs Arthur had not provided any alternative quotes. Plainly the landlord was obliged to provide and maintain fire extinguishers and to replace them promptly if they were damaged or missing for any reason. This cost was allowed.

Foyer Ceiling

35. Again the tribunal has commented above about the managing agents' handling of this issue, but the cost of the work carried out supported by invoices was not unreasonable. These costs were allowed.

Works to tarmac drive

36. The tribunal found that these works were necessary and carried out to a reasonable standard, again supported by invoices. It accepted the managing agents' evidence

about the phased programme and need for the works. Patch repairs as necessary were sensible. Mrs Arthur had no sustainable objection to these costs which were properly apportioned to the north block. The tribunal allowed this cost in full.

Determination

37. The tribunal therefore determines that the total expenditure for service charges for the accounting years ending 29 September 2005, 2006 & 2007 were reasonably incurred as shown in the annual accounts, apart from the reductions for managing agents' fees and gardening costs as specified. The adjusted total, to be calculated by the landlord, is therefore recoverable from Mrs Arthur in accordance with proportions under the terms of the lease.

Dated 20 July 2009

Signed

**Ms J A Talbot
Chairman**