

7862.



**HM Courts  
& Tribunals  
Service**



**Residential  
Property  
TRIBUNAL SERVICE**

**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**

**ON AN APPLICATION UNDER SECTIONS 27A AND 20C OF THE LANDLORD  
AND TENANT ACT 1985**

**Case Reference:** LON/00BK/LSC/2011/0697

**Premises:** 10A Bathurst Street, London W2 2SD

---

**Applicant(s):** David Allen and Marika Allen

**Representative:** In person

**Respondent(s):** The Church Commissioners

**Representative:** Ms Louise Clark, solicitor of Charles Russell and  
Mr James Dobson, surveyor

**Date of decision:** 22<sup>nd</sup> March 2012

**Leasehold Valuation  
Tribunal:** Mr Adrian Jack, Mr Michael Mathews FRICS, Mrs  
Rosemary Turner JP

## **Procedural**

1. By an application dated 6<sup>th</sup> October 2011 the tenants sought determination of their liabilities to pay service charges in the service charge years 2001 to 2012. (The service charge year runs from Christmas, but for convenience only the calendar year is used to describe the service charge year.)
2. A pre-trial review was held on 2<sup>nd</sup> November 2011.
3. Subsequently there were negotiations between the landlord and the tenants. These resulted in agreement being reached as to the service charge years 2001 to 2009. We were not told the precise terms of settlement but it was common ground that the settlement of these years had been on terms advantageous to the tenants.
4. Accordingly the only years remaining in dispute before us at the hearing on 23<sup>rd</sup> February 2012 were 2010, 2011 and 2012. The final figures were available for 2010 but not the other two years. We were only asked to determine whether the budgeted figures were justifiable for these three years. As the Tribunal explained to the parties, where the Tribunal is considering budgeted figures the Tribunal in practice has only a limited task. It looks at whether a particular head of charge is in principle recoverable under the service charge provisions of the lease. It also asks whether the budgeted figures are reasonable as a budget. The Tribunal does not generally investigate the standard of work or the cost of individual items. Such matters are for the final account.
5. Neither party sought an inspection and none was held. It was common ground that the tenants occupied a ground floor and basement maisonette in a house converted into five flats. The house dated from the early nineteenth century and formed part of the landlords' Hyde Park Estate. Although described as an estate, in fact much of the landlords' property on it was not contiguous and extended over an large area of Bayswater and Paddington.
6. The Church Commissioners were created by the Church Commissioners Measure 1947 and are the legal successors to Queen Anne's Bounty (created 1714 for the support of poor clergymen) and to the Ecclesiastical Commissioners (created in 1836 for the better management of diocesan revenue).

## **The lease**

7. The leases are in standard form with provision for payments on account of service charges with a balancing payment once the final accounts were available. The tenants' percentage is 37.4 per cent.

### Amounts claimed

8. The amounts claimed by the landlord are as follows, with the items in dispute identified in bold:

	2010	2011	2012
<b>Management fees</b>	<b>£1,920.00</b>	<b>2,040.00</b>	<b>2,122.00 Disputed</b>
Insurance	1,500.00	1,460.00	1,474.00
<b>Repairs</b>	<b>1,600.00</b>	<b>1,600.00</b>	<b>1,500.00 Disputed</b>
<b>Audit and accounts</b>	<b>550.00</b>	<b>750.00</b>	<b>700.00 Disputed</b>
<b>Area FM costs</b>	<b>nil</b>	<b>360.00</b>	<b>360.00 Disputed</b>
Other fees	200.00	100.00	100.00
Income tax	nil		
Internal cleaning	300.00	660.00	
Hygiene services	nil		
Electricity	150.00	300.00	350.00
Video entry	100.00	150.00	150.00
<b>Health and safety</b>	<b>200.00</b>	<b>1,400.00</b>	<b>550.00 Disputed</b>
Fire protection	1,200.00	1,140.00	900.00
Reserves	1,000.00	1,000.00	1,000.00
	£8,720.00	£10,960.00	£9,206.00

### Management fees and audit

9. The tenants' attack on the management fee was based on alleged inadequacies in the management services provided, especially in connection with taking the handover from the previous managing agents. In our judgment this is a matter properly for a final account, not for the budgeted figures. The amounts for a five unit property in this part of London are in our judgment reasonable. Accordingly we disallow nothing.
10. Likewise the figures claimed in respect of audit and accounts are in our judgment reasonable as budgeted figures. As a result of changes in the practice of HM Revenue & Customs, it is now necessary to make a tax return for service charge monies held on trust. This increases the labour involved.

### Area FM costs

11. These costs are in respect of facility management, which covers the landlords' entire Hyde Park Estate. The advantage to the tenants of incurring this expense is said by the landlord to be that professional fees are reduced on any major works which are carried out and in other ways. The Tribunal's difficulty is that the landlord has not produced the job description for the facility management function. In these circumstances the Tribunal is unable to judge either whether the amounts are reasonable or indeed whether they fall under

the provisions of Schedule 7 para 8 and Schedule 8 para 5 to the lease. Nor is the Tribunal able to tell whether there is any element of double-counting between the FM services and the ordinary management services provided by Knight Frank LLP.

12. In this rather unsatisfactory situation, the Tribunal disallows this item on the budget, but does not determine definitively whether or not the area FM costs are properly recoverable. The basis of the Tribunal's determination is simply that it is not satisfied on the evidence presented at the current hearing that the amounts will be reasonably incurred. It will be open to the landlords on any determination of the final accounts to present better evidence to justify this head of expense.

### **Repairs and maintenance**

13. In our judgment these sums are reasonable as budgeted figures. The tenants' main point was that some expenditure might be expected to come out of the reserve fund. However, in our judgment, the landlord has a discretion as to what sums should come from the reserve fund and what from the recurrent contributions to maintenance. The landlords have not acted unreasonably in the judgment which they have made. The sum claimed is only £1,250 plus VAT. That is a comparatively modest sum in a building this age.

### **Health and safety**

14. It is now a requirement that landlords carry out health and safety inspections and the tenants did not in principle object to some inspections being carried out. They did, however, object to the cost and frequency of the inspections.
15. The landlords said that the last health and safety inspection had been in 2007. They tried to have inspections carried out every other year. One contributor to the cost of this item was the use of the "track record" system. This was a computer system designed to keep health and safety records up-to-date. Mr Dobson said: "I never want to have to explain why an avoidable accident has occurred."
16. We preferred the argument of the tenants that the frequency of inspections is excessive. An inspection every third year should be adequate in a building of this type.
17. Moreover we are not satisfied that the track record system ensures anything more than a managing agent would be expected to do as part of its ordinary duties. Again on this item we do not make a final determination of irrecoverability, because we have not seen all the documentation. As a budgeted item, it has not, however, in our judgment been adequately justified.

## Conclusion

18. Accordingly we find the following sums in the accounts: The amounts claimed by the landlord are as follows, with the items in dispute identified in bold:

	2010	2011	2012
<b>Management fees</b>	<b>£1,920.00</b>	<b>2,040.00</b>	<b>2,122.00</b>
Insurance	1,500.00	1,460.00	1,474.00
<b>Repairs</b>	<b>1,600.00</b>	<b>1,600.00</b>	<b>1,500.00</b>
<b>Audit and accounts</b>	<b>550.00</b>	<b>750.00</b>	<b>700.00</b>
<b>Area FM costs</b>	<b>nil</b>	<b>nil</b>	<b>nil</b>
Other fees	200.00	100.00	100.00
Income tax	nil		
Internal cleaning	300.00	660.00	
Hygiene services	nil		
Electricity	150.00	300.00	350.00
Video entry	100.00	150.00	150.00
<b>Health and safety</b>	<b>200.00</b>	<b>nil</b>	<b>nil</b>
Fire protection	1,200.00	1,140.00	900.00
Reserves	1,000.00	1,000.00	1,000.00
	<hr/>	<hr/>	<hr/>
	£8,720.00	£9,200.00	£8,296.00

The tenants' share is 37.4 per cent.

## Costs

19. Tribunal has a discretion as to who should pay the fees payable to the Tribunal. These comprise a £200 application fee and a £150 hearing fee.
20. In our judgment the tenants have (particularly when bearing the result of the settlement in respect of the years 2001 to 2009) overall succeeded in this matter. There were, however, matters which they contested at the hearing on which they did not succeed. In our judgment the fairest solution is to order that the landlord pay the tenant £300 in respect of the fees payable to the Tribunal.
21. The tenants sought an order under section 20C of the Landlord and Tenant 1985. This allows the Tribunal to make an order preventing the landlord recovering the cost of the proceedings from the tenant through the service charge. The Tribunal would not lightly interfere with a landlord's rights under its lease, but here it would not be just to allow the landlords to recover their costs of the proceedings in the light of the tenants' significant wins. Accordingly we make a section 20C order.

## DETERMINATION

The Tribunal accordingly determines:

- (a) that the tenants are obliged to pay 37.4 per cent of £8,720.00 in 2010, £9,200.00 in 2011, and £8,296.00 in 2012 by way of monies on account;
- (b) that the landlords do pay the tenants £300 in respect of the fees payable to the Tribunal;
- (c) that pursuant to section 20C of the Landlord and Tenant Act 1985 the landlord be prevented from recovering its costs of the current proceedings from the tenants.

Adrian Jack, Chairman

22<sup>nd</sup> March 2012

### ANNEX: The law

Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

#### Section 18

- (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, improvement 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 of 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 period

#### Section 19

- (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.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### Section 27A

- (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.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-
  - (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.

The Landlord and Tenant Act 1987 provides in sections 47 and 48 that any demand made by a landlord must contain the landlord's name and address and must provide an address in England and Wales at which notices may be served. Failure to comply with either of these requirements makes the monies demanded irrecoverable until the default is remedied.