CASE NUMBER: CHI/OOHG/LSC/2006/0118

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL

17 KER STREET
DEVONPORT
PLYMOUTH
PL1 4EJ

MRS M E WALKER
(Tenant Applicant)

AND

PLYMOUTH CITY COUNCIL
(Landlord Respondent)

In The Matter Of
Section 27a Landlord And Tenant Act 1985 (As Amended)

And In The Matter Of
The Rent Assessment Committee (England And Wales)
Leasehold Valuation Tribunal (Services Charges Etc)
Order 1997

TENANT'S APPLICATION
FOR DETERMINATION OF LIABILITY TO
PAY SERVICE CHARGES IN RESPECT OF
THE FINANCIAL YEARS
1988-89 TO 2006-07 INCLUSIVE

DETERMINATION
MARCH 2007

Summary Decision

1. This cases arises out of the tenant's application, made on 3rd November 2006, for the determination of her liability to pay service charges for the financial years 1988/89 to 2006/07 inclusive. Under Section 27a of the Landlord and Tenant Act 1985 (as amended) service charges are payable only if they are reasonable. The Tribunal has determined that the charges for the years in question are reasonable.

Background

2. 17 Ker Street is a two bedroom maisonette forming part of a local authority development in Devonport. The applicant, Mrs Walker, originally occupied the flat as a tenant of the Plymouth City Council but she acquired a leasehold interest in the property in July 1988. It is clear from the documentation supplied by the parties that there has been ongoing argument about the amounts of service charge payable from that date of acquisition, and that the situation has been confused by the fact that the flat stands in an area now scheduled for redevelopment so that, in time, the flat is likely to be demolished.

3. Although there has been extensive negotiation between the City Council and Mr Keith Walker, who is separated from Mrs Walker but has been acting on her behalf, that has not produced a satisfactory result and so on 3rd November 2006 Mrs Walker applied to the Tribunal for a determination of the matter.

Procedural Matters

4. Directions were issued by the Tribunal on 7th November 2006, following which the parties made written submissions which, in the council's case, included statements from a number of members of council staff. A hearing was then held on Tuesday 20th February 2007, at which Mr Walker represented Mrs Walker and Ms N Jennings of the council's legal department represented the council, and called oral evidence from the majority of the witnesses who had made written statements.

5. The Tribunal had inspected the flat immediately prior to the hearing in the presence of Mr Walker and Mr Sergeant, the Council's Caretaking Services Manager.

The Lease

6. Mrs Walker holds the property under the terms of a lease dated 11thJuly 1988, which was granted for a term running from that date to 23rd May 2107 subject to Mrs Walker

> "Paying Therefor
> (a) the yearly rent of £10.00 in advance on the 25th day of March in each year without any deduction the first of such payments being a proportionate payment to be made on the execution hereof and

(b) by way of additional rent the service charge and the other payments hereinafter made payable by the lessee subject to the rights set out in the Fourth Schedule hereto (which so far as not already affecting the lessor's estate in the premises are hereby excepted and reserved from this demise) and to the covenants on the part of the lessee hereinafter contained."

7. Service charge is defined in the lease as

> "the payment referred to in clause 15 of the Fifth Schedule hereto"

and that clause provides that

> "The Lessee shall contribute and shall keep the lessor indemnified from and against one thirteenth of all costs and expenses incurred by the lessor in carrying out its obligations under and giving effect to the provisions of the Sixth Schedule hereto including clauses ten to eleven inclusive of that Schedule and in enabling the lessee to enjoy the rights contained in the Third Schedule hereto."

8. The Third Schedule sets down the rights included in the demise, including rights of access, rights to services and the right to use common facilities. The Sixth Schedule provides that the landlord shall keep the flat insured, and rebuild and reinstate it following any fire damage, and that

> "4 The Lessor shall keep the reserved property and all fixtures fittings and apparatus therein and additions thereto in a good and tenantable state of repair decoration and condition and in particular shall keep and maintain the exterior of the block (including the roof thereof) in good and tenantable repair decoration and condition provided that nothing herein contained shall prejudice the lessor's right to recover from the lessee or any other person the amount of value of any loss or damage suffered by or caused to the lessor or the reserved property by the negligence or other wrongful act or default of the lessee or such other person.
>
> 7 The lessor shall keep the reserved property including the drives paths lawns open spaces communal areas halls stairs landing and passages cleaned and in good order (apart from those matters which are the lessees responsibility under paragraph 21 of the Fifth Schedule) and shall keep adequately lighted all such parts of the reserved property as are normally lighted or should be lighted (and shall regularly empty all bulk refuse bins provided by the lessor on the reserve property).
>
> 8 The lessor shall employ and engage such servants agents and contractors as it considers necessary or desirable for the performance of its obligations under this Schedule and pay their wages commissions fees and charges.
>
> 9(a) The lessor shall so far as it considers practicable equalise the amount from year to year of its costs and expenses incurred in carrying out its obligations under this Schedule in such manner as it thinks fit within its existing accounting practices for its housing stock.

(b) If and so far as any monies received by the lessor from the lessee during any year by way of contribution to the lessor's said costs and expenses are not actually expended by the lessor during that year in pursuance of this schedule the lessor shall hold those monies upon trust to expend them in subsequent years in pursuance of this schedule and subject thereto upon trust from the lessee absolutely.

10 The Lessor shall keep proper accounts of costs and expenses incurred by it in carrying out its obligations under this Schedule and an account shall be taken on the 31st day of March in every year during the continuance of this demise and at the termination of this demise of the amount of those costs and expenses incurred since the commencement of this demise or the date of the last preceding account as the case may be.

11 The account taken in pursuance of the last preceding clause shall be prepared and audited by the City Treasurer for the time being of the lessor who shall certify the total amount of the said costs and expenses for the period to which the account relates and the proportionate amount due from the lessee to the lessor pursuant to clause 6 of the Fifth Schedule which certificates shall be final and conclusive as between the parties."

The Hearing

9. The documentation produced by the parties indicates that the service charge demands made by the landlord council are consistently categorised by type of expenditure for each of the years in respect of which Mrs Walker seeks a determination. It was therefore agreed that Mr Walker would present Mrs Walker's case by reference to those categories of expenditure rather than by consideration of each of the individual cost items for each year.

The Tenant's Case

10. Mr Walker made it clear that the greatest concern related to the caretaking services provided. He said that those services were originally of a good standard, but that when the City Council became a unitary authority they embarked upon a number of cost cutting exercises which resulted in lower standards: the quality of caretaking service deteriorated.

11. Whereas there had been one caretaker who was responsible for this block there was now no one person responsible: the work was done by a group of people who were dealing with several blocks at a time, so that their weekly hours were divided amongst many areas. They therefore gave less time to this block and the work done was of a less good standard. Although there was a team of three people, time would probably be lost by moving between sites and if one of the team was sick or on holiday then the remaining team member or members had to provide the service without additional backup.

12. This resulted in such things as the stairs not being swept, and when they were mopped the work was done badly, in a way which really did little more than move the dirt from one part of the staircase to another. Overall, therefore, the generally cleanliness of the block was poor. In comparison with the service which used to be provided, the work was not of a good standard.

13. When the flats had been decorated, both time and money had first had to be spent on removing the inappropriate non fire retardant coating which the council had applied previously, and so the tenants were, in effect, being asked to pay for the council's mistake. The colour had been changed to one which showed marks far more readily and there was a problem of graffiti. When the graffiti had been painted over, apparently in preparation for the Tribunal's inspection, it had been done with an emulsion paint which readily came off the walls when they were damp.

14. The window cleaning to the communal areas, which was supposed to be done quarterly, was done irregularly, and it was only the inside of the glass that was cleaned. When windows were broken they were not replaced, but were simply boarded up.

15. There was reference in the accounts to a door entry control system but in reality no such system existed. There was no intercom system to the individual flats and anyone could walk into the block quite easily.

16. There was an issue over the TV aerial system for which tenants were charged. There was one main aerial for the block, but this provided analogue reception until 2006, and what Mr Walker described as the cheap attempts at upgrading the situation had failed. In theory it had now been updated but the update meant providing a digital signal which few tenants had the equipment to receive. Quite apart from that, tenants had been charged the full cost of a poor service until the improvement was carried out.

17. A number of the flats were now vacant and, when tenants moved out, there was a tendency for furniture simply to be thrown over the balconies into the central courtyard. Although the furniture was subsequently removed, that was not a reasonable way of dealing with the matter.

18. There was a question about insurance in that the original provision had been that insurance should remain with the same company, but it had actually been transferred to a different company. Mr Walker was also concerned that individual tenants were unable to claim against the insurance policy because of the way the Council timed the preparation of its accounts.

The Landlord's Case

19. For the Council, Ms Jennings said that the council's position was that all of the charges were due and properly payable, but that they had offered concessions over some items in order to try and resolve matters. She referred in particular to damage caused by vandalism, where the council recognised that it was difficult for tenants to make valid insurance claims within the time specified within the policy. She said that the council was also prepared to make a concession in relation to charges for a communal laundry facility, because although it was the council's position that Mrs Walker was entitled to use this facility, located in another neighbouring block, they accepted the fact that in practice she never used it.

20. Mr Sergeant, the Manager of the Council's Caretaking Services, gave evidence of the caretaking service actually provided at Ker Street. He pointed out that there had never been a resident caretaker, although he accepted that at one time there was a caretaker who lived in the area, which not all of the present staff did. He explained the nature and the cycle of the work undertaken, but explained that there was no specific day allocated for specific tasks since the council operated a responsive system, which meant that there were some tasks which, although undertaken regularly, could not necessarily be undertaken on the same day during each cycle. Mr Sergeant answered questions from both Mr Walker and the Tribunal in which they sought further detail on the matters of which he had spoken.

21. Ms Jennings then called evidence Ms Jennings then called evidence from Mr Bryan Millham, a member of the caretaking team, who gave evidence of the caretaking work undertaken by him and his colleagues, that evidence being partially based on an unofficial log of activities which he maintains. Mr Millham agreed in answer to questioning that he did sometimes sign to say that window cleaning had been done, but the implication of his statement was that he might not have seen all of the work for which he signed for actually being done.

22. Evidence was then given by Mr Karl Donegan, Team Leader of the Programmed Maintenance section within the Council's Community Services Department, who gave evidence in relation to the decoration work which had been carried out in 1999/2000, when he had been a member of the team rather than the team leader. This produced some questioning regarding the removal of the non-fire retardant paint finish which had been used before that date, and whether it was reasonable for the tenants to have had to meet that cost. Whilst Mr Walker's view had been that the council had previously used an inappropriate paint material, Mr Donegan's evidence was that there was a change in the paint used because of the change in standards generally. The previous coating had been a reasonable coating to use at the time it was used, but could not simply be over-painted with the new coating and had had to be removed entirely.

23. Mr Walker also raised questions about the reasonableness of charging Mrs Walker a full one thirteenth contribution towards the cost of this work, given that she had, at her own expense, replaced all the original windows and the external door of her flat with pvc-u units which did not require redecoration, and that she had only been allowed to do this to a specification which had first had to be approved by the council. Mr Donegan's response was that the lease provision was one thirteenth of the cost, and that he had no authority to vary that.

24. In response to questioning from the Tribunal Mr Donegan did concede that some small element of charge had been introduced into the calculation which related to works done to individual flats in preparation for the decoration, and that that was not something to which Mrs Walker should be expected to contributed. He indicated that it should produce a reduction of up to £10.00 on the sum claimed.

25. Further evidence in relation to the calculation of service charges was given by Mr Martin De'Ath, Group Accountant, Housing, in the Council's Community Services Department. His particular evidence related to the on-account repair charges provided for in the accounts. The wording of the Sixth Schedule to the lease was such as to allow the council to seek on-account payments and for many years it had done this by making a nominal £25.00 charge in each year, but then refunding it two years later and seeking payment of the actual costs incurred. The two year cycle was necessitated by the council's own accounting procedures, and the requirements for audit.

26. The Council took the view that this had been a fair way of the dealing with the situation, although they had, more recently, moved to accounting on an actual cost basis. Nevertheless, the method did mean that there had to be periodic adjustments in the accounts, but that did not generate any element of profit to the council: the account was a simple "in and out" transaction record.

27. The Council's final witness was Mr F Corbridge, Leasehold Services Manager in the Council's Community Services Department. Mr Corbridge explained that it was his job to deal with the rent and service charge bills generally and that he was the first point of contact with the council for all leaseholders. It appeared that his job had come into existence at the request of the Leasehold Forum, a body of council leaseholders.

28. With regard to insurance, Mr Corbridge explained that the flats were covered by a block insurance policy under which individual leaseholders were supposed to make claims. On reviewing the account, however, he had come to the conclusion that this involved some inequity, because the reality was that individual leaseholders were only made aware of the actual costs of dealing with damage caused by vandalism some time after the event, by which time any claims were out of time. Having reviewed the sums demanded from Mrs Walker on this basis he had indicated to Mr Walker that the council would be prepared to waive an amount of £211.37.

29. A particular query had been raised over the insurance premium charge for the year 1998/99. Mr Corbridge explained that, at the time when the service charge demands were due to be issued (and they were issued only on an annual basis) the council was still in negotiation with their then insurers, Zurich, and so they simply sought payment of premium at the same level as had applied to the previous year. In the event, the policy was not renewed with Zurich, but terms were negotiated with Commercial Union which resulted in a reduction in premium, and the appropriate adjustment had been made in the 1999/2000 accounting year.

30. Mr Corbridge also explained that there had been a change in the way in which the Council dealt with the costs of grounds maintenance. At one time this had been done on a citywide basis but from 2003 that had been changed to a "per block" basis, although for practical reasons some blocks, such as those in a group at West Hoe, were grouped. He explained that Ker Street was part of a group of 155 flats and they were all billed together because the grounds maintenance caretaking work was done by the same team.

31. Mr Corbridge also gave evidence of the lengthy negotiation that there had been with Mr Walker regarding the various matters now before the Tribunal. Following meetings on the 18th and 19th October 2005 he had written at length to Mr Walker on 29th November 2005 setting down full details of what he understood Mr Walker had agreed and the concessions that the council was prepared to make in relation to repairs, the door entry system, window cleaning, grounds maintenance and the communal laundry. Although he had thought these matters had been agreed, Mr Walker had then sought further concessions in relation to caretaking charges, and so nothing had been paid.

32. Mr Corbridge explained the council's administration charges as being intended to cover the time costs of the Council's officers involved in leasehold administration. Each leaseholder was charged a flat rate plus an administrative addition related to the services received. This method of charging had been introduced in 2003 following calculations done in 2002, although the full cost of this was only being passed to leaseholders on a phased basis. These particular charges had been challenged in the county court in an unrelated case but, Mr Corbridge said, the Judge had held the charges to be "very reasonable". No further evidence was offered to the Tribunal as to the parties to the case and no transcript of the judgement was given.

33. Mr Corbridge also gave further information in relation to the window cleaning, something which was undertaken by independent contractors who were supposed to do the work four times a year. This meant that they visited each block once in each quarter, but that did not mean that their visits occurred on a quarterly basis: work might be done at the beginning of one quarter but not until the end of the next one, or vice versa. There was a confusion over one quarter's documentation in relation to this work, but Mr Corbridge was unable to explain that.

34. In relation to the television aerial contract, over which Mr Walker had expressed particular concern, that contract had been signed in 2004. It had been Mr Corbridge's understanding that the work had been completed within a short period after that rather than the two year delay of which Mr Walker had spoken, although as part of his questioning of Mr Corbridge Mr Walker confirmed that there had been that delay. Mr Corbridge nonetheless made the point that residents had had a full aerial service before, albeit restricted to four analogue channels, and Mr Walker conceded that that had been the case.

Tenant's Concession of Disputed Matters

35. At the conclusion of Mr Corbridge's evidence Mr Walker indicated that all matters in dispute had been covered adequately, and no further evidence or submissions were made. Mr Walker said that the only matters remaining to be resolved by the Tribunal were in relation to the aerial system and the caretaking service.

36. Mr Walker said that he was willing to accept as reasonable the modified charges set down in Mr Corbridge's letter of 29th November 2005, after a further £10.00 adjustment in relation to the wrongly attributed repair costs. It had been made clear to Mr Walker by Mr Corbridge that the concessions made in that letter related to the past and not the future.

37. This meant that Mr Walker was accepting as reasonable all of the council's charges in respect of the lighting of common areas; communal refuse bins; repairs to communal areas; insurance; administration; redecoration, including the cost of removing the previous decorative finish; and grounds maintenance.

38. For the avoidance of doubt, the Tribunal confirms that it considers that the charges presented to it and the justifications for those charges, in respect of these items were reasonable. In particular it is noted that whilst Mrs Walker might have seen it as unfair that she should be asked to contribute to the cost of external decoration when her flat did not require that service, that has become an increasing problem in flats of this type and the Tribunal accepts the council's contention that, as a matter of general principle, the provision of the lease must prevail.

Tribunal's Determination of Outstanding Matters

39. With regard to the aerial system, the Tribunal concludes as a matter of fact on the evidence put before it that the council were providing a satisfactory service but then made the decision to upgrade that service for the benefit of its tenants and leaseholders. The Tribunal concludes that that was a reasonable decision and that the associated charges appear to have been reasonable. The reality is that there has been little variation in charge on a year on year basis, and although there may have been some slight delay in the implementation of the upgrade contract, that is not a matter in respect of which it would be reasonable to make any reduction.

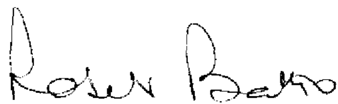
40. With regard to the caretaking services, it is clearly established that, despite the implication of what Mr Walker has said, there has not at any stage been a resident caretaking service to the block of which 17 Ker Street forms a part, and indeed this was specifically referred to in the pre-contract documentation. The issue is whether the service provided is of a reasonable standard in relation to the costs charged.

41. The Tribunal accepts Mr Walker's contention that some of the work could be done better, but also recognises the difficulties facing a team charged with the caretaking of a block which is only partially occupied and from which non residents cannot be excluded. No landlord can be expected to accept responsibility for the unreasonable or anti-social behaviour of some tenants. Whilst it might be possible to achieve a better standard of cleaning in this case, the Tribunal concludes that that could be achieved only by a greater labour input, with a resulting increase in the charge being levied.

42. Whilst it is recognised that there was a sudden rise in the cost of caretaking between 2002/2003 and 2003/2004, the earlier charges seem to have been low and the more recent charges, running at a level of approximately £5.00 per week, cannot be considered unreasonable in all the circumstances.

Summary

44. In summary, therefore, the Tribunal concludes that, subject to the concessions and adjustments already offered by the council, and the additional £10.00 reduction related to repair costs, the charges for the years in question are reasonable and so payable by the applicant. The Tribunal concludes that charges for the year 2006/2007, calculated on a similar basis, are also likely to be reasonable.



Robert Batho (Chairman)
A member of the Southern Leasehold Valuation Tribunal appointed by the Lord Chancellor

Dated 5th March 2007

CASE NUMBER: CHI/OOHG/LSC/2006/0118

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL

17 KER STREET
DEVONPORT
PLYMOUTH
PL1 4EJ

MRS M E WALKER
(Tenant Applicant)

AND

PLYMOUTH CITY COUNCIL
(Landlord Respondent)

In The Matter Of
Section 20c Landlord And Tenant Act 1985

And In The Matter Of
The Rent Assessment Committee (England And Wales)
Leasehold Valuation Tribunal (Services Charges Etc)
Order 1997

TENANT'S APPLICATION
FOR LEAVE TO APPEAL AGAINST
THE TRIBUNAL'S DETERMINATION OF
5TH MARCH 2007

DETERMINATION
APRIL 2007

1. By its written decision of 5th March 2007 the Leasehold Valuation Tribunal determined Mrs Walker's application in relation to her liability to pay service charges in respect of the financial years 1988/89 to 2006/07 inclusive, and by its supplementary decision of 18th April 2007 it determined her application made under Section 20c of the Landlord and Tenant Act 1985.

2. On 13th April 2007 Mr K Walker, acting on Mrs Walker's behalf, made an application for leave to appeal against the Tribunal's decision of 5th March, on the grounds that the services provided by the landlord had deteriorated following the hearing which took place on Tuesday 20th February 2007 and that, with regard to the caretaking services, the charge which the landlord was seeking to recover had increased.

3. The Tribunal's decision of 5th March 2007 was made in the light of the evidence then available to it and on the basis that, at the conclusion of Mr Cawbridge's evidence given at the hearing, Mr Walker had conceded that the majority of matters had been resolved.

4. It is the Tribunal's responsibility to help the parties to achieve finality in any dispute between them, and that finality cannot be achieved if a decision is to be reviewed on every change of circumstances. Such a change of circumstances may given ground for a new application to the Tribunal, but cannot be seen as reason for revisiting a decision already made.

5. The Tribunal concludes that, for this reason, it would be wrong to grant leave to appeal, but the Tribunal confirms that it would not have made a different decision on the evidence before it at the time, and no new evidence has been put before it. Accordingly leave to appeal is refused.

Robert Batho (Chairman)
A member of the Southern Leasehold Valuation Tribunal appointed by the Lord Chancellor

Dated 18th April 2007

CASE NUMBER: CHI/OOHG/LSC/2006/0118

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL

17 KER STREET
DEVONPORT
PLYMOUTH
PL1 4EJ

MRS M E WALKER
(Tenant Applicant)

AND

PLYMOUTH CITY COUNCIL
(Landlord Respondent)

In The Matter Of
Section 20c Landlord And Tenant Act 1985

And In The Matter Of
The Rent Assessment Committee (England And Wales)
Leasehold Valuation Tribunal (Services Charges Etc)
Order 1997

TENANT'S APPLICATION
FOR LIMITATION OF LANDLORD'S ABILITY TO RECOVER COSTS
RELATING TO DETRMINATION OF REASONABLENESS OF
SERVICE CHARGES IN RESPECT OF
THE FINANCIAL YEARS
1988-89 TO 2006-07 INCLUSIVE

DETERMINATION
APRIL 2007

1. On 3rd November 2006 the tenant applied to the Tribunal for a determination of her liability to pay service charges for the financial years 1988/89 to 2006/07 inclusive. This application was made under Section 27a of the Landlord and Tenant Act 1985 (as amended), which provides that service charges are payable only if they are reasonable. On 5th March 2007 the Tribunal determined that the charges for the years in question were reasonable.

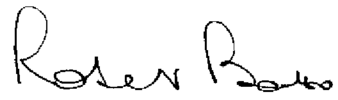
2. Under Section 20c of the Landlord and Tenant Act 1985 it is open to a tenant to make an application for an order that all or any of the costs incurred by the landlord in connection with proceedings before a Leasehold Valuation Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant. This determination relates to the tenant's application under that provision in connection with her original application for the determination of the reasonableness of service charge.

3. Prior to making its determination that the service charges for the years in question were reasonable, the Tribunal heard evidence of the way in which the landlord had sought to address the tenant's concerns and to reach agreement with her over the sums properly payable. The Tribunal concluded not only that the charges were reasonable, but also that the tenant might reasonably have accepted that position without recourse to the Tribunal.

4. Section 20c of the Landlord and Tenant Act 1985 provides that the Tribunal to which a cost application is made may make such order on the application as it considers just and equitable in all the circumstances. The Tribunal cannot conclude in this instance that it would be right to prohibit the landlord from recovering any of its costs as part of the service charge.

5. Nevertheless, the Tribunal has noted that not only did the landlord produce written statements from ten witnesses of fact in the dispute, but it also called or had available each of those witnesses to give oral evidence. The Tribunal takes the view that calling oral evidence from that number of witnesses was disproportionate to the circumstances of the case and that, apart from some small matters of clarification of detail, the giving of such extensive oral evidence had little influence on the Tribunal's determination of the matter.

6. Accordingly the Tribunal determines that such costs as the landlord seeks to recover from the tenant by way of service charge should exclude any witness costs. The Tribunal reminds the parties that costs are otherwise payable only in so far as they are reasonable.



Robert Batho (Chairman)
A member of the Southern Leasehold Valuation Tribunal appointed by the Lord Chancellor

Dated 18th April 2007