

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/00HN/LIS/2010/0060

Re: 27 Hamilton Road Bournemouth BH1 4EQ

Applicant Tableprime Ltd

Respondents Mr R J Thompson, Mrs T Bennett, Mr P White and Ms C
Burfield, Mr and Mrs CJ Randall and Mr P Herdman

Date of Application 23 July 2010

Date of Inspection 11 November 2010

Date of Hearing 11 November 2010

Venue Royal Bath Hotel Bournemouth

Representing the parties For the Applicant: Mr M Clark and Mr P Taylor
For the Respondents: Mr P White, Mr R Thompson and Ms B
Hickman

Members of the Leasehold Valuation Tribunal:

M J Greenleaves	Lawyer Chairman
Miss RBE Bray BSc MRICS	Valuer Member

Date of Tribunal's Decision: 25 November 2010

Decision

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that for the accounting years 2007, 2008 and 2009, the reasonable and payable sums for service charge items in dispute in the service charge accounts for those years are as follows:

Year	Item	Claimed	Reasonable (inc VAT save where specified)
2007	management fees	£699.99	699.99
2007	gardening	£135.00	£135.00
2007	Waste management	£123.38	£123.38
2007	Repairs and maintenance	£435.17	£435.17
2007	Fire risk assessment	£235.00	£235.00
2008	Management fees	£1063.75	£800.00 ex VAT
2008	Statutory costs	£146.88	Nil

2008	Gardening	£390.00	£310.00
2008	Repairs and maintenance	£493.51	£440.63
2009	Management fees	£1063.87	£800.00 ex VAT
2009	Statutory costs	£200.00	Nil
2009	Internal cleaning	£50.00	£50.00
2009	Gardening	£700.00	£625.00
2009	Repairs and maintenance	£170.00	£170.00
2009	Major works	£7718.80	£7718.80

2. The Respondents' contribution to the service charges is payable by them, in accordance with Clause 1 (B) of the lease, within 14 days after being formally demanded in writing.

Reasons

Introduction

3. This was an application made by Tableprime Ltd (the Applicant) for determination whether certain service charges for the years set out above were reasonable and payable. Other than the items specifically set out in the decision, the other items for the 3 years in question were agreed or not challenged by the Respondents.

Inspection

4. The Tribunal inspected 17 Hamilton Road Bournemouth (the property) in the presence of those who attended the hearing. The inspection included the exterior of the property and grounds, the internal common parts comprising the hallway and staircase and also Flat 27c so far as necessary in relation to their damp problem.
5. The property, probably built about 100 years ago, is built of brick under a slate roof but partly with a flat roof extension at the rear and is converted into 5 Flats laid out on the ground and first floors. The grounds are laid out to a gravelled access drive, grassed areas, borders and hedges.
6. The property appears to be in fair condition for its age and character but in particular the roof is in need of further repair due to slipped/loose slates, some brickwork is spalled and there is no flashing around the chimney. The internal common parts need redecoration and re-carpeting. There are no emergency lighting or alarm systems.

Hearing & Representations

7. An oral hearing took place, attended by those referred to above and the Tribunal heard evidence and submissions from them and considered the papers received from them. The evidence was largely set out for the Applicant in the statement of Mr Taylor dated 28 September 2010 and for the Respondents in a statement received from Mr White and Ms Burfield dated 12 October 2010. They are not repeated in detail in these reasons. Mr Taylor, for the Applicant, considered all the charges set out in the accounts for the years in question to be reasonably incurred and of a reasonable cost but in oral evidence:
- a. accepted that there was at least one instance where letters from the Lessees had not been replied to by the managing agents,
 - b. he inspected during major works with a building surveyor but service charge bills incurred were generally paid on the basis of trusting the contractors employed without checking that the work had been done or as to the standard of work ;

- c. that 2009 statutory costs related to the Tribunal fee of £200 for the present application;
- d. that both items of statutory costs were recoverable under the terms of Schedule 4 to the lease;
- e. since he took over the property's management in May 2007 he had inspected the property at least 4 times a year and he produced notes of some of his inspections;
- f. in relation to the 2009 gardening, he did not feel that monthly gardening was sufficient; in relation to major works in 2009, he produced written evidence of compliance with the statutory consultation procedure;
- g. that obtaining a fire risk assessment was reasonable and will not be available either from the Fire Brigade or Local Authority; that a review of the fire risk assessment every 5 years for this type of property is reasonable;
- h. in respect of management fees, they had reviewed the level of these and found that they had been undercharging up to 2007 so had reviewed them and as a result charged at the rate of £180 plus VAT per flat for 2008 and £185 plus VAT per flat for 2009.
- i. They have a list of approved contractors particularly on the basis of solvency, public liability insurance and references;

8. The Respondents' written case may be summarised, as to its main points:

- a. they were dissatisfied with the level of management provided by Parsons Son and Basly, referring in particular to failure to communicate;
- b. work charged for, particularly gardening, had not been carried out on all the occasions asserted by the Applicant; in relation to gardening, they know when the gardener comes because they can see that work has been done; they themselves do some grass cutting, weeding etc: they generally get on with matters themselves because of poor management responses
- c. poor standard of some works
- d. they consider that the fire risk assessment and waste management charges could have been avoided by using the Fire Brigade/local authority instead without charge;
- e. they undertook some of the management themselves by reporting faults and sub-standard work which the managing agents should have identified .

9. The respondents emphasised these points in their questioning of Mr Taylor and in their oral evidence.

Consideration.

10. We took into account all the case papers and the evidence.

11. The lease. Amongst the case papers we were provided with a copy of the lease of Flat 27e dated 31 August 1988 and we understand the leases of the other 4 flats are in the same form so far as material to the issues before us.

12. The only issue which we have needed to consider, in respect of the recoverability of statutory costs only, is the 4th schedule which is in the following terms:

- a. Heading: "Costs expenses outgoings and matters in respect of which the lessee is to contribute:
- b. "All costs and expenses reasonably incurred by the lessor for the purpose of complying with or in connection with the fulfilment of the lessor's obligations under Clause 3 (2) 3 (3) and 3 (4) hereof and if the lessor decides to instruct managing agents to deal with the

collection of the rents and the general management of the building and the common areas all costs and expenses reasonably incurred by the lessor in this respect including the charges made by such managing agents".

13. Management fees.

- a. In our experience, the level of fees charged by Parsons Son & Basly for 2008 and 2009 for a proper management service is reasonable and we agree that the rate of £120 plus VAT per flat for 2007 was below the market level for a small property of this nature.
- b. We accept the outline of Mr Taylor's written evidence as to what these fees need to cover. However, we note his acceptance of some failure of communication. We also note in particular that he has not given the Lessees any indication of when he intended to visit the property; further that when he has been presented with a bill for services, e.g. gardening, he has taken no steps to check that the work has been carried out or that it has been carried out to a reasonable standard. That may be because his firm is based in Bognor Regis, a considerable distance from Bournemouth, and does not enable him to exercise the control of the use of Lessees' funds which we think they can reasonably expect. That is a matter for the managing agent, but we consider that this aspect of management falls short of that which reasonable management fees are expected to cover.
- c. We also took into account the evidence from Mr Taylor that in 2008 they had not been aware for several months that the gardener had not carried out work: this ought to have been noted on inspection.
- d. For those reasons we reduced the fees for 2008 and 2009 to a reasonable level commensurate with the level of management actually provided. We would have made a similar reduction in relation to the 2007 fees but did not do so because we consider them to be below the level of a reasonable fee for proper management at that time, so that the fees charged were commensurate with the service actually provided.

14. Statutory costs.

- a. These costs in 2008 were £146.88 and we are told that they relate to an administration fee payable to the Council to ascertain whether the property needed to be licensed under the Housing Act 2004.
- b. In 2009 they were £200 and related to the intended payment of the fee for making this present application to the Tribunal. In the event the fee was not paid until July 2010 so this item represents an advance payment.
- c. The Applicant contends that the sums are payable under the provisions of the 4th schedule which we have set out above.
 - i. As regards the 2008 item, it does not in any way represent the provision of a service to Lessees. To be recoverable from Lessees, there would need to be clear provision in the lease to cover it. Neither the service charge provisions nor the 4th schedule nor any other term of the lease provide for recovery of such an item from Lessees. It does not relate to services for the Lessees benefit: it is a fee payable by the Applicant simply by virtue of its ownership of the property. It is not payable by the Lessees.
 - ii. As regards the 2009 item, similarly the lease would need to show clearly the right of the Applicant to recover it from the Lessees. Again, no part of the lease, the 4th schedule or otherwise, contains any such provision and it is therefore not chargeable to Lessees.

15. Gardening.

- a. For each of these years we considered on the balance of the evidence and taking into account the nature and extent of the property that the work had probably been carried out.
 - b. 2007. The charges amounted to £135 for a total of 5 visits. The grounds are not extensive and, from our inspection, are not of a nature which require a high standard: the standard that we saw was not poor in itself but reflected the nature of the property. We have no reason to suppose that for any of the years in question the standard of gardening required or carried out has been any higher. For this particular year we considered the rates of charge and the time spent were reasonable.
 - c. 2008. The charges amount to £390, to include trimming hedges and work to trees of £190. We accepted that this work was probably required, was carried out and was a reasonable charge. In respect of the remaining £200, which was charged at a rate of £40 per month for monthly lawn cut, we consider that the nature and extent of the property and the work required did not justify a fee of more than £30 per month, a total of £120. Accordingly for this year we decided that reasonable charges totalled £310.
 - d. 2009. The charge is £700 to include the cost of hedge cutting of £240. Again, we decided that the hedge cutting work was probably carried out on both occasions and that fee was reasonable. The remaining £460 related to 11 visits for gardening. Again, we considered that a charge of £40 per visit was too high for the nature and extent of the property. We considered that £35 per visit would be reasonable, totalling £385 making a total gardening charge for the year of £625 as being a reasonable sum.
16. Waste management. The fee charged is £123.38. It relates to the removal of a mattress and wood and the remains of a bin area and broken fencing. The Respondents say that this could have been carried out free by the local authority. From our knowledge and experience that is unlikely and we have no evidence before us that it is the case, other than the Respondents' assertion. We did not accept the work could have been done free and we consider that the sum charged is reasonable for the extent of work.
17. Fire risk assessment. Such an assessment must be made and reviewed by lessors on a regular basis. The nature of the assessment has not been the one available free from the Fire Brigade or local authority during the years in question or earlier. We therefore do not accept the Respondents' assertion in this respect. In our experience the level of fee charged in this case is reasonable.
18. Repairs and maintenance.
- a. 2007. The total charges of £435.17 include £381.88 for easing the front door and attendance work concerning damp problems, £42.59 for repair of a lock. The remaining £9.50 is not accounted for but was not challenged by the Respondents. The Respondents did not however think the front door had been the subject of any easing and doubted work carried out concerning damp problems. However, on the balance of the evidence we found that these works have been carried out and that the sums charged were reasonable so we allowed this item for the year in full as being reasonable.
 - b. 2008. The total charges are £493.51.
 - i. This includes £88.30 for fitting a new gate stop. The Respondents complained it had been poorly carried out and this was accepted on behalf of the Applicant and confirmed by our inspection. While it is understood that the contractor has agreed to replace it, as it stands at the moment, the work has not been done to a satisfactory standard, although it has served as a temporary measure. A reasonable sum for the work done is £30 plus VAT, a total of £35.10.

- ii. The other amount is £405.38 in respect of repairs to some parts of the roof. The Respondents say that there is still a hole in the roof and that part of the problem is the lack of proper management. It is understood that the work carried out was on the right-hand side of the roof while our inspection showed other roof slopes requiring work. We did not find that there was any evidence that the work had not been carried out or not carried out to a reasonable standard and we found that the charge for the work done, in our knowledge and experience, was reasonable.
 - c. 2009.
 - i. The item includes £170 for separate items of clearing gutters and clearing away a fallen tree. We found both items were probably carried out, were reasonably incurred and the amounts were reasonable.
 - ii. Major works were carried out at a cost of £7,718.80. The Respondents complained about paint damage and snagging items. In our experience that snagging items are not unusual. We were satisfied the consultation procedure had been duly carried out and the cost incurred was reasonable.
19. Internal cleaning. This cost of £50 was a one-off cleaning item carried out in December 2009. The invoice shows extensive work; we accept that the Respondents may also have carried out internal cleaning during the years in question. The work followed an inspection by Mr Taylor on 22 September 2009 when he noted that the internal decorations were poor and the carpets "OK". We found on balance that the work had probably been carried out to a reasonable standard and the cost was reasonable.
20. We made our decisions accordingly.

[Signed]

M J Greenleaves

Chairman

A member of the Tribunal
appointed by the Lord Chancellor

Issued 29 November 2010