

Leasehold Valuation Tribunal
of the
Northern Rent Assessment Committee

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Landlord and Tenant Act 1985
Section 27A, 19 and 20C

Property: Flat 7b, Badby Close, Manchester M4 7EY

Applicant: Mr R Bingham

Respondent: St. Anne's Court, Ancoats
(Management Company) Ltd

Represented by: Mr B Westmacott and Miss K Peirce of
Suttons City Living Ltd

Hearing Dates: 18 December 2006 and 25 January 2007

Tribunal: Mrs E Thornton-Firkin
Mr M Hope
Mr J Holbrook

Application and Preliminary

1. By his application to the Tribunal dated 13 July 2006, Mr Richard Bingham applied for the determination of liability for, and reasonableness of, service charges for the above property where costs have been incurred for the service charge years 2003/4, 2004/5 and 2005/6. He also applied for the current year of 2006/7.
2. The first Hearing on 18 December 2006 was adjourned for further information to be provided by the managing agents.

Inspection

3. The inspection was held on the date of the first Hearing.
4. The applicant's flat was situated on a small estate built around 1990 which included houses in addition to the flats. The general area was one with mixed uses and was within easy access of the city centre.
5. The two storey development was built in two blocks, one containing six flats, the other eight flats. The applicant's flat was sited in the block of six flats. There were five shared entrances within the two blocks. The blocks were clad in brick to the ground floor and render to the first floor under a pitched tiled roof. The landscaping consisted of grassed areas and some perennial planting. The rubbish store was situated between the two blocks and consisted of a timber-fenced area containing wheelie bins. Rubbish had been dumped both inside and outside the store giving a very untidy appearance.

Lease Terms

6. The Applicant is the current lessee of the Property which he holds pursuant to an underlease dated 19 October 1990 made between St Anne's Court Ancoats (Management Company) Limited, Tay Homes (North West) Limited and William Herbert Billing. The term of the lease is 99 years from 1 January 1990. Under recital 3, the Respondent (as lessor) is to grant an underlease imposing similar terms for each flat. Rules and regulations set out in the first schedule include the lessees' obligations to clean all the windows of the flat (both inside and out) at least once a month, to deposit rubbish and refuse only in the refuse container provided for that purpose in the area designated for the same and not to fix any radio or TV aerial to any part of the exterior.
7. It is covenanted between the lessor and the lessee in clause 4(i) that the lessor or its managing agents will send to the lessee a maintenance account showing the annual maintenance cost for the year ending 30 June. This will be received by the lessee within three months from 30 June.

8. Clause 4(ii) states the lessee will pay 1/14th of the annual maintenance cost.
9. Clause 4(iii) states that the annual maintenance cost means and shall be the total of all sums actually expended by the lessor during the period to which the relevant maintenance account relates in connection with the management, maintenance and insurance of property defined in the Fourth Schedule which includes the two blocks of flats referred to above and the immediately surrounding common areas.
10. The expenditure includes the cost of and incidental to the performance and observance of the lessor's covenants and is expressed to include amounts spent on the maintenance and renewal of any communal TV and aerial system and call system.
11. Clause 4(iii)f states that all fees, charges and expenses payable to professional and competent advisors employed in the maintenance of the property including preparing the maintenance account and collecting these charges are part of the maintenance cost.
12. A reserve fund may be set up for items which are not of a regularly recurrent nature.
13. The lessor shall not be entitled to challenge a maintenance account or object that the materials, work or service might have been provided or performed at a lower cost.

14. The lessee shall be entitled to examine the original invoices of the audited maintenance account within 28 days after the dispatch of the copy.
15. The lessor will maintain, repair, cleanse, repaint, redecorate and renew:-
 - a. the passages, staircases, landings, entrances and all other common parts of the property
 - b. the roadways, drives, paths and forecourts, refuse and drying areas
 - c. the external surfaces of the window frames and the outside surface of the front doors
16. The lessor will insure the property and insure such other risks as are normally covered by a policy of comprehensive insurance and against such other risks as the lessor in its absolute discretion considers it desirable to insure.
17. The lessor declares that it will hold all maintenance charges in trust.

Law

18. Section 27A (1) of the Landlord and Tenant Act 1985 provides that "an application may be made to an LVT for a determination whether a service charge is payable and, if it is, as to the amount which is payable".
19. Section 27A (3) provides that an application may also be made "if costs were incurred.....".
20. Section 19 (1) states that "relevant costs should be taken into account in determining the amount of the service charge payable for a period :-
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provision of services....., only if the services....are of a reasonable standard.And the amount payable shall be limited accordingly".
21. Section 19 (2) states that, "where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise".

Hearing on 25 January 2007

22. Mr Bingham's reasons for his applications were, in summary, that the terms of the lease were not being complied with. For example, the decorating and repair clauses, the cleaning and window cleaning and, to some extent, the garden maintenance, were not being carried out either at all or to a reasonable standard. The aerial did not work inside Mr Bingham's flat.
23. The Tribunal questioned the applicant and respondent on all the items in the service charge accounts which were produced in evidence. They took into account all relevant evidence from the Hearing and the two written submissions and dealt with it in the decision below.

Decision

24. Before considering the detailed items which form part of the service charge for the periods in question, the Tribunal noted a number of preliminary points. First, it was noted that the carry forward of the excess of expenditure over the service charge collected from the year 2002/03 was shown as a loss of £2,758.00 in the 2003/04 accounts. In a letter dated 29 April 2004, Mr Bingham was notified that his share of this amount produced an additional liability on his part of £197.00. This was considerably after the time he should have been notified (three months after the end of the financial year - ie the end of September 2003). The Tribunal was not asked for a decision concerning the service charge year 2002/03 and did not form an opinion as to whether the amount of overspend was reasonable.
25. **The Maintenance Account**

The audited maintenance account should have been rendered to the lessee within three months of the end of the financial year (30 June). In the case of the year 2005/06, this was produced (unaudited) to the Tribunal for the hearing on 25 January 2007. The lessee should then pay the proportion due within 14 days of its delivery. The lessor may require the yearly payment by monthly installments.
26. **Ground Rent**

This item was included each year. The amount to be paid was shown in the lease. How this was collected was not considered a service charge item and was not dealt with by the Tribunal.

Accounts for the Year 2003/04

27. Light and Heat

Taking the items in the order they appear in the accounts, the Tribunal first considered the payments for lighting. The managing agent produced invoices from the electricity company totalling £147.75 and at the Hearing added a further invoice dated 3 November 2003 of £44.52. This totalled £192.27 which the Tribunal considered reasonable and payable and substituted this figure for £241.00 shown in the accounts.

£192.97

28. Insurance

Mr Bingham had queried the increase in amount from the previous year and had calculated the amount from the invoices to be £1,990.63. £1,926.00 was shown in the accounts. Mr Westmacott gave evidence that he had consulted a broker, Romero Insurance Brokers Ltd, and that the insurance cost had been increased by including the cover for the directors of the company, terrorism and increasing the figure insured from £714,999.00 to £770,000.00 for the cost of rebuilding. The premium was paid monthly on a budget plan, which included an element of interest, instead of an annual amount. This increased the cost. The Tribunal considered the increase in cover (and hence premium) to be justified and allowed the figure of £1,990.63 instead of the amount shown in the accounts.

£1,990.63

29. Repairs and Maintenance

Having looked at the receipts produced, the Tribunal added these up to £1,165.37 which was more than £1,050.00 included in the accounts. Evidence was given that some items which were for the benefit of individual tenants were charged back to them and, therefore, the Tribunal accepted the figure shown in the accounts.

£1,050.00

30. Decorating

Mr Westmacott gave evidence that this amount was a sinking fund item which would be kept in a separate trust account. Although designated for decorating, the sum had been used to fund other services of a recurrent nature when insufficient funds had been collected. This sum was acceptable when used for its designated purposes, and, indeed, good management practice, but the use it had been put to was not within the RICS code of practice and should be refunded to the sinking fund.

£500.00

31. Cleaning

The Tribunal had no evidence from the invoices or the Hearing as to the exact date when the cleaning service was reduced from weekly to once a month. The cost was kept at the same level and, therefore, the change in frequency was not apparent. At the Hearing, the Tribunal was told by the applicant this occurred sometime around the end of 2003/early 2004. As this was not certain, the Tribunal made the assumption that the once a month visit commenced in February 2004. In questioning, the respondent informed the Tribunal that the managing agents had not sought competitive tenders at the time of the reduction in the frequency of cleaning. In the opinion of the Tribunal, a reasonable time spent on each visit to clean each common part once a month would be greater than the time spent if on a weekly basis. However, the total time spent each month would be significantly less. For the first seven months of the accounting year, the payment of £136.73 per month, shown in the accounts, was reasonable. The Tribunal assessed the amount for the following five months as £50.00 per month. This totalled a sum of £1,207.11 which the Tribunal allowed.

£1,207.11

32. Window Cleaning

There was conflicting evidence from the parties concerning this item Mr Bingham had notified the managing agents that this cleaning had not been carried out. The Tribunal had evidence that the work had not been checked by the respondent but the invoices were provided in Mr Westmacott's submission. The impression given was that the cleaning was rarely carried out and the standard was not reasonable. The Tribunal considered it reasonable to allow four cleans during the year which added up to £196.00.

£196.00

33. Caretaker

The invoices from the managing agents added up to £1,527.52 and not the £1,646.00 shown in the accounts. The Tribunal allowed the amount shown in the invoices. The Tribunal had no detail as to how the figure was arrived at other than the caretaker was paid on a time basis plus travelling costs. A simple breakdown of hours, travelling expenses and the rate charged would have been helpful to the Tribunal and the tenants.

£1,527.52

34. Garden Maintenance

The invoices for the year added up to £846.00 and this amount was shown in the accounts. Evidence was given that the gardening services were suspended for two summer months. The Tribunal deducted for the two months suspension and allowed a sum of £720.00 for the ten months when the service was provided. The Tribunal considered this figure not unreasonable on an annual contract due to the seasonal nature of the work.

£720.00

35. Management Charges

At the Hearing, Mr Westmacott said that the caretaker worked solely for the managing agents and not for the managing company. The management company had voted to engage the caretaker's services. Unless there was a caretaker dedicated to the subject property, it was normal for costs of an itinerant caretaker to fall within the management agent's charges. The management fee on its own would be within the Tribunal's expectations in a well run scheme of this size given the RICS guidelines. The two items of cost (management charges and caretaker) together exceeded the Tribunal's expectations of reasonable cost. Moreover, in the opinion of the Tribunal, the management of the property was not of the highest standard – for example, the service charge collection, the repair and decorating obligations, cleaning and rubbish removal, had not been satisfactorily administered. The Tribunal considered that the managing agent's fee, over and above the caretaker's cost, should be £100.00 per flat and, together with VAT, this added up to £1,645.00 for the year.

£1,645.00

36. Legal Charges

The amount under this heading of £15.00 was the fee to file the accounts at Companies House and was allowed.

£15.00

37. Accountancy Fees

Mr Westmacott gave evidence that the Accountants were employed by the managing agents to deal with all Sutton's properties thus obtaining economies of scale. The Tribunal accepted the amount in the accounts. The Tribunal noted that the accounts were not certified within the timescale allowed by the lease. This had caused problems to both the applicant and the respondent.

£823.00

The total allowable for the year 2003/04 was

£9,867.23

Accounts for the Year 2004/05

38. Light and Heat

The invoices supplied to the Tribunal were inconsistent within the bundles provided by the respondent. Only one bundle showed the seven invoices which added up to £181.45 which was more than the £156.00 shown in the accounts. The Tribunal allowed the actual amount of £181.45. **£181.45**

39. Insurance

The increased inflation-enhanced amount for reinstatement cover for this year was £804,650.00. The amount shown in the payment ledger added up to the amount shown in the accounts although it is more than the premium shown in the renewal quotation. The Tribunal accepted the amount when paid by the budget plan will be higher than the quotation. The Tribunal accepted the figures shown in the accounts of £1,802.00. **£1,802.00**

40. Repairs and Maintenance

The Tribunal was satisfied that sufficient invoices were produced in the bundle for the items under this head including those charged back to the tenants to justify the figure included in the accounts. **£653.00**

41. Cleaning

The respondent produced seven invoices in the bundle adding up to £957.11 and eight payments of £136.73 were shown in the ledger (£1,093.84). The Accountants' figure did not match either of these or a figure produced if twelve monthly cleans were allowed (£1,640.76). The Tribunal considered this item in the 2003/04 year and increased the monthly cleaning allowance over that year by 10% to £55.00 per month. From the ledgers, it was apparent that there were only eight monthly entries for cleaning which the Tribunal took to mean eight visits. Evidence was given that some services were temporarily suspended, therefore, the Tribunal allowed the eight visits. **£440.00**

42. Window Cleaning

The ledger showed four entries for this item and not the five invoices provided in the bundle. No evidence was given to explain why this had occurred. The four entries added up to the amount in the accounts which the Tribunal accepted. **£196.00**

43. Caretaker

The Tribunal accepted the amount in the accounts which equalled the invoices supplied. **£1,204.00**

44. Garden Maintenance

The Tribunal accepted that the garden services were interrupted during this year which corresponded with the invoices and Mr Bingham confirmed there was additional work following the period of suspension. The invoices were in line with the expectation of the Tribunal considering the nature of the extra work involved following the suspension. The amount of the invoices corresponded with the figure in the accounts. **£452.00**

45. Management Charges

The Tribunal's comments for the year 2003/04 applied to this year. The respondent gave evidence that the agent's services were withdrawn for three weeks because they were unable to collect the service charges, but were asked to resume providing services by the management company. Although part of the manager's duties are to collect service charges and pursue any outstanding debts, no decisive action appeared to have been put in train. The Tribunal would have expected more proactive management to ensure the service charges were paid and would not agree any increase over the 2003/04 amount as being reasonable. **£1,645.00**

46. Legal and Professional

The legal and professional fees were shown as £259.00. The Tribunal did not have invoices for this total. It would appear these items could have been recovered from the individual lessees with the exception of the annual filing fee of £15.00. It was noted that the year end account for June 2006 showed £16.00 in the column for the previous year. The Tribunal allowed the figure for filing at the actual cost of £15.00.

£15.00

47. Accountancy Fees

The total from the invoices added up to £822.50 and not the £864.00 shown in the accounts. The Tribunal allowed the amount shown in the invoices. **£822.50**

The total allowable for the year 2004/05 was

£7,410.95

Accounts for the year 2005/06

48. Light and Heat
Despite discrepancies between the invoices and accounts, the Tribunal was prepared to allow the higher figure shown on the invoices of £184.19 and not the £154.00 shown in the accounts. **£184.19**
49. Insurance
The building sum insured was increased from 9 December 2005 to £1,550,000.00 which the Tribunal accepted. The figures in the accounts were not verifiable but the original quotation, the adjustment figure and the extra figure for payment by the budget scheme, would reasonably add up to £2,949.00 which was the figure shown in the accounts and which the Tribunal accepted. This figure corresponded to the total of the payment in the agent's ledger for the period in question. **£2,949.00**
50. Repairs and Maintenance
The Tribunal followed the view taken in previous years and allowed the £1,172.00 shown in the accounts. **£1,172.00**
51. Cleaning
For the first ten months of the financial year, Cleancut, a related company to the managing agent, continued to carry out monthly cleaning and for that time the Tribunal allowed the figure of £55.00 per month as before. When the contract reverted to a weekly clean, the Tribunal noted that the figure from the invoices amounted to £45.00 for a weekly clean which was in line with their expectations noted in the year 2003/04. The Tribunal accepted the invoices of £405.00 from Fantastic Hygienic. They also allowed the invoice of £55.52 to clear the rubbish in the electricity cupboard. These amounts totalled £1,010.52. **£1,010.52**
52. Window Cleaning
The Tribunal allowed the ten payments amounting to £490.00 in the ledger and not the nine shown in the bundle. The respondent's evidence was noted that a system had been set in place which would notify the managing agent when the cleaning had been carried out and which would permit the work to be checked. **£490.00**
53. Caretaker
The Tribunal allowed the amount in the accounts. **£734.00**

54. Gardening
The invoices added up to the amount of £905.00 which the Tribunal allowed. **£905.00**
55. Management Charges
As in the previous year, the Tribunal allowed £1,645.00. **£1,645.00**
56. Legal Fees
As with the previous years, the amount in the accounts could not be verified as some of the payments could have been charged back to the appropriate tenants. Again the company filing fee was allowed. **£15.00**
57. Accountancy Fees
These were shown in the invoices as £863.63 which differed from the accounts. The Tribunal allowed the invoice figure. **£863.63**
- The total allowable for the year 2005/06 was **£9,968.34**

Accounts for the year 2006/07

58. Mr Bingham had applied to the Tribunal for a determination regarding the figures for this year. The Tribunal had no indication or figures other than the 6% increase in the approved budget. The Tribunal considered that there was little time within the current financial year for improvements in the standard of management or quality of services. If this proved to be possible, and improvements do occur, then either party can make a further application for determination of the actual service charge for this year.
59. The Tribunal determined that the 6% increase over the 2005/06 costs was within the range it would accept as a reasonable increase and, therefore, accepted an allowable amount of £10,566.44.

Order

60. The amount that is payable by the applicant in respect of service charges for the periods in question is one-fourteenth of £9,867.23 being the service charges for the year 2003/04, one-fourteenth of £7,410.95 for 2004/05 and one-fourteenth of £9,968.34 for 2005/06. The amount that is payable by the applicant for the year 2006/07 is the lesser amount of either one-fourteenth of £10,566.44 or one-fourteenth of the audited amounts in the service charge account.
61. The application for the limitation of any costs incurred in connection with proceedings before the LVT is granted and no costs will be charged to the service charge account.



Mrs E Thornton-Firkin
Chairman

12 March 2007