

**IN THE MATTER OF  
FLATS 1 AND 7 PARKLANDS, 27-29 TYNDALLS PARK ROAD, BRISTOL,  
BS8 1PQ**

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

**CASE NO: CHI/00HB/LIS/2010/0070**

**AND**

**IN THE MATTER OF AN APPLICATION UNDER  
SECTION 27A OF THE LANDLORD & TENANT ACT 1985 AS AMENDED ("THE  
1985 ACT") AND SECTION 20C OF THE 1985 ACT**

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**FINAL DECISION**

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**Applicants/Leaseholders:** Mrs P N Almond (Flat 7) & Mrs M K Newington-Wise (Flat 1)

**Respondents/Landlord:** Tyndalls Park Road Management Company ('the Respondents')

**Premises:** Flats 1 & 7 Parklands  
27 – 29 Tyndalls Park Road  
Bristol  
BS8 1PQ

**Date of Application:** 22 August & 27 August 2010

**Date of Directions:** 25 August 2010

**Venue of Hearing:** The Appeals Service  
Vintry House  
Wine Street  
Bristol  
BS1 2BP

**Members of the Leasehold Valuation Tribunal:** Mr A D McC Gregg (Chairman)  
Mr J Reichel BSc. MRICS

Clerk : Charlotte Osborne

**Persons present at the Hearing (For the Applicants):** Mr and Mrs D Almond  
Mr and Mrs M Newington-Wise

**Persons presents at the Hearing (For the Respondents):** Mr A Delong

## **1. Inspection of the Premises**

- 1.1 There was an inspection of the premises at 10.15 a.m. on Monday the 25<sup>th</sup> of October prior to the hearing.
- 1.2 The Tribunal noted that Flats 1 & 7 were part of a block of residential flats comprising some 20 flats that were developed between 1998 and 2000.
- 1.3 There is also a Coach House on the same site.
- 1.4 The flats vary in size and in terms of flooring area both interior and exterior and external wall surface.
- 1.5 Flats 1 & 7 (together with Flat 13) are all studio flats and approximately the same size.
- 1.6 The accommodation of each flat comprises an entrance hall, a kitchen, a bathroom/WC and a lounge/bedroom.
- 1.7 Flat 1 enjoys a fenced patio area accessed from the lounge/bedroom.

## **2. The Issues**

- 2.1 The Applicants have requested the Tribunal to determine the amount of the service charges to be paid by the Applicants for the years 2009 – 2010, 2010 – 2011 and ongoing from 1 April 2011.
- 2.2 The Tribunal has, already, in its directions dated the 25<sup>th</sup> of August 2010 informed the Applicants that it does not have jurisdiction to determine the issues beyond the current year 2010/11.
- 2.3 In particular the Applicants take issue with the service charge percentage of 5% for the years 2009 and 2010.
- 2.4 The Applicants feel that the appropriate percentage is 3.74% that being the percentage figure charged for the 8 years prior to 2009.

- 2.5 For the year 2009/2010 the total service charge was £70,968.80 for all 20 flats. A 3.74% contribution would amount to £2,654.23. In addition they pay an insurance contribution of £179.52 which is not in dispute. The total service charge demanded for the year 2009/2010 amounted to £3,727.96 including the insurance sum. The Applicants feel that the correct sum, applying a percentage of 3.74%, would be £2,833.75 (again including the insurance) and that they should therefore be reimbursed the sum of £894.21 that being the difference between £3,727.96 actually charged for the year and £2,833.75.
- 2.6 For the year 2010/2011 again a service charge at the rate of 5% of the total was levied on all 20 flats rather than the anticipated 3.74%. The total service charge for all 20 flats for this year amounted to £22,161.60. Again there was an undisputed insurance contribution of £179.52. The Applicants feel that the total sum that they should have paid using the percentage of 3.74 (and including the insurance sum) was £1,008.36 and are therefore seeking reimbursement of £279.24 being the difference between that figure and the actual sum charged of £1,287.60.
- 2.7 The cause of the dispute that is now before the Tribunal arises because between the years of 1999 to 2008 the Management Company practice was to charge a service charge of varying proportions depending on the size of the flat involved. The percentage for Flats 1 & 7 was 3.74% whereas the largest flat paid 6% of the total service charge.
- 2.8 In 2009, following the appointment of new managing agents from the 1<sup>st</sup> of May 2008, the new managing agents together with the Directors of the Management Company at a meeting held on 23 February 2009 decided that the service charges should be split equally between all the members.
- 2.9 This was ratified at the Annual General Meeting of the Management Company held on the 2<sup>nd</sup> April 2009 when all but one present at that meeting voted in favour of the change.
- 2.10 It would seem that the original 3.74% percentage figure was a somewhat arbitrary figure depending on the size of the flat concerned, though it also equated to the percentage figure for the annual insurance premium (which is not in dispute) – See clause 7.2 of the Lease.

### **3. Relevant Liabilities under the Lease**

- 3.1 The Applicants' liabilities (covenants) are set out in their leases.
- 3.2 The Tribunal has, amongst the documents submitted a copy of the lease relating to Flat 7 which is dated the 22<sup>nd</sup> day of October 1999 and which grants a lease of 1000 years from the first day of January 1999.
- 3.3 Clause 5 of that lease provides, amongst other things, that the lessee should pay the service charge "as and when the same shall become due from time to time the proportion of the service charge herein after covenanted to be paid by the lessee".

- 3.4 Clause 7.1 of the lease states that the lessee covenants with the lessor as follows ***"to pay to the lessor as rent on demand such proportion of the service charge relating to the property as the lessor should specify at its discretion to be fair and reasonable so that the accounts of the lessor...."***
- 3.5 Paragraph 7.2 goes on to state that the lessee covenants with the lessor "to pay the lessor during each year of the term by way of further or additional rent (in default of payment to be recoverable by the lessor as such) a sum equal to 3.74% of the amount or amounts of the premiums on all policies of insurance effected by the lessor under the provisions of Clause 8.3 hereof...."
- 3.6 The obligations of the lessor are set out in the fourth schedule of the lease under the heading of 'Matters to which the Service Charge Relates'.

#### **4. The Law**

- 4.1 Section 27a of the Landlord & Tenant Act 1985 ("the Act") states as follows: -
- 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
- 4.2 For the purposes of the Act a service charge is defined in Section 18(1) as "an amount payable by a tenant of a dwelling as part of or in addition to the rent
- (a) which is payable directly or indirectly for services, repairs, maintenance, improvement 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 (including overheads).
- 4.3 "Relevant costs" are defined as costs or estimated costs incurred or to be incurred by or on behalf of the landlord or superior landlord in connection with the matters for which the service charge is payable.
- 4.4 Section 19(1) of The Act deals with the test of reasonableness and the only costs that shall be taken into account in determining the amount of the service charge are those that are
- (a) reasonably incurred and
  - (b) where they are incurred on the provision of services or carrying out of work if those services or works are of a reasonable standard.

## **5. The Applicants' Case**

- 5.1 The Applicants argue that the amount of their service charges should be, as they were until 2009, restricted to 3.74% of the overall service charge figure for all 20 flats. They also argue that they believe and understand that this figure reflected the difference in size and amenities enjoyed by their flats when compared with other flats in the development.
- 5.2 That figure of 3.74% would appear to be derived from the figure in paragraph 7.2 of the lease relating to the percentage of the annual insurance premium and which, in turn, was probably based on the size of the flat.
- 5.3 The Tribunal, has however, noted that there is no correlation between paragraph 7 1 (the obligation to pay such proportion of the service charge relating to the property as the lessor shall specify at its discretion to be fair and reasonable...) and paragraph 7 2 which relates specifically and solely to the percentage proportion of the insurance premium.

## **6. The Respondent's Case**

- 6.1 The Respondent argues that having changed managing agents on the 1<sup>st</sup> of October 2008 they requested the new property manager obtain legal advice as to the proposed change in contributions towards the service charges.
- 6.2 That legal advice stated that whilst the contributions in respect of buildings insurance were as a fixed percentage the other costs should be apportioned by the lessor at its discretion to be fair and reasonable.
- 6.3 This matter was put before a director's meeting on the 12<sup>th</sup> of January 2009 and again on the 23<sup>rd</sup> of February 2009 when it was decided to put all matters before the Annual General Meeting at which all members (Leaseholders) were invited to attend.
- 6.4 At the Annual General Meeting on the 2<sup>nd</sup> of April 2009 the matter was voted upon, when the almost unanimous view, with one dissenting vote was to change the apportionment to equal proportions for the year 2009/10.
- 6.5 The Respondent further argues that the service charges (as specified in Appendix 4 of the Lease) relate to the entire development of all 20 flats and that the total service charges benefit all flats equally.


## **7. The Determination**

- 7.1 There is no dispute as to whether the service charges have been reasonably incurred or whether those services and works provided have been of a reasonable standard. Indeed, Mrs Almond complemented the Directors of the Management Company on the way that they had conducted themselves.

- 7.2 The only matter in issue is whether the percentage of the overall service charge payable by the Applicants should be 3.74% or 5% of the total service charges for all flats.
- 7.3 Clause 7.1 of the lease makes it quite clear that the proportion of the service charge relating to the property shall be that as specified by the lessor as its discretion to be fair and reasonable. There is no link or requirement that the service charge should be 3.74% as is specified in paragraph 7.2 of the lease and which relates solely to the insurance premium.
- 7.4 The Tribunal finds that there is equal merit in both arguments and that both could be regarded as fair and reasonable.
- 7.5 To put it another way, neither is unfair or unreasonable and it is a matter for all the members voting at an Annual General Meeting to agree and adopt any proposal that, at the discretion of the Respondent, is "fair and reasonable".
- 7.6 Accordingly the Tribunal finds that the lessor has a discretion to specify the amount of the annual service charge provided that it is fair and reasonable.
- 7.7 The change to 5% was adopted at the Annual General Meeting of the Management Company at which all members (lessors) had a vote.
- 7.8 Accordingly the Tribunal find that the service charges for the years 2009/10 and 2010/11 are fair, reasonable and payable.

## **8. The Section 20C Application**

- 8.1 Whilst the applicants have not made a formal application under Paragraph 9 of their application form to the Tribunal (LVT4) they have in their response to the Respondent's statement at page 27 asked that their fees and costs be reimbursed by the Respondent and furthermore that the Respondent's costs should not be taken into account or allowed when determining the amount of the service charges payable by the applicants.
- 8.2 In the light of the Tribunal's finding, the Tribunal have decided that it would be just and equitable for the Respondent to be able to recoup their costs in connection with this application by way of an additional service charge and no adjudication is made with regard to the applicants fees and costs.

Signed:   
Andrew Duncan McCallum Gregg (Chairman)

Dated: 12<sup>th</sup> November 2010