

IN THE MATTER OF
FLAT 84 BRANDON HOUSE, JACOBS WELLS ROAD, HOTWELLS, BRISTOL,
BS8 1DU

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESMENT PANEL AND THE
LEASEHOLD VALUATION TRIBUNAL

CASE NUMBER:CHI/00HB/LIS/2008/0005

IN THE MATTER OF AN APPLICATION UNDER
SECTION 27A OF THE LANDLORD AND TENANT ACT 1985 AS AMENDED
("THE 1985 ACT")

DECISION

Applicant/Leaseholder: Mr Roger Scott
Flat 84 Brandon House
Jacobs Wells Road
Hotwells
Bristol
BS8 1DU

Respondent/Landlord: Bristol City Council
The Council House
College Green
Bristol
BS99 7BL

Premises: Flat 84 Brandon House
Jacobs Wells Road
Hotwells
Bristol
BS8 1DU

Date of Application: (Undated but received by the Tribunal Service on the
24 January 2008)

Date of Directions: 12 March 2008

Further Directions: 11 April 2008

**Date of Inspection and
Hearing of Application:** 24 June 2008

Venue of Hearing: The Bristol Appeals Service
Vintry House
Wine Street
Bristol
BS1 2BP

Members of Leasehold Valuation Tribunal: Mr A D McC Gregg (Chairman)
Mr S Hodges FRICS
Mr M R Jenkinson
Clerk Miss N Bennett

Persons present at the Hearing (For the Applicant): None

Persons present at the Hearing (For the Respondent): Mr J Tooze and Mrs K Williams

1. Inspection of the Premises

1.1 On the 24 Day of June 2008 prior to the hearing the Tribunal inspected the premises at Flat 84 Brandon House, Jacobs Wells Road, Hotwells, Bristol, BS8 1DU.

1.2 Brandon House comprises a large block of flats built in about 1961 and consists of 15 bedsits, 50 2 bedroom maisonettes and 25 3 bedroom maisonettes.

1.3 Of the 90 flats the majority are occupied by council tenants, 1 is occupied by a resident care taker and 12 (which include flat 84) have been purchased by various tenants under the Statutory Right to Buy Scheme.

1.4 The Applicant Mr Roger Scott purchased flat 84 on the 5th day of November 1984 under the Right to Buy legislation and a copy of his lease was included in his bundle of documents (pages 38 – 67 inclusive).

1.5 The Tribunal inspected Mr Scott's flat which was situated on the 9th Floor of Brandon House access being gained via a modern lift serving the common areas of all floors.

1.6 The accommodation comprises the following:

- On the "ground floor" a large lounge over looking the city docks with a balcony, a kitchen and hallway.
- Off the hallway there are stairs to the "first floor" comprising a study and double bedroom over looking the city docks, together with a guest room which included a fire escape to a balcony (the only flat to have such a facility), storage cupboards on the landing, a separate W.C. and basin and separate bathroom and basin.

1.7 The flat had been well maintained and Mr Scott was in the process of carrying out further improvements.

1.8 Following the inspection the Tribunal adjourned to the Bristol Appeals Service, Vintry House, Wine Street, Bristol, BS1 2BP for the hearing.

1.9 However, before leaving for the hearing the Tribunal were informed by Mr Scott that he had a hospital appointment that morning and did not think he would be able to attend. He did however state that he was content for Tribunal to proceed with the hearing.

2. The Issues

2.1 The issues to be determined by the Tribunal relate to certain items of the service charges payable by the Applicant for the years 1 April 2003 to 31 March 2004, 1 April 2004 to 31 March 2005, 1 April 2005 to 31 March 2006 and 1 April 2006 to 31 March 2007 as more particularly set out by the applicant in his application.

2.2 However, not all the items for those years were disputed by the applicant and for the sake of clarity those matters in dispute are set out in the schedule below.

Schedule of Disputed Items 1.4.03 to 31.3.05 (Page 8)

Item No	Description	Amount	Liabilities Under the Lease
3	Lighting Contract	£0.81	Schedule 3.5
5	Lift Contract	£70.37	Schedule 3.13(e)
6	Laundry Repairs	£38.32	Schedule 3(13)(A)
7	Laundry Contract	£4.00	Schedule 3(13)(A)
8	Gas	£14.27	Schedule 3(13)(G)
9	External Decorations	£2,048.80	Schedule 3(2) and 5(2)(A) P.43
12	Diesel Alternator	£ 0.78	Schedule 3(5)
15	Administration	£394.95	Schedule 3(8)

Schedule of Disputed Items 1.4.04 to 31.3.05 (Page 7(d))

Item No	Description	Amount	Liabilities Under the Lease
3	Lighting Contract	£0.86	Schedule 3.5
5	Lift Repair	£2,266.32	Schedule 3.13(e)
6	Lift Contract	£70.37	Schedule 3(13)(e)
7	Laundry Repairs	£31.54	Schedule 3(13)(a)
8	Laundry Contract	£4.25	Schedule 3(13)(a)
9	Gas	£7.87	Schedule 3(13)(g)
12	Diesel Alternator	£ 0.82	Schedule 3(5)
14	Administration	£440.99	Schedule 3(8)

Schedule of Disputed Items 1.4.05 to 31.3.06 (Page 7(c))

Item No	Description	Amount	Liabilities Under the Lease
1	Repairs	£58.76	Schedule 3(1)(2)(3)(4)
3	Lighting Contract	£0.90	Schedule 3(5)
4	Lift Repair	£2,465.08	Schedule 3(13)(e)
6	Laundry Repairs	£34.65	Schedule 3(13)(a)
7	Laundry Contract	£4.46	Schedule 3(13)(a)
8	Gas	£13.51	Schedule 3(13)(g)
11	Diesel Alternator	£ 0.87	Schedule 3(5)
14	Administration	£465.61	Schedule 3(8)

Schedule of Disputed Items 1.4.06 to 31.3.07 (Page 7(c))

Item No	Description	Amount	Liabilities Under the Lease
1	Repairs	£21.39	Schedule 3(1)(2)(3)(4)
3	Lighting Contract	£1.78	Schedule 3(5)
5	Lift Contract	£82.93	Schedule 3(13)(e)
6	Laundry Repairs	£36.37	Schedule 3(13)(a)
7	Laundry Repair/Refurbishment	£569.22	Schedule 3(13)(a)
8	Laundry Contract	£5.41	Schedule 3(13)(a)
9	Gas	£1.41	Schedule 3(13)(g)
14	Administration	£190.83	Schedule 3(8)

3. Relevant Liabilities under the Lease

3.1 The Applicant's liability (covenants) are set out in his lease which is dated the 5th day of November 1984 and which form pages 38-67 of the applicants bundle.

3.2 Specifically, Clause 5 on pages 43-49 inclusive sets out the obligation to pay the service charge and the third schedule of the lease (pages 60-63 inclusive) defines those items of service charge.

4. The Law

4.1 Section 27a of the Landlord and Tenant Act 1985 ("the Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and if it is, determine

- a) the person by whom it is payable
- b) the person to whom it is payable
- c) the amount which is payable

d) the date at or by which it is payable

e) the manner in which is payable

4.2 For the purpose of the 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).

4.3 "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.

4.4 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 are:

a) Reasonably incurred and

b) Where they are incurred on the provision of services or carrying out of works if those services or works are of a reasonable standard.

THE HEARING

5. The Applicant's Case

5.1 Following the inspection of the premises and before the hearing the Applicant informed the Tribunal of a hospital appointment that morning and accordingly that he would be unable to attend.

5.2 He did however say that he was content for the Tribunal to hear the application in his absence Tribunal members having previously read all the papers submitted by both the Applicant and the Respondent pursuant to the directions given in this case.

6. The Respondent's Case

6.1 Mr Tooze was then invited to present the Respondent's case and he referred to the statement filed on behalf of the Respondent dated the 6 June 2008 together with the accompanying documents JT1 to JT32 inclusive.

6.2 Specifically he argued where the Applicant should be liable to pay all of the items comprising the service charge (including management and administration charge for the years concern) and not just those items that the Applicant had accepted as being properly due.

6.3 Mr Tooze confirmed to the Tribunal that the Respondent has fully complied with the requirements of the Act in giving notice of the proposed works at every stage and undertaking consultation/comment prior to the commencement of those works.

6.4 He argued that the correct and easiest method of calculating the service charge was on the basis of the old rateable value for the premises pursuant to Clause 5(2)(I)(Page 45 of the Lease). The Tribunal accepted this.

7. The Determination

7.1 The Tribunal having considered all the representations made by the Applicant in his paper submissions and having heard the response from the Respondent concluded that all the items of the service charge for the years April 2003 to March 2007 were properly due and payable by the Applicant.

7.2 The Tribunal had the greatest sympathy with the Applicant due to the fact that the service charges had been substantially increased during these years by the three exceptional items of expenditure namely the replacement of the lifts in Brandon House which had become out dated and unreliable, the refurbishment of the laundry building (even though Mr Scott and his fellow lessors had not been asked to contribute towards the Capital expenditure of the improvements to the building) and finally the external decorations to the entire building.

7.3 The Tribunal had specifically considered the issue of reasonableness and had heard evidence that before incurring the heavy items of expenditure consultation had taken place with the lessors and tenders had been sought from six separate contractors before the lowest quote was accepted for each of the items.

7.4 The Tribunal noted that, regrettably, the lease contained no provision for a sinking fund which would have ameliorated the effect of these exceptional items on the annual service charge in question.

7.5 Nonetheless the Tribunal considered that they had to have regard to the terms of the lease and apply the law to it.

7.6 Accordingly the Application is dismissed.

Signed.....
Andrew Duncan McCallum Gregg (Chairman)

Date 8 July 2008