

IN THE MATTER OF

**FLAT 72 EDDINGTON COURT, 30 BEACH ROAD, WESTON SUPER MARE,
BS23 1DH**

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

CASE NO: CHI/00HC/LIS/2009/0030

AND

**IN THE MATTER OF AN APPLICATION UNDER
SECTION 27A OF THE LANDLORD & TENANT ACT 1985 AS AMENDED ("THE
1985 ACT")
AND SECTION 20(C) OF THE 1985 ACT**

DECISION

Applicant/Leaseholder: Mr Norman W Greed
Flat 72 Eddington Court
30 Beach Road
Weston Super Mare
BS23 1BH

Respondent/Landlord: Fairhold Homes (No 9) Limited
c/o Seddons Solicitors
5 Portman Square
London, W1H 6NT

Premises: Eddington Court
30 Beach Road
Weston Super Mare
BS23 1DH

Date of Application: 20 April 2009

**Date of Provisional
Directions:** 27 April 2009

Date of Further Directions: 28 May 2009

Venue of Hearing: The Campus
Highlands Lane
Locking Castle
Weston Super Mare
BS24 7DX

Members of the Leasehold Valuation Tribunal: Mr A D McC Gregg, Chairman
Mr M J Ayres, FRICS
Mr M R Jenkinson

Clerk: Mr A J Peach

Persons Present at the Hearing: (For the Applicant): The Applicant - Mr N W Greed
Mr K Kilminster (Applicant's Spokesman)
Mr L Ball
Ms M Briggs
Mr Heady

Persons Present at the Hearing (For the Respondent): The Respondent: Fairhold Homes (No 9) Limited
Mr P Letman (Counsel)
Miss J Canham (Seddons Solicitors)
Mr I Rapley (Director of Fairhold Homes (No 9) Limited)
Miss L Smith (Property Manager)

Other Persons Present as Observers: Numerous other interested parties attended as observers.

1. Inspection of the Premises

- 1.1 There was no inspection of the premises as the Tribunal had previously inspected on the 2nd of April 2008 prior to the hearing of Case No CHI/008C/LSC/2007/0108.
- 1.2 At the directions hearing on the 28th of May it had been deemed unnecessary to hold a further inspection.

2. The Issues

- 2.1 The Applicant requested the Tribunal to determine three questions.
- 2.2 The questions were as follows:-
 - (i) Is the landlord entitled to charge a rent for the house manager's flat that includes service charge and ground rent when he has incurred no such costs/losses, the service charge already being paid by the other leaseholders in their own service charges and the ground rent not being a cost that he incurs?
 - (ii) Is the landlord entitled to re-claim income from the guest apartment retrospectively, when the income has always been part of the audited service charge and budget calculation and confirmed by the landlord's agent as being solely for the purpose of covering the costs of the apartment paid for by the leaseholders?
 - (iii) If the landlord re-claims that income retrospectively or keeps it for his own account in future should he not also repay/pay all the costs associated with maintaining and managing the apartment?

2.3 Prior to the hearing the Applicant withdrew Question 3.

2.4 The remaining two questions posed above related to the years listed below.

Year	Service Charge and Ground Rent	Income from Guest Apartment	Alternatively Cost Association with Guest Apartment
2004/5	£1,738.00	£993.00	£993.00
2005/6	£2,405.00	£2,104.00	£2,104.00
2006/7	£2,386.00	£2,046.00	£2,046.00
2007/8	£2,548.00	£2,717.00	£2,717.00
2008/9	Not specified	Not specified	Not specified

3. Relevant Liabilities under the Lease

3.1 The Applicant's liabilities (covenants) are set out in his lease which is dated the 17th of August 2004 and are specifically found in the fourth and fifth schedule of that lease (Pages 74-84 of the agreed bundle).

3.2 Specifically, the fourth schedule of the lease (Page 74) specifies the service charge calculation and those items that are covered by the service charge.

3.3 The eight schedule of the lease sets out the annual ground rent and specifies the service charge fraction numerator to be applied to each apartment.

4. The Law

4.1 Section 27a of the Landlord & 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 purposes 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.

5. Preliminary Argument

- 5.1 Before considering the main issues and the two remaining questions posed by the Applicant the Tribunal were asked by Mr Letman, on behalf of the Respondent, to consider as a preliminary point an abuse of process argument namely that the matters had already been adjudicated upon by a previous Tribunal (CHI/008C/LSC/2007/0108).
- 5.2 This preliminary point had been referred to in the Respondent's answer to the Applicant's case dated the 25th of June 2009 (Pages 31-33 of the agreed bundle) and the witness statement of Ian Rapley dated the 26th of June 2009 (Pages 34-38 of the agreed bundle).
- 5.3 It was further expanded upon by a skeleton argument handed to the Tribunal on the day of the hearing and dated the 8th of September. The Tribunal considered whether to accept such a late submission, but concluded that it would not prejudice the Applicants case. The Applicant agreed to it's inclusion.
- 5.4 Mr Letman opened his arguments by referring to Regulation 11 of the Leasehold Valuation Tribunal's procedure (England) Regulations 2003 on the basis that the application "is frivolous or vexatious or otherwise an abuse of process of the Tribunal".
- 5.5 Mr Letman argued that the two remaining questions had been considered by the Tribunal at the previous hearing (Document 7, Pages 93, 97 and 102) and that the application that was now before the Tribunal should be dismissed.
- 5.6 Mr Letman therefore contended that the application was an abuse because the matters raised were "res judicata".
- 5.7 Mr Letman also referred to passages from Phipson on Evidence (Paragraphs 44-23) and the case of Johnson -v- Gore Wood (No 1).

6. The Respondent's Case

- 6.1 Mr Kilminster, on behalf of the Respondent, opposed the Applicant's submissions.
- 6.2 In particular he argued that the matters before the Tribunal had not been the subject of a previous decision and that the previous Tribunal had only determined the market rent for the housekeeper's flat. The subject of the service charge and ground rent had not been addressed.
- 6.3 It was the Applicant's belief that this was on the basis of it being treated as a 'headline rent' as in an assured tenancy where the rental would include not only the rent but also the service charge and a ground rent element.
- 6.4 He specifically referred in his argument to the witness statement of Norman Greed dated the 6th July 2009 (see Pages 39-42 of the agreed bundle) and in particular to Paragraph 4 of that statement together with further copy correspondence not forming part of the agreed bundle.
- 6.5 Mr Letman for the Respondents replied by saying that the service charge and ground rent issue was fully discussed but the previous Tribunal had arrived at the rent payable under the lease rather than any notional assured tenancy rent.


7. The Determination

- 7.1 Having considered both sides of the argument concerning the preliminary issue the Tribunal concluded that the matters before the Tribunal in this application were, in effect, the same as those issues that had been before the previous Tribunal (CHI/008C/LSC/007/0108) and that to adjudicate upon them again would amount to an abuse of process.
- 7.2 The Tribunal agreed with Mr Letman that the previous decision had simply used the comparisons with an assured tenancy to get to the rent which should be payable under the lease. Whether this did or did not include service charge or ground rent was a matter for the Landlord.
- 7.3 With regard to the income from the guest apartment, the Tribunal noted that the previous decision had made it clear that this was not a service charge matter.

8. Section 20c Application

- 8.1 The Applicant had made an application under Section 20(c) of the Act to preclude the Landlord from seeking to recover the costs of the Tribunal proceedings.
- 8.2 Mr Kilminster felt that the Respondents should not be entitled to their costs for the following reasons:-
 - (i) The respondents had ignored correspondence.
 - (ii) The late submission of the skeleton argument.
 - (iii) That the Applicants would have been happy with a written determination.

8.3 In the light of the Tribunal's finding the Tribunal decided that it would be just and equitable for the Respondent to be able to recoup their costs which had been quoted as amounting to £9,000.

Signed: 
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Andrew Duncan McCallum Gregg (Chairman)

Dated: 24 September 2009