

IN THE MATTER OF
FLAT 1, 62 ST MARY STREET, CHIPPENHAM, SN15 3JF

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

CASE NO: CHI/46UC/LSC/2006/0124

AND

IN THE MATTER OF
AN APPLICATION – SECTION 27A OF THE LANDLORD & TENANT ACT 1985
AS AMENDED (“THE 1985 ACT”)

DECISION

Applicant/Freeholder:	Anthony Napper 2 Shire House 11 Lambs Passage London EC14 8TE
Respondent/Leaseholder:	Evan James Flat 1 62 St Mary Street Chippenham SN15 3JF
Premises:	62 St Mary Street Chippenham SN15 3JF
Date of Application:	6 November 2006
Date of Directions:	24 November 2006
Respondent’s Reply:	12 March 2007
Further Directions:	4 April 2007
Supplemental Statement by Applicant:	16 April 2007

Supplemental Statement by Respondent: 25 June 2007

Date of Inspection and Hearing of Application: 28 June 2007

Venue of Hearing: The Castle Inn Hotel
Castle Combe
Wiltshire, SN14 7NH

Members of the Leasehold Valuation Tribunal: Mrs A D McC Gregg, Chairman
Mr J Reichel, Bsc, MRICS
Mr I R Perry, Bsc (Est.Man), FRICS

Clerk: Mr A J Peach

The Issue

To determine the liability and the amount of the service charges payable by the Respondent Leaseholder to the Applicant for the period from the 1st of April 2004 to the 31st of March 2006. more particularly specified in the service charge account dated the 31st of March 2006 (Document 2 on the Applicant's bundle of documents) and totalling two thousand, six hundred and eighty two pounds, thirty one pence (£2,682.31)

Relevant Liabilities under the Lease

The Respondent Leaseholder is a long leaseholder of Flat 1, 62 St Mary Street, Chippenham, Wiltshire, under the terms of a lease made on the 13th day of May 2002.

The covenants and terms of the lease are not in dispute and both parties agreed that the Respondent Leaseholder is liable to pay 40 per cent of the service charges and as more particularly set out in the 8th schedule of the lease.

The Law

The Landlord & Tenant Act 1985 (as amended) is the applicable law. For the purpose of the 1985 Act a service charge is defined in Section 18(1) as "an amount payable by a tenant of a dwelling as part of or in addition to the rent

- (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management and
- (b) the whole or part of which varies or may vary according to the relevant costs (including overheads)"

“Relevant costs” are defined as costs or estimated costs incurred or to be incurred by or on behalf of a landlord or superior landlord in connection with the matters for which the service charge is payable.

The word “improvements” was added to the definition of the service charge by the Commonhold and Leasehold Reform Act (CLARA) of 2002, thus works that amount in law to an improvement as opposed to a repair can be the subject of a determination under the 1985 Act provided that the cost of such work is recoverable under the terms of the lease.

The question of whether any sum is payable by a tenant as a “service charge” turns on the definition in Section 18(1) of the 1985 Act as amended by CLARA 2002.

Section 19(1) of the Act deals with the test of reasonableness and the only costs that shall be taken into account in determining the amount of the service charge are those that

- (a) are reasonably incurred and
- (b) where they are incurred on the provision of services or carrying out works provided those services or works are of a reasonable standard.

The LVT’s jurisdiction has been extended by CLARA 2002 and now covers all aspects of the service charge including liability and reasonableness (Section 27(a)(1)(3) of the 1985 Act. This new jurisdiction applies to all applications made on or after the 30th of September 2003 irrespective of whether the service charge costs were payable or incurred before or after the operative date.

Particulars of the Issues to be Determined by the Tribunal

These are set out on Page 2 of the Applicant’s bundle (referred to before) and are as follows:-

Item No	Date	Items	Total Costs	Service Charge at 40%	Specific Details
I	31-03-05	Service Charge April 2004-2005	£2796.50	£1118.60	More specifically referred to Page 4 of Applicant’s bundle
II	01-04-05	Ground Rent 2005-2006	£100	£100	This has been paid and is therefore withdrawn
III	20-1-06	Insurance Premium	£610.15	£244.06	Found on Page 21 of the Applicant’s bundle

Item No	Date	Items	Total Costs	Service Charge at 40%	Specific Details
IV	31-3-06	Service Charge April 2005-2006	£1914.40	£766.16	Found on Page 5 of the Applicant's bundle.
V	31-03-06	Advanced Works 2005-2006	£1493.88	£597.55	This has been withdrawn
VI	01-05-06	Ground Rent April 2006-2007	£100	£100	This has been paid and is withdrawn

Item I – As Set Out on Page 4 of the Applicant's Bundle – Service Charge April 2004-2005

Item No	Date	Items	Service Charge at 40%	Receipt Reference And Comments
1	26-05-04	Passage Refit	£27	The invoice for this item is found on Page 13 of the Applicant's Bundle. This item has been allocated to the wrong service year. It will therefore be disallowed here but included in the following year (Item IV)
2	23-08-04	Electrical Alterations	£24	The invoice for this item is found on Page 12 of the Applicant's bundle. This item was withdrawn by the Applicant and is therefore disallowed.
3	29-09-04	Exterior Door Surround	£238	The invoice for this item is found on Page 7 of the Applicant's bundle. The Committee have inspected this item and seen the photograph of the condition of the door beforehand. The Committee accepts that the works were justified at the time albeit exploratory in nature. This item is therefore allowed in the sum of £238.

Item No	Date	Items	Service Charge at 40%	Receipt Reference And Comments
4	29-09-04	Exterior Joinery	£248	<p>The invoice for this item was found on Page 8 of the Applicant's Bundle.</p> <p>It was agreed by both parties that there was no issue concerning this item and it is therefore allowed in the sum of £248.</p>
5	28-10-04	Door to North West Elevation	£230	<p>This item was found on Page 9 of Applicant's Bundle.</p> <p>Both parties had agreed previously to take off all the rendering on the face of the wall in which this door is situated. Having done so it transpired that the door entrance had been blocked up with a mixture of bricks and breeze blocks.</p> <p>The options were therefore to reinstate the entrance with a door appropriate to the building or to brick it up which would involve using double skinned hand made bricks.</p> <p>The Applicant Freeholder decided to take the least expensive option and reinstate the doorway.</p> <p>The Respondent has contended that this was an improvement. The Committee felt it was a necessary work and that the most reasonable of the options available had been adopted, namely by fitting a period door.</p> <p>The sum of £230 is therefore allowed.</p>

Item No	Date	Items	Service Charge at 40%	Receipt Reference And Comments
6	06-11-04	Water Damaged Ceiling	£241.60	<p>The invoice for this item appears on Page 10 of the Applicant's bundle.</p> <p>Both parties conceded that this item formed part of the previous agreement relating to earlier service charges but the quotes for this item are vague (see Page 26 of the Respondent's bundle). However subsequent water damage required an immediate repair together with timber treatment as set out on Page 10 of the Applicant's bundle. The total amount of the invoice is at variance with the schedule and is either £604 or £605.</p> <p>The Committee felt that the removal of the damaged ceiling amounting to £275 should be allowed as should the timber treatment of £150.</p> <p>However the Committee felt that only half of the re-plastering costs amounting to £90 should be allowed as the work had not been completed. Therefore the total applicable to this invoice amounts to £515.</p> <p>40% of that sum is £206 and that should be the Respondent's liability.</p>
7	07-11-04	Clearing blocked Drain	£110	<p>The invoice for this item appears on Page 17 of the Applicant's bundle.</p> <p>This item was not contested and therefore the sum of £110 is allowed.</p>

The Committee therefore found that in total the sum of £1032 should be payable under this item.

The Committee however also noted that there had been no charge for insurance for this year.

Item II – 1-4-05 – Ground Rent – April 2005-6 - £100

This had been paid and is therefore withdrawn.

Item III – 20-01-06 – Insurance Premium - £244.06

This should be allowed.

**Item IV – 31-03-06 – Service Charge April 2005-2006 - £522.10
(Incorrectly quoted as £766.16) (As detailed in Page 5 of the Applicant's Bundle**

Service Charge for 2005-2006 As per Page 5 of the Applicant's Bundle

Item No	Date	Items	Service Charge at 40%	Receipt Reference And Comments
1	24-08-05	Blocked Sewer System	£60	The invoice for this item is found on Page 14 of the Applicant's Bundle. This item was not disputed and the sum of £60 is therefore allowed.
2	13-11-05	Clearing Drain	£30	The invoice for this item is found on Page 18 of the Applicant's Bundle. This item was not disputed and the amount of £30 is therefore allowed.
3	17-11-05	Drainage Camera Survey	£70.50	The invoice for this item is found on Page 19 of the Applicant's Bundle. This was not disputed and the amount of £70.50 was therefore allowed.
4	01-12-05	Cracked and loose cement	£230	The invoice for this item is found on Page 20 of the Applicant's Bundle. Having inspected this area from outside the Committee concluded that these works were carried out as a safety precaution and the sum of £230 should therefore be allowed.

Item No	Date	Items	Service Charge at 40%	Receipt Reference And Comments
5	20-01-06	Insurance Premium	£244.06	The invoice for this item is found on Page 21 of the Applicant's Bundle. This item had already been claimed in the summary on Page 2 and allowed (Item 3 of Summary Page) and it is therefore disallowed here.
6	06-03-06	Legal Fees (Management)	£131.60	The invoice for this item is found on AN 16 of the Applicant's Bundle. The Committee found that this item related to management fees as opposed to enforcement of rights and therefore allowed the sum of £131.60.

In addition to the above the Committee allowed Item 1 from the previous Schedule (Page 4) Passage Refit to be brought forward to this year and therefore allowed the sum of £27.

The total sum allowed under this item is therefore £549.10.

**Item V of Summary – 31-03-06 - Advanced Works April 2005-2006
£597.55**

These were withdrawn by the Applicant and therefore the Committee makes no adjudication.

Item VI – Ground Rent April 2006-2007 - £100

This has been paid and is therefore withdrawn.

Total Service Charges Due

Item III – Insurance Premium -	£244.06
Item I -	£1032.00
Item IV -	£549.10
Total -	£1825.16

The Respondent, Mr James contended that he was not liable to pay the service charges due to lack of inspection facilities as required under Section 22 of The Landlord & Tenant Act 1985 as amended by CLARA 2002.


Having considered this matter carefully and looked at the invoices that have been provided and linked them to the works inspected at the premises on the 28th of June the Committee concluded that although the book keeping was by no means perfect there had been sufficient information provided to justify payment of the above sum. However greater detail needs to be given to the legislation in future and the Committee recommends that the Applicant should take professional advice to ensure that he fulfils all his statutory obligations under the Landlord & Tenant Act 1985 as amended.

The Respondent, Mr James, contended that there were outstanding works from the previous service charge (the Humberts Schedule). This was agreed by the Applicant, Mr Napper, who said that he would complete the works even though the documentation and accounts are unclear on these matters. The Committee were however only asked to adjudicate on the issues before them, namely the service charges for the period from the 1st April 2004 to the 31st of March 2006 and therefore no adjudication is made with regard to earlier service charges.

Finally, the Committee recommended that the Applicant, Mr Napper, should read the RICS Publication on Service Charges and the Residential Management Code ISBN No 0-85406-643-8.

The Decision and Findings of the Rent Assessment Committee is that the Respondent, Mr James, should pay the sum of £1,825.16 towards the service charges for the years 1st April 2005 to the 31st March 2006.

Dated this 11th day of July 2007

Signed 

Andrew D McCallum Gregg (Chairman)

A Member of the Southern Leasehold Valuation Tribunal appointed by the Lord Chancellor