

LON/00BK/LIS/2006/0049

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**  
**ON APPLICATION UNDER SECTIONS 27A OF THE**  
**LANDLORD AND TENANT ACT 1985 (AS AMENDED)**

Applicants: 171 Gloucester Place Limited

Represented by: Mr Malcolm Jarrett  
Mrs Caroline Jarrett

Respondent: Mr J O'Sullivan

Re: Basement Flat, 171 Gloucester Place, London, NW1 6DX

Application received: 31 March 2006

Hearing date: 17 July 2006

Appearances: Mr M Jarrett (for Applicant)  
Mrs C Jarrett

Mr J O'Sullivan (for Respondent)

Members of the Leasehold Valuation Tribunal:

Mrs E Samupfonda LLB(Hons)  
Mr F Coffey FRICS  
Mr A Ring

In the Leasehold Valuation Tribunal

Ref:LON/00BK/LIS/2006

Applicant 171 Gloucester Place Limited

Represented by Mr M Jarrett (Managing Director)  
and Mrs Jarrett

Respondent Mr J O'Sullivan (Lessee)

Premises Basement flat, 171 Gloucester Place, London NW1  
6DX

Tribunal  
Ms E Samupfonda  
Mr F Coffey  
Mr A Ring

1. The application was transferred from Central London County Court by Order of District Judge Silverman for the Tribunal to determine the reasonableness and liability to pay service charges pursuant to section 27A Landlord and Tenant Act 1985 (the Act). The service charge years and amounts in question (as agreed by the parties at the pre trial review) are ½ year up to 29 September 2005 in the sum of £656.70 and ½ year up to 26 March 2006 in the sum of £395.43.
2. An oral pre trial review was held on 10th May 2006 with the parties in attendance. Directions for a hearing were issued.
3. The parties attended the hearing on 17th July 2006. Mr Jarrett produced a statement outlining the substance of the applicants' claim and the amounts they sought to recover. The Tribunal explained to the parties that it did not have jurisdiction to consider the cost of the ground rent and legal costs incurred in respect of the county court action, both of which were included in Mr Jarrett's statement.
4. As to the remaining items in the statement Mr O'Sullivan confirmed that he now only challenged the managing agent's fees in respect of both years. He had conceded the miscellaneous bank charges incurred in 2005 during the course of the hearing.
5. Mr and Mrs Jarrett explained that they acquired the freehold in October 2002 following a long and unsatisfactory period as leaseholders of the previous freeholder. They had hoped to purchase the freehold collectively with the three other leaseholders at 171 Gloucester Place but, in the event, they had proceeded alone. They managed the property themselves for a short while until they recognised that they did not have the management expertise

required. They then sought to engage a managing agent. From several enquiries made of various local estate agents, they received only one response 6 months later by which time they had already engaged Marr-Johnson & Stevens. Marr Johnson & Stevens charged £2,000 per annum plus VAT, a sum identical to that offered by the sole responding local agent. The service provided by the agents included; seeking out tradesmen to carry out various jobs, invoicing and chasing up payment of invoices, applying for planning permission on occasion and giving them advice. There was no element in the service charge for cleaning the common parts. Individual lessees undertook this themselves. Mr and Mrs Jarrett were unsure as to whether or not the managing agent provided them with annual service charge accounts to enable them to comply with the accounting requirements of clause 4 (5) of the lease.

6. Mr O'Sullivan stated that he challenged the managing agent's fee on the basis that very little work had been carried out to the building and what had been carried out has been done so to a poor standard. He highlighted the fact that essential repairs were needed on the building and he produced photographs to support his claim. The applicant did not dispute this. Mr O'Sullivan added that his dissatisfaction was also due to the fact that the agents had failed on two occasions to respond to his written enquiries. He was dissatisfied with the installation of the intercom system, as it was not linked up to his flat. His view was that a reasonable figure for managing the property would be £10 per annum per leaseholder. He conceded that overall, management had improved since Mr and Mrs Jarrett had become freeholders.

### Decision

7. In determining the application the Tribunal considered the relevant law, the lease and the evidence.
8. Section 27A (1) provides that "An application maybe 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 payable,
  - (d) the date at or by which it is payable and
  - (e) the manner in which it is payable"
9. The service charge provision is contained in clause 1 (ii) of the Lease. The lessee is liable to contribute the "proper proportion" and clause 5 (3) (ii) determines that the proper proportion is 20%.
10. We considered that the service charge of £2,000 per annum plus VAT in respect of managing the four flats at the property is rather on the high side. We have taken into consideration the level and volume of service provided. We have noted that the applicants rely on the agent's expertise which ought to have ensured that they complied and with their obligations under clause 4 ((5) of the lease. Mrs Jarrett informed us that they had not received service charge

accounts from the managing agent and that although the agents had provided them with a menu of services that they would provide under the terms of the contract, that had not, to their knowledge been forwarded to the lessees. We were not entirely satisfied that the agents had complied with the requirements of section 2.5 and 2.6 of the RICS management code as no evidence documentary or otherwise was adduced to this effect. It appeared that the respondent had not been provided with any detailed information as to what service he could expect and what the agents would provide in return for their fee.

11. However, we were satisfied that the applicants had tested the local market to the best of their abilities and that the fees charged by Marr-Stevens were not out of keeping with the market norm. Although Mr O'Sullivan considered that the fee was unreasonable, we were not persuaded by his submissions that a fee of £10 per unit per annum was reasonable. He had not tested the market and did not produce any evidence in support of his claim. Furthermore, we were not persuaded by Mr O'Sullivan's submissions that Mr and Mrs Jarrett should consider managing the property themselves. As lay people, they had rightly acknowledged their limitations and sought expert assistance. In addition, the lease entitled them to appoint managing agents and to charge a fee for doing so. (see Clause 4 of the Fourth Schedule.)
12. In the circumstances the tribunal determines that the service charge of £2,000 per annum plus VAT in respect management fees for the building is reasonable. The respondent is liable to pay 20% of that cost in respect of each service charge year in question in accordance with the terms of his lease. However, it appears from the statement provided by Mr Jarrett that the amount sought from Mr O'Sullivan (£293.75) for each ½ year in dispute equates to 25% of the total costs. The Tribunal therefore determined that correct amount calculated at 20% is £235, including VAT for each ½ year in dispute.
13. No application was made under section 20C of the Act. In any event, the tribunal noted that there were no provisions in the lease that entitled the applicants to recover the cost of these proceedings through the service charge account.

Chairman



Dated

28/7/06