

MAN/00BY/LSC/2010 /0042

**LEASEHOLD VALUATION TRIBUNAL
OF THE
NORTHERN RENT ASSESSMENT PANEL**

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

**LANDLORD AND TENANT ACT 1985
SECTION 27A (1)**

**Properties: 10, 94, 116,131, 175, 180, 213, 255, 257 and 261 Minster Court
Liverpool L7 3QH**

Applicants: Minster Court Management (Liverpool) Company Limited

Respondents: Various (see schedule)

Chairman: Mr G C Freeman
Mr J Faulkner FRICS
Mrs E Thornton-Firkin BSc MRICS

Dates of Hearings: 2nd September and 11th October 2010

Application

1. By their application dated 15th April 2010 the Applicants seek a determination of the liability to pay and reasonableness of service charges for the above properties where costs have been incurred, or are about to be incurred, for the service charge years 2004 to 2010 inclusive. The Applicants named the Respondents in their application as their tenants. Save for 213 Minster Court, which is a house, all the Properties are flats.
2. The Applicants were represented by Mr Hugh Derbyshire of Counsel, instructed by Messrs Brabners Chaffe Street, solicitors, of Liverpool. Save for Miss R Lucca of 172 Minster Court, who attended both hearings and Mr A. Arlotta of the same address, who attended on on 11th October 2010, the Respondents did not attend the hearing and were not represented. Mr John Degg, a director of the Applicants, attended both hearings.

The Lease

3. The Lease of each flat within the Property is similar in form. It demises the flat for the term of 999 years from 1 March 1983. No ground rent is reserved. However, a rent is reserved to cover the cost of insuring the Property.
4. The service charge provisions are contained in clause 3. The tenant covenants with the Management Company to contribute and pay a proper proportion of

the costs, expenses and outgoings and matters mentioned in the Fourth Schedule. This contribution is to be estimated by the Management Company at the beginning of the relevant year and the contribution is to be paid in advance by four equal instalments on 1 January, 1 April, 1 July and 1 October. There is provision for the creation of a Reserve Fund in clause 3(iv) in order to equalise the service charge from year to year and to provide for the depreciation of assets within the Development.

5. The Fourth Schedule sets out the heads of expenditure for which service charge is payable. This includes maintaining, repairing, redecorating and renewing the main structure, redecoration, insurance and management fees. The Tribunal noted that clause 3(i) of the Lease provides for a "proper proportion" to be paid.
6. The Tribunal also noted clause 3(ii) of the Lease provides that the estimate to be prepared by the Management Company prior to the beginning of the year is to be final.

Inspection and Hearings

7. The Tribunal inspected the property on the morning of the 2nd September 2010. It consists of a development of re-furnished former council owned flats, originally constructed in the inter war years, in an inner city area of Liverpool, close to the University. During the later part of the last century, the development had fallen into disrepair. It was purchased by a national house builder and converted into privately owned flats with communal gardens. In all there are 280 properties including 26 houses, the latter constructed relatively recently. There are five different types of one bedroom and two bedroom flats.
8. A hearing was held at the Employment and Tribunal Service, Cunard Building, Pier Head, Liverpool at 11.00 am on 2nd September 2010. It was established that the Applicants service charge year runs from 1st January to 31st December each year. It was also established that the lease provides for each owner to contribute a "proper proportion" of the expenses and outgoings. Mr Degg stated that at a meeting of the Applicants held in November 2003 it was decided that the "proper proportion" would be one equal share of the total expenses. He also said that each owner is also a shareholder in the Applicants.
9. At that point the Tribunal indicated that it had not been provided with sufficient information about the expenses for the years in question, for them to make a determination of what was a fair and reasonable service charge. The Tribunal made further directions and adjourned the hearing to 11th October 2010 at the same venue. Several owners having previously applied to be removed from the list of Respondents, it was directed that they should no longer be parties.
10. At the adjourned hearing the Applicants produced the accounts of the Applicants for the years in question except for the year ended 31st December 2008 and the current year. However, the Tribunal was able to deduce the

expenditure for this year from the 2009 accounts. The Tribunal was disappointed to note that the Applicants failed to comply with the Tribunal's directions and were also late in supplying information to the Tribunal. The Accounts for 2008 were not produced at all. No evidence was produced that the Applicants had complied with clause 8.4 of the RICS Service Charge Residential Management Code. No accounts were produced for the reserve fund described in the leases. There was an item described in the Applicant's accounts for 2006 as Service Charge Equalisation Account, but no evidence was produced as to whether this was the reserve fund and Mr Degg was unable to offer any explanation for this. No certificates signed by the auditor pursuant to clause 3 (b) of the leases were produced. The Tribunal noted that the Applicants had been under considerable difficulties in bringing a dilapidated development up to a reasonable state of repair, but this is no excuse for not supplying information to owners to which they are lawfully entitled, or for failure to comply with the terms of the leases. The Applicants should note that any Tribunal dealing with a similar application in the future may take a different view of the Applicant's conduct.

The Law

11. Section 18 of the Landlord and Tenant Act 1985 provides:
 - (1) In the following provisions of this Act "service charge" means" an amount payable by a tenant of a dwelling as part of or in addition to the rent –
 - (a) which is payable directly or indirectly , for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
 - (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
 - (3) For this purpose-
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.
12. Section 19 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 of works only if the services or works are of a reasonable standard:
and the amount payable shall be limited accordingly.

13. Section 27A provides 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 date at or by which it is payable, and
 - (d) the manner in which it is payable.
 - (2) Subsection (1) applies whether or not any payment has been made.
 - (3)
 - (4) No application under subsection (1)...may be made in respect of a matter which –
 - (a) has been agreed by the tenant.....
 - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
14. No guidance is given in the 1985 Act as to the meaning of the words “reasonably incurred”. Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.
15. In *Veena S A Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].

The Tribunals’ Conclusion

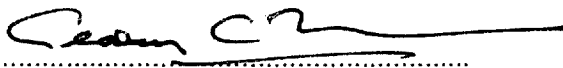
16. The Tribunal considered the accounts for the Applicants for the relevant periods. In the previous decision of the Tribunal in the case of the Applicant v Abdul Hamid (MAN/00BY/2008/0042), the Tribunal decided that a service charge per property for the year **2006 of £856.28** and for the year **2007 of £845.00** was reasonable. However that decision was based on paper submissions, without a hearing, on the assumption that 278 properties paid service charge and on the basis of budget figures. The Tribunal decided to base its decision in this case on the evidence presented to them.
17. For the remaining years, except for 2010, the Tribunal considered the Income and Expenditure accounts of the Applicant. Based on 280 properties, these produce service charges as follows:

Year	£Total Expenses	£ per property per year (280 properties)
2004	201788.00	720.67
2005	201553.00	719.83

Year	£Total expenses	£ per property per year
2006	188472.00	673.11
2007	228029.00	814.39
2008	212240.00	758.00
2009	211988.00	731.00

18. Mr Degg alleged that he produced a service charge budget for 2010 at the hearing on 7th September. It was no longer in the possession of the Tribunal. It may have been returned to Mr Degg during the earlier hearing. No evidence was produced that copies had been supplied to the Respondents or four copies had been supplied to the Tribunal in accordance with its directions. It was not included in either of the Applicants bundles of documents and Mr Degg was unable to supply a further copy at the adjourned hearing for consideration by the Tribunal. In the absence of such a budget the Tribunal were unable to decide a reasonable service charge for the year ended 31st December and therefore decline to do so.

Dated 13th October 2010



G C Freeman

Chairman

The Schedule
List of Respondents

<u>Name</u>	<u>Address</u>
Mrs J Bowker	10 Minster Court
Mr M.K. Vijayanarayanan	94 Minster Court
Miss L Moran	116 Minster Court
Mr C and Mrs P Burns	131 Minster Court
Mr T. R. Trafford	175 Minster Court
Mr A. Excell	180 Minster Court

Mr and Mrs Bhatti	213 Minster Court*
Mr L. W. Veall	255 Minster Court
Ms E. Finn	257 Minster Court
Mrs Morgan	261 Minster Court

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