

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**Southern Rent Assessment Panel  
Leasehold Valuation Tribunal**

Case Number: CHI/29UL/LIS/2009/0013

Property: 6, Laburnham Court, 22-24 Westbourne Gardens, Folkestone,  
Kent CT20 2HZ

Applicant: Mr. L. Armstrong

Respondent: Capment Limited

Date of Directions: 4<sup>th</sup> March and 26<sup>th</sup> May 2009

Date of inspection: 20<sup>th</sup> May 2009

Date of Decision: 18<sup>th</sup> August 2009

Members of the Tribunal

C.H.Harrison Chairman  
N.I.Robinson FRICS

## **Background**

1. Mr. Armstrong, the Applicant, is the tenant under a lease, dated 24<sup>th</sup> July 1975 made between (1) Geroy Properties Limited and (2) himself, of flat 6, Laburnham Court, Westbourne Gardens, Folkestone. The Respondent is the landlord.
2. On 28<sup>th</sup> February 2009, the Applicant applied to the Tribunal for a determination under section 27A of the Landlord and Tenant Act 1985 which enables a leasehold valuation tribunal to determine whether a service charge is payable and, if it is, the person by and to whom it is payable, the amount which is payable and other related matters.
3. The essence of the application relates to the Applicant's concerns:
  - a) that he should not have to pay a service charge representing one fifteenth of the annual common parts cleaning contract sum of £1,800 in respect of the period 30<sup>th</sup> September 2007 to 29<sup>th</sup> September 2008 because, he asserts, the quality of the work has often proved inadequate and attendance by the cleaning contractors has been irregular; and that, consequently, the cleaning service charge for that period is unreasonable;
  - b) about the proposed cleaning charge for 2008/2009;
  - c) that the Respondent proposes to increase the service charge by the imposition of a sinking or reserve fund contribution; and
  - d) that the service charge accounting is not transparent.
4. The Application was accompanied by a certified copy of the Applicant's lease. Nevertheless, the copy lease plans were uncoloured and the proportion of the landlord's expenditure on relevant costs which the lease purports to require the tenant to pay, i.e. the proportionate service charge payable by the Applicant, has been left blank (paragraph 16 of the 6<sup>th</sup> schedule). It may be common ground between the parties that the service charge proportion is one fifteenth but no evidence in that regard has been presented to the Tribunal.
5. The Tribunal issued Directions on 4<sup>th</sup> March 2009 that the application may be dealt with without a hearing and it gave notice accordingly to the parties, neither of whom has subsequently requested an oral hearing.
6. After the Tribunal's inspection of the property on 20<sup>th</sup> May 2009, the Tribunal issued further Directions seeking production of a copy of the original lease or its counterpart and copies of all relevant service charge demands, certificate and related papers for the service charge year 2007-2008 and 2008-2009 to date. Such Directions have not been complied with.

## **The lease**

7. The Applicant's lease contains the following provisions which are relevant to this case:
  - a) at paragraphs 15 to 18 of the sixth schedule, the Applicant agrees to pay a proportion of the Respondent landlord's expenditure in carrying out its obligations under, and giving effect to the provisions of, the seventh schedule. Those payments qualify as a service charge for the purposes of sections 18 to 30 of the Landlord and Tenant Act 1985. Nevertheless, as stated above, the actual percentage contribution payable under the lease is not specified in the copy lease provided to the Tribunal;

- b) at paragraph 1 of the seventh schedule, the Respondent is obliged to keep what the lease defines as the Reserved Property in a good and tenable state of repair and condition;
- c) at paragraph 5 of the seventh schedule, the Respondent is obliged to keep the entrance hall, staircases and landings forming part of the Reserved Property properly cleaned and in good order;
- d) at paragraph 9(a) of the seventh schedule, the Respondent is obliged, so far as it considers practicable, to equalise the amounts of its expenditure from year to year by making provision for depreciation or for future expenditure and charging amounts for such provisions and carrying them to a reserve fund; and
- e) at the second schedule, there is the definition of the Reserved Property. It states that the Reserved Property is:  
*FIRST ALL THOSE the entrance and other drives paths forecourts and garden land as may from time to time form part of the Property and other parts of the building forming part of the Property which are used in common by the Lessees and occupiers of any two or more of the Flats or adjoining property now or formerly forming part of the Property*  
*SECONDLY ALL THOSE the main structural parts of the buildings forming part of the Property* [and there follows a description of various components such as items of common plant]

### **The Tribunal's inspection**

- 8. The Tribunal inspected the property as a whole (but not the inside of the Applicant's flat) during the morning of 20<sup>th</sup> May 2009 in the presence of the Applicant and Lesley Frost and Laura Treadwell from the Respondent's managing agents, Maltbys. The property as a whole comprises a terrace of three adjoining Edwardian houses, each containing five flats, one of which in each building is a basement flat. The Applicant's flat is one of the three basement flats.
- 9. Each of the four non-basement flats in each of the three buildings is accessed via a common hall, staircase and landings. There are, therefore, three such circulation cores in the property as a whole. However, these circulation cores are irrelevant to access to, and egress from, the basement flats. They are accessed via the open areas referred to in paragraph 10 below.
- 10. To the front, rear and side of the terrace of buildings, there are open basement areas or forecourts giving access to the basement flats.
- 11. The Tribunal found the external condition of the property as generally unkempt and noted that there were some wants of repair. The areas referred to in paragraph 10 above had not recently been swept clean and were untidy and littered. The three internal circulation cores were, in part, rather dusty but, on the whole, were in a condition which the Tribunal considered to be in keeping with the age, character and appearance of the property as a whole.

### **Evidence**

- 12. The Tribunal has no evidence of actual service charge demands, accounts or certificates. Nor could the Tribunal inspect any specification of the cleaning contract. During the site inspection, both the Respondent's managing agents and the Applicant confirmed to the Tribunal that each of the fifteen flat owners pays one fifteenth part of the landlord's

expenditure on services. However, the Tribunal cannot be certain that is the correct legal position for the reason stated in paragraph 4 above.

13. During the site inspection, the parties confirmed to the Tribunal that the basement tenants do not use, and have no need to use any of the three internal circulation cores (see paragraphs 9 and 10 above).

#### **The Tribunal's determination**

14. The cleaning contract in question covers the three circulation cores and the open basement forecourts described in paragraphs 9 and 10 above. The question therefore arises whether those cores and basement forecourts form part of the Reserved Property, so as to fall within the lease provisions referred to at paragraph 7 (b) and (c) above. Each refers to the Reserved Property.
15. The basement forecourt areas form part of the Reserved Property because, under the first limb of the definition quoted in paragraph 7(e) above, they are forecourts forming part of the overall property.
16. The three internal circulation cores also form part of the Reserved Property because, under the first limb of the definition, they are used in common by the 'Lessees' and occupiers of any two or more of the flats. The tribunal considers that is the correct interpretation of the definition, even though the word 'Lessees' is uncomfortably close to the definition of the Applicant himself in the lease – 'Lessee' – who has no right to use any of those circulation areas. Even if that interpretation is open to doubt, the internal cores are comprised in the main structural parts of the buildings, under the second limb of the Reserved Property definition. That may appear to produce a harsh result under the Applicant's lease in the context that he has no rights of use; but nevertheless that appears to be the correct construction and it may be compensated by all other tenants having to contribute to basement forecourt cleaning.
17. The Tribunal considers that, in the absence of service charge evidence as noted above, it cannot determine any specific service charge amounts under section 27A of the 1985 Act.
18. In order to deal with the application so far as possible in the circumstances, the Tribunal determines:
  - a) for the purposes of section 19 of the 1985 Act (which limits the amount of relevant costs for which a service charge is payable to the extent the costs are reasonably incurred and, where spent on providing work such as cleaning, to the extent the work is of a reasonable standard), in the absence of any evidence to the contrary:
    - i) £1,800 being the 2007-2008 overall cleaning cost is at the very upper level of a reasonable amount. In the Tribunal's opinion, any higher charge would be unreasonable; and
    - ii) there is no evidence before the Tribunal about whether the 2007-2008 standard of cleaning was reasonable or not. However, in the context that the application extends to 2008-2009 (for which no service charge amounts are available to the Tribunal), the Tribunal considers from its site inspection that the standard of cleaning the internal circulation cores just reached a reasonable standard but that

the cleaning the external basement areas had not been done to a reasonable standard; and

- b) the Respondent is entitled to charge amounts to a reserve, as part of the service charge, in accordance with paragraph 9 of the seventh schedule to the lease.

19. Finally, the application to the Tribunal also seeks its order, under section 20C of the 1985 Act, that all or any of the Respondent's costs in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant. Section 20C enables the Tribunal to make such order as it considers just and equitable in the circumstances. Although the Tribunal has not considered whether the Respondent is entitled, under the Applicant's lease, to charge its costs, if any, in these proceedings to the service charge, it considers that, in the circumstances, justice and equity are best served by making an order as to 50% of the Respondent's costs. Consequently, if the Respondent's costs are recoverable under the Applicant's lease via the service charge, the Tribunal orders that only one half of them may be so recovered.

Dated 18<sup>th</sup> August 2009

A handwritten signature in black ink, appearing to read 'C.H. Harrison', written over a horizontal line.

.....  
C.H.Harrison Chairman