

RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL

S.27A Landlord & Tenant Act 1985 (as amended)



**Residential  
Property**  
TRIBUNAL SERVICE

**DECISION**

Case Number: CHI/45UC/LSC/2009/0122

Property: 39A Arundel Road  
Littlehampton  
West Sussex BN17 7BY

Applicants: Mr & Mrs M W Davis (landlord)

Respondent: Ms J Wallace (tenant)

Application (County Court): 15 July 2009

Transfer to LVT: 13 August 2009

Directions: 28 August 2009

Hearing: 16 November 2009

Appearances: For the Applicants:  
Mr J Everett, Coole & Haddock solicitors

For the Respondent:  
Ms Wallace in person

Decision: 18 December 2009

**Members of the Tribunal**

**Ms J A Talbot MA, Chairman**  
**Mr A O Mackay FRICS**  
**Mr T Sennett MA MCIEH**

**Case No. CHI/45UC/LSC/2009/0122**

**39A Arundel Road, Littlehampton, West Sussex BN17 7BY**

### **Application**

1. This was an Application commenced on 15/07/2009 by way of a Part 8 claim in Chichester County Court by Mr & Mrs M W Davis (landlords) against Ms J Wallace (tenant), for arrears of service charges of £2,035.51 for the year ending 24 December 2007.
2. The case was transferred to the LVT by order of DJ Levinson on 13/08/2009 and is treated as an application pursuant to Section 27A of the Landlord and Tenant Act 1985, for a determination on the payability of service charges by Ms Wallace.
3. Directions were issued on 28/08/2009 and provided for the Respondent to produce a full Statement of Case together with all relevant documents, and for the Applicants to produce a Statement in reply. Ms Wallace put in a defence and also produced a list of agreed and unagreed service charge items. Mr Everett, solicitor, produced a Statement in Reply on behalf of the Applicants (who appear to have played no active part in the matter) together with documents in support. He also produced a further bundle of documents at the hearing in support of his legal argument.

### **Jurisdiction**

4. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). Under s27A, the Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

### **Lease**

5. The Tribunal had a copy of the lease of the ground floor flat at the property. It is dated 10 February 1988 and is for a term of 99 years from 29 September 1987 at a ground rent of £40. The proportion of service charges attributable to 39A, the ground floor flat, was one third, in relation to both internal common parts expenditure and the remaining expenditure incurred "*pursuant to Clause 5(4) hereof*". The accounting year runs to 31 December each year.
6. At Clause 4(4) the lessee is to pay an interim service charge, payable under Schedule 5 on 24 June and 25 December each year, with a balancing exercise if the landlord's total costs exceed the interim payment.
7. The landlord's rights and obligations are to be found at Clause 5(4). These include at 5(4)(j)(i) the right to employ managing agents and accountants "*to manage the Building ... including the cost of computing and collecting the rents and service charges*" and at (ii) "*to employ all such surveyors builders architects*

*engineers tradesmen accountants or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the building". Clause 5(4)(n) provides for sums to be set aside for future costs, effectively a reserve fund.*

### Inspection

8. The members of the Tribunal inspected the property before the hearing accompanied by Mr Everett. It comprised a ground floor flat in a converted house, one of a row of three semi-detached villa-style period properties built in the 1850's of brick quoin construction with flint and stone infill under a pitched tiled roof. The exterior was in good condition. The front door gave access to flats A and B via a small lobby area with a linoleum floor and single pendant light. The third unit of accommodation, called the cottage, had a separate side entrance. A lane at the rear gave vehicular access to parking space for three cars.
9. Ms Wallace's tenant gave the Tribunal members access to the ground floor flat. It comprised two rooms, kitchen and bathroom/WC. It was in good condition and decorative order.

### Hearing

10. A hearing took place in Chichester on 14 November 2009. It was attended by Mr Everett on behalf of the landlords. Ms Wallace attended in person.
11. Mr Everett submitted generally that the service charges claimed were payable under the terms of the lease, as the headings of expenditure in the 2007 accounts fell within the landlord's permitted costs under Clause 5(4) of the lease. He was unable to explain why the landlords' managing agents, Welbeck Properties ("Welbeck") used a year end of 24 December when the accounting year specified in the lease ends on 31 December; or why the 2007 accounts were not produced until 5 November 2008. Ms Wallace's defence to the action was generally that Welbeck had not provided receipts to support all the expenditure in the accounts, and she had not received satisfactory explanations for the items with which she disagreed.
12. Ms Wallace bought her flat in September 2007 on the open market as an investment buy-to-let property. A letter from her conveyancing solicitor, Peter C.Careless, to Welbeck, dated 07/09/2007, showed that on completion she paid £7,460.28. This represented £414.54 service charge and £20 ground rent arrears of her vendors, £100 notice fee, and £6,945.74 referred to as a "decoration levy", but which was in fact a prior payment due for anticipated costs of exterior maintenance and decoration planned for 2006.
13. Section 20 consultation took place in 2007 and the works were carried out in 2008. Ms Wallace did not dispute the quality or cost of these works. Because of the delay the cost of the works had not yet appeared in any accounts. The Tribunal did not see any accounts for 2008 which was unsatisfactory but perhaps unsurprising given that the 2007 accounts were served nearly one year late.
14. The 2007 accounts showed total expenditure of £4,224,67, a reserve fund of £4,500 and arrears brought forward of £20,898.93. A column headed Assets suggested that there was £19,035.39 in a bank account. However, Mr Everett said that there was not in fact the case. The arrears figure arose because of the interim charges demanded in 2006 in respect of the major works.

15. The sum of £2,035.51 claimed in the County Court action was calculated with reference to a table attached to the 2007 accounts headed "Statement and Maintenance Account" giving a breakdown of the sums owed by each flat. This stated that Ms Welbeck owed £1,358.22 maintenance and £677.29 towards the reserve fund, totaling £2,035.51.
16. Ms Wallace confirmed the items of expenditure with which she agreed and disagreed. She agreed the following: £141.00 for fire alarm maintenance (this was incorrectly described and was in fact a fire risk assessment); £143.35 accountancy fees; £1,321.71 building insurance; £505.00 management fees. She challenged £99.98 general repairs; £747.73 legal fees; £454.58 surveyor's fees; and £1,500 reserve fund.
17. Taking these items in turn, Ms Wallace noticed that the same figure of £99.98 appeared in the 2006 accounts under the same heading and queried this. Mr Everett explained that this sum related to an invoice from Grayland Construction dated 11/11/2006 which was paid twice in error. When the duplicate payment came to light, the tenants' accounts were credited with £33.33 each on 09/02/2007.
18. The surveyor's fees were evidenced by an invoice from Stuart Radley Associates dated 31/12/2007 for £454.54. According to the invoice, this represented the balance of his fee for administration of the major works contract (12.5% of the contract sum of £15,475). The Tribunal noted that this invoice post-dated the accounting date of 24 December used by Welbeck. Mr Everett submitted that the item did fall within the accounting year specified in the lease. As the 2008 accounts were not yet available it was not possible to ascertain whether there had been a duplicate charge.
19. The reserve fund of £4,500 (one third being £1,500) was being levied for anticipated costs of fire precaution works to the common parts. Estimates were obtained by Welbeck and statutory consultation notices served on Ms Wallace's vendor on 06/09/2007, which was in fact the day before her purchase. It was somewhat unfortunate that Welbeck had not given full information about this before the purchase. In a letter dated 02/07/09 regarding pre-contract enquiries it was stated that they did not have the prices for the work, yet the tenders submitted by Brighton Fire Alarms and All Fire Ltd were dated 13/06/07 and 25/06/07 respectively.
20. Brighton Fire Alarms quoted £2,814 plus VAT, a total of £3,306.45, for the works but Welbeck had assessed a reserve fund of £4,500. In answer to questions from the Tribunal as to why the proposed works were so extensive and expensive, given the very modest size of the common parts, Mr Everett submitted that the quotes were in accordance with the numbered items in the specification which were all required to comply with fire safety regulations. The most expensive items were upgrading of the entrance doors and commonway meter cupboards. In his view the reserve was reasonable and recoverable under the terms of the lease, as Clause 5(4)(n) entitled the landlord to set aside sums for future anticipated costs. The other lessees had paid their share but the works had not yet commenced. Ms Wallace said that had she been aware of the statutory consultation she would have wished to respond and obtain her own quotation. However, she accepted that the works were necessary.
21. Turning to legal fees, the amount stated in the accounts was £745.73. Ms Wallace objected because she had not seen any invoices and also because she

understood from Welbeck's letter of 30/01/09 that the legal fees related solely to Flat C so in her view should not be included as a service charge. Mr Everett explained that in fact only £150 was chargeable to Flat C as shown on the table accompanying the accounts. The total legal fees were £595.73 and had been reduced by £150. He produced 2 invoices from his firm: one dated 09/03/07 for £229.13 and another dated 28/09/07 for £366.60 (both inclusive of VAT). The client was stated as "Mr MW Davis, Mrs S E Davis & HWC Trustees Limited c/o Welbeck Properties". Welbeck is closely linked to Mr & Mrs Davis via Davis Properties Ltd (as on Welbeck's stationery).

22. Invoice 1 was for "29 Arundel Road, Littlehampton: professional charges for advise [sic] regarding the Regulatory Reform (Fire Safety) Order 2005 and applicability to this property (£100.00) and advise (by email of 08 January 2007) regarding responsibility for damp proofing works and joinery repairs (£95.00). £195 was one hour of Mr Everett's chargeable time as a Level A fee earner. He contended that the advice was not general advice on the fire safety regulations but specific to the property; the remainder of the advice related to internal repairs to the cottage consequential to the exterior works and involved considering the lease terms to advise whether the lessee of the cottage was liable or whether the cost was a service charge item. Invoice 2 was for 16 units of chargeable time. Mr Everett was instructed to recover arrears of ground rent and service charges from the lessees of the cottage and from Ms Wallace's vendor. The sums were recovered without recourse to legal proceedings.
23. Mr Everett submitted that the legal fees were recoverable under the lease terms: invoice 2 under clause 5(4)(j)(i) and invoice 1 under 5(4)(j)(ii). In relation to invoice 2, even though the lease terms did not explicitly allow for legal fees and there was no mention of solicitors or counsel, he argued that as his instructions came from the managing agents, the legal fees could be construed as an expense incurred by those agents in "*collecting the rents and service charges in respect of the Building*". In relation to invoice 1, he argued that the advice given concerned the "*maintenance, safety and administration of the Building*".
24. Mr Everett referred to the case of *Sella House Ltd v Mears [1989]* in which the lease terms were exactly the same. In that case legal costs were disallowed as service charges because the term "professional persons" did not cover legal fees: "the fees of solicitors and counsel were outside the contemplation of either limb of clause 5(4)(j) of the lease" (per Taylor LJ). However, he sought to distinguish the case because Taylor LJ "had certain hesitation ... in light of the argument in relation to the position where solicitors are instructed by the managing agents. It does not appear from the evidence whether that was actually the case". Mr Eevertt contended that because he had been instructed by Welbeck, Taylor LJ's comment would mean that legal fees were recoverable in this case.

### **Decision and Reasons**

25. The Tribunal carefully considered all the oral and written evidence and submissions and dealt with each disputed item in turn.
26. The position in relation to the Grayland Construction invoice of £99.89 was straightforward in that there had been a duplicate entry in the accounts and the error had been corrected. The cost was incurred in 2006 and the lessees' service charge accounts had been credited. Regarding the surveyor's fees of £454.54, the amount was not in question, purely the accounting year in which it should properly be charged. As Welbeck had decided to make up the accounts to 24

December each year, rather than 31 December, it was logical that this sum would be recovered in the accounts ending 24 December 2008. Quite simply the invoice fell outside the accounts for 2007.

27. On the accounts generally, the Tribunal took the view that they lacked detail and clarity, and were far from self-explanatory, especially over the state of the reserve fund. The impression was given that there was cash at the bank of over £19,000 when this was not in fact the case. A lessee receiving these accounts could easily be misled. In addition they were served unacceptably late. Ms Wallace had raised reasonable questions and had asked for supporting invoices, but her concerns were not adequately addressed by Welbeck.
28. Turning to the reserve fund, the Tribunal accepted that clause 5(4)(n) provided a mechanism for a reserve even though the terminology referred to sums set aside for anticipated future works. However, the figure of £4,500 was in the Tribunal's view unreasonably high. It was a provision for specific future fire precaution works for which the Brighton Fire Alarms quote was £3,306.75. Assuming a surveyor's fee at 12.5% of £351.75 (on the VAT exclusive figure) plus VAT of £61.55, this would be a total of £3,719.75. Ms Wallace's one third would be £1,239.91. It appeared that Welbeck had rounded up the reserve to £4,500 but the Tribunal saw no justification for this. Given the modest nature of the property and the common parts in issue, it was questionable whether the level of specification (and therefore the cost) was excessive, especially since the front doors to the flats to be upgraded were arguably the lessees' responsibility under the terms of the lease. However, Ms Wallace had not challenged the scope or proposed cost. The Tribunal reduced the reserve figure to £1,200 per lessee.
29. On the question of legal fees, the Tribunal was not persuaded by Mr Everett's argument. *Sella House Ltd v Mears* is clear, settled and binding authority for the principle that legal fees are not recoverable as service charges unless they are expressly provided for in the lease. Taylor LJ may have expressed "slight hesitation" where solicitors were instructed by managing agents, as here, but his overall conclusion (as set out at paragraph 24 above) was clear. The Tribunal concluded that all the legal fees were not recoverable as service charges.
30. Even if legal fees were recoverable, the Tribunal would comment that it would in any event have disallowed the part of invoice 1 attributable to advice on fire safety regulations. A fire risk assessment had already been carried out and charged for, which could have reasonably been expected to cover this area; Brighton Fire Alarms was a specialist contractor presumably with knowledge of the regulations; and the managing agents could be expected to inform themselves on fire safety through such things as CPD, membership of professional bodies and so on.

### Determination

31. For all the reasons given above, the Tribunal determines that the following service charges are payable by Ms Wallace for the year 2007:

Fire risk assessment	£141.00
Buildings insurance	£1,321.71
Management fees	£505.00
Accountancy fees	<u>£143.35</u>
	£2,111.06

Ms Wallace's one third share:	£ 703.69
Plus reserve fund contribution:	£1,200.00
Total payable:	£1,903.69

32. Ms Wallace made an oral application at the hearing under Section 20C for an order that any costs incurred by the landlord in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be included in any future service charges payable by her. In light of the determinations made in her favour, the Tribunal's concerns over the transparency of the accounts, and the fact that the Tribunal accepted Ms Wallace would have paid the sums due had she had a proper and clear explanation from the landlord and/or the agents before recourse to legal proceedings, the Tribunal made the order sought. However, the Tribunal has no control over County Court costs.

**Dated 18 December 2009**

**Ms J A Talbot MA  
Chairman**

