

RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL



**Residential  
Property**  
TRIBUNAL SERVICE

S.27A Landlord & Tenant Act 1985 (as amended)

**DECISION**

Case Number: CHI/45UD/LSC/2007/0019

Property: Ground Floor Flat  
156 Winterbourne Road  
Chichester  
West Sussex PO19 6RS

Applicant: Martlet Homes Ltd (landlord)

Respondent: Mrs Doreen Lemm (tenant)

Application: 16 March 2007

Directions: 21 March 2007

Hearing: 31 May 2007

Appearances: For the Applicant:  
Ms Joan Wright, leasehold and debt recovery co-ordinator  
Ms Joanne Rawnsley, property sale manager

For the Respondent:  
No attendance

Decision: 11 June 2007

**Members of the Tribunal**

**Ms J A Talbot MA, Chairman**  
**Mr Neil Cleverton FRICS**  
**Mrs J Morris**

**Case No. CHI/45UD/LSC/2007/0019**

**Ground Floor Flat, 156 Winterbourne Road, Chichester, West Sussex PO19 6RS**

**Application**

1. This was an Application dated 16 March 2007, made by Martlet Homes Ltd (the landlord), pursuant to Section 27A of the Landlord and Tenant Act 1985, for a determination on the payability of service charges by Mrs Doreen Lemm (the tenant), for the years 2004-05, 2005-06, and 2006-07, at 156 Winterbourne Road Chichester, West Sussex, PO19 6RS.
2. Directions were issued on 21 March 2007 and provided for the Applicant to produce a full Statement of Case together with all relevant documents, and for the Respondent to produce a Statement in reply. Martlet complied with the Directions. Mrs Lemm did not comply with the Directions or respond to the Application in any way.

**Jurisdiction**

3. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

**Lease**

4. The Tribunal had a copy of the lease of the ground floor flat at the property. It is dated 28 April 1986 and is for a term of 125 years from 28 April 1986 at a ground rent of £10. The proportion of service charges attributable to the ground floor flat used by Martlet was 25%, as there were 4 flats in the block.
5. The provisions relating to the calculation and payment of the service charge are to be found at Clause 2 and Clause 7. At 2(b) the lessee is to pay to the landlord "by way of further or additional rent (hereinafter referred to as "additional rent) a proportionate part of the costs expenses and outgoings incurred by the landlord as provided by Clause 7 hereof".
6. Clause 7, insofar as is material, provides as follows:

*"7(a) The additional rent shall be a yearly sum equal to a proportionate part of the costs expenses and outgoings which the landlord shall have incurred in the period of twelve months prior to the first day of April preceding the date on which the rent becomes due in respect of the services management repair maintenance and renewal of the building in which the demised premises is situate ... such proportionate part being determined in accordance with the provisions contained in Schedule 19 of the Housing Act 1980 ..."*

7. The landlord's obligations to insure the property, and to repair and maintain the main structure of the property are to be found at Clause 4 and are "*subject to the tenant paying the additional rent referred to in Clause 2(b)*".

### **Inspection**

8. The members of the Tribunal inspected the property before the hearing. It comprised a ground floor flat in a purpose built block of 4 flats, built in the 1970's of brick construction under a tiled roof with UPVC windows and gardens to front and rear. The exterior was in good condition. The interior was in good decorative order with modern kitchen and bathroom fittings. The rear garden had been well maintained by the tenant.
9. Mrs Lemm, an elderly lady, was present at the inspection and obviously lived at the property, despite the fact that Martlet claimed that they had not been able to make contact with her and did not know whether she was in occupation. Mrs Lemm did not recall having received any letters from Martlet (apart from one she had signed for). She knew about the Tribunal hearing but had mistaken the date. She said that she was intending to sell the flat (which had a For Sale board outside) and that she realised any service charge arrears would have to be paid before any sale could proceed. She did not know why they were so high. She also said that her son, who was on holiday, was going to help her. She asked if it would be possible to wait until his return. The Chairman said this would be treated as a request for a postponement and dealt with at the hearing.

### **Hearing**

10. A hearing took place in Chichester on 31 May 2007. It was attended by Ms Wright and Ms Rawnsley on behalf of Martlet. Mrs Lemm did not attend and was not represented.
11. The Tribunal first considered Mrs Lemm's request for a postponement. Martlet opposed this on the basis that Mrs Lemm had failed to pay any service charges for the past 2 years and had only paid for 2001-04 when a debt collection agency was instructed. She had ignored letters sent throughout 2005 and 2006. She had had ample opportunity to contact Martlet and to respond to the Application but had not done so.
12. The Tribunal, whilst recognising that Mrs Lemm was an elderly lady who may well rely on her family for help in such matters, saw the force of Martlet's comments and considered that little would be gained from a postponement. In view of Mrs Lemm's stated intention to sell, it would be more helpful to both parties to deal with the matter and determine the amount payable. In addition the Tribunal had a duty to deal expeditiously with the matter and to avoid unnecessary delay.
13. Accordingly the Tribunal examined the statements of account produced by Martlet and the sums demanded from Mrs Lemm for the years in question. The year end was 31 March each year. Even though the accounts for the years ending 31 March 2005 and 2006 were dated "as at 11/08/05" and "28/02/2006" they did in fact show the actual expenditure for those years. The accounts for the year ending 31 March 2007 were more clearly laid out and generally more satisfactory and self-explanatory.

14. The same headings of expenditure arose in each year: insurance, repairs, gardening, audit, management. Lighting and window cleaning were always nil as there were no common parts; each of the 4 flats had its own separate entrance. In 2004-05 there was a heading for "cost of collecting outstanding debt" in the sum of £865.79 which is discussed further below.
15. Ms Wright explained that the insurance premium for each year was apportioned by Martlet's insurers according to the size of the unit across their whole property portfolio of 5,000 units in the Chichester area. As Mrs Lemm had a 2 bedroom flat, her proportion was £104.30, £118.10, and £120.31 for the 3 years in question, calculated in advance. Martlet placed the insurance for all their units of accommodation with broker Lloyd Jardine, who tested the market annually on Martlet's behalf to obtain insurance cover at a competitive rate.
16. The audit fees were paid to Martlet's auditors for producing the leasehold accounts. Of Martlet's stock, 337 were leasehold and the rest were rented as social housing (Martlet is a Registered Social Landlord who took a stock transfer from Chichester District Council some years previously). The figures were £16.25, £15.54 and £14.85 respectively and had in fact decreased over the 3 years in issue.
17. On repairs, there were no repair costs attributed to Mrs Lemm's flat in the year 2004-05. Minor maintenance of clearing gutters took place in 2005-06. The total cost was £24.86 and Mrs Lemm's 25% share was £6.22. In 2006-07 repair works were carried out to the roof totaling £270.38, of which Mrs Lemm's 25% share was £67.60. Ms Wright explained that routine maintenance and repair works of this type were carried out by Martlet Build, Martlet's in-house maintenance team.
18. On gardening, Ms Wright said that an audit had been carried out of all grounds maintenance and this had revealed that in fact no gardening work was done for Mrs Lemm's block. Accordingly the gardening costs of £32.16 and £33.19 should be removed for the years 2004-05 and 2005-06. The 2006-07 accounts showed a nil amount for grounds maintenance.
19. The largest single item concerned £865.79 debt collection agency fees, reflecting the costs incurred by Martlet of collecting unpaid service charges from Mrs Lemm of £1,964.90 for the years 2001-04. It was not known why Mrs Lemm failed to pay these as Martlet had written to her many times during this lengthy period.
20. On questioning from the Tribunal, Ms Wright and Ms Rawnsley conceded that there was no entitlement under the terms of the lease for Martlet to recover these costs by way of service charges. They were not "management" costs. Accordingly they accepted that £865.79 was not recoverable from Mrs Lemm. The Tribunal observed that even if the tenant was liable for these costs, they were unreasonably high in that they were disproportionate in relation to the sum actually recovered from Mrs Lemm (although she had, of course, failed to pay them at the proper time, with no explanation).
21. Martlet charged a management fee of either 10% of actual expenditure or £25, whichever was the greater. In view of the reduction of the service charges payable for 2004-05, the sum of £25 was chargeable for each year in question.

**Decision**

22. In the light of the clear explanations given for all the expenditure headings examined above, the Tribunal was satisfied that they were all payable and reasonable. The service charges for gardening were removed and Martlet accepted that £865.79 debt collection fees were not payable. The management fees were low, and doubtless reflected Martlet's primary function as a social landlord rather than commercial managing agents.

**Determination**

23. For the reasons given above, the Tribunal determines that the following service charges are payable by Mrs Lemm:

2004-05

Insurance	£104.30	
Audit	£ 16.25	
Management	<u>£ 25.00</u>	
Total		£145.55

2005-06

Insurance	£118.10	
Repairs	£ 6.22	
Audit	£ 15.54	
Management	<u>£ 25.00</u>	
Total		£164.86

2006-07

Insurance	£120.31	
Repairs	£ 67.60	
Audit	£ 14.85	
Management	<u>£ 25.00</u>	
Total		<u>£227.76</u>

**Grand Total** **£538.17**

24. In view of the unexplained delays in payment, the Tribunal determines that the total due of £538.17 must be paid as soon as possible and in any event within 14 days of the date of this Decision.

**Dated 11 June 2007**

**Ms J A Talbot MA  
Chairman**

