

IN THE LEASEHOLD VALUATION TRIBUNAL
LANDLORD & TENANT ACT 1985 SECTION 27A

DECISION AND REASONS

Case No	CHI/00ML/LSC/2009/0038
Property	Embassy Court Kings Road Brighton
Applicants	(1) Bluestorm Ltd (freeholder) C/o Clifford Dann, Managing Agents (2) Mr PB Christenson, Flat 92
Respondents	(1) Mr A Rashand, Flat 84 (2) Mr A L George, Flat 52 (3) Mr Ishag, Flat 52 (4) Mr P Fenton, Flat 74 (5) Mr Khalil (rep by Bunkers Solicitors), Flat 51 (6) Mrs Sayidhum (rep by Bunkers Solicitors), Flat 23 and others
Members of the Tribunal	Ms H Clarke (Chair) (Barrister) Mr N Robinson FRICS Ms J Morris
Date of hearing	8 June 2009
Date of decision	8 June 2009

1. THE APPLICATION

The Applicant sought the Tribunal's determination of whether the sums demanded as service charge for the year ending 31 December 2008 were reasonably incurred and payable by the Respondents, and whether the sums budgeted for the year ended 31 December 2009 were reasonable.

2. THE DECISION

The Tribunal determined that the sums sought by the Applicant were reasonably incurred and payable by the Respondents in their due proportions subject to paragraph 4 below. The total amount due for year ended 2008 was £162,965.94.

3. The Tribunal determined that the sums budgeted for the year ended 31 December 2009 were reasonable and would be payable by the Respondents in their due proportions on account subject to paragraph 4 below. The total amount of the budgeted expenditure was £196,303.00 including provision for a 10 year maintenance fund.
4. The Tribunal did not see copies of service charge demands and was therefore unable to determine whether they complied with the requirements of the law. Provided that they were so compliant, the sums would be payable on demand. The Tribunal did not make a determination as to whether any credits or balancing items were to be set against any Respondent's liability.

5. THE LAW

Section 19 Landlord & Tenant Act 1985:

"(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."

6. Section 27A:

"(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—

c) the amount which is payable..,

(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 .."

7. THE LEASES

The Tribunal was provided with a copy of the Lease relating to a Flat at Embassy Court and were told by the Applicant that the remainder of the Leases were in the same form as regards service charges. This obliged the tenant to pay an annual maintenance provision based on anticipated expenditure with a balancing item after the year's end. Payment on account was to be made on 1st January and 1st July in each year. The maintenance year ran from 1st January to 31st

December. Each Flat was attributed a percentage proportion which the tenant was liable to contribute to the annual maintenance charges, the total making 100%. No points of dispute were raised concerning liability to pay under the terms of any Lease in the building.

8. THE INSPECTION

The Tribunal inspected the property immediately prior to the hearing. The property was a substantial sea-front concrete block constructed in the 1930s and containing 73 flats on 11 floors together with some garages and parking spaces and a small freeholder's office/storage area. The property was served by 3 passenger lifts and 1 service lift. Cleaning, maintenance and security were provided by off-site services, and CCTV cameras were in place. The property was generally in good condition. Some garages were still to be refurbished. The Tribunal observed new doors to a lift, and noted where asbestos removal works had taken place.

9. THE HEARING

The hearing was attended by Ms Emma Jinks, Director and Chairman of Bluestorm Limited, on behalf of the Applicant Freeholder, and Mr Mark Newman, of Clifford Dann, Managing Agents for the Applicant. Ms Roberts and Ms Ozzin attended to observe the hearing. Nobody attended or made representations for the Respondents.

10. At his request Mr Christenson, Lessee of Flat 92, had been joined as an Applicant but he took no further part in the case and did not attend the hearing.

11. In support of the Application the Applicant submitted to the Tribunal a large number of invoices and the expenditure accounts for the relevant years, together with a short covering statement by Mr Newman. The Applicant said that none of the Respondents had paid the service charges demanded in respect of the year to December 2008 or on account for 2009. A cheque for the full amounts demanded, but post-dated to a date later in June 2009, had recently been received on behalf of Mr Khalil and Mrs Sayidhum, both of whom had been represented by Bunkers Solicitors.

12. In response to the Tribunal's questions Mr Newman confirmed that arrears of council tax related to the former resident caretaker's flat and had fallen due in the few months before January 2008. Invoices relating to Banfield ironmongers were not always particularised, but the maintenance worker was permitted to order items on account at Banfield for work done at Embassy Court, as he did not have a cash float. Clifford Dann did not manage any other property with an account at Banfield, so there was no risk of confusion with any other premises. Invoices from British Telecom referred to the freeholder's

management office lines and fax. The Applicant had considered whether to re-charge the cost of reconnecting an unplugged electricity supply to a CCTV camera, but the circumstances did not make it possible to identify any person responsible. Work done to the interior of Flat 44 had been charged to that flat's individual account and the money paid had been credited back to the total account.

13. The Tribunal did not receive any submissions on behalf of any of the Respondents, and no other person attended the hearing. Copies of correspondence had been received between Bunkers Solicitors and Clifford Dann in connection with the bundle of documents and expenditure account, but no matters of dispute were raised before the Tribunal.

14. The Applicant's case was therefore undisputed. The Tribunal was satisfied with the answers given and the evidence provided, and determined that the service charges for 2008 were reasonably incurred and payable. The evidence provided in relation to expenditure in 2008 supported the budget for 2009, and the Tribunal determined that the proposed budget costs would be reasonable and payable under the Lease on 1st January and 1st July 2009. The Tribunal did not see the service charge demands and was therefore unable to determine that they had complied with all the requirements of the law.

Signed Helen Clarke Chair

dated 8th June 2009