

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

Case Number: CH1/46UF/LSC/2008/0015

Re: Flat E, Orchard Hall, 57 Station Road, Westbury, Wiltshire, BA13 3JW

In the matter of an application under Section 27A of the Landlord and Tenant Act 1985 for a determination of liability to pay service charges.

**Between:**

**Peverel OM Limited** Applicant

and

**Mr. Philip Roy Parrish** Respondent

Date of application: 11 January 2008

Date of hearing: 6 June 2008

Members of the Tribunal: Mr. J. G. Orme (Lawyer Chairman)  
Mr. M. Ayres FRICS (Valuer member)  
Mr. S. Fitton (Lay member)

Date of decision: 1 August 2008

**Decision of the Leasehold Valuation Tribunal**

**For the reasons set out below, the Tribunal determines that: -**

- 1) The total service charge payable in respect of Flat E, Orchard Hall, 57 Station Road, Westbury, Wiltshire BA13 3JW for the year ended 25 December 2006 is £884.17. To the extent that that sum has not been paid to the Applicant by payments on account, it is now due and payable by the Respondent.**
- 2) The service charge payable in respect of Flat E, Orchard Hall on 1 January 2007 was £518.42 and on 1 July 2007 was £518.41. Those sums are now due and payable by the Respondent.**
- 3) The administration charges of £58.75 levied by the Applicant on 1 August 2006 and 30 January 2007 are not payable by the Respondent.**

**Reasons**

**The Application**

1. On 11 January 2008, the Applicant, Peverel OM Limited, applied to the Tribunal under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") to determine the liability to pay service charges

and administration charges in respect of Flat E Orchard Hall, 57 Station Road, Westbury ("the Property"). The specific charges in respect of which the Applicant seeks a determination are: -

1 July 2006	Service charge	£569.09
1 August 2006	Administration charge	£58.75
1 January 2007	Service charge	£598.31
30 January 2007	Administration charge	£58.75
1 July 2007	Service charge	£598.31

The service charges claimed are all service charges demanded on account of future expenditure. On 17 May 2007, the Respondent's account was credited with the sum of £54.15 as a year end adjustment for the year to 25 December 2006.

2. On 7 November 2007 OM Limited issued against the Respondent, Mr. Philip Roy Parrish, a claim for £1,979.69 in the Southampton County Court under claim number 7S006043. The claim included the service charges and administration charges which are the subject of this application together with other sums claimed to be due under the lease. Mr. Parrish filed a defence and the claim was transferred to the Trowbridge County Court. On 23 January 2008 the court made an order staying the claim until determination by the Leasehold Valuation Tribunal. A further order dated 30 January 2008 transferred the claim to the Leasehold Valuation Tribunal.
3. The Tribunal issued directions on 13 February 2008 providing for both parties to prepare written statements of case. The Applicant lodged a statement of case on 3 April 2008. The Respondent lodged a statement of case on 5 June 2008, the day before the hearing.
4. Direction 3 required the Applicant to send to the Tribunal and the Respondent "*a bundle of documents setting out their case. Those documents shall include a statement in writing by an authorised representative of the Applicants who has full knowledge of the facts. The statement shall summarise the facts and refer to any specific clauses in the Lease under which the claim for service charges is made. Copies of all relevant documents shall accompany the statement, including copies of relevant service charge demands and annual accounts with audited confirmation, any section 20 notices, schedules of work, specifications, tenders, correspondence and other relevant documents.*"
5. As from 1 August 2007 Orchard Hall RTM Company Ltd has been responsible for the management of Orchard Hall, having taken over management from the Applicant under the provisions of Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002.

#### **The Law**

6. The statutory provisions primarily relevant to applications of this nature are to be found in sections 18, 19 and 27A of the Act.

7. Section 18 provides:

- 1) *In the following provisions of this Act "service charge" means 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, improvements 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.*
- 2) *The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*
- 3) *For this purpose:-*
  - a. *"costs" includes overheads and*
  - b. *costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.*

8. Section 19 provides:-

- 1) *Relevant costs shall be taken into account in determining the amount of a 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 or the carrying out of works, only if the services or works are of a reasonable standard;*  
*and the amount payable shall be limited accordingly.*
- 2) *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.*

9. Section 27A provides:-

- 1) *An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to:-*
  - 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, and*
  - e. *the manner in which it is payable.*

Subsections 2 to 7 of section 27A are not relevant in this application.

### **The Lease**

10. The Applicant submitted with the application a copy of the counterpart lease of Flat 1, Bramley Mews. It was not until a few days before the

hearing that the Applicant, at the request of the Tribunal, provided the Tribunal with a copy of the lease of the Property. That is in a very different form to the lease of Flat 1 Bramley Mews.

11. The lease of the Property is dated 2 February 1987. The Respondent holds the Property for the residue of a term of 99 years from 25 December 1985.
12. The lease contains the following relevant definitions:
  - 1) *"The Block" – The land and buildings edged blue on the plan annexed hereto.*
  - 2) *"The Maintenance year" shall mean every twelve monthly period ending on the 25<sup>th</sup> day of December the whole or any part or which falls within the term.*
  - 3) *"The Service Charge" means a sum equal to one eighteenth (or such other proportion as may be determined pursuant to Part I of the fourth schedule) of the aggregate Annual Maintenance Provision (as herein defined) for the whole of the Block (computed in accordance with Part II of the fourth schedule).*
13. The extent of the demised property is set out in particulars and the first schedule to the lease. It describes the second floor flat numbered E on the plan annexed to the lease.
14. By clause 3.2 of the lease, the lessee covenanted *"In respect of every Maintenance Year to pay the Service Charge to the Lessor by two equal instalments in advance on the half-yearly days."*
15. By clause 3.3 of the lease, the lessee covenanted *"To pay to the Lessor a due proportion of any adjustment pursuant to Paragraph 3 of Part II of the Fourth Schedule."*
16. Part I of the fourth schedule provides a mechanism for the lessor to vary the proportion of the service charge payable by the lessee.
17. Part II of the fourth schedule provides for computation of the annual maintenance provision. It is to be computed in accordance with paragraph 2 of the schedule not later than the beginning of December immediately preceding the commencement of the Maintenance Year. Paragraph 2 provides for the annual maintenance provision to consist of a sum comprising: -
  - 1) The estimated expenditure to be incurred by the lessor in the maintenance year for the purposes mentioned in the fifth schedule.
  - 2) An appropriate reserve towards the cost of those items mentioned in the fifth schedule which are likely to occur after the maintenance year.
  - 3) A reasonable sum to remunerate the lessor and its managing agents for its administrative and management expenses in managing the Block.

18. Paragraph 3 of the fourth schedule provides for the lessor to calculate the maintenance adjustment at the end of each maintenance year. The Maintenance Adjustment is the amount by which the estimated cost exceeded or fell short of the actual expenditure in the Maintenance year. The Lessee shall be allowed or shall pay on demand as the case may be the appropriate percentage of the Maintenance Adjustment.
19. Paragraph 4 of the fourth schedule provides for certificates of the Annual Maintenance Provision and the Maintenance Adjustment for any Maintenance Year to be conclusive. Paragraph 5 requires the lessor to prepare accounts of the Service costs in respect of each Maintenance Year and to provide a summary to the lessee.
20. The fifth schedule set out the purposes for which the service charge is to be applied. It includes: -
  - 1) Decorating the exterior of the Block;
  - 2) Keeping the structure of the Block including drains and boundaries in good repair;
  - 3) Maintaining the amenity areas, drying area, dustbin compound, footpaths, access ways, parking spaces and fences;
  - 4) Cleaning and lighting the internal common parts;
  - 5) Paying the running and management expenses of the Block including the costs of collecting rents and service charges;
  - 6) Insuring the Block against loss or damage by the specified risks.
21. The benefit of the lease was assigned to the Respondent in January 2006.

### **Inspection**

22. The Tribunal carried out an inspection prior to the hearing on 6 June in the presence of Mr. Dominic Gearon, the Regional Manager of the Applicant. The Respondent was not present at the inspection nor was he represented. He had left the keys of his flat with his neighbour but the Tribunal did not need to inspect the interior of his flat.
23. The Property forms part of a development consisting of Orchard Hall, Bramley Mews and a block of garages. Orchard Hall fronts onto Station Road. It appears to be an older building which has been converted into 6 flats on three floors. It has one communal staircase.
24. Bramley Mews is of more recent construction. It stands behind Orchard Hall and is detached from it. It consists of 12 flats. It has two communal staircases.
25. There is a block of 12 garages along the left hand boundary (as seen from Station Road facing Orchard Hall).

26. At the entrance to the development is a communal area set aside for dustbins. To the right of Orchard Hall is a communal drying area with 4 rotary dryers. The remainder of the site is covered with tarmac to form access ways and parking spaces or laid down to grass.
27. The external parts of the development were generally untidy. There was rubbish at the end of the garages, the right hand boundary fence was in need of attention, the grass did not appear to have been cut for a couple of weeks and there was an area to the rear of Orchard Hall where a tree had been removed and the grass had not been restored.
28. The walls of the communal staircase in Orchard Hall appeared to have been recently painted. The floor was covered with carpet. There was a considerable quantity of rubbish on the top landing. It was not possible to check whether the lights were working as they were controlled by sensors.

### **The Hearing and the Issues**

29. The hearing took place in the Pump Rooms, Bath on 6 June 2008. Mr. Gearon represented the Applicant. The Respondent appeared in person.
30. Mr. Gearon was given an opportunity at the beginning of the hearing to consider the Respondent's statement of case which he had not previously seen. Mr. Gearon confirmed that he was prepared to continue with the hearing without a further adjournment.
31. The copy of the plan annexed to the lease supplied to the Tribunal did not show any blue edging. Neither Mr. Gearon nor the Respondent knew what area was edged blue. Mr. Gearon contacted his office but the copy lease there had no blue edging. Both parties agreed that the hearing should proceed on the assumption that there was blue edging around the whole development and on the condition that the Applicant would lodge with the Tribunal a properly coloured plan showing the blue edging which was agreed by the Respondent. If that plan showed that the assumption was correct, the Tribunal would proceed to make a determination. If not, it would be necessary to convene a further hearing. An agreed plan has now been lodged with the Tribunal showing that the assumption was correct.
32. In his defence to the County Court claim, the Respondent raised the following issues: -
  - 1) Lack of communication by the Applicant;
  - 2) Failure to provide new doors;
  - 3) Failure to redecorate the interior of the common parts;
  - 4) Failure to supply rubbish bins to each flat;
  - 5) Failure to supply cleaners and gardeners between January and April 2006, inadequate cleaning when the cleaners attended and failure to supply cleaners after September 2006.

6) Overall *“why should I pay for a service I am not getting?”*  
It was on the basis of that defence that the Applicant prepared for the hearing.

33. The Respondent's statement of case lodged on 5 June 2008 raises the following issues: -

- 1) Lack of cleaners between October 2005 and March 2006, sporadic cleaning between March and August 2006 and no cleaning after August 2006;
- 2) Sporadic gardening services;
- 3) Failure to carry out internal and external decorations and replacement of doors;
- 4) Lack of maintenance of the garages;
- 5) Limited maintenance of the electricity and lighting installations.
- 6) Lack of co-operation in the process of Orchard Hall taking on responsibility for its own management under the right to manage legislation.

34. The Respondent also challenged the cost of insurance. This was an issue which he had raised in correspondence.

35. A further issue was raised by the Tribunal at the hearing in relation to the charge of £2,135.51 for removal of rubbish in the 2006 accounts.

### **The Evidence**

36. The Applicant provided a witness statement from Richard John Sandler, the company solicitor. The statement exhibits a number of documents which show how the service charge was calculated. However it did not include all the information required by direction 3. Mr. Sandler was not present at the hearing. Mr. Gearon gave evidence at the hearing.

37. The Respondent gave evidence on his own behalf.

38. Mr. Gearon explained that the costs incurred in maintaining the estate are split into 6 schedules with separate schedules for the costs associated with Bramley Mews, Orchard Hall, the garages, insurance, exterior decoration of both blocks and the remainder of the estate. The costs within each schedule are then split between those leaseholders who benefit directly from those costs. Mr. Gearon accepted that this was not the method of calculating the service charge which is prescribed by the lease. He did not know if this had been agreed with the leaseholders. He was not aware of any determination made under Part I of the fourth schedule of the lease.

39. He explained that the administration charges were charges levied for the collection of arrears which are raised on the individual in arrears so that other leaseholders do not have to share that cost. Mr. Gearon was

not able to point to any provision in the lease entitling the lessor to raise such a charge other than paragraph 4(a) of the fifth schedule.

40. Mr. Gearon relied on the service charge accounts for 2006 to support the charges raised for that year. He produced an estimate of the costs for 2007 to support the charges for that year. The accounts for 2007 had not yet been prepared.
41. In relation to cleaning and gardening services, Mr. Gearon explained that the Applicant employed contractors to carry out these services and prescribed the frequency of delivery of the services. The Applicant used the same contractors on other properties and Mr. Gearon would be surprised if they were not doing the work properly. Mr. Gearon had not personally checked that the services were being carried out. He said that there had to be an element of trust. The Applicant's estate manager carried out monthly inspections and she had told him that the work was done. No written statement was available from the estate manager. Mr. Gearon said that he had received no written complaints from other leaseholders about the level of services except at the time when Orchard Hall took on its own management.
42. In relation to lack of maintenance, Mr. Gearon said that work had been planned for 2006 to include replacing doors, pointing, repairing fences and decoration. However due to lack of funds, this had been postponed. The work was going to be done in 2008 but excluding Orchard Hall.
43. In relation to insurance, Mr. Gearon said that all properties in the Applicant's portfolio were insured through one insurer and that there would be a block policy for the whole block. The insurer had been changed in 2006-07.
44. Mr. Gearon explained that the item for removal of rubbish in the 2006 accounts related to the cost of a contractor to remove items dumped in the bin store. He had no detail available. He thought that it was unlikely to be a single occurrence and was probably a series of removals.
45. In relation to electrical repairs, Mr. Gearon explained that the Applicant makes an estimate of the likely cost to be incurred and if that amount is not spent, it is returned to the leaseholders in the end of year adjustment.
46. Mr. Gearon said that the lease contained no obligation for the lessor to provide rubbish bins nor to clean the windows. No charge had been included in the service charge for such items.
47. Mr. Parrish gave evidence that the communal stairs were grubby when he viewed the Property in 2005 and that no cleaning was done until well into March 2006. There was a card on which cleaners were meant



to record their visits and the last entry on that was for July 2005. He was unable to produce the card. The cleaners then came for a while but they stopped coming altogether in September 2006 and had not been seen since. Although he goes out to work, the cleaners came on Saturdays and he was there on Saturdays so he knew whether or not they had attended. He would also notice a piece of dirt on the stairs from one week to the next.

48. He said that the attendance of the gardeners was sporadic. In 2007, the grass was not cut until June when it was about 8 to 9 inches high. He said that the gardeners did not trim 2 large conifers outside flat A and eventually the leaseholders cut them down about 18 months ago.
49. He confirmed that he was not challenging the amounts charged by the cleaners and gardeners, merely the fact that they were not doing the work for which they were contracted.
50. Mr. Parrish also relied on letters signed by 4 of the other leaseholders in Orchard Hall, all in identical terms, saying that no cleaning was done at Orchard Hall between October 2005 and March 2006 and between August 2006 and July 2007 and that the gardening service provided was not acceptable during the same periods.
51. Mr. Parrish said that he could recall one occasion in 2006 when it was necessary for the lessor to remove electrical goods, a freezer, a TV and a sofa.
52. Mr. Parrish disputed Mr. Gearon's evidence that the estate manager made regular visits to the development. He was not aware of any such visits, nor was his neighbour at flat C who was housebound.
53. As to insurance, he says that Orchard Hall RTM Company Ltd now pays £840 per year to insure Orchard Hall with cover of £550,000. He considered that the insurance premiums charged by the Applicant were excessive.
54. As for the electrical works, he says that no electrician had called to check lightbulbs for over 2 years. He later contradicted himself by telling of an occasion when he had found a contractor on a step ladder outside his flat checking the light fitting.
55. Overall, he considered that the Applicants were not charging a fair and reasonable amount for the services which they provided. He was not challenging the amount charged for reserve funds but said that if the money was not spent then it should come back to the leaseholders.

## Findings of Fact

56. In relation to the sums charged in the 2006 accounts, the Tribunal makes the following findings of fact:

- 1) The sum of £1,403.04 charged for gardening was reasonable. There was no evidence from the Respondent of lack of service in 2006. The Applicant says that the work was done. The Tribunal accepts that evidence.
- 2) The charge for cleaning at Orchard Hall should be reduced by 50% to £484.18. The Tribunal accepts the evidence of the Respondent supported by the other leaseholders at Orchard Hall that there were no visits by cleaners between October 2005 and March 2006 and after September 2006. The Applicant relied on trust and the visits by the estate manager but no logs of visits were kept. The evidence gained by the Tribunal's inspection is not relevant as the Applicant is no longer responsible for cleaning Orchard Hall. The Respondent accepts that the cleaners did visit between March and August 2006 which amounts to 6 months or half of the year so the Tribunal allows half of the cost of the cleaners for 2006.
- 3) The charge for removal of rubbish is excessive and should be reduced to £587.50 (including VAT). There was no estimated sum for that item which suggests that it was a one-off cost. The Tribunal accepts the Respondent's evidence that there was one occasion when a few items had to be removed. Notwithstanding the terms of direction 3 which are set out at paragraph 4 above, the Applicant was unable to produce any evidence as to why this cost was incurred.
- 4) The cost of insurance is reasonable. Although the Respondent said that it was excessive, he had obtained no alternative quotes for the cost of insuring the whole block despite a request from the Applicant in its letter dated 19 April 2006. The Tribunal did not find the actual cost of insuring Orchard Hall to be a useful comparison without being able to compare the cover provided by that insurance.

57. In relation to the sums charged on account for 2007, the Tribunal makes the following findings of fact: -

- 1) The estimated charge for gardening is reasonable. The Respondent made general complaints with no specific complaint except that the grass was not cut until June. The Tribunal accepts Mr. Gearon's submission that if that was the case, the grass would have been much higher than 8 or 9 inches. The Tribunal accepts the Applicant's evidence that the gardening services are being provided to a reasonable standard at a reasonable cost.
- 2) The estimated charge for cleaning services at Orchard Hall should be deleted. The Tribunal accepts the evidence of the Respondent and his fellow leaseholders that no cleaning services were supplied after September 2006.

- 3) The estimated cost of insurance is reasonable. The Tribunal relies on the same reasons as set out above at paragraph 56.4.

58. The Tribunal is satisfied that the actual cost of general repairs shown in the 2006 accounts and the estimated costs for electrical work and general repairs for 2007 is reasonable. The Respondent did not provide any sufficient evidence to justify a finding to the contrary.

### **Conclusions**

59. The whole dispute might have been avoided if both parties had looked at the terms of the lease and established their rights and obligations before proceedings were issued and if both parties had made better attempts to communicate with each other. It would also have helped to focus minds if both parties had considered and properly complied with the directions issued by the Tribunal.
60. By the Applicant's own admission, the service charges levied by the Applicant have not been calculated in accordance with the terms of the lease of the Property. They may have been calculated in accordance with the terms of the leases of the flats in Bramley Mews but those terms are not binding on the Respondent. It may be that those terms are fairer to the Respondent than the terms in his lease and it may be that the Applicant applied them with the best of intentions. However, what the Tribunal must consider is the terms of the lease of the Property.
61. Possibly due to the fact that he did not appreciate that fact, the Respondent did not seek to challenge any of the costs which relate just to Bramley Mews. For that reason, the Tribunal has no evidence before it on which it can make any change to those costs.
62. In relation to the 2006 accounts, the Tribunal has found that the actual costs for removal of rubbish and cleaning at Orchard Hall should be reduced to £587.50 and £484.18 respectively. That reduces the total expenditure on all schedules in 2006 to £15,915.04. The lease provides that the Respondent is to pay one-eighteenth part of that which amounts to £884.17. That is the total of the service charge which the Respondent should pay for 2006, taking account of any payments which have been made on account and taking account of the credit by the Applicant for the year end adjustment of £54.15. The Tribunal does not know whether any payment was made on account of service charge at the beginning of 2006 either by the Respondent or his predecessor.
63. In relation to 2007, the estimated costs on all 6 schedules amount to £19,463. The Tribunal has found that the estimated cost of cleaning at Orchard Hall should be removed. That is the sum of £800. That leaves a total estimated cost of £18,663. One-eighteenth part of that amounts to £1,036.83. That is the amount which was payable by the

Respondent on account in 2 equal parts. Obviously, there will need to be an adjustment when the end of year accounts have been prepared.

64. The Tribunal notes that the estimate of £800 for cleaning including the cost of carpet cleaning. Neither party gave evidence as to whether or not the carpet was cleaned. If the Applicant has incurred such a cost then that cost may be included in the final accounts.
65. The Respondent correctly points out that since Orchard Hall RTM Company Ltd has taken over management of Orchard Hall from 1 August 2007, the Applicant's costs of managing the development will have been reduced. Any such reductions will be taken into account in the final accounts. However, the reduction may not be as large as the Respondent anticipates as he remains liable for payment of one-eighteenth of the overall costs which includes costs relating to Bramley Mews and the garages.
66. The Tribunal finds that the Applicant is not entitled to recover the administrative charges from the Respondent. There is no provision in the lease entitling the Applicant to make such charges. The provision relied on by the Applicant merely entitles it to include such costs in the overall service charge payable by all leaseholders.
67. The Respondent raised a number of issues which are not relevant to this application. His complaints about lack of maintenance work to the buildings and garages are not relevant because no work has been done and no charge has been made. The Respondent should consider whether to enforce the lessor's covenants in the lease rather than take the point on a challenge to the service charge. Likewise, his complaint about lack of dustbins is not justified as there is no obligation in the lease for the lessor to provide dustbins. He also complained about the legal costs charged by the Applicant to Orchard Hall RTM Company Ltd. Again, that is not part of the service charge.
68. In summary, the Tribunal concludes that: -
- 1) The total service charge payable in respect of Flat E, Orchard Hall for the year ended 25 December 2006 is £884.17. To the extent that that sum has not been paid to the Applicant by payments on account, it is now due and payable by the Respondent.
  - 2) The service charge payable in respect of Flat E, Orchard Hall on 1 January 2007 was £518.42 and on 1 July 2007 was £518.41. Those sums are now due and payable by the Respondent.
  - 3) The administration charges of £58.75 levied by the Applicant against the Respondent on 1 August 2006 and 30 January 2007 are not payable by the Respondent.



Mr. J.G. Orme  
Chairman

Dated 1 August 2008