

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

Case No: CHI/00HN/MNR/2010/0063

Re: Flats 1, 2, 3 & 4, 7 Glen Fern Road, Bournemouth BH1 2LX

Applicant Philip Clarke, Ryan Lockett and Paul Keating

Respondent Castleford Management Ltd and Rayner Homes Limited

Date of Application 7 June 2010

Date of Inspection 29 September 2010

Date of Hearing None

Venue -

Representing the parties -

Members of the Leasehold Valuation Tribunal:

M J Greenleaves	Lawyer Chairman
K M Lyons FRICS	Valuer Member

Date of Tribunal's Decision: 2 November 2010

Decision

1. Rayner Homes Ltd being the company liable under the landlord's covenants in the leases of the Flats of the property, is joined as a party to the application.
2. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that for the accounting year 2009/10, the reasonable and payable sums for the following items in the service charge account for those years are as follows:

Item	Claimed	Reasonable Sum
window cleaning	£373.00	£124.20
Electricity	£72.00	£72.00
Gardening	(£45.00)	(£45.00)
Insurance	£768.00	£768.00
Postage/photocopying	£53.00	Nil
Management charges	£518.00	£387.60
Accountancy	£250.00	£105.75

3. The Tribunal makes an order under Section 20C of the Act that if the terms of the lease might enable the landlord to recover by way of service charge its costs in connection with these proceedings, it shall not be entitled to do so.

Reasons

Introduction

4. This was an application made by Philip Clarke, Ryan Lockett and Paul Keating for determination whether certain service charges for the year 2009/10 were reasonable and payable.
5. The items of service charge in question were the items referred to in the decision.

Inspection

6. The Tribunal inspected the external common parts of the property containing the Flats 1, 2, 3 and 4 7 Glen Fern Road Bournemouth (the property).
7. The property is semi-detached, comprising Flat 1 in the basement, having a separate side entrance and Flats 2,3 and 4 having a communal hall and stairway. There is a driveway to the side leading, through electrically powered gateway to a parking area at the back, part of which is for use by the Flats in the adjoining property.
8. The property appears to be in need of proper care and maintenance. It is built of brick under a tiled roof. Externally, there are shrubs to the front garden, to the side is a drive way and electrically operated gateway and the parking area at the rear is tarmac. In the parking area there is a pile of tyres, a bicycle and old refrigerator. All external areas are unkempt.

Hearing & Representations

9. No party requested an oral hearing so the Tribunal determined the case on the papers submitted.
10. In addition to the items referred to in their application form, the Applicants subsequently asked the Tribunal to determine additional items, all those items being referred to in the decision above. In their application form, the Applicants complained that Castleford Management were charging full amounts for the year in question although they admitted they had stopped services. In a response to documents and submissions made by Castleford Management, the Applicants submitted in relation to the items in question :
 - a. The electricity should be £19.58 per annum as in previous years (apparently referring to the determination of the previous Tribunal for those previous years);
 - b. Photocopying postage: querying whether that was in relation to preparing bundles against them;
 - c. Insurance: is the building properly insured or over insured;
 - d. Window cleaning: £373 is too much and 4 times a year would be enough; window cleaners had never been seen;
 - e. Management charges are "over the top " for what they do;
 - f. Establishment cleaning: "racing around with the Hoover twice a year does not justify £140 a year";
 - g. Accountancy: "is the way they charge us twice for this fair and also should this not be covered in management charges";

- h. "In conclusion we feel that the determination should be based upon the last determination and also take into account trades being stopped during the year".
11. Castleford Management made submissions and provided documents on behalf of the landlord: –
- a. Window cleaning: they explained how the contractor overcame the closed gates; they had every confidence in the work invoiced was carried out; that the contractor is an acquaintance of one of the Applicants and they meet when carrying out the work; the cleaning did not stop in April 2009
 - b. Electricity: noting that £58 of the total bill had been recovered from the adjoining property and allowed for in the accounts;
 - c. Gardening: none had been done in the year in question and there was only a credit figure in the accounts from previous years;
 - d. Insurance: they only insure 7 Glen Fern Road; it is placed with Zurich for a buildings um insured of £1,162,500 plus contents. It is part of a block policy; alternative quotes had been obtained in February 2009 on the basis of a revaluation of the premises.
 - e. Management charges had been reduced by 50% which they believe to be fair and reasonable;
 - f. Photocopying and postage had gone up in the year in question comprising 350 photocopies and £16 postage
 - g. Accountancy: they produce accounts in house and then have them checked by an external accountant in accordance with ARMA practice.

Consideration & determination.

12. It is plain from the lack of evidence provided by the Applicants in support of the case, that they assume the Tribunal can merely make its decision on the basis of decisions made by the previous Tribunal. The Tribunal cannot do so. The Tribunal is required to make its decisions first on the basis of the evidence submitted in relation to the items in question in the accounting year 2009/10 and secondly to apply its own knowledge and experience as appropriate. The Tribunal has proceeded in its consideration and determination accordingly.
13. The relevant terms of the lease (the lease of Flat 1 dated 20 February, 2002 was produced to us and we understand that its provisions, so far as relevant to this application, are in similar terms to the other Flat leases):
- a. the maintenance charge per Flat is 25% of all items except that it is 12.5% in relation to the driveway and forecourt, the bin store and the gates;
 - b. in the 4th Schedule, the lessor covenants to carry out the work and provide the services the subject of this application. There are no conditions attached such that the landlord would only be required to carry out such work and provide such services if the service charge was paid. Even if there had been such a condition, the landlord would have been required to comply with these covenants in relation to the one tenant who has paid up to date regardless of not having received full payment from all the tenants.
14. Window cleaning. We note the submissions and explanations made by Castleford and we have no contrary evidence from the Applicants. However we consider that window cleaning once per quarter would be reasonable. We have been provided with window cleaning invoices up to and including December 2009 but none thereafter on the basis of which it appears to us that cleaning should reasonably have taken place 3 times in the preceding 9 months. We accept the rate of charge of a total of £41.40 per month and we therefore find a reasonable charge for window cleaning for the year in question would be £124.20 (£41.40 x 3).

15. Electricity. We note from the bills supplied that standing charges per year totalled £33.72 and the overall charge for electricity (including that recoverable from the adjoining property) is £130. The proportion charged to 7 Glen Fern Road is a balance of £72 which, for internal lighting and a proportion of the electric gates, is reasonable.
16. Gardening. Castleford rightly point out that there is a credit balance in the accounts for the year in question and that no gardening has been carried out in the year. There is therefore no charge for gardening but the credit is appropriate and the Applicants have the benefit of it.
17. Insurance. On the basis of the policy schedule produced by Castleford for the insurance year commencing 24 June 2009 there has been a substantial uplift in the sums insured from the previous year. We requested additional evidence from Castleford which is referred to above. On the basis of that evidenced and using our own knowledge and experience, we were satisfied that the cover provided and the premium paid is reasonable.
18. Accountancy fees. The external accountant charged £105.75 for preparing the accounts for the service charge year in question and we find that is reasonable. The accounts show a total charge of £250 and Castleford explain that the balance of £144.25 relates to their internal accountancy. In respect of the internal accountancy we deal with that below in relation to management fees.
19. Photocopying/postage. We deal with this below in relation to management fees.
20. Management fees.
 - a. The accounts show a charge of £518 for management which equates to £129.50 per flat which is not excessive in itself. However, such a fee presupposes first of all that proper management is carried out and, secondly, that it would be expected to include internal preparation of management accounts and overheads such as photocopying and postage.
 - b. Instead however, Castleford have made 3 separate charges for aspects of their work in relation to the property: accountancy £144.25; photocopying £53; management fee £518 which together total £715.25 or £178.81 including VAT per flat. That is not reasonable. As noted earlier, a reasonable charge would be £129.50 to cover all these items on the basis that a proper standard of management is provided.
 - c. The previous Tribunal had found that the level of management provided by Castleford had not been to an acceptable standard. From our inspection on 29 September 2010 we came to the same conclusion and, like the previous Tribunal, found that there was no evidence of Castleford have done anything more than paid insurance premiums, some bills and also have their own office expenses including internal accountancy. There is no evidence of inspection or any other proactive steps; there is no evidence that they have checked whether bills received were justified.
 - d. We concur with the view taken by the previous Tribunal that a management charge of £387.60 for 2009/10 is reasonable in all circumstances.
21. The Applicants have again had to make application to the Tribunal and they should not be penalised for so doing by risk of paying the Respondents' costs in connection with the application. We accordingly made the order under Section 20 C of the Act.
22. We made our decisions accordingly.

[Signed] M J Greenleaves

Chairman

A member of the Tribunal
appointed by the Lord Chancellor