

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



Section 27A Landlord and Tenant Act 1985 (as amended)
Application for a determination of liability to pay service charges

DECISION AND REASONS

Case Number: CHI/00HG/LSC/2009/0062

Property: 6 – 16 Holne Chase The Spinney Widewell
Plymouth PL6 7UB

Applicant : The Spinney (Plymouth) No 1 Co Ltd

Respondent : Miss A. Kirby

Date of Application: 3rd April 2009

Date of Determination and inspection: of 4th August 2009

Tribunal Members: Cindy A. Rai LLB Solicitor (Chairman)
Michael C. Woodrow MRICS (Valuer Member)

Date of Decision: 10th September 2009

SUMMARY OF DECISION

1. The Tribunal determined that the service charges set for 2009 and which amount to a total payment of £525 per annum payable in two equal instalments of £262.50 on the 1st January

2009 and the 1st July 2009 "on account" of the costs incurred or to be incurred that year by the Management Company, are reasonable.

INSPECTION

2. On the day of its determination the Tribunal inspected the common parts of the Property by appointment and were accompanied by Mrs Cottrell who is one of the occupiers of Flat 12, and a shareholder and director of the Applicant. The Respondent was not present. The Application was submitted on behalf of the Applicant by Freehold Management Services Limited which is employed as the managing agent of the Applicant. The Applicant is the freeholder of the Property and the Tribunal has been informed that all of the leaseholders are shareholders in the Applicant.
3. The Property comprises a purpose built block of six self contained flats on three levels built in or about the early 1990s. The building occupies fairly large corner plot a with rear frontage to Lulworth Drive with a public footpath on another. The garden are open plan to the side is mainly lawn. The boundaries are a mixture of fencing and some hedging. Access to the building is gained via concrete stairs to the front door underneath which is an integral bin store. The Tribunal was told that its dimensions do not enable the wheelie bins supplied by the local council to be stored within. The wheelie bins are therefore located to one side of the steps. The only communal areas within the building are the hall and stairs; The Tribunal were shown a UPVC window at first floor level which had recently been replaced. From the exterior it was observed that the windows in all but one of the flats had been replaced. The parking spaces serving the flats are located immediately to the front of the building. The Tribunal were told that regular maintenance of the trees which overhang some of the parking spaces is necessary to keep the parking spaces usable and also to prevent overhanging branches from becoming a hazard to

users of the adjacent public footpaths. Gaps in the fence were pointed out and it was explained that regular maintenance was undertaken to keep the garden tidy. In addition the residents hoped to accumulate sufficient funds from the service charge payments to repair the fencing.

BACKGROUND

4. Following the submission of the Application a pre trial review was held on the 12th May 2009. The Respondent did not attend. The Applicant was represented by the Managing Agents. Directions were issued on the 14th May 2009 in which further information was requested from the Applicant upon which the Respondent was invited to respond. It was determined that the application would be dealt with on paper and without a hearing unless either party requested a hearing. Subsequently the Applicant supplied bundles of information and a skeleton argument. No response has been received from the Respondent. Neither party requested a hearing.

EVIDENCE

5. The Applicants' written case is set out in a statement in which it requests a "certificate of reasonableness". It states that the Respondent has repeatedly failed to pay her service charges. All of the lessees are shareholders in the Applicant. The expenditure for the current year (2009) has been authorised by the Applicant. In past years the amounts of service charges demanded have been determined to be reasonable by other tribunals. Previously when the Respondent has not paid her mortgagees have paid instead. In addition the Applicant requests that the Tribunal consider a section 20(C) application, notwithstanding that the Respondent has not made such application, and determine that it should be rejected. In its bundle it provided the following information:-

- a. A copy of the credits and debits for the Applicants ledger operated by the Managing Agents
- b. A service charge summary for 2009
- c. Copies of statements from Lloyds Bank plc of the Applicants account

The Tribunal found the summary confusing in that it stated it was for the period 1.01.09 – 31.12.09 but also stated "January to May only". At 1.01.09 reserves totalled £982.09; subsequently a total of £1320 had been received from 5 of the 6 lessees. Items of expenditure were listed but copies of only some invoices and supporting information is supplied. The highest amounts were for:-

FMS Agency	600.00
Property maintenance	428.40
Buildings insurance premium	344.92

6. A letter from Close Premium Finance confirms that the buildings insurance premium payments are financed by advance monthly payments of £86.23 per calendar month. Although 5 payments fall due within the period 1.01.09 – 31.05.09 (which would total £441.50) the figure quoted in the summary is different.
7. The bank charges are listed and shown on the Lloyds Bank statements but these all show that entries are being made into and taken out of the account in error which might affect the charges
8. The charges for the bins, fire equipment maintenance ground maintenance and electricity for the communal areas are verifiable from the copy accounts provided. It is not possible to verify the Property Maintenance figure in that only copies of two invoices were provided from M J Building and Handy Plastic respectively and which amount in total to 372.00.
9. Copies of the minutes of the AGM of the Management Company which took place on the 13th October 2008 verify that the Applicant was advised that the FMS would charge a management fee of £200 per flat. They also evidence that the Applicant was advised by FMS that it would be able to add an interest charge

in respect of unpaid service charges and a rate of 8% was suggested as being appropriate. In paragraph 11 of the minutes there is proposal which was seconded and presumably accepted (although this is not recorded in the minutes) that the service charge for the ensuing year would be increased by 5% and that the service charge demands for 1.01.09 and 1.07.09 would be £262.50 per lease

10. Notwithstanding the directions made following the Pre Trial Review, the Applicant has not supplied copies of the service charge demands for 2009 nor any accounts. Neither did the Applicant in its submissions refer the Tribunal to the lease provisions which entitle the Applicant to recover to the service charges. At the inspection of the Property Mrs Cottrell volunteered to provide the Tribunal with a copy of the most recent accounts (for the year ending 2008) and did so.
11. No submission or response has been received from the Respondent.

THE LAW

12. This application is made pursuant to section 27A of the Landlord and Tenant Act 1985 (the Act) which is set out below.

S27A Landlord and Tenant Act 1985

Liability to pay service charges: jurisdiction

(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.*

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.[...] [FN1]

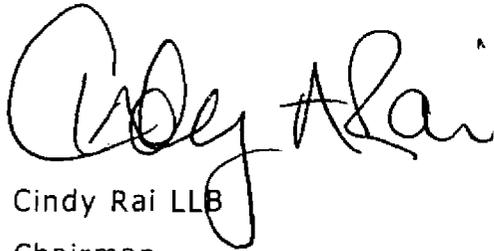
[FN1] inserted subject to savings specified in SI 2004/669 Sch.2 para.6 by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 155 (1)

13. A copy of the lease of what was then described as Plot 1 being the lease of one of the flats situate on the ground floor of the Building is included with the Application. It is assumed in the absence of any information to the contrary that the six flats are each let on similar leases.
14. In Clause 4 the lessee covenants with the Management Company which is a party to the lease, to pay an equal share (later referred to in Part 4 of the 6th Schedule as being one sixth) of the costs expenses outgoings and matters mentioned in the Fourth Schedule. It also provides that the contributions for each year shall be estimated as soon as practicable at the beginning of each year of the term and that the Lessee shall pay the estimated contribution on the first day of July and first day of January in every year. (The lease term commenced on the 25th March 1994). The accounts for 2008 are in fact for a period commencing on the 1st June 2007 and ending on the 31st May 2008. The Fourth Schedule enables recovery of:-
 - a. costs and expenses of the Management Company in carrying out its obligations under Clauses 5 and 6 of the Lease
 - b. all rates and other outgoings payable in respect of the common parts
 - c. the costs and incidental expenses of running and administration of the Management Company
 - d. "All other expenses incurred by the Landlord in and about the proper maintenance and proper and convenient management and running of the building and the land including in particular but without prejudice to the generality of the foregoing any expenses incurred in rectifying or making good any inherent structural defect in the building any interest paid or any money borrowed by

the Lessor to defray any expenses incurred by it and specified in this Schedule and any legal or other costs bona fide incurred by the Lessor in taking or defending proceedings (including any arbitration) arising out of any Lease of any part of the building or any claim by or against any lessee or tenant thereof (other than a claim for rent alone; or by any third party against the Lessor”

15. The same schedule provides that the Management company shall keep proper books of account showing the expenditure incurred under the Schedule and the contributions received from the Lessees of the flats and confirms that it shall be entitled to employ contractors to carry out any of its obligations or charge for works carried out by the Lessor (if it is not the Management Company). There is no provision within that schedule or anywhere else in the lease for interest to be paid in respect of unpaid or overdue service charge contributions.
16. Having considered all the information that had been provided to it the Tribunal determined that the service charges set for 2009 and which amount to a total payment of £525 per annum payable in two instalments “on account” of the costs incurred or to be incurred that year by the Management Company are reasonable.
17. Only a tenant may make an application under section 20C of the Act and no tenant of the Property has made such an application This application was made by or on behalf of the landlord. The Tribunal has not been supplied with copies of the service charge demands so it has no evidence as to whether or not service charge demands have actually been sent to the Respondent and the other lessees. However the copy of the ledger which was provided, shows payments of £262.50 credited in respect of Cottrell, Hawkins Stokes and Minnett in January and a cash payment from Stone of £270 in February. All these names match the details of the leaseholders whose names were attached to the application. It therefore reminds the Applicant of the provisions contained in section 21B of the Act and in the Service

Charges (Summary of Rights and Obligations, and Transitional Provision (England) Regulations 2007, which have been force since 1st October 2007, and the obligations that a landlord must comply with, when sending service charge demands.

A handwritten signature in black ink, appearing to read 'Cindy Rai', written in a cursive style.

Cindy Rai LLB
Chairman

10th September 2009