

**Southern Rent Assessment and Leasehold Valuation Tribunal**

**CHI/00HA/LIS/2008/0011**

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**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 27A AND SECTION 20C LANDLORD  
AND TENANT ACT 1985**

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Applicant: Miss B. Lyster

Respondent: Knightstone Housing Association

Property: Flat 1, 3 Bloomfield Avenue, Bath, Avon,  
BA2 3AB

Date of Paper Determination: 2<sup>nd</sup> February 2009

Date of Inspection: 2<sup>nd</sup> February 2009

Also in Attendance at the Inspection: Eleanor Lowman Knightstone Housing

Members of Leasehold Valuation  
Tribunal: Miss S Casey (LLB HONS)  
Lawyer Chairman  
Mr S Hodges FRICS  
Mr S Fitton

Date of Tribunal's Decision: 2<sup>nd</sup> February 2009

## **Issues**

1. The Applicant applied to the Tribunal to determine whether certain items of the service charge for the years 2005/06, 2006/07 and 2008 were reasonable. The disputed items are "day to day" repairs and the amount and formula for calculation of the sinking fund. No dispute had been raised about the identity of the person by whom such a service charge would be payable, the person to whom it is payable or when or in what manner it is payable. The Tenant also applied for a Section 20C determination namely that it would be unfair for the landlord to recover costs from the tenant in respect of this application by way of future service charge.
2. Throughout the proceedings the parties attempted to negotiate a settlement of the dispute. They were able to reach settlement in respect of the day to day repairs. In addition, the Applicant had queried the balance amount of her sinking fund balance at the start of the year (2007/08). These items were resolved during the course of the negotiations. The remaining issues for the Tribunal to resolve were precise calculation of the sinking fund balance at the start of the year 2006/07 and an explanation of the credit of £1,254.94 which the Applicant requested should be fully explained: and the introduction and calculation of the sinking fund provision over a 20 year period and, finally the proportionate contributions from each Lessee.

## **Inspection**

3. On 2<sup>nd</sup> February 2009 the Tribunal inspected the subject property, Flat 1, 3 Bloomfield Avenue, Bath, Avon, BA2 3AB. The Property is a semi-detached Victorian property built of natural stone under a tiled roof. At the front of the Property there is parking for two cars. There is a small communal garden which is paved with slabs. There are two casement

windows in the subject Property on the top floor together with soffits, fascia and barge boards which would need cyclical attention. There is no communal bin area or drying area. At the rear of the property there is an attached single story extension in reconstructed Bath stone elevations under a tiled roof.

### **Statutory Regulations**

4. Section 18 (1) of the Landlord and Tenant Act 1985 defines a service charge 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, 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..."

5. Section 19 provides that

(a) "(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

(b) only to the extent that they are reasonably incurred, and

(c) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount shall be limited accordingly...."

6. Section 27A of the Act provides that

"An application may be made to a Leasehold 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..."

### **Section 20 Costs**

A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court (or residential property tribunal) or leasehold valuation tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

The application shall be made:

- a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal.

c) in the case of proceedings before the Lands Tribunal, to the tribunal,

d) in the case after the proceedings are concluded to a County Court.

### **Determination of the Tribunal**

#### **Balance on Account**

7. Having been presented with a comprehensive bundle containing budgets, reports and sinking fund calculations the Tribunal noted that it would have been helpful if they had had the opportunity to seek clarification with regard to certain calculations contained in the bundle. The Tribunal have done the best they can on the available information and in the circumstances.

8. The financial year runs from April to March. The balance at the start of 1<sup>st</sup> April 2008 in the Applicant's account is £2,874.45.

9. The Respondent filed a second bundle of documents containing a statement dated 23<sup>rd</sup> December 2008. At 2.11 in that statement the Respondent states:-

"An income and expenditure statement for the building sinking fund is produced annually and sent out to Leaseholders. Some adjustments were needed to the opening balance at 1<sup>st</sup> April 2007 (as queried by Miss Lyster). We agreed that we would not charge the £1,254.94 for cyclical works carried out in 2004. This was not picked up by our Finance Department so the building sinking fund income/expenditure statement showed that the amount had been charged. This has now been rectified. The £1,254.94 has been

credited back to the sinking fund along with the interest that would have been accrued. The balance in the fund as at 1<sup>st</sup> April 2008 is £2,874.45. On 1<sup>st</sup> April 2007 the balance shown is £1,149.74 excluding the adjustment and interest.”

**Is the Introduction of and the Method of Calculation of the Sinking Fund Fair?**

10. The Tribunal determined that the method of calculation of the sinking fund was fair. The contributions are recoverable under the Lease made between Knightstone Housing Association Limited and Miss B Lyster, dated 31<sup>st</sup> July 1992, Clause 3. Clause 3 provides authority for collection of one quarter of the costs and payments incurred or charged by the Lessor for service charges, Clause 3(a); Clause 3(b); Clause 3 (d); Clause 3 (e) reserves against future liabilities i.e. sinking fund; Clause 3(f) fair proportion of administrative costs of the Lessor. The administrative charge is at the larger end of the scale but not unreasonable, the scale would normally be in the region of 10 – 15% of the annual service charge fund. The Clause gives adequate discretion to impose a charge that is, reasonable.
11. In considering how to operate the sinking fund the Respondents had clearly had extensive consultation with the Leaseholders and had complied with all necessary procedural requirements. See 4.9 in the new bundle, page 6 “Consultation Process”. The Respondents evidenced consultation from 2000 and 2001 regarding the new system for calculation of the sinking fund that was then implemented after that consultation process. Pages 68 and 69 of the original bundle illustrate the principles of the sinking fund calculation. The Respondents phased in the move to a 20-year rolling programme for the sinking fund over a number of years. In March 2008 Ridge and Partners were appointed by the Respondents to carry out a survey to give an independent view on future works required and estimated costs. (Report of Ridge Property and Constriction Consultants, May 2008 page 70-78 of the new bundle). A copy of this survey was sent to the Applicant on 6<sup>th</sup> June 2008 together with a covering letter and summary of the proposed sinking fund contribution that would apply from October 2008. The letter advised that there would be a consultation meeting which would give Leaseholders a chance to pose any questions about the sinking fund calculation. The Applicant did not attend this consultation meeting. The Tribunal agreed with the observation that a Flat with an effective sinking fund provision was more saleable than one without. It was prudent for the Respondent’s to take account of the VAT costs that would be incurred and would form, in due course, part of

the total cost of the works. The administration charge of 15% is allowable in the Lease.

### **Contributions**

12. Contributions are determined by the original Lease, see Clause 3, which states that each Lessee is responsible for one quarter of the costs expenses and payments notified by the Lessor. The Respondents had explained in their statement dated 23<sup>rd</sup> December 2008 at 2.9: "the sinking fund arrangement only applies to leasehold properties. For our rented units we pay in full for these units' contribution at the time of the work. So, for 3 Bloomfield Avenue, there is a sinking fund for Flat 1 which is leasehold and the contribution for this Flat is one quarter of the costs plus our administration fee. For the other three flats which are rented units Knightstone as the owner pays in full the remaining three quarters of the cost at the time of the works".
13. The Applicant, in an attempt to reduce her contribution to the service charge fund had offered to paint her own windows. The Tribunal observed that the Respondents are obliged under the Lease to carry out external decoration and repairs. They have the authority in the Lease to charge the Applicant for this work. It does appear that the Applicant only has two windows which would need attention but her property is located on the top floor and therefore any painting works carried out by any contractor will need to be done with the provision of scaffolding. The Applicant had taken on the Lease on the basis of the obligations set out within it at the time of purchase. The Tribunal determined that the costs saved to the Applicant of painting her own windows would be minimal bearing in mind that scaffolding would have to be erected in any event to attend to the cyclical works on the fascia boards, soffits and barge boards. Whilst the parties are at liberty to amend the terms of the contract, should they both agree to do so, the Tribunal was not persuaded that the applicant would achieve a financial benefit by undertaking the painting task herself.
14. The Tribunal determined that the costs demanded by the Respondents arose following a survey by Ridge Partnership Consultants who have provided independent professional advice. The Respondents had acted upon the advice provided to them by the surveyors. The Respondents evidenced extensive consultation with the Leaseholders. No evidence has been provided to the Tribunal that the costs calculated are unreasonable or unrealistic.

### **Section 20 C, Landlord and Tenant Act 1985**

15. As a result of successful negotiations between the parties during the course of the proceedings the Tribunal only had to determine the issue of the reasonableness of the sinking fund arrangements. With this in mind the Tribunal limits recovery of the Landlords costs incurred in connection with these proceedings via any future service charge to 50% only of those costs.

Signed: ..... Siobhan Casey  
Siobhan Casey  
Lawyer Chairman Appointed by the Lord Chancellor

Decision Dated: ..... 2 February 2009

Reasons Dated: ..... 17 February 2009