

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/43UD/LSC/2008/0084

BETWEEN:

TIMOTHY CASTLE

Applicant

- and -

VALE COURT MANAGEMENT CO LTD

Respondent

PREMISES: Flat 4 Vale Court
Station Approach
Aldershot
Hampshire
GU12 5QB ("the Premises")

TRIBUNAL: Mr D Agnew LLB, LLM (Chairman)
D Lintott FRICS
Mrs M Phillips

HEARING: 10th February 2009

Determination and Reasons

1. The Application
 - 1.1 On 13th August 2008 the Applicant, who is the long lessee of the Premises, applied to the Tribunal under Section 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination as to the reasonableness of the service charges in respect of the Premises relating to the service charge year 2007/2008 and relating to the budget for 2008/2009 on which a payment on account of service charge was sought by the Respondent.
 - 1.2 The Applicant also sought an order under Section 20C of the Act to prevent the costs of these proceedings being added to any future service charge demand and at the hearing he also sought an order that the Respondent reimburse his expenditure in respect of Tribunal fees of £350 paid by him and for a determination that the respondent pay his costs.
 - 1.3 On 26th September 2008 there was held a pre-trial review at which the Respondent was substituted as Respondent in place of the freeholder and the managing agents and directions were given which included the filing and service by each party of statements of case supported by a bundle of all the documents on which the party sought to rely at the hearing. In particular in the case of the Respondent it was directed that the bundle would include a schedule of income and expenditure, copy receipts and vouchers, copies of any service charge demand and a copy of any documents that went with the service charge

demands. The pre-trial review was attended by representatives of the Respondent's managing agents, the Applicant and the freeholder's solicitor.

2. Inspection

- 2.1 The Tribunal inspected the Premises immediately prior to the hearing on 10th February 2009. It comprises a block of eight flats converted from a public house. The building probably dates back to around 1900 and the conversion was carried out in the early 1990's.
- 2.2 There is a fairly extensive front driveway with parking spaces for two cars per flat. There is a garden area to the rear comprising almost exclusively thick and matted grass. There is one tree in this area. The garden is small in comparison with the size of the building. Outside to the rear there is also a small clothes drying area with a whirlygig in a space enclosed by a wooden fence and to the front/side of the building there is a small bin store containing one small plastic bin per flat.
- 2.3 The exterior decorations of the building are rendered and painted off white. There is algae growing on the front elevations and there is also staining down the walls in places. The exterior walls are in need of decoration. The windows are upvc double glazed units. The fascias and soffits are of wood and are in need of decorating.
- 2.4 The communal hallway and stairs are carpeted. This was clean but tired and in particular the treads are wearing thin. This carpet will need replacing soon. There was a lot of leaf debris in the hallway on the ground floor. The front doors to the individual flats were in need of re-decoration.

3. The hearing

- 3.1 This took place at Rushmoor Borough Council Offices on 10th February 2009. Only the Applicant attended: there was no appearance from the Respondent or their managing agent. The Tribunal was satisfied that the managing agent had been sent notification of the hearing and so proceeded with the hearing.

4. The evidence

- 4.1 It was the Applicant's case that basically the managing agents had done nothing to maintain the building for several years. It needed redecorating but there was no sign of this being put in hand. Although a provision of £800 (£100 per flat) was proposed in the budget for 2008/2009 this was the first proposal for money to be put into a sinking fund. There was never any consultation with the lessees about the budget. No proper accounts had been kept. An account purporting to be an income and expenditure account for the year end October 2008 had been produced by the Respondent to the Applicant. This

showed zero expenditure against some items such as window cleaning and repairs whereas the Applicant had also been supplied by the managing agents' solicitors with information that indicated that £250 had been spent on window cleaning up to May 2008 and £314.90 on repairs and maintenance. The Applicant knew that some window cleaning had indeed been carried out so he could not understand why the expenditure on this item did not appear in the account. He had no idea what repair/maintenance coming to £314.90 might have been.

- 4.2 The Applicant's main challenge, however, was to the charge for garden maintenance and managing agents' fees. As for gardening, until about April or May of 2008 the managing agents employed a firm to carry out garden maintenance at, basically, £250 per month. This contract was terminated at that time and in or about November 2008 a new contractor was employed to attend to ground maintenance charging £100 per month. The Applicant considered that £250 was extortionate for the amount of garden concerned and the work that was required to be done.
- 4.3 As far as managing agents' fee is concerned the Applicant considered that they did very little indeed for what they charged. The amount of their fees would be reasonable if they did what they were supposed to do but they did not.
- 4.4 As for the budget for 2008/2009 on which a payment on account of service charges for that year had been based, the figures amounted to an anticipated expenditure of £6720 or £840 per flat. The Applicant said that the managing agents had not carried out any proper survey of what would be required to be spent during the year before the budget was prepared. He thought an allowance of £200 for the cost of electricity was high. There is one external light by the front door to the common parts and lighting in the common hallway and stairs. There are also electric sockets in the hallway to enable an electric cleaner to be powered therefrom. The Applicant challenged £200 for each item of repairs and maintenance of aerials and satellite and door entry systems. £500 for external repairs he thought too high and had not been based on a properly considered estimate. Again he challenged the provision of £1481 for management fees on the basis that the work done by the managing agents did not justify such a charge. Finally he thought that a provision of £800 (£100 per flat) for "forward funding" or a reserve fund for future decorating or repairs was too high.
- 4.5 Although there was no appearance on behalf of the Respondent, its solicitors had sent to the Tribunal on 15th December 2008 a document being the Respondent's statement of case together with some documents in support.
- 4.6 The Respondent's case was simply that the expenditure set out in the document entitled "Vale Court Management Company Limited Service Charge Account for the year ended 31st October 2008 had been made and that they were reasonable. £150 per flat was a

reasonable charge for managing agents to levy. Copy invoices were produced for accountancy fees, together with some receipts for ground maintenance and a copy of the specification for the work to be carried out by the new garden contractor at the rate of £100 per month. A copy of the insurance schedule for the period 23rd march 2008 to 22nd March 2009 was produced.

- 4.7 As far as the estimated expenditure for 2008/2009 is concerned a mistake in the figure for managing agents' fees was acknowledged: it should have stated £1410 and not £1481. Other amounts were the "best estimate" for costs based on previous expenditure in some instances.

5. The Lease

- 5.1 By clause 3.29 of the lease, the lessee covenants "to comply with all agreements with the Managers which the Tenant make in this lease."

- 5.2 "The Managers" are defined as Vale Court Management Company Limited (the Respondent).

- 5.3 By clause 5.1 of the lease the Respondent covenants with the tenants

a) to insure the flat "and all additions to it".

b) to provide the services listed in the Sixth Schedule to the lease and in doing so: "may engage the services of whatever employees, agents, contractors, consultants, and advisers as the Managers consider necessary.

c) to maintain a reserve fund in accordance with the Seventh Schedule to the lease.

- 5.4 By Clause 7 of the lease the Managers agree with the Landlord to perform the obligations undertaken by the Managers in the lease.

- 5.5 By the Fifth Schedule to the lease "service costs" is stated to mean: "the amount the Managers spend in carrying out all the obligations imposed by this lease and not being reimbursed in any other way including the costs of borrowing money for that purpose." "final service charge" is 12.5% of the service costs in Part I of the Sixth Schedule to the lease and 20% of the service costs in Part II of that Schedule.

"interim service charge" means a quarterly payment on account of the final service charge..... and is "a quarter of the final service charge on the latest service charge statement."

- 5.6 By paragraph 2 of the Fifth Schedule the managers must:-

a) keep a detailed account of service costs.

b) have a service charge statement prepared for each period ending on (sic) during the lease period which

(i) states the service costs for that period with sufficient particulars to show the amount spent on each major category of expenditure.

- (ii) states the amount of the final service charge.
- (iii) states the total of the interim service charge instalments paid by the Tenants.
- (iv) states the amount by which the final service charge exceeds the interim service charge instalments ('negative balance') or vice versa ('positive balance').
- (v) is certified by a member of the Institute of Chartered Accountants in England and Wales, that it is a fair summary of the service costs, set out so that it shows how they are or will be reflected in the final service charge, and is sufficiently supported by accounts, receipts and other documents which have been produced to him.

5.7 By paragraph 3 of the Fifth Schedule it is provided that the Tenant is to pay the Managers an interim service charge instalment on each day on which the rent is due (25th March and 29th September in each year).

5.8 By Paragraph 4 of the Fifth Schedule, if the service charge statement shows a positive balance the Managers "must pay that sum to the Tenants when giving the statement" and if it is a negative balance, the Tenants must pay the deficit to the Managers within fourteen days of having been given the statement.

5.9 By the Sixth Schedule to the lease the services to be provided by the Managers is set out including Part I:-

- a) repair to the roof, main structure and foundations of the building
- b) the costs of repairing, maintaining and cleaning the building, property or sewers, drains, pipes, wires and cables of which the benefit is shared by occupiers of the building and occupiers of other property
- c) decorating the exterior every three years
- d) repairing and maintaining communal parts
- e) maintaining communal drive paths and gardens
- f) insuring the property
- g) keeping accounts of service costs, rendering service charge statements and retaining accountants to certify those statements

and including in Part II

- a) repairing and wherever necessary decorating and furnishing the common entrance hall and stairs
- b) heating, lighting and cleaning the common entrance hall and stairs

5.10 The Seventh Schedule makes provision for a reserve fund to accumulate in advance to meet the expected costs of

- a) a major repairs to the roof and foundations
- b) exterior decoration

and by paragraph 3 of that Schedule the Managers are to estimate the contribution needed to that sum is a service cost when calculating the service charge.

6. The Law

6.1 Under Section 27A of the Landlord and Tenant Act 1985 (hereafter referred to as the 1985 Act) 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 it is payable.

6.2 By Section 19(1) of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

6.3 By Section 19(2) of the 1985 Act: "Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable....."

7. The determination

7.1 The Tribunal was severely hampered in determining this case by the lack of information and documentation furnished by the Respondent. Contrary to what was required by the Directions which had been given at the pre-trial review the Respondent had not produced a copy of the service charge demand for the year 2007/2008 and there was no evidence that a statement of rights and obligations of tenants had been served with any such demand for that year. The requirement to do this, laid down by Section 21B of the Act came into force for service charge demands made after 1st October 2007. Consequently, the service charge demands for the 2007/2008 service charge year would have had to comply with this requirement. Until such a statement of rights and obligations is served with the service charge demand, technically the money is not owed by the tenant and he/she can withhold payment. Thus, even though the Tribunal has gone on to consider the reasonableness of the service charges for 2007/2008 in respect of the Premises the Applicant will not be liable to pay what has been determined as reasonable until such time as the requisite statement has been served accompanying a demand.

7.2 The Tribunal has treated the document supplied with the Respondent's statement of case as a final statement of account for 2008/2008 even though it is expressed to be "for the information of the Directors only. Not for filing at Companies House." This is because in its statement of case the Respondent refers to this document as "the service charge

account for the year ending 31st October 2008." However, the Tribunal is aware, from the Applicant's evidence that some window cleaning was carried out during the year and the Applicant was advised by the managing agents that this had cost £250 up to May 2008 and yet no items of expenditure appears in the account for window cleaning. Further, the Applicant was advised by the managing agents that repairs and maintenance had been carried out costing £314.90 and yet, again, there is no figure against this item in the account. The Tribunal decided that it would include a figure of £250 for window cleaning as being a reasonable charge because evidently the work had been done and the costs reasonable. It is a mystery as to why there is no figure for window cleaning in the account. It is possible that more than £250 was actually expended on window cleaning during that year but the Tribunal has no evidence that it was and so has confined itself to determining that £250 is reasonable. As for the figure for repairs and maintenance of £314.90 the Applicant was not aware that any such work had been carried out and the respondent certainly has not produced any evidence of such expenditure. The Tribunal therefore determined that it was not reasonable for any sum to be charged under this head in the 2007/2008 service charge.

- 7.3 With regard to gardening the Tribunal agreed with the Applicant that £250 per month to tend to the small area of grass and the tree at the rear of the Premises was excessive. The new contact price of £100 is reasonable if the work is done. The evidence was that the grass was not cut from about March/April 2008 until 3rd November 2008. The Applicant knows that the new contractor started on that date because he was at home and made a special note of it. When the contractor attended on that date the grass was knee height so it had not been cut throughout the summer until 3rd November. The purported receipted invoices did not tally with this evidence.

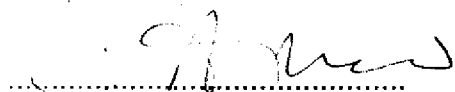
The Tribunal determines that for the year 2007/2008 a reasonable sum for the Applicant to pay by way of service charge for gardening is one-eighth of £100 per month for six months (November to April) making a total of £600 or £75.63 per flat.

- 7.4 The Tribunal agreed with the Applicant that the managing agents seem to have done very little. £150 per flat would be a reasonable figure for managing agent's fees if they are doing their job properly but they are clearly not doing so with regard to the Premises. The Tribunal decided that £25 per flat for the 2007/2008 service charge year would be a reasonable figure for what they have done, namely prepare some sort of accounts, albeit seemingly inaccurate or incomplete, insure the premises and change the gardening contract. There would appear to have been as yet no certified accounts for the year 2007/2008 or full compliance with the other requirements of paragraph 2 of the Fifth Schedule to the lease. If they have done more they were not at the hearing to persuade the Tribunal accordingly by producing evidence.

- 7.5 Attached to this decision is a schedule setting out the items sought to be charged and the amounts the Tribunal has found to be reasonable against each item.
- 7.6 As for the year 2008/2009 the Tribunal was only concerned to determine whether the sum sought for payment on account of service charge based on the budget was reasonable. It will not be known how much has actually been spent on each item until the end of the service charge year. At that time, if the Applicant or any other lessee thinks that items of expenditure have been unreasonably incurred or are unreasonable in amount then they can make another application to the Tribunal. Bearing that in mind, the Tribunal decided that all the items of anticipated expenditure contained in the statement of anticipated expenditure produced by the Respondent and appended to its statement of case were reasonable sums apart from the figure of £200 for "possible aerial or satellite maintenance" as this does not appear to be a service charge item under the lease. The Tribunal decided to allow the anticipated management fees of £1410 (not £1481 as the Respondent accepted had been stated in error in that document) on the basis that £1410 would be a reasonable amount to pay for managing agents' fees if they are doing a proper job. This figure can be challenged at the end of the year if the Tenants do not consider that this is so. The Tribunal hopes, however, that by allowing the full figure as a budget item it will encourage the proper management of the block.
- 7.9 Strictly speaking, in accordance with the lease, the amount that can be sought on account of service charges is the same as the service charges levied under the last service charge statement and a budgeting exercise does not therefore have to be undertaken to try to determine anticipated expenditure. In this case the service charge for 2007/2008 as determined by this Tribunal comes to £344.50 and so this is the amount (paid in quarterly instalments but only twice a year on rent due dates – a contradiction within the lease) which, under the lease, is the amount that can be sought on account plus the sum of £100 per flat for the reserve fund payment. The Tribunal therefore determines that the amount payable on account for 2008/2009 is £444.50. This does mean to say that there is likely to be a significant shortfall between income and expenditure at the end of the year and it would be sensible therefore if all the Tenants would agree to pay an amount on account of service charge for 2008/2009 based on the budget figure of £827.50 per flat rather than as provided by the lease. The Tribunal is not in a position to impose this on the lessees as the lease must prevail as far as the Tribunal is concerned.
- 7.10 Although the lease is not happily worded there is a provision that the Managers can maintain a reserve fund. It is regrettable that nothing has seemingly been specifically demanded hitherto to go towards external redecoration costs. However, the Tribunal finds that the sum of £800 (i.e. £100 per flat) is a reasonable sum to be put towards reserves during 2008/2009.

- 7.11 The Tribunal considers that it is most regrettable that the respondent has not complied with the provisions in the lease or the Act to furnish the Applicant or this Tribunal with information as to the amount standing to the credit of the Respondent company with regard to the service charge account resulting from any surplus (if any) of income over expenditure for previous years and information as to who has paid what in respect of service charges. This information would have been helpful for the Tribunal to have had in determining whether the reserve fund request was reasonable. According to the lease any surplus should be repaid to the Tenants each year when the service charge statement is delivered. This may not be the most appropriate way to deal with any surplus as it may more usefully be added to the reserve fund. However, that is not what the lease requires and it would need all the Tenants to agree if anything different were to be done. Without full information as to the state of the service charge account, however, the Tenants are not in any position to make any informed choices. The Tribunal was also seriously concerned at the Applicant's evidence that, as a shareholder, he had received no notice of any AGM of the company since he acquired his flat in June 2007 and that, as far as he was aware, there is currently no Company Secretary. The Tribunal considered that there appeared to be serious deficiencies with regard to the running of the Respondent company and the management of the block which required urgent attention and remedial action.
- 7.12 The Tribunal considered that the Applicant was justified in making his application to the Tribunal and that it would be wrong for the Landlord's or Managers' costs to be added to future service charges. An order would therefore be made under section 20C of the 1985 Act.
- 7.13 The Tribunal also decided that the circumstances were such that it would be right for the Respondent to be required to reimburse the Applicant the Tribunal fees paid by him of £350 and the Tribunal so directs.
- 7.14 The Tribunal found that in failing to comply properly with directions and failing to attend the hearing the Respondents had acted unreasonably in connection with the hearing and that under the jurisdiction conferred on it under paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 it would require the Respondent to reimburse the Applicant his out of pocket expenses in relation to the proceedings which the Tribunal assess at £50.

Dated this 17th day of February 2009



D. Agnew LLB, LLM
Legal Chairman

Schedule 1

Service Charge year 2007/2008			
Item	Amount Claimed	Challenged?	Allowed
Electricity	24	No	24
Insurance	1267	No	1267
Repairs and maintenance	-	-	-
Management charges	1410	Yes	200
Accountancy	385	No	385
Companies House	30	No	30
Grounds Maintenance	2380	Yes	600
Window cleaning – not claimed but agreed carried out	250		250
			2756

Total found to be reasonable = £2756 or £344.50

Schedule 2

Budget items found to be reasonable for year 2008/2009	
Garden maintenance	1200
Window cleaning	380
Electricity	200
Insurance	1334
Repairs and maintenance	500
Door entry systems	200
Accountancy fees	425
Management fee	1481
Forward funding	800
	6520 or 827.50 per flat