

MIDLAND RENT ASSESSMENT PANEL

Case No BIR/00CN/LSC/2006/0009

LEASEHOLD VALUATION TRIBUNAL

DECISION OF LEASEHOLD VALUATION TRIBUNAL
LANDLORD AND TENANT ACT 1985

Applicant : Daljit Dodd

Respondent : Anchor Housing Association

Property : 7 Wesley Court, 116 City Road, Edgbaston, Birmingham B16 0NL

Heard at : Birmingham Panel Offices

On : 18th April 2007

Appearances

For the Applicant : In person

For the Respondent : No appearance

Members of the Tribunal : Mr D Jackson (Chairman)
Mr I Taylor BSc FRICS

Date of decision : **09 MAY 2007**

1. BACKGROUND

This is a decision of a Leasehold Valuation Tribunal of the Midland Rent Assessment Panel on an application dated 29th March 2006 made by the Applicant under Section 27A Landlord and Tenant Act 1985 (the "Act"). The Applicant also applies for an Order under Section 20C of the Act.

2. The Applicant holds Flat 7 Wesley Court, 116 City Road, Edgbaston, Birmingham B16 0NL ("the Property") under the terms of a Tenancy Agreement which commenced on 25th November 1991. The Landlord is the Respondent, Anchor Housing Association.
3. Under Clause 3(b) of the Tenancy Agreement the Applicant is required to pay a service charge: "this is your contribution towards the costs we incur, or expect to incur, in providing services for your home."

4. Under Clause 6 the Respondent agrees to provide services including those, inter alia, set out in the Schedule of Services.

5. PRE-TRIAL REVIEW

A Pre-Trial Review was held on 23rd January 2007. The Respondent did not attend or make any representations. At the Pre-Trial Review the Tribunal exercised its powers under Regulation 12 of the Leasehold Valuation (Procedure) (England) Regulations 2003 and recorded the following admissions made by the Applicant:-

5.1 The Application under Section 27A relates to the service charge year 1st April 2006 to 31st March 2007 only.

5.2 The Applicant seeks determination from the Tribunal solely in relation to the sum of £12,896 described in the service charge breakdown relating to "Expenditure - Scheme Manager's Service including rent and heating for accommodation, NI, pension and relief."

5.3 The Applicant accepts his liability to pay all items of service charge set out in the breakdown 00682 - 102.

6. ISSUES FOR DETERMINATION

6.1 Whether the sum of £12,896 (Expenditure - Scheme Manager's Service) for the service charge year 1st April 2006 to 31st March 2007 is payable (Section 27A of the Act).

6.2 Whether all or any of the costs incurred by the Respondent in connection with proceedings before the Tribunal are to be regarded as relevant costs (Section 20C of the Act).

7. THE SERVICE CHARGE BREAKDOWN

On 14th February 2006 the Respondent sent to the Applicant a letter headed "Notice of Rent Charge." That letter enclosed a Service Charge Breakdown 00682-102 containing a 2006/2007 budget.

8. The budgeted expenditure for Scheme Manager Services (including rent and heating for accommodation, NI, pension and relief) was £12,896. There are 24 properties in the scheme excluding the scheme manager's flat. The total service charge per flat from 1st April 2006 is £147.40.

9. THE TENANCY AGREEMENT

The Schedule of Services attached to the Tenancy Agreement provides for "Running costs of the Scheme" including:-

"Warden service (includes wages for warden and relief warden, employers contribution to the government Pension scheme, rent and heating emoluments, and telephone rental and cost of official calls)"

10. Accordingly the Tribunal determines that under Clause 3(b) of the Tenancy Agreement the Applicant is, prima facia, liable to pay the costs of the Scheme Manager Service as identified in the 2006/2007 budget.

11. INSPECTION

The Tribunal inspected the property on the morning of the hearing. The property is one of a total of 25 flats (24 for the residents and 1 for the Scheme Manager) comprised in a modern 3-storey building of brick framed construction under a pitched tiled roof. All flats appear to benefit from communal central heating and double glazed windows. In addition there are communal facilities, disabled access and central heating.

12. The current Scheme Manager is Mrs Jenny Timms. The Tribunal was informed that she works 30 hours per week Mondays to Fridays. Originally there was a Warden Scheme operating 36 hours but this was reduced to a residential Scheme Manager Service (without morning calls at weekends) for 30 hours. In previous years the warden scheme had been pooled with another scheme during which time the scheme manager worked an additional 10 hours at another scheme. Mrs Timms has confirmed that she now only works for this particular scheme. Her core hours are 8.30 a.m. – 1.00 p.m.

13. The Scheme Manager's duties include making arrangements for repairs, arrangements for cleaning staff, security and to a limited extent, health and safety. In addition the Scheme Manager is responsible for supporting people. Wesley Court only accepts older people over 55 years of age with the aim of helping them to sustain their tenancies and live independently. Wesley Court operates under "Supporting People" and provides support for vulnerable groups.

14. The Scheme Manager also attends training days and meetings. If she is not available (for example she is taking a day in lieu under the flexi-time scheme) casual relief will cover her duties.

15. There is also an emergency 24 hour call out scheme which operates out of hours.
16. The Scheme Manager's flat is arranged over 2 floors and has 3 bedrooms. She is allocated a parking space. In addition there is a designated Scheme Manager's office.
17. The Tribunal was informed that residents flats all configured as one bedroom.
18. THE APPLICANT'S CASE
The Applicant in his evidence argues that the service charge is not reasonable firstly because the Scheme Manager was often away from her post due to illness and secondly no audited service charge accounts had been prepared by the Respondent.
19. In relation to his first argument, the Applicant said that the Scheme Manager had a history of illness. The Applicant said that when she was there the Scheme Manager was efficient and helpful. In her absence a relief manager called Pam would attend and on other occasions a gentleman from another scheme would turn up. The relief worker would leave at midday. The Applicant said the Scheme Manager was "in and out of hospital" and that "the whole thing was unsatisfactory."
20. In his evidence the Applicant said that the out of hours Anchorcall Scheme was quite efficient but felt that the Respondents "banked on it a lot."
21. The Applicant produced to the Tribunal a letter dated 17th April 2007 sent by the Respondents:-

"Please may we confirm that at the point an absence reaches 20 working days, then any further costs for a member of staff, during the period of their absence, are paid for entirely by Anchor Trust, and not the Tenants. We can confirm this is what has happened at Wesley Court. Mrs Timms was absent for a period during the year 2006-2007 due to illness. Once this absence totalled 20 days, then the entire cost of her salary was born by Anchor Trust."
22. In relation to his second contention the Applicant referred to the RICS "Service Charge Residential Management Code" approved by the Secretary of State under Section 87 of the Leasehold Reform Housing and Urban Development Act. In particular the Applicant referred to paragraphs 11.20 (accounting for service charges) and paragraph 12 (audited service charge accounts).

23. The Applicant confirmed that he had not at any time requested audited or certified accounts from the Respondent.

24. RESPONDENT'S CASE

The Respondent did not attend the hearing and has not produced any written representations other than a letter to the Tribunal received on 27th February 2007 providing an explanation for the sum of £12,896

"The amount can be detailed as follows:

£8,840 relates to annual pay for the Scheme Manager

£ 698 relates to annual pay for the scheme Relief Manager

£3,358 relates to the annual emolument for the Scheme Manager,

which can be further detailed as relating to:

£2,686.40 for accommodation

£ 671.60 for heating."

25. THE GREY BOOK

The Tribunal had regard to the updated Guidance on Services issued to Rent Officers:-

"Whilst wardens/porters are provided for the benefit of the tenants, it is usual for part of their duty to be of direct assistance to the Landlord in the management of the premises. They will often advise on the need for repairs to the structure, give access to builders, show prospective tenants over vacant accommodation, even give Landlord's prior information about tenants' financial difficulties and generally keep an eye on the property on behalf of the Landlord. Some allowance should be made to the Tenant for such service to the Landlord, and it is customary to allow approximately 85% of the total wardens'/portage costs as a service, with the remaining 15% being considered as relating to work done for the benefit of the Landlord and therefore included in the rent itself. However, this percentage division should not be slavishly followed, and there may be many cases where a more appropriate adjustment should be made."

"There is generally an optimum size for a block of flats below which it is uneconomical to provide a porter/warden service. In smaller blocks the unit costs will be high, whilst in larger blocks it would be low. However the smaller blocks may not be receiving a noticeably better service. Some Housing Associations have sought to remedy this problem by providing an "overall or pooled warden service," each tenant being charged the same figure whether living in a small or large block. This seems to be a sensible system which rent offices could accept provided, as in all other service charge items, they are satisfied tenants receive value for money. The generally recommended apportionment is 85% of the charge to the tenants and 15% to the landlords for management tasks performed by the warden/porter. Although for sheltered schemes the proportion charged to tenants could be less. In every case the rent officer must be satisfied the apportionment is reasonable considering all the circumstances, taking into account geographic area, duties and hours worked."

26. TRIBUNAL'S DETERMINATION

The Tribunal had regard to the size of the block and that there were 24 flats occupied by residents aged 55 or over, some of whom were potentially vulnerable. The Tribunal also had regard to the fact that the Scheme at Wesley Court operates under "Supporting People." The Applicant conceded in evidence that when the Scheme Manager was in attendance he and others found her to be very helpful. The Tribunal noted that of the total 2006/2007 expenditure of £44,252 some £12,896 was spent on the Scheme Manager's Service and therefore considered whether or not the scheme was giving the tenants value for money.

27. The Tribunal determined that the employment of a Scheme Manager was reasonable but that some deduction should be made to reflect the time spent by the Scheme Manager on training days and meetings and her duties in relation to the Landlord's repairing obligations. The Tribunal determined that 92.5% of the costs of the Scheme Manager Service should be recoverable by way of Service Charge.

28. The Tribunal finds that the Applicant has not requested audited accounts under Section 21 of the Act and does not find that the Respondent's failure to provide audited accounts affects in any way its ability to recover the Service Charge.

29. COSTS

The Applicant submitted that the Respondent had not turned up, did not respond to correspondence and has delayed the application. Under those circumstances the Applicant requested an Order be made under Section 20C of the Act.

30. DECISION

28.1 In relation to the Service Charge year 2006/2007 the Tribunal determines that 92.5% of the expenditure under "Scheme Manager's Service" is payable.

28.2 The cost of the salary of the Scheme Manager during her absence beyond 20 days is not payable.

28.3 All costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs.

Signed



MR D JACKSON – Chairman