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**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
and SECTION 24(1) LANDLORD AND TENANT ACT 1987**

Case Reference: LON/00AG/LSC/2012/0581

Premises: Flat 4, 46 Chalcot Crescent, NW1 8DY

Applicants: Michael & Suzette Partridge

Respondent: Chalcot Crescent (Management) Co. Ltd.

**Leasehold Valuation
Tribunal: Mr M Martynski (Solicitor)
Miss M Krisko BSc(EstMan) BA FRICS
Mr A Ring**

**Those present taking part
in the hearing: Mr M Partridge
Mr J Schehtman (leaseholder and director of
the Respondent company)
Mr M Bryant (assisting Mr Schehtman)
Mr Stephen Stone (proposed manager)
Mr Newman (associate of Mr Schehtman)**

Dates of hearing: 14 & 15 January 2013

Decision summary

1. The only Service Charges reasonably incurred and payable for the Service Charge year 2010 are;

Buildings insurance	£765.00
Survey on building	£150.00
Cleaning	£25.00
Electricity	£75.00
Maintenance and repairs	£108.13
Management fees (agents)	£440.00
Management fees (Mr Schehtman)	£84.23

Total £1647.36

2. The only Service Charges reasonably incurred and payable for the Service Charge year 2011 are:-

Building insurance	£785.00
Cleaning	£100.00
Maintenance and repairs	£1266.00
Management fees	£215.10
Total	£2366.10

3. As to the Service Charge for 2012 the charges that would be reasonable if they were incurred are as follows:-

Buildings insurance	£842.00
Cleaning	£100.00
Lighting	£100.00
Management fee (10% of the ultimate total of all reasonable service charge expenditure)	

4. The Tribunal appoints Mr Stephen Stone of Grangeview Management Limited as a Manger in respect of 46 Chalcot Crescent, NW1 ('the Building') from 1 January 2013 until 31 December 2015 upon the terms of the order set out at the end of this decision.
5. An order is made pursuant to section 20C Landlord and Tenant Act 1985 that none of the costs incurred by the Respondent in connection with these proceeding are to be added to the Service Charge payable by the Applicants.
6. The Respondent must pay to the Applicant the sum of £300.00 in respect of his application and hearing fees.
7. No other order as to penalty costs is made.

The Property

8. 46 Chalcot Crescent ('the Building') is a period house converted into four flats. The freehold of the Building is owned by the Respondent, a company whose members are the Applicant, Mr J Schehtman, Mr Schehtman's wife and his daughter. The long lease of Flat 1 is owned by Mr & Mrs Schehtman; the long leases of flats 2 & 3 are owned jointly by Mrs Schehtman and Mr & Mrs Schehtman's daughter. The Applicant is the long leaseholder of flat 4 having purchased the lease in early 2004. Mr Schehtman has lived in the Building for over 30 years.

The Applicants' applications

9. The Applicants have made two separate applications. The first challenges Service Charges for the Applicants' flat for 2010, 2011 and 2012. The Service Charge year for the Building is the calendar year.

10. The second application seeks the appointment of a manager for the Building. The grounds of that application include allegations that unreasonable Service Charges have been levied.
11. As a corollary to both applications, the Applicants sought an order preventing the Respondent from putting any costs that it has incurred in these proceedings onto the Service Charge for the Building.

The background

12. There is a long and unfortunate history of litigation between the parties which includes previous proceedings in the Leasehold Valuation Tribunal and proceedings in the High Court.
13. Following an application made in 2004 by Mr Partridge for the appointment of a manager, by a decision dated 20 December 2004, a Leasehold Valuation Tribunal appointed a Mr Pearl of Saffron Property Limited to manage the Building for a period of 5 years from 1 January 2005.
14. At paragraph 34 of its decision, that Tribunal noted:-

The Tribunal was satisfied that the accounts kept by Mr Schehtmann were not satisfactory and that Mr Partridge had been justified in challenging the items, which were demanded from him. The attitude of Mr Schehtmann was less than co-operative to Mr Partridge and that for all these reasons, even if consent has not been forthcoming to the appointment of a manager the Tribunal would have considered that there were grounds for making such an order and that it was in the best interest of the property that such an order was made.
15. It appears that, following the expiry of the 2004 management order, Mr Pearl had continued to manage the building (with the acceptance of both parties) until his resignation, since when Mr Schehtman had resumed management control.
16. By a notice dated 30 July 2012 the Applicants gave notice to the Respondent that they intended to make an application to the Tribunal for an order appointing a manager of the Building.
17. The Applicants then made applications to the Tribunal for the appointment of a manager and in connection with the Service Charges for the years 2010, 2011 and 2012. By the time of the hearing, the application for the appointment of manager was not opposed, the actual manager proposed by the Applicant's, Mr Stone, was opposed by the Respondent.
18. Directions were given on the applications on 19 September 2012.

The Service Charge Application

The Service Charge year 2010

Cleaning - £138.00

19. The sum of £138.00 was claimed for cleaning. This was made up of two invoices. One 'invoice' was for £25.00 (including other items). This 'invoice' was prepared by Mr Schehtman and simply recorded that cash of £25.00 had been given to a street cleaner to clean under the iron staircase. This method of payment and recording of a Service Charge item is clearly unsatisfactory. On balance however, the Tribunal is satisfied that the expense was incurred and was reasonable.
20. The remainder of the amount claimed was represented by an invoice from LPMD for £125.00. This invoice was on a generic invoice form and contained no details of LPMD. It was handwritten and described the work as the dumping of flower pots and the washing down of a roof. It transpired in evidence that this work was done on the balcony of Flat 3. From looking at the Applicants' lease, it appears that balconies are demised to the flat owners. It appears therefore that this work should have been paid for by the leaseholder of Flat 3 and not charged to the service charge. It is therefore not payable.
21. The Tribunal records here that the invoices discussed, respectively for £25.00 and £125.00 do not add up to the £138.00 figure set out in the Service Charge account for this year.

Electricity - £75.00

22. No documentation was produced by the Respondent regarding this charge. The reason given for this is that it was not given as a head of dispute by the Applicants. Mr Partridge was concerned at the lack of documentation and concerned that the documentation in respect of this item would be lacking in some respects in common with the documentation for the cleaning.
23. On balance, the Tribunal finds this sum to be reasonable and payable given that it appears in the end of year accounts and given that it appears to be a reasonable sum for a year's worth of communal electricity.

Maintenance and Repairs

24. The sum for this item in the Service Charge account was £440.00. The documentation relied upon to support this figure did not total the sum of £440.00 set out in the account.
25. As to the individual figures making up this amount; first there was an invoice from LMPD in the sum of £88.13, this time a proper invoice with

the company details and VAT number. The invoice was for roof and gutter clearance and appeared reasonable and payable.

26. There was then the invoice from LMPD discussed at paragraph 19. That is disallowed for the reasons already given.
27. There were then two 'receipts' from M Bailey for £20.00 for some external railings work and for £80.00 for work carried out to the bathtub and water tank in Flat 1. Neither 'receipt' was satisfactory as both were drawn up by Mr Schehtman, although signed by Mr Bailey. The Tribunal concludes that the costs of the works to the railings was, on balance, probably done and reasonably incurred. The works to Flat 1 should have been paid for by that flat as they were purely internal works which were the responsibility of that flat owner. Those costs are not therefore payable by the Applicants.
28. There were then two 'invoices' which had been prepared by Mr Schehtman. Both were headed with the name and address of the (then) leaseholder of Flat 2. The first, in the sum of £150.00, was for carpets laid to the communal landing in March 2007. The second, for £50.00, was said to be from Mr Bailey to clear ivy on an external wall in November 2009. Both 'invoices' were unsatisfactory having been drawn up by Mr Schehtman himself. It was not clear who the first invoice was supposed to be from nor why both invoices were headed with the name and address of the (then) leaseholder of Flat 2. In any event, neither sum is payable. The Applicants were not informed of this expenditure within 18 months of it being incurred and so both amounts fall foul of section 20B Landlord and Tenant Act 1985. This expenditure should not have appeared in the accounts for this period.
29. Finally, there was another 'invoice' prepared by Mr Schehtman. This invoice included sums for cleaning and electricity. The relevant sum was for the repair of "Mr Jackson's washing machine March 2009 (approx) - £40.00". A repair to a leaseholder's washing machine is clearly not chargeable to the Service Charge.
30. This makes the total sum payable for maintenance and repair to be just £108.13.
31. Taking into account the unchallenged sums of £765.00 for buildings insurance, £150.00 for a survey report and £440.00 for the fees of the previous managing agent, this brings the total allowed expenditure for that year to £1563.13. Under the terms of the Applicants' lease, the Applicant is allowed to charge 10% of expenditure for management if there is no managing agent. The Tribunal has therefore worked out the management fee to be allowed as follows:-

Total expenditure	£1563.13
Less fees to external Managing agent	<u>£ 440.00</u>
	£1123.13
10% management fee on £1123.13 =	£112.31

The Applicant managed for three-quarters of the year so; £112.31 x 75% = £84.23

Total Service Charge payable for the year = £1647.36

Total payable by the Applicants £411.84 (i.e. 25%)

The service charge year 2011

Cleaning - £254.49

32. This was cleaning carried out by Mr Schehtman and charged by him. The total amount shown in the accounts for this year was £254.49. The parties agreed a reduction of this sum to £100.00.

Maintenance and repair

33. The sum for this item in the Service Charge account was £1642.15. The documentation relied upon to support this figure did not total the sum of £1642.15 set out in the account.
34. As to the individual figures making up this amount; first there was an 'invoice' from Mr Roger Gray in the sum of £1066. This was another of the invoices drawn up by Mr Schehtman. The work charged for was asphaltting parts of the exterior. The Tribunal considered that this work was probably done and from the limited details it had of the work as described by Mr Schehtman, the cost of the work appeared reasonable. As however the Applicants' share of this cost is £266.50 and as there was no consultation pursuant to section 20 Landlord and Tenant Act 1985, the Applicant's payable share is limited to £250.00.
35. Next there is another of Mr Schehtman's 'invoices' this time for a Mr Jacek Bator in the sum of £291.05 for various exterior painting and related work. The action sum shown as paid on the invoice is "£200=00 in cash". The Tribunal considered that this work was probably done and from the limited details it had of the work as described by Mr Schehtman, the cost of the work appeared reasonable.
36. Finally there is an actual invoice from Mr Schehtman himself which includes; painting and repairs £344.05 and electrical switch repairs £32.10. Although the invoice is from himself, Mr Schehtman said that he prepared the invoice in order to reimburse the workers who carried out the work. The Tribunal concludes that these sums are not payable. There is no detail regarding the work and no detail as to who carried it out.
37. This makes the total sum payable for maintenance and repair to be just £1266.00¹.

¹ This includes the full sum of £1066 for the asphaltting

² This takes account of the £250.00 contribution limit to the asphaltting works and the electricity credit

38. A sum of £132.00 for management appeared on the Service Charge account for this year. The Respondent conceded that this was a mistake and was double counted.
39. In the individual accounts for this year, credit was given to the Applicants for an electricity repayment of £77.94.
40. Taking into account the unchallenged sum of £785.00 for buildings insurance, this brings the total allowed expenditure for that year to £2151.00. The Tribunal has worked out the management fee to be allowed as follows:-

Total expenditure £2151.00

10% management fee on £2151.00 = £215.10

Total Service Charge payable for the year = £2366.10

Total payable by the Applicants £497.08²

The Service Charge year 2012

41. No finalised accounts were available for this year (ending 31 December 2012). The figures for the budget for this year were revised by agreement and those revised figures are as follows:-

Buildings insurance	£842.00
Cleaning	£100.00
Lighting	£100.00
Management fee (10% of the ultimate total of all reasonable service charge expenditure)	

42. The Tribunal concluded therefore, by consent, that such expenditure would be reasonably incurred.

The appointment of manager application

The reasons and grounds for the application

43. In their section 22 notice dated 30 July 2012, the Applicant's set out the grounds for the proposed application as being:
- Breach of landlord's obligations to the tenants under the lease
 - Unreasonable charges made by the landlord
 - Other circumstances which make it just and convenient
44. The matters relied upon by the Applicants to establish these grounds (and the Tribunal's comments on them) are as follows.

² This takes account of the £250.00 contribution limit to the asphaltting works and the electricity credit

Failure to provide accurate service charge demands and accounts

45. The matters recorded in this decision in respect of Service Charges for 2010-2012 demonstrate that there has been a history of unsatisfactory accounting and record keeping in respect of Service Charges during this period. The Tribunal is mindful that similar findings were made by a tribunal in 2004 with respect to previous Service Charges levied by the Respondent.

Disputed credit of £2521

46. The parties have long been in dispute as to a payment made by the mortgagee of the Applicants' predecessors in title. The Applicants say that this sum stands to their credit in their Service Charge account. The Respondent denies this and says that the matter was effectively settled by a consent order agreed between the parties in the High Court litigation between them.
47. The Tribunal was quite unable to resolve this dispute for the parties. The dispute really revolves round the interpretation of the High Court order. Even if the Tribunal had all the facts and had the time to investigate the dispute, it may well come to the conclusion that the dispute is not within its jurisdiction in any event or that it has any direct and meaningful relevance to the application for the appointment of a manager.

Failure to maintain the Building

48. This point was not pursued by the Applicants at the hearing.

Failure to extend leases

49. The Tribunal explained to Mr Partridge at the hearing that this issue concerned the Respondent in its capacity as freeholder rather than as manager and as such it was not relevant to the application.

Administration fee

50. The Applicants have recently been trying to sell their flat. In order to sell, they have required the Respondent to give information on previous Service Charges. The Respondent has required a fee of £250.00 for this. There was a dispute between the parties as to whether this was an Administration Fee demanded of the Applicants or if it was a conveyancing practice (said on behalf of the Respondent to be standard) whereby a freeholder sought payment from a prospective purchaser for the provision of information.
51. The reference in the papers before the Tribunal to the fee was in an email from Mr Partridge to Mr Schehtman dated 20 June 2012 in which Mr Partridge says;

As I understand it, after further discussion, you subsequently substituted that unreasonable demand for another, a demand of a payment of £250-300 cash, up front payment before you would even provide the information we sought....

52. In the absence of any further information, the Tribunal concludes that this fee has been demanded as an Administration Fee from the Applicants. There is no provision for the demand or payment of such a fee in the Applicants' lease and the sum demanded is therefore unreasonable and not payable.

Demand for director's fees

53. Director's fees are not payable by the Applicants under the terms of their lease.
54. The Tribunal was shown a letter dated 28 August 2012 from Mr Newman, acting on behalf of the Respondent, to the Applicant's mortgage company. In that letter Mr Newman states;

.....we attach statement of outstanding ground rent and service charges as requested.

Attached to the letter was a document titled "Ground Rent & Service Charge Statement". Under that, included in the sums demanded was the sum of £1,500.00 for "Director's fees 3 years (2010/2011/2012@£500 per annum".

55. There was no justification for making the demand for Director's fees and both Mr Newman (who professed to have a great deal of experience in property management) and Mr Schehtman ought to have known that.

The Tribunal's decisions

Grounds for appointment of a manager

56. The Tribunal is satisfied that the Applicant has levied unreasonable Service Charges as set out earlier in this decision.
57. The Tribunal is satisfied that the Applicant has levied Administration Charges that are not payable as set out earlier in this decision.
58. Both the above make it just, in the Tribunal's view for a manager to be appointed.
59. The Tribunal is further satisfied that other circumstances exist which make it just for the appointment to be made, those are:
- (a) The failure to provide proper invoices in support of service charges
 - (b) The failure to produce accurate Service Charge accounts

- (c) The failure to comply with section 20 Landlord and Tenant 1985 consultation regulations and procedure
- (d) The unlawful demanding of Director's Fees

The proposed manager

- 60. The Applicant's proposed manager, Mr Stephen Stone of Grangeview Management Limited attended before the Tribunal and was questioned at great length both by the Tribunal and by the parties.
- 61. The Tribunal is satisfied that Mr Stone is a suitable person to be appointed as manager in respect of the Building for the following reasons:-
 - (a) He has a great many years experience in property management
 - (b) His company had experience of managing this type of property and a range of other types of property
 - (c) He manages in accordance with the relevant code
 - (d) He was aware of the importance to have regard to the terms of the leases in the Building
 - (e) He was aware of the animosity between the parties and accordingly had a good idea of the problems that he would face as manager
 - (f) His company was well set up to deal with issues out of hours and in emergencies
 - (g) His firm is appropriately insured
 - (h) He was able to give clear details of his fees which are, in the Tribunal's view, reasonable
- 62. Accordingly the Tribunal appoints Mr Stone as per the attached order.

Costs

- 63. It follows from the decisions made by the Tribunal in these applications that it would be appropriate for it to make an order pursuant to section 20C Landlord and Tenant Act that none of the costs incurred, or to be incurred, by the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.
- 64. The Applicants have been successful in both applications. They were entitled to pursue the applications to the final hearing in order to demonstrate the Respondent's failings in managing the Building and (in the light of those failings and the previous history to the Building) in order to get a Tribunal appointed manager. Accordingly the Tribunal orders that the Respondent must pay to the Applicant's their issue and hearing fees in the total sum of £300.00 within 28 days of the date of this decision.
- 65. The Applicants made an application that the Respondent pay further costs to them of up to £500 on the grounds that it had behaved frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. Whilst the Respondent may well have behaved unreasonably in its capacity as manager and freeholder, and

whilst the Tribunal has heard from both parties about problems in the meeting of deadlines and the preparation of documents in the proceedings, the Tribunal does not consider that the Respondent has behaved unreasonably in connection with these proceedings to justify any further costs award against it.

Chairman:



Mark Martynski

Date:

28 January 2013

LONDON RENT ASSESSMENT PANEL

**APPOINTMENT OF MANAGER ORDER PURSUANT TO SECTION 24 LANDLORD
AND TENANT ACT 1987**

Case Reference: **LON/00AG/LSC/2012/0581**

Premises: **Flat 4, 46 Chalcot Crescent, NW1 8DY**


Applicants: **Michael & Suzette Partridge**

Respondent: **Chalcot Crescent (Management) Co. Ltd.**

Leasehold Valuation
Tribunal: **Mr M Martynski (Solicitor)
Miss M KriskoBSc(EstMan) BA FRICS
Mr A Ring**

ORDER

1. In accordance with section 24(1) Landlord and Tenant Act 1987 Mr Stephen Stone of Grangeview Management Limited ('the Manager') is appointed as manager of the property at 46 Chalcot Crescent, NW1 8YD ('the Building').
2. The order is from 1 January 2013 and shall continue until 31 December 2015.
3. The Manager shall manage the Building in accordance with:
 - (a) The directions and schedule of functions and services attached to this order.
 - (b) The terms of the leases of the individual flats in the Building.
 - (c) The duties of a manager set out in the Service Charge Residential Management Code ('the Code') or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to section 87 Leasehold Reform Housing and Urban Development Act 1993



.....
Mark Martynski - Chairman
15 January 2013

DIRECTIONS

1. From the date of the appointment and throughout the appointment the Manager shall ensure that he has appropriate professional indemnity cover in the sum of at least £1,000,000 and shall provide copies of the current cover note upon a request being made by any lessee of the Property, the Respondent or the Tribunal.
2. That no later than four weeks after the date of this order the parties to this application shall provide all necessary information to and arrange with the Manager an orderly transfer of responsibilities. No later than this date, the Applicants and the Respondent shall transfer to the Manager all the accounts, books, records and funds (including without limitation, any service charge reserve fund).
3. The rights and liabilities of the Respondent arising under any contracts of insurance, and/or any contract for the provision of any services to the Property shall upon 1 January 2013 become rights and liabilities of the Manager.
4. The Manager is to be entitled to prosecute claims in respect of causes of action accruing before or after the date of his appointment.
5. The Manager shall account forthwith to the Respondent for any payment of ground rent received by him and shall apply the remaining amounts received by him (other than those representing his fees) in the performance of the Respondent's covenants contained in the said leases.
6. The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges of leases of the Property) in accordance with the Schedule of Functions and Services attached.
7. The Manager shall be entitled to apply to the Tribunal for further directions.

SCHEDULE OF FUNCTIONS AND SERVICES

Insurance

- i. Maintain appropriate building insurance for the Property. Ensure that the Manager's interest is noted on the insurance policy.

Service charge

- i. Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the lessees.
- ii. Set, demand and collect service charges (including contributions to any sinking fund), insurance premiums and any other payment due from the lessees. Instruct solicitors to recover unpaid service charges and any other monies due to the Respondent (save ground rent).
- iii. Place, supervise and administer contracts and check demands for payment of goods, services and equipment supplied for the benefit of the Property with the service charge budget.

Accounts

- i. Prepare and submit to the Respondent and lessees an annual statement of account detailing all monies received and expended.
- ii. Maintain efficient records and books of account which are open for inspection. Produce for inspection, receipts or other evidence of expenditure.
- iii. To maintain on trust an interest bearing account/s at such bank or building society as the manager shall from time to time decide into which ground rent, service charge contributions and any other monies (save ground rent) arising under the leases shall be paid.
- iv. All monies collected will be accounted for in accordance with the accounts regulations as issued by the Royal Institution for Chartered Surveyors.

Maintenance

- i. Deal with routine repair and maintenance issues and instruct contractors to attend and rectify problems. Deal with all building maintenance relating to the services and structure of the Property.
- ii. The consideration of works to be carried out to the Property in the interest of good estate management and making the appropriate recommendations to the Respondent and the lessees.
- iii. The setting up of a planned maintenance programme to allow for the periodic re-decoration and repair of the exterior and interior common parts of the Property.

Fees

- i. Will be a basic fee of £1200 per annum plus VAT plus a further sum of £150.00 in respect of a 'taking on' fee.
- ii. The manager may also charge additional fees as per the sheet attached.

Complaints procedure

The Manager shall operate a complaints procedure in accordance with or substantially similar to the requirements of the Royal Institution of Chartered Surveyors

There are certain areas of work which managing agents are expected to deal with which do not form part of the day to day management of the building. Some of these are the responsibility of individual lessees and some must be met from service charges. A note of our additional charges is set out on the following page. This list may not cover every eventuality and where fees are payable but are not listed these will be discussed on an individual basis.

Additional Costs - payable only as applicable - all prices exclusive of VAT

Fixed Fees

*	Hourly rate for work not included in annual management fees charged in 10 six minute segments	£60.00
*	Notice of Transfer and Charge	£60.00
*	Sales Information pack - agreed individually	
*	Late payment fee as notified on every invoice	50.00
*	Dealing with tenant's nuisance - per letter	35.00
	First letters to tenant/letting agent and landlord sent at no cost if tenancy registered with our letting scheme	
*	Process to recover monies from mortgage company	from 100.00
*	Fee for issuing proceedings in respect of non-payment of service charges including instructing solicitors and notifying mortgagees of proceedings	from 150.00
*	Section 82 - Abatement of Nuisance	
	Fee for initial letters	35.00
	Fee for instructing solicitors	from 100.00
*	Attendance at LVT - rate per day	750.00
*	Issuing Share and membership certificates	75.00

Additional Costs - payable only as applicable - all prices exclusive of VAT

Fees calculated as a percentage of work

- * Section 20 consultation process - administration only to include obtaining quotations and liaising with contractors where no surveyors are involved
10% of cost of work
- * Section 20 consultation process - administration only where surveyors are involved
5% of cost of work