

3643

MIDLAND RENT ASSESSMENT PANEL

Case No BIR/00CN/LSC/2007/0010

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 : 30th January 2008

Appearances

For the Applicant : In person

For the Respondent : Mr R Gavaghan (Senior Assistant Accountant)  
Mr A Dann (Area Manager)

Members of the Tribunal : Mr D Jackson (Chairman)  
Mr D Satchwell FRICS  
Mr D Underhill

Date of decision : **15 FEB 2008**

1. BACKGROUND

This is a decision of a Leasehold Valuation Tribunal of the Midland Rent Assessment Panel on an application dated 28th March 2007 made by the Applicant under Section 27A(3) 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. On 14th February 2007 the Respondent wrote to the Applicant enclosing Service Charge Breakdown 00682-102 containing a 2007/2008 budget.
6. By two separate notices dated 23rd February 2007 the Respondent gave to the Applicant Notice of Consultation in relation to –
  - 6.1 Fire alarm replacement – total cost £34,724.01
  - 6.2 Emergency lighting replacement – total cost £16,278.02.

7. DIRECTIONS

Directions were issued by the Tribunal on the 16th May 2007. Those Directions were re-issued on 7th August 2007. On 20th November 2007 a further copy of the Directions were sent marked for Mr Gavaghan's attention. Following a telephone call to Panel Office from Mr Gavaghan a further copy of the Directions were sent out at his request. It is therefore a matter of very considerable concern to the Tribunal that the Respondent completely failed to comply with its obligations under those Directions.

Mr Gavaghan accepted that Respondent was aware of the Directions. The Tribunal were assured that in future dealings with Tribunal cases would be centralised within the Complaints Team and that the Respondent would ensure that it improved its understanding of its obligations.

8. ISSUES FOR DETERMINATION

- 8.1 Whether if the following costs (contained within the service charge breakdown 00682-102 referred to above) were incurred for the service charge year 1st April 2007 to 31st March 2008 a service charge would be payable for those costs:

|       |  |         |
|-------|--|---------|
| 8.1.1 | Scheme Manager Service                     | £14,809 |
| 8.1.2 | Anchorcall, Scheme Telephone & internet    | £ 1,929 |
| 8.1.3 | Repair, maintenance and usage of Equipment | £11,479 |

|       |                                 |         |
|-------|---------------------------------|---------|
| 8.1.4 | Overheads and Management        | £ 5,792 |
| 8.1.5 | Light and power to common parts | £ 2,781 |
| 8.1.6 | Refuse Service                  | £ 194   |

8.2 Whether the consultation requirements of section 20 of the Act have been complied with in relation to the fire alarm replacement and the emergency lighting replacement.

8.3 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)

## 9. THE TENANCY AGREEMENT

The Applicant accepts that the disputed items set out in paragraph 8.1 and 8.2 above are recoverable under the terms of the Tenancy Agreement.

## 10. INSPECTION

The Tribunal inspected the Property on 19th November 2007. The Property is one of a total of 25 flats (24 for residents and one for the Scheme Manager) comprised in a modern three-storey building of brick construction under a pitched tiled roof. All flats benefit from communal central heating and double glazed windows. In addition there are communal facilities including lounge, dining area and kitchen on the ground floor, a communal laundry for the use of residents and a first floor communal shower room.

11. The Property itself comprises entrance hall, lounge, single bedroom, kitchen (fitted including cooker and fridge) and bathroom (bath, wash basin and WC). As noted above the Property has central heating and double glazing.

## 12. REQUEST FOR SUMMARY OF RELEVANT COSTS

On 12th May and 6th July, the Respondent requested that the Respondent supply him with "Audited Service Charge Accounts" in accordance with Section 21 of the Act.

13. The Respondent replied on 8th August 2007 indicating "there is no legal requirement for us to provide audited accounts for each individual scheme." The Respondent indicated that it could provide a detailed transaction reports if the Applicant wished.

14. The Applicant accepts that he did not request those detailed transaction reports.

15. At the Hearing the Respondent conceded that it was "in error" in not providing transaction reports to the Applicant. It accepted it should have interpreted the request to provide written information where possible.
16. The Tribunal determines that the time the Applicant made his request the obligation under section 21 was only to provide a summary of relevant costs certified by a qualified accountant (section 21(6)) rather than audited accounts. At the time the Applicant made his request the new section 21 requiring regular statements of account had not been brought into force.
17. The Tribunal further determines that the Respondent should have complied with the Applicant's request and provided a summary of relevant costs in accordance with its statutory duty under the terms of section 21 as it existed at that time.
18. THE APPLICANT'S CASE

The Applicant submitted that costs in relation to the Scheme Manager Service had gone up tremendously. The Applicant accepted that the scheme manager was "very good, very nice, very helpful" but a lot of the time was absent due to illness or off site meetings and training. The Applicant contended that the relief manager did not know anything and failed to provide an adequate service.
19. The Respondent produced documents to show that the manager was absent on both 31st October and 1st November 2007 for training. The Service Manager was on a training course on 9th and 10th January 2008, at a team meeting on 24th January and a half day off site meeting on 21st January.
20. In conclusion the Applicant submitted that there should be no increase in the service management costs from the 2006/2007 figures of £12,896 (2007/2008 - £14,809).
21. At the Hearing and following evidence and arguments in relation to the Scheme Manager Service the Applicant withdrew his application in relation to the items listed at 8.1.2 – 8.1.6.
22. THE RESPONDENT'S CASE

Mr Dann on behalf of the Respondent replied to the Applicant's submissions by indicating that the provision of training for the Service Manager was one of the best schemes he had

come across but that the Respondent tried to limit this to no more than one day per month in addition to a further one day a month allowed for team meetings. Accordingly the Scheme Manager should only be absent for on average 2 days per month.

23. The Respondent confirmed that in accordance with the Guidance on Services issued to Rent Officers ("The Grey Book") only 85% of the cost of the Scheme Manager Service was passed on to tenants.
24. Unfortunately it appears that the Scheme Manager has been very ill and the Respondent as her employer has rightly been sympathetic to her health situation. The Tribunal was assured that no extra cost would accrue to residents of Wesley Court as a result of the use of a relief manager. The Respondent indicated that it trains its relief managers to as high a level as possible but accepted that relief managers were only intended for weekend cover, sickness and annual leave. It was accepted by the Respondent that where a manager was away as often as the Scheme Manager of Wesley Court had been then a relief manager would not provide as good a service as if a fully trained manager were present. The Respondent further indicated that it was piloting a scheme to have a fully qualified Peripatetic Scheme Manager available to cover longer week day absences within the area.
25. Mr Gavaghan confirmed that once the Scheme Manager's absence exceeded 20 days any additional costs for that member of staff during the period of absence would be paid entirely by the Respondent and would not be passed on to the residents of Wesley Court.
26. CONSULTATION  
The Respondent confirmed that the final cost in relation to fire alarm replacement was £12,495.27 (estimate £34,724.01) and that the cost to each resident of Wesley Court would be £0.88 per month payable over 10 years resulting in a total contribution of £105.60 per tenant.
27. The final cost of the emergency lighting replacement was £26,654.67 (estimated £16,278.02) and that the cost to each resident will be £2.59 per month payable over 7 years resulting in a total contribution of £217.56.

28. The Respondent confirmed to the Tribunal that costs in relation to both items over and above the Tenant's contribution will be borne entirely by the Respondent "from revenue" and would not be recovered from the Tenants by way of service charge.

29. The Tribunal therefore determines that the consultation requirements of section 20 of the Act are not applicable as the "relevant contribution" of each of the tenants does not exceed £250 (paragraph 6 of Service Charges (Consultation Requirements)(England) Regulations 2003).

30. TRIBUNAL'S DETERMINATION

The Tribunal is required under section 19 of the Act to consider whether the costs in relation to the Scheme Manager Service are reasonably incurred and whether the service provided is of a reasonable standard. The Tribunal has had regard to the size of the block and that there are 24 flats occupied by residents aged 55 or over, some of whom were potentially vulnerable. The Tribunal determines that the employment of a Scheme Manager was under those circumstances reasonable and that the scheme was giving the tenants value for money. However it had been argued by the Applicant that the scheme manager was absent for a considerable period of time and that the service provided by the relief manager was not acceptable. The Respondent itself had conceded that the level of service provided by relief management was not as good as that of a fully trained manager. Accordingly the Tribunal determines that 95% of the scheme manager's service should be regarded as relevant costs for the purposes of the service charge payable.

31. COSTS

The Respondents confirm that they have not incurred any costs in connection with these proceedings.

32. DECISION

32.1 In relation to the Service Charge year 2007/2008 the Tribunal determines that 95% of the budgeted expenditure (00682 – 102) under "Scheme Manager Service" if incurred would be payable under section 27A(3) of the Act.

32.2 The Applications in relation to the items listed at 8.1.2 – 8.1.6 are withdrawn.

32.3 The consultation requirements of section 20 of the Act do not apply to fire alarm replacement and emergency lighting replacement.

32.4 Any costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of the Service Charge payable by the Applicant.

Signed ..... 

MR D JACKSON – Chairman

**15 FEB 2008**