

IN THE MATTER OF

13 UNDERDOWN HOUSE, GUINEA STREET, BRISTOL, BS1 6TA

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

CASE NUMBER:CHI/00HB/LSC/2009/0045

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

DECISION

Applicants/Leaseholders: Ms R Persad and Mr L Dookie (13 Underdown House)
Ms M S Smart (78 Waring House)
Mr Koller Kozaks (39/71 Waring House)

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

Premises: 13 Underdown House
Guinea Street
Bristol
BS1 6TA

Date of Application: 18 March 2009

Date of Directions: 28 April 2009

**Date of Inspection and
Hearing of Application:** 29 June 2009

Venue of Hearing:	Conference Room 2 Whitefriars Lewins Mead Bristol BS1 2NT
Members of Leasehold Valuation Tribunal:	Mr A D McC Gregg (Chairman) Mrs M Hodge Bsc (Hons) MRICS Mr D Johnson Clerk Cathy Brewer
Persons present at the Hearing (For the Applicant):	Ms R Persad Mr L Dookie Mr J G Koller Kovaks
Persons present at the Hearing (For the Respondent):	Mr J Tooze and Ms M Millington

1. Inspection of the Premises

1.1 On the 29th of June 2009 prior to the hearing the Tribunal inspected the premises at 13 Underdown House, Guinea Street, Bristol, BS1 6TA.

1.2 Underdown House consists of a block of flats, probably built in about 1960, on land adjoining Redcliff Hill and as part of a development which included similar and adjoining blocks of flats in Francome House and Waring House.

1.3 The majority of the flats are occupied by Council tenants and the Tribunal were given to understand that 2 of the flats were occupied by resident caretakers.

1.4 A small number of the flats have been purchased by tenants under the Statutory Right to Buy Scheme.

1.5 The Applicants, Ms R Persad and Mr L Dookie purchased their flat on the 8th day of March 2004 and a copy of their lease was included in the Respondent's bundle of documents (Pages 5-24 inclusive).

1.6 The Tribunal inspected the Applicants' maisonette which was situated on the third and fourth floors of Underdown House, access being gained via a modern lift and a staircase serving the common areas of all floors.

1.7 A layout of the accommodation is found on Page 3 of the Respondent's bundle attached to the lease and may be described as follows:-

Entrance via the front door from a shared walkway into a hall off which, on the left hand side is a small kitchen and straight ahead is a lounge with a balcony. A flight of stairs leads from the hall to a landing on the second floor which in turn leads to a WC, bathroom and 2 bedrooms at the rear of the premises. There is a third bedroom at the front of the premises with a door giving access to a balcony.

1.8 The flat was well maintained by the Applicants/Leaseholders.

1.9 However, during the inspection the Tribunal were shown a number of defects which they were told were as a result of a lack of or poor maintenance by contractors employed by the Respondents. These defects (which are not exhaustive) included poor paintwork on the outside of the front door, the floor of the balcony adjoining the lounge was supposed to have been painted and had not been cleaned down after the painting of the adjoining walls and ceiling, insulation had apparently not been put in to the window dividers when they were originally fitted, holes had been drilled into the wall of the lounge and not filled in, earth bonding to the radiator in the hall was exposed and considered by the applicants to be a safety hazard, there was evidence of rain penetration through the window of the small rear bedroom upstairs, there was staining on the wall near that window, in the front bedroom there was evidence of long term damp penetration through the ceiling from the balcony above, the door to the balcony from this bedroom was ill fitting and the Tribunal were told that the glass in the fire door smashes when the door bangs in the wind, there was builders' debris and litter on that balcony, in the rear double bedroom the wiring for the television had been poorly fitted.

Externally the communal balcony was supposed to have been rubbed down before painting and handrails were now showing rust penetration indicating that they had not been properly treated. The door to the communal bin area had cracked glass due to either vandalism or the door slamming in the wind and attention was drawn to the similarity of the pattern of the cracks with that on the glazed door to the balcony of the front bedroom inspected at number 13. The Tribunal were told that many of the external works had not been carried out though they had been charged for by the contractors. This included work on the concrete structure. The Tribunal were further told that a number of the balcony glazing panels had not been changed though they had been charged for. There was clear evidence that the railings adjoining the main entrance had not been painted for many years.

1.10 It should be noted that the above is not an exhaustive list of all of the complaints that were drawn to the attention of the Tribunal and is merely indicative of the main complaints.

2. The Issues

2.1 The issues to be determined by the Tribunal relate to certain items of the service charges payable by the Applicants for the years 2004/5, 2005/6, 2006/7 and 2007/8.

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

Schedule of Disputed Items 2004/5

Item No	Description	Amount	
	Repairs	£121.18	
	Buildings Insurance	£228.44	
	Management Fee	£162.00	

Schedule of Disputed Items – 2005/2006

Item No	Description	Amount	
	Repairs	£100.82	
	Electricity	£152.00	
	Caretaking	£376.25	
	Building Insurance	£241.74	
	Management Fee	£126.00	

Schedule of Disputed Items – 2006/2007

Item No	Description	Amount	
	Caretaking	£434.47	
	Administration	£191.21	
	Building Insurance	£263.81	
	Management Fee	£190.00	
	Repairs	£32.99	

Schedule of Disputed Items – 2007/2008

Item No	Description	Amount	
	Building Works	£9,407.87	
	Insurance	£278.05	
	Clearing Stack System	£60.00	

3. Relevant Liabilities under the Lease

3.1 The Applicants' liabilities (covenants) are set out in their lease which is dated the 8th of March 2004 (Pages 11-24 of the Respondent's bundle).

3.2 Specifically, Clause 5 (2)(a) sets out the liability to pay the service charge that being described as "a proportion of the reasonable expenses and outgoings incurred or anticipated by the Council in respect of the repair, maintenance and renewal of the structure and exterior of the building and in respect of the other matters specified in the third schedule hereto".

3.3 The third schedule (Page 19 of the Respondent's bundle) sets out "the Council's expenses and outgoings and other heads of expenditure in respect of which the tenant is to pay a proportionate part by way of a 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 it 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 Applicants' Case

Repairs

5.1 The Applicants felt they were being charged for repairs, many of which were caused as a result of vandalism. They asked whether it was reasonable for them to pay that proportion bearing in mind the City Council's liability to house, in the blocks of flats, a number of tenants who did not have the same social skills and motivation to look after the premises as a whole and many of whom were responsible for the vandalism.

Building Insurance Premiums

5.2 The Applicants felt that the insurance premiums demanded in each year were considerably higher than other leaseholders and that their premises were insured for a figure that was substantially greater than the value of the premises themselves.

Management Fees

5.3 The Applicants felt they were not getting a good service for the management fees charged and that the management was poor and inadequate.

Electricity Charges

5.4 The Applicants felt that this was excessive.

Caretaking

5.5 The Applicants felt that this was to a poor standard and did not adequately cope with the littering of the building, stopping people urinating in the lift and general vandalism and they felt they were paying a high cost for poor quality work.

Administration Fee

5.6 The Applicants felt that they should not be paying this as it was part of the management fee.

Building Works (£9,407.87)

5.7 This was the biggest issue financially in contention and the figure had been revised by the Respondents from a figure of £14,048.69.

Clearing Stack

5.8 The Applicants felt that the clearing of the stack was clearly the responsibility of the Respondents and they had been forced to do it simply because of the Respondents' refusal.

6. The Respondent's Case

6.1 Mr Tooze then presented the Respondents' case and referred the Tribunal to Bundles R5, R6, R7 and R8 dealing with the repairs undertaken and the expenditure incurred each year.

6.2 With regard to the insurance premiums Mr Tooze pointed out that the building reinstatement costs differ from the value of the property that might be expected from the sale of a property on the open market. Mr Tooze accepted that in a number of cases if it could be identified that the damage was due to vandalism the applicants should have been able to claim on their insurance policy for the repair and reinstatement as a result of that vandalism.

Management Fee

6.3 Mr Tooze said that there was some cross over between the management fee and a fee for administration and felt that the Applicants were getting value for money in the management fees charged. He accepted that the Respondents had made a number of errors in their calculation and that the bill for 2004 had only now been corrected stating that there were "a number of issues which we have been tripped up on".

The Electricity

6.4 The bill for the electricity again had been corrected 2 years after it had been submitted. Mr Tooze accepted that this was another error.

Caretaking

6.5 Mr Tooze accepted that there was vandalism throughout the blocks and went on to say that it was difficult to manage blocks of flats where very many of the inhabitants lacked social skills.

Administration Fee

6.6 This fee had first been charged in the year 2006/7 and even though there was no reference to the liability to pay an administration fee in the lease Mr Tooze felt that it should be in addition to the Management Fee and covered by the general service charge provisions.

Building Works for the Years 2007/8 (£9407.87)

6.7 There was clearly confusion concerning what sum was due from the Applicants under their service charge provisions. A number of demands had been made, including threats of court proceedings, against the Applicants and eventually a demand had been made for £14,048.69 which had been capped at £9,407.87.

Clearing the Stack

6.8 Mr Tooze accepted that that was the responsibility of the City Council and should have been dealt with by their contractors.

7. The Determination

The Tribunal, having inspected the premises considered all the papers in the case and listened to the arguments from both the Applicants and the Respondent, concluded as follows:-

7.1 Underdown House has been the subject of shoddy maintenance and management for some years and that the Applicants were not therefore getting value for money.

7.2 The Tribunal felt that the Respondent should have identified those elements of maintenance and caretaking which arose as a direct result of vandalism in order that home owners such as the Applicants could claim for those items on their buildings insurance policy particularly since they appear to pay a higher premium specifically to cover damage by vandals.

7.3 The quality of the workmanship painting had in many cases been poor, being given only "a lick" without proper preparation.

7.4 There was evidence that the property had not been managed to get to the core of the problems and that rubbish had been deposited. A particularly bad example of the former was the leak in the front bedroom of the premises which had been in existence since before the Applicants purchased the premises and which had been highlighted in a letter dated the 17th of March 2003 (R30) of the Respondent's bundle.

7.5 Poor management was also indicated by the numerous instances of charging in error which had to result in recalculations at a later date, often 2 years, and the failure therefore lay not only in the management of the building as a whole, including the caretaking, but also in the management of the accounts and this justified a reduction of 15% from all management fees.

7.6 It was noted that there is no provision in the lease to pay an administration fee and yet this had suddenly been charged in the Year 2006/7 under the pretext of it being similar to a management fee and thus forming part of the service charges. The Tribunal did not accept this argument and this item should be disallowed.

7.7 With regard to the building works in the Year 2007/2008 (the biggest financial item), the Tribunal found that these figures were inconsistent and in a mess and furthermore the workmanship in many cases had been shoddy and was not of a reasonable standard. Accordingly this item should be reduced to £7,024.34 for this year.

7.8 With regard to the insurance premiums for the years in question there appeared to be inconsistencies in the sums demanded throughout the years in question and in particular for the Year 2007/2008. Accordingly only a figure of £104.53 will be allowed in respect of this item.

7.9 With regard to the clearing of the stack, the Tribunal finds that this was the liability of the Respondent and determines that the Applicant should be reimbursed for this figure though the Tribunal has no power to order such reimbursement.

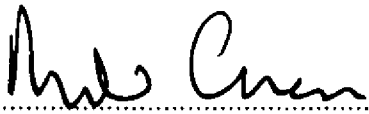
7.10 In the light of the above the Tribunal determines that the following deductions should be made in respect of the service charges for the years in question.

Year	Description	Amount	Deduction following Determination
2004/5	Repairs	£121.18	
	Buildings Insurance	£228.44	
	Management Fee	£162.00	£24.30
	Administration at 15%	£86.77	£86.77

Year	Description	Amount	Deduction following Determination
2005/6	Repairs	£100.82	
	Electricity	£152.00	
	Caretaking	£376.25	
	Building Insurance	£241.74	
	Management Fee	£126.00	£18.90
	Administration at 15%	£106.63	£106.63

Year	Description	Amount	Deduction following Determination
2006/7	Caretaking	£434.47	
	Administration	£191.21	£191.21
	Building Insurance	£263.81	
	Management Fee	£190.00	£28.50
	Repairs	£32.99	

Year	Description	Amount	Deduction following Determination
2007/8	Building Works	£9,407.87	£2,383.53
	Insurance	£278.05	£106.73
	Clearing Stack System	£60.00	
	Administration at 15%	£107.05	£107.05
	Administration at 5%	£668.99	£668.99

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

Date: 10th July 2009