

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**Southern Rent Assessment Panel
Leasehold Valuation Tribunal**

Case Number: CHI/43UG/LSC/2008/0122
Property: Flat 10, The Quadrant, Brighton Road, Addlestone,
Surrey KT15 1PX
Applicant: Labyrinth Management Limited
Respondent: Marcella Olivace

Appearances

For the Applicant: Miss Helen Macrae AIRPM, Leasehold Legal Services
Limited
For the Respondent: The Respondent was not represented and did not appear
Date of Directions: 12th December 2008
Date of inspection: 27th March 2009
Date of Hearing: 27th March 2009
Date of Decision: 24th April 2009

Members of the Tribunal

C.H.Harrison Chairman
R.A.Potter FRICS
Mrs J.Playfair

Decision under Section 27A Landlord and Tenant Act 1985

Background

1. By a lease dated 20th October 2006 and made between (1) Kingsoak Homes Limited (2) Marcella Olivace, the Respondent tenant and (3) Labyrinth Management Limited, the Applicant management company, flat 10, formerly plot 13, The Quadrant, Brighton Road, Addlestone, Surrey was demised to the Respondent for a term of 155 years from 1st August 2005, in consideration of a premium, a yearly ground rent and an additional yearly service rent.
2. By the terms of the lease, the Applicant is entitled to enforce payment of the service charge rent payable under the lease. The Applicant is, therefore, treated as a landlord by section 30 of the Landlord and Tenant Act 1985 (the 1985 Act) for the purpose, among other provisions, of section 27A of the 1985 Act. That section is concerned with the liability to pay service charges.
3. On 27th October 2008, the Applicant applied to the tribunal under section 27A to determine the amount of service charge payable by the Respondent under her lease, first, for the period 1st July 2007 to 30th June 2008 and, second (and to the extent relevant costs are yet quantified) for the period 1st July 2008 to 30th June 2009.
4. On 12th December 2008 the tribunal issued Directions to the parties requiring the Applicant and, subsequently, the Respondent to submit a statement of case in connection with the application. The Applicant did so. The Respondent neither did so, nor appeared in person or through a representative at the hearing of the application.
5. (Mr Skousbo, a tenant of another flat at 'The Quadrant, had applied to the tribunal to be joined as a respondent. On receipt of his solicitors' explanation that Mr Skousbo had applied to be joined in ignorance of the effect and by misunderstanding, the tribunal notified the parties that Mr Skousbo would take no further part in the proceedings.)

Relevant law

6. Section 27(A)(1) of the 1985 Act provides, so far as material to this case, that an application may be made to a leasehold valuation tribunal to determine whether a service charge is payable and, if it is, the person by whom it is payable and the amount which is payable.
7. Section 27A(2) of the 1985 Act has a similar purpose but is expressed conditionally in respect of future expenditure were it to be incurred.
8. Section 18(1) of the 1985 Act defines a service charge as an amount payable by a tenant of a dwelling, as part of or in addition to the rent:
 - a) which is payable... for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - b) the whole or part of which varies or may vary according to the relevant costs (which are defined by section 18(2) as the costs or estimated costs incurred or to be incurred by or on behalf of the landlord ... in connection with the matters for which the service charge is payable.

9. Section 19 of the 1985 Act provides, at subsection (1), that 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; and, at subsection (2) so far as material to this case, that where a service charge is payable before relevant costs are incurred, no greater amount than is reasonable is so payable.

The Respondent's lease

10. Paragraph 1 of the Tenth Schedule to the lease obliges the Applicant to carry out the works and do the acts and things set out in the Sixth Schedule to the lease. That obligation is subject to various qualifications, none of which is relevant to this case.
11. Paragraph 2 of the Eighth Schedule to the lease obliges the Respondent to pay to the Applicant the Lessee's Proportion at the times and in the manner provided for in the lease and without deduction or set-off and free from any equity or counterclaim.
12. The Particulars to the lease define Lessee's Proportion as 4.16% of the Maintenance Expenses which clause 1 of the lease defines as the moneys actually expended or reserved for periodical expenditure by or on behalf of the Applicant or the lessor at all times during the term of the lease in carrying out the obligations specified in the Sixth Schedule to the lease.
13. Paragraph 6 of the Seventh Schedule to the lease obliges the Respondent to pay the Lessee's Proportion:
- a) by two instalments in advance on 1st July and 1st January in every year, each being one half of the Lessee's Proportion of the amount estimated from time to time by the Applicant or its managing agents as the Maintenance Expenses for the forthcoming year (treated under the lease as the period 1st July to the following 30th June). The payment dates and the service charge accounting reference period may be altered under the provisions of the lease. The tribunal understands that no such alteration has occurred; and
 - b) subject to balancing accounting between the parties against production of a certified account of Maintenance Expenses. The Respondent would be obliged to pay a balance to the Applicant only if the aggregate of the instalments on account, referred to in paragraph (a) above fall short of the Lessee's Proportion of the certified amount of the Maintenance Expenses.
14. The Sixth Schedule covers the services, repairs and other matters which are described by section 18(1)(a) of the 1985 Act. Consequently, the amount of the Lessee's Proportion is a service charge (subject to the variable test of section 18(1)(b), which it appears to the tribunal on the evidence before it is satisfied) and the Maintenance Expenses are relevant costs.

Site inspection

15. The tribunal inspected the curtilage of The Quadrant on 27th March 2009, before the hearing on that day. The inspection took place in the company of a site representative of the Applicant. The Respondent was not present at the inspection. The tribunal also entered the common parts of the overall block of 24 flats, at ground floor level. The tribunal noted that the external appearance of the property as a whole appeared in reasonable condition. The tribunal did not inspect the internal parts of any flat.

The Applicant's evidence

16. Miss Macrae produced:

- a) for the service charge year 1st July 2007/30th June 2008:
 - i) an expenditure (service charge) budget statement amounting in total to £20,640; and
 - ii) an uncertified schedule of actual property expenditure amounting in total to £18,071.33.
- b) for the service charge year 1st July 2008/30th June 2009:
 - i) an expenditure (service charge) budget statement amounting in total to £22,800; and
 - ii) an uncertified schedule of actual property expenditure to 29th December 2008 amounting in total for that period to £2,222.54.

17. Based on the 2007/2008 budget of £20,640, the Respondent's interim service charge instalments for that year were £430 each, being (rounded up) one half of 4.16% of the budget. The interim instalments for 2008/2009 are, on the same basis for the budget for that year, £475.

18. The service charge budgets in evidence before the tribunal were:

Budget expenditure	2006/2007	2007/2008	2008/2009
Audit and accountancy	£550	£580	£470
Cleaning	£3,000	£2,700	£2,045
Door entry system	£750	£500	£750
Electricity	£1,000	£1,190	£3,185
Landscaping	£4,650	£3,585	£3,195
Management fees	£3,810	£4,230	£4,653
Property owner's insurance	£2,655	£2,035	£2,370
Repairs and maintenance	£750	£1,000	£1,000
Reserve	£1,250	£1,730	£1,819
Smoke and fire management	£600	£425	£500
Sundries	£100	£100	£150
Tree works	£150	£900	£350
TV/satellite system	£150	£100	£100
Water supply	£105	£105	£140

Window cleaning	£400	£1,460	£970
Emergency assistance			£943
Health & safety assessment			£160
Total	£19,920	£20,640	£22,800

19. Miss Macrae confirmed that the budget for 2008/2009 was prepared during, approximately, the last quarter of 2007/2008 and certainly before the actual expenditure for that year had been calculated. The tribunal noted that the budget for each of those two years had regard to the anticipated expenditure for the immediately preceding year as at the time the budget was made.
20. The tribunal had no evidence that the budgets for 2007/2008 and 2008/2009 had been assessed unreasonably.
21. The schedules referred to in paragraphs 15 (a)(ii) and (b)(ii) above listed each item of actual expenditure incurred by the Applicant, each as a separate component under a sub-category of expenditure. Those sub-categories are as follows:

Sub-category of actual expenditure	Amount 2007/2008	Amount 2008/29/12/08
Audit and accountancy	£580.92	
Cleaning	£1,227.83	£111.54
Door entry system	£114.32	
Electricity	£3,067.17	(£1,355.39) credit
Emergency insurance premium	£876.00	
Gardens/ground keeping	£1,799.21	£258.50
Health & safety audit	£458.25	
Buildings insurance	£2,539.07	£667.62
Maintenance & repairs	£1,265.36	£95.20
Management fees	£4,230.00	£2,326.50
Sundry	£244.70	£90.43
Tree maintenance	£493.50	
Window cleaning	£1,175.00	
Professional fees		£28.14
Total	£18,071.33	£2,222.54

22. The tribunal examined each item under each sub-category for each service charge accounting period, in the great majority of cases against invoices for the relevant expenditure item. The tribunal's observations were:
- the amount of the management fee for 2007/2008 seems, as a proportion of the whole but not necessarily taken on its own, high. Miss Macrae confirmed that the overall fee was assessed on a unit price of £150 plus VAT per flat;
 - the cost of electricity to the common parts for 2007/2008 appears high but was supported by invoices from the suppliers. The tribunal also noted that there has been

a change of supplier during 2008/2009 and that the former suppliers made a substantial credit in respect of that year;

- c) the buildings insurance item for 2008/2009 appears unusual on its face. Miss Macrae confirmed the expenditure was in respect of an additional premium following an insurance revaluation;
- d) some of the items of expenditure within the "Sundry" sub-category were vaguely described on the schedules, which did not assist in understanding whether the items were reasonably incurred. The tribunal is satisfied that they were, following Miss Macrae's more detailed explanation;
- e) nevertheless, the Applicant was unable to explain to the tribunal's satisfaction an item of £105.87 included in the buildings insurance sub-category for 2007/2008, described as "interest on insurance premium". There was no evidence that the amount of the premium had been borrowed by the Applicant or, otherwise, explaining the expenditure. Accordingly, the tribunal was unable to find that the item was reasonably incurred for the purposes of section 19(1)(a) of the 1985 Act; and
- f) in all other respects, each item fell within a category of expenditure under the Sixth Schedule to the Respondent's lease of the property and each appeared to have been reasonably incurred. There was no evidence before the tribunal to the contrary or that the provision of the services or works had not been provided to a reasonable standard.

The tribunal's decision

23. Accordingly, the tribunal determines that:

- a) a service charge is payable by the Respondent to the Applicant under the Respondent's lease, in respect of the service charge accounting year 1st July 2007 to 30th June 2008;
- b) the amount of that service charge under paragraph 6.1 of the Seventh Schedule to the lease is, having regard to the contractual provisions of the lease and for the purposes of Section 19(2) of the 1985 Act, £858.62, being 4.16% of the budgeted expenses of £20,640 for the year;
- c) for the purposes of Section 19(1) of the 1985 Act and of giving effect to the service charge accounting provisions under paragraph 6.2 of the Seventh Schedule to the lease, the aggregate relevant costs referable to that service charge accounting year is £17,965.46, being the amount of £18,071.33 referred to in paragraphs 16(a)(ii) and 21 above, less the amount of £105.87 referred to in paragraph 22 (e) above;
- d) a service charge is payable by the Respondent to the Applicant under the Respondent's lease, in respect of the service charge accounting year 1st July 2008 to 30th June 2009;
- e) the amount of that service charge under paragraph 6.1 of the Seventh Schedule to the lease is, having regard to the contractual provisions of the lease and for the purposes of Section 19(2) of the 1985 Act, £948.48, being 4.16% of the budgeted expenses of £22,800 for the year; and

- f) for the purposes of Section 19(1) of the 1985 Act and of giving effect, in due course, to the service charge accounting provisions under paragraph 6.2 of the Seventh Schedule to the lease, the expenditure of £2,222.54, referred to in paragraphs 16(b)(ii) and 21 above, are relevant costs.

Dated 24th April 2009

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

C.H. Harrison - Chairman