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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985 SECTION 27A and  
Section 20C

**LON/00AY/LSC/2010/0028**

**Premises:** 8 Hilldown Court, 327 Streatham High Road, London  
SW16 3NU

**Applicant:** Hilldown Court Management Limited

**Represented by:** Mr S Purkis-Counsel on behalf of Maddersons Solicitors

**Respondent:** Mr Anthony Taylor

**Date of  
Hearing:** 17 May 2010

**Tribunal:** Ms M Daley LLB (hons)  
Mr I Thompson BSC FRICS  
Mrs L Walters MA

**Background**

- (a) The property, which is the subject of this application, is two purpose built 1960's adjoining four storey block of flats.
- (b) The Respondent is the leaseholder of flat 8 Hilldown Court.

### **Matters in dispute**

- a) The case was transferred from Wandsworth County Court by Order of District Judge Gittens on 15 January 2010. The Order from the County Court provided for a determination of the reasonableness and liability to pay service charges for the years 2008 and 2009. The service charges outstanding were in the sum of £1803.18. There were also administration fees of £300.25.

### **The Law**

Section 27A(1) of the Act provides that an application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to –

- (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, and
- (e) the manner in which it is payable

Section 18(1) of the Landlord and Tenant Act 1985 (“the Act”) provides that, for the purposes of the relevant parts of the Act, “service charge” means 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, 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.

Section 19(1) provides 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.

### **The Hearing**

- b) In attendance at the hearing were counsel for the Applicant, Mr Purkis and Ms Sara Maysey and Mr Mark Tejada of HML Andertons (managing agents for the property). The Respondent did not appear and was not represented. He had also not complied with the directions by providing written representations for the Tribunal to consider. It was therefore left for the Tribunal to enquire as to the reasonableness of the charges presented by the Applicant.
- c) The charges were set out at pages 154 and 164 of the bundle and were as follows:-

<b>Service charges</b>	<b>Year ending 25 December 2008</b>	<b>Year ending 25 December 2009</b>
Cleaning	£2069	£1860
Window Cleaning	£253	£510
Gardening	£1126	£1625
Tree Surgery	£388	-
Building Insurance	£3978	£4418
Directors Insurance etc	£349	£334
Terrorism Insurance	£722	£699
Electricity	£318	£435
General Repairs	£1996	£3594
Entry phone contract	£571	£896
Hire of Refuse containers	-	-
Waste Removal	£59	
Audit & Accountancy fees	£853	£846
Company Registration fee	£30	-
Admin Charges	£116	
Managing Agents fee	£2938	£3010
Bank interest and charges	£42	£52

Meeting and inspection fees		£345
Postage and Photocopying	£113	£130
Company Secretarial fees	£399	£388
Resurfacing of Access Road	£5418	
General Reserve Fund	-£2,999	£325

- d) In addition there were also charges for sundry items.
- e) At the hearing Ms Maysey gave evidence on behalf of the Applicant. In her witness statement, Ms Maysey stated that she was the Estate Manager for Hilldown Court.
- f) Ms Maysey provided the following background information in support of the charges-: **The Cleaning and Gardening-**:In relation to the cleaning cost, Ms Maysey informed the Tribunal that the cleaning company undertook both the cleaning and the gardening and had been in place when she took over the management of the building. The service provided involved fortnightly cleaning of the common parts and work to the communal garden (which was hard standing with two trees). The cleaning involved vacuuming and sweeping, and undertaking small items of maintenance such as clearing drains, litter picking and wiping down surfaces and internal windows. The gardening involved keeping the garden clean and tidy and free from litter.
- g) In answer to a question from Mr Purkis, Ms Maysey confirmed that there had been no complaints from the Respondent or from any of the other leaseholders, either concerning the frequency, or the standard of service provided by the cleaning company.
- h) **Window Cleaning**: this was carried out three times a year and involved the use of a harness. There had also been no complaints concerning the cleaning of the windows.
- i) **Tree Surgery**: This was re-active work in that there was no maintenance plan for the trees. The managing agents responded to complaints from the leaseholders of obstruction by the Trees, with cutting back to prevent overgrowth.

- j) **Building Insurance:** Ms Maysey explained that although there were separate headings in the accounts, the Building Insurance and the Terrorism Cover, were obtained by one insurance provider, there was in effect only one policy for the building. The Insurance was obtained via a broker who invited insurance providers to tender for the provision of insurance. The managing agents did not receive commission for placing the policy with a broker. Ms Maysey stated that the managing agents considered the policy to be competitive.
- k) In respect of the **Directors insurance**, this was placed with the broker and was also considered to be competitive. The Tribunal queried whether this expenditure was payable under the terms of the lease. Mr Purkis referred the Tribunal to clause 4(1) which amongst other matters, provided that the Applicant could recover the cost of "*initiating and running its business*". In Counsel's submission this included the reasonable company expenses.
- l) **The Electricity:** This was for lighting in the common parts. The lighting was on a timer switch. The cost set out in the service charges was for the actual cost of the electricity used.
- m) **General Repairs and Maintenance:** The Applicant had provided a schedule to the accounts which set out the detailed items for the repairs and maintenance which included roofing work, fence replacement, fitting a new gate catch and replacement fire door, clearing blocked gullies, and re-fixing hand rails and replacing light bulbs. In 2009 there had also been cost incurred for the removal of non-domestic waste as well as work to the down pipe drains, roof repairs cleaning of gullies and clearing blocked drains.
- n) **The Accountancy and Audit Fees:** Ms Maysey informed the Tribunal that this work was carried out by Simpson and Wreford (Chartered Accountants) who were an independent external firm of accountants who were engaged by the Board of Directors.
- o) **The Managing agent's fees:** In 2009 the fees were £163 per unit plus Vat. Ms Maysey stated that this figure was below the managing agents' current rate for new business (which was at least £175). The work of managing the building involved managing the premises in

accordance with the lease provisions. The Tribunal was informed that there was a management agreement in place. The terms set out in the agreement dealt with the responsibilities of the managing agent and also set out the circumstances in which additional charges would be incurred. Ms Maysey stated that the additional charges were billed at a separate rate as per the management schedule to the management agreement. These charges were subject to annual revision.

- p)* **The Resurfacing of the access Road:** The Tribunal queried whether this charge was considered to be subject of section 20 of the landlord and Tenant Act. Counsel agreed that it was, and the managing agents provided the Tribunal with a copy of the section 20 notice and the letters served in compliance with section 20 at the hearing.
- q)* There were also **fees for the hire of the entry-phone** and the **refuse container**, Mr Purkis confirmed that the Respondent had not challenged the reasonableness of any of these items.
- r)* The Tribunal asked for additional information on the Reserve fund and the Administration Fees, which were detailed in the 'Scott Schedule' which had been prepared for the hearing. The Administration fee included the following items £58.75 admin fee, £80.50 late payment fee, and an item for debt collection fees in the sum of £161.
- s)* Mr Purkis stated that the Lease provided that outgoings of any description were covered by clause 2(2) and under 2(13) the lease provided that the leaseholder was obliged to pay all expenses including solicitors cost and surveyors fees. Mr Purkis stated that the charges broke down as follows:- £50 plus vat for the Transfer to the debt collector, £80.50 for the letters sent regarding the transfer. The £161 was for the debt collector's fee.
- t)* Mr Purkis submitted that it was now not possible to forfeit the lease without a determination from the Tribunal concerning the reasonableness and payability of the service charges. Given this, all of the steps up to and including the referral to the County Court should be recoverable.

- u) The Tribunal queried the position concerning the balancing charges, as it was noted that there were no end of year balancing charges demanded and no credits applied to the account. The Tribunal noted that there was a variation between the actual charges and the budgeted amount. Mr Purkis explained that there were no balancing charges. This was because in the past the company had agreed that small surpluses from the budgeted service were credited to the reserve, deficits to the budget would also be recouped from the reserve fund. The Directors of the Company had discussed and agreed that this would happen at an AGM.
- v) Mr Purkis stated that the lease provided for a reserve fund under clause 4(1) “... *the aggregate amount properly and reasonably required to be expended by the Company and the amount of any reserve properly and reasonably required to be expended by the company in connection with the performance and observance during the whole of the term...*”.
- w) Mr Purkis stated that it was not a “... high end building”, and although there were some major works, the bulk of the work was decorative. The Tribunal asked about the planned maintenance. Mr Purkis stated that there would be work to the lintels as it had been noted that this was required. However the Applicant expected that funds would be collected before the work was carried out. There were no other major repairs planned.
- x) Mr Purkis invited the Tribunal to consider the service charge demands (which were in the bundle) and the attached summary of rights and obligations served in compliance with section 21 of the Landlord and Tenant Act 1985.
- y) Mr Purkis submitted that the charges were reasonable and payable. He submitted that the charges could be substantiated and that they had been demanded in compliance with the Applicant’s legal obligations.

## The Decision of the Tribunal

1. The Tribunal having considered the submission on behalf of the Applicant and the evidence given by Ms Maysey, find on a balance of probabilities that the service charges claimed in the sum of £1803.18 are reasonable and payable. The Tribunal listened carefully to the evidence of Ms Maysey and found her to be a credible witness who demonstrated a good knowledge of Hilldown Court and the management of the premises. The Tribunal also noted the considerable amount of supporting evidence, in the form of invoices and statements of account which supported the charges.

2. The Tribunal regretted the absence of the Respondent and his non-compliance with the directions, as we were not assisted in understanding any reasonable objections that he might have to the charges. The Tribunal noted that he had attended the pre-trial review, at which the hearing date was set, given this, the Tribunal can only assume ( in the absence of a contrary explanation), that he chose not to attend the hearing.

### *The Reserve Fund*

3. The Tribunal noted however the use of the Reserve Fund, and whilst the Tribunal accepts that the clause can be interpreted widely to enable the use of the Reserve Funds to balance short term deficits, the Tribunal does not consider that to do so on a regular basis, represents good practice. There are leaseholders who contribute to the fund, presumably understanding that this fund will be used to fund major works. In the event of major work being necessary the Applicant will not be in a position to fund the work without substantial additional contribution.

4. (Guidance is given about the use and purpose of a reserve fund in part 9 of the RICS *Service Charge Residential Management Code*.)

### *The Administration Charges*


5. The Tribunal having considered the clauses referred to by Counsel noted that there is no direct provision for the payment of Administration Charges, Counsel submits that they are incidental to the preparation and service of a notice under section 146. The Tribunal do not accept this interpretation, and find, in the absence of clearly expressed wording, that



there is no right to levy these charges. Accordingly the Tribunal find that the sum of £300.25 is not recoverable.

6. The Tribunal noted that the Respondent at the pre-trial review indicated that he wished to make an application under section 20C. No application was made at the hearing, and the Applicant indicated that they would pursue any cost action against the Respondent directly rather than seeking recovery against the account. The Tribunal notes that this is outside the scope of its jurisdiction.

7. **The Tribunal find that the sum of £1803.18 is reasonable and payable, and that it is not reasonable to make an order under section 20C.**

Signed 

Dated 23<sup>rd</sup> June 2010.