

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



Section 27A Landlord and Tenant Act 1985

Application for a determination of liability to pay service charges

DECISION AND REASONS

Case Number: CHI/18UE/LSC/2008/0138

Property: 2 Adelaide Terrace Ilfracombe Devon EX34 9JR

Applicant : Mr Chris Harmer

Respondent : Mr & Mrs Bird

Date of Application: 28th November 2008

Date of Hearing: 20th February 2009

Appearances: None

Witnesses: None

In Attendance: Mr Tony J. Peach (Clerk)

Tribunal Members: Ms Cindy Rai LLB (Chairman)
Ms Siobhan Casey (Lawyer Member)
Mr Eric Distin (Valuer Member)

Date of Decision:

SUMMARY OF DECISION

The Tribunal decided: that the Respondent is liable to pay the service charges claimed by the Applicant for the year 2008 and to be incurred in relation to the installation of an automatic fire detection system

The Application

- 1 This Application is made by the Applicant under Section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) in respect of the year "2008" for a determination of liability to pay and reasonableness of service charges. Following provisional directions made by the Leasehold Valuation Tribunal on the 15th December 2008 the Applicant sent further information in support of its Application to both the Tribunal office and the Respondent.
- 2 No paperwork was received from the Respondent prior to the date of the Hearing but telephone calls were received by the Tribunal office whereby the Respondent indicated that it would, or had, sent cheques to settle the outstanding or invoiced service charges. The Application refers to an amount of £1765.03 being "in issue" and describes this sum as service charges and contribution to essential maintenance works. Later in the Application it is stated that payment is sought from the Respondent to enable works required by North Devon District Council i.e. installation of fire alarm system and essential maintenance.
- 3 The Applicant did not withdraw the Application because apparently the Respondent had previously promised payment, but such payment had either not materialised, or cheques received had not cleared, or been of sufficient value to discharge all the arrears due at that time.
- 4 The Tribunal members inspected the Property prior to the Hearing. The Applicant was represented at the inspection by its agent, Michelle Turner, of the Turner-Carr Property Centre who arranged entry to the common parts of the Property and accompanied the members of the Tribunal. The Respondent was not present.
- 5 The Property is one of five flats within a four storey terraced building with a common frontage shared by the whole terrace. Access to four of the flats is gained through the front door of the building. A separate lower entrance provides access to the lower ground floor flat. It is assumed that all of the other flats within the building are let on leases similar to the lease of the Property ("the Lease") a copy of which accompanied the Application.
- 6 The Property is located on the ground floor of the building. Flat 1 appears to be located on the lower ground floor. It appears that Flat 3 is located on the first floor and Flats 4 and 5 are located on the second and third floors of the building.
- 7 The Tribunal members inspected the front exterior of the building, the entrance hall and stairs inside. The Tribunal members gained access, through a door situate on the half landing between the

- ground and first floor of the building, to the back yard from where it was possible to view the exterior of the back of the building. Scaffolding remains in situ at the back of the building and repair and redecoration works are apparently ongoing and remain unfinished.
- 8 The Tribunal members were able to glimpse the front of the roof from the lower access road. The rear roof and windows were clearly visible from the rear yard and from the lane running behind it.
- 9 The only information which the Tribunal had been provided with prior to the inspection was the Application with the supporting documentation to which it refers and the bundle of other information that the Applicant had provided in response to the provisional directions.
- 10 This information consisted of:-
- a. a copy of the counterpart of the Lease,
 - b. a letter dated 7th January 2009 providing the names and addresses of the other lessees of flats within the building and which also provided some information requested within the provisional directions
 - c. An estimate from Jason Morrison dated 2nd August 2007 for external decoration to front and back of the building? (addressed to Mr and Mrs Harmer) for £3750
 - d. a quotation from Challenge alarm services Ltd dated 18th September 2007 regarding Fire alarm & Emergency Light installation for £2698 + VAT
 - e. a quotation from JPM Property Maintenance (J. P. Morrison) dated 25th September 2009 for four specified exterior items of repair for £960
 - f. a letter from North Devon District Council dated 14th November 2007
 - g. a job description from JPM Property Maintenance dated 9th December 2007 for 10 specified items for £3780
- 11 The letter from North Devon District Council stated that following an inspection of the building by a Housing Officer it had identified that the absence of an automatic fire detection system compliant with BS5839 was a Category 1 hazard in relation to which it could take enforcement action (by serving an Improvement Notice) under the Housing Act 2004
- 12 The Tribunal noted that:-
- a. the same BS standard was referred to in that letter as in the quotation from Challenge alarm services;
 - b. the letter was dated after the quotation had been obtained;
 - c. that the letter from Challenge alarm services Ltd recommended liaison with the local authority / fire authority by

way of confirmation that the proposed works would satisfy current legislation;

The Tribunal has not been provided with any evidence as to whether the Applicant had acted or would act on that recommendation

- 13 Neither party attended the Hearing. At the inspection Mrs Turner indicated that she had already sent to the Tribunal all of the evidence upon which the Applicant would rely to support the Application, save that she had prepared an up to date service charge statement in relation to the Respondent's arrears but that statement had not yet been sent to the Respondent. The tribunal therefore declined to accept this statement as further evidence. Mrs Turner said that she did not believe the Respondent would attend the Hearing and therefore she was therefore reluctant to attend in person since it would involve making a charge for her time to the service charge account. A note of her telephone number was taken by the Clerk and the Chairman agreed that she would be telephoned and given the opportunity to attend the hearing if the Respondent appeared so she could respond to any oral evidence that the Respondent might give.

The Law

- 14 This application is made under section 27A of the 1985 Act (as amended) which section is set out below.

S27A 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.[...]

- 15 In the Application the Applicant seeks to recover service charges indicated as being £1765.03 which is referred to as service charges and contribution to essential maintenance works. No evidence has been provided by the Applicant to the Tribunal as to how this amount is calculated. The Application asks that the Tribunal determine if the payment sought from the Respondent to enable works required by North Devon District Council i.e.: the installation of a fire alarm system and essential maintenance, are payable. The Tribunal understands this to mean that the Applicant wishes it to determine if the Respondent is liable to pay the outstanding service charge to the Applicant and contribute towards the cost of the alarm system, which has not yet been installed.

- 16 The Applicant indicated in its correspondence with the Tribunal that it relied upon Clause 5 (a) (i), (ii), 5 (b) and Clause 6 and the Fourth Schedule to the Lease. In addition the letter from North Devon District Council has identified a statutory obligation for the Landlord to provide a fire alarm system in accordance with the standard identified in that letter..
- 17 Clause 5 of the Lease contains the lessee covenants with the Lessor. In it the lessee covenants to pay (amongst other things) the yearly maintenance charge and any excess over that maintenance charge. The yearly maintenance charge is referred to in clause 1 (b) of the Fourth Schedule and is defined as being “..the sum of £50 per annum payable in advance on the 6th April in every yearPROVIDED THAT at any time during the term the Lessor may at his discretion notify the Lessee that he is increasing the Yearly Maintenance Charge for the next year to the sum specified in such notice not being greater than the sum of one fifth of the anticipated Total Expenditure for that year of the term....”. The Total Expenditure is defined as being “the total expenditure incurred by the Lessor in any accounting period for the 6th day of April in each year in carrying out his obligations under Clause 6 (b) (c) (d) and (e) of this lease”.
- 18 In Clause 6 (b) of the Lease the Lessor covenants:-
“to maintain repair and re-decorate as necessary and appropriate (subject to the Lessee’s contribution as aforesaid) (i) The main structure of the building and in particular the foundations up to and including the damp proof course the main outer walls from the back face of the internal plaster to the external face (but excluding the windows) the internal load bearing walls (but excluding surface plaster within individual flats) the structural joists and timbers the roof from the top of the plaster of the ceilings over the top floor and gutter rainwater pipes soil and vent pipes and common parts of the building and the boundary walls and fences”
- 19 All of the decoration and repair works referred to in the estimates, copies of which have been provided, refer to works which the Lease anticipates that the Lessor would undertake (at the expense of the Tenant). The Lease does not specifically refer to the Lessor complying with statutory obligations. The works referred to in the quotation from Challenge alarm services Ltd refer to the proposed system conforming to BS5839 L3 throughout the communal escape stairwell along with AFD fitted in each apartment lobby. The Housing Act 2004 imposes a statutory duty upon properties in multiple occupation and the subject property falls within this

definition on account of the shared common parts. Section 1 (4) of the Housing Act 2004 defines residential premises as including :-

- (a) a dwelling
- (b) an HMO;
- (c) unoccupied HMO accommodation;
- (d) any common parts of a building containing one or more flats.

[An HMO is a house in multiple occupation]

20 Section 5 (1) of the Housing Act 2004 provides:-

"If a local housing authority consider that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard."

21 The Tribunal determined that all the work referred to in the Application would appear to be work in respect of which the Landlord could carry out and recharge to the lessees under the Lease. However no precise evidence of the actual costs incurred or indeed the actual works undertaken have been provided. The inspection revealed that external decoration of the building had been undertaken and was still being undertaken to the rear elevation of the building where scaffolding remains in place The Respondent has provided no evidence as to whether it disputes its liability to contribute towards the cost of these works. Instead it would appear that the Respondent has suggested to the Tribunal office that it might be willing to pay, but at the date of the inspection and hearing no payments had been received by the Respondent.

22 Neither has the Respondent suggested that that the service charges are unreasonable, nor that they have not been reasonably incurred. The Tribunal has received no reasons or evidence from the Respondent as to why payment has not been made or indeed whether the payments requested are contested.


23 Whilst the works to install the fire detection system have not yet been carried out, it would appear from the date of the letters produced that there is a risk that North Devon District Council could take "appropriate enforcement action" within Section 5(2) of the Housing Act 2004 and serve an Improvement Notice on the Applicant

24 The Tribunal accepts that the service charges have been reasonably incurred in relation to the improvement works, and that from their visual inspection of the exterior of the building of which the Property forms a part, the works that have been carried out are of a reasonable standard. Without more information with regard to the actual contributions payable by each of the five leaseholders in 2008, it is not clear what contributions may have been sought and paid.

- 25 With regard to the proposed works to install a fire detection system such works would appear to be reasonable and indeed necessary both for the safety of the occupants of the building and to enable the Applicant to comply with its statutory obligations.
- 26 The Tribunal has been provided with some evidence of quotations having been obtained by the Applicant, in advance of works being undertaken, but has not been provided with, nor in the absence of a hearing attended by the parties, was it able to request sufficient information to consider whether the Applicant has complied fully with the Service Charges (Consultation Requirements) (England) Regulations 2003. On the basis of the quotations apparently provided and the lessees being obliged to contribute equally towards the "Total Expenditure" as defined in the Lease, the Applicant might consider it appropriate to have regard to these Regulations prior to incurring expenditure and seeking to recover it from the lessees, (if indeed it had not done so already).

Decision

- 27 The Tribunal determines that a service charge is payable by the Respondent for the Property for the year 2008 in respect of the works described as being "essential maintenance works" which appear to relate to external repairs and decoration and to enable the installation of an automatic fire detection system in accordance with statutory requirements imposed by the Housing Act 2004 and identified by both the Applicant and North Devon District Council. From the evidence put before it, the amount referred to in the application of £1765.03 is the amount it determines is recoverable by the Applicant from the Respondent in respect of service charges together with the appropriate share of the costs incurred in installing the fire detection system.


Cindy Rai
Chairman

16th March 2009