

MAN/00BN/LSC/2010/0036

**LEASEHOLD VALUATION TRIBUNAL
OF THE
NORTHERN RENT ASSESSMENT PANEL**

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

**LANDLORD AND TENANT ACT 1985
SECTION 27A (1) and SECTION 20(C)**

Property: Flat 7, 51/53 Alness Road, Whalley Range, Manchester M16 8HW.

Applicant: Ms J. Greer.

Respondents: Great Places Housing Association Limited

Chairman: Mr G C Freeman
Mr M. Hope B.Sc. F.R.I.C.S
Mrs J Howell

Date of Hearing: 12 July 2010

DECISION

- A. The reasonable service charge for the Property for the period from 1st April 2009 to 31st March 2010 is £9.91 per week and for the period 1st April 2010 to 31st March 2011 is £10.23 per week.**
- B. No order is made under section 20(C) of the Landlord and Tenant Act 1985.**

Application

1. By her application dated 31st March 2010, the Applicant seeks a determination of the liability to pay and reasonableness of service charges for the above property where costs have been incurred, or are about to be incurred, for the service charge years 2004 to 2010 inclusive. The Applicant named the Respondent in her application as her landlord.
2. The Applicant also referred, on the same date, the rent payable under her tenancy to the Rent Assessment Committee, under section 13(4) of the Housing Act 1988 (as amended). This application has been dealt with separately by the Tribunal, sitting as a Rent Assessment Committee under reference MAN/00BN/MNR/2010/0028.

Background

3. The Applicant is a tenant of the Respondents under an assured weekly tenancy which commenced on Monday 11th May 1998. The original tenancy was made between Community Relations Housing Association Limited of the one part and the Applicant of the other part. The Respondents are now the Applicant's landlord.
4. The tenancy agreement provides that the Respondents will provide lighting and cleaning of the communal areas, a door entry system, floor coverings to the communal areas, a TV aerial system, and maintenance of the gardens and grounds, in return for payment of a service charge. The Respondents may change the rent payable, including the service charge, on 28 days' written notice. The notice is to include the proposed service charge which is to be reviewed on the basis of actual costs incurred during the previous period and any known or anticipated increases in costs.
5. The Tribunal issued directions on 6th May 2010. Paragraph 1 of the directions required the Applicant to provide a statement of case to the Tribunal setting out what is disputed and a summary of arguments in support of each service charge year in question. The Applicant failed to provide any such documentation in respect of any period prior to 2009/2010. Her statement, dated 25 May 2010, consisted of a single sheet of A4 sized paper which outlined an objection to the costs of the services provided in general terms. The Respondents provided detailed budgets, accounts and copies of actual invoices for the period from 1 April 2009 to 31st March 2010.

The Property

6. The Tribunal inspected the Property on the morning of the hearing. It consists of a top floor flat in a large late Victorian house which has been converted into nine flats in a quiet residential area south of Manchester city centre. The flat itself consists of a combined living room and kitchen area, with a separate bathroom and a bedroom. The entrance hall is very narrow. At the hearing the Applicant complained of noise and vibration from adjoining flats. The communal areas are carpeted with painted walls. At the rear there are lawned and shrub areas with a tarmac area for car parking and a bin store.

The Law

7. Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:
 - (1) In the following provisions of this 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.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose-

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

8. Section 19 provides that

- (1) 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.

9. Section 27A provides that

- (1) 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 date at or by which it is payable, and
 - (d) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3)
- (4) No application under subsection (1)...may be made in respect of a matter which –
- (a) has been agreed by the tenant.....
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

10. No guidance is given in the 1985 Act as to the meaning of the words "reasonably incurred". Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.

11. In *Veena v S A Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].

Hearing

12. A hearing was held at the Tribunal’s offices, 5 New York Street, Manchester on 12th July 2010 immediately following the application to fix a market rent. The Applicant attended in person. The Respondents were represented by Ms A Donachie, a neighbourhood manager, Ms C Daly, a neighbourhood co-ordinator and Mr M Forrest, a management accountant.
13. The Tribunal pointed out that the Applicant had failed to comply with the Tribunal’s directions in respect of the periods prior to 2009/2010. The Tribunal stated that in the absence of any evidence from the Applicant, the Tribunal could not consider the application insofar as it referred to any period prior to 2009/2010. The Applicant therefore withdrew her application in respect of these periods.

The Tribunal’s Conclusions

14. The Tribunal considered the budgets for service charges, the accounts and the invoices produced by the Respondent. For the year 2009/2010 the budget amounted to £9.91 per week. For the year 2010/2011 this amounted to £10.23 per week. Copies of the budgets are included at the Appendix. The Tribunal noted the Respondent’s statement that the TV aerial system had been replaced following the conversion of the TV signal to digital in the northwest area. The Tribunal also noted during their inspection that there was an amount of litter in the communal garden, but in view of the small amount attributable to gardening (59p per week in 2009/10 and 50p per week in 2010/11) decided not to reduce this figure.
15. The Tribunal did not take into account, when deciding on a reasonable service charge, the Applicant’s assertion that the flat suffered from excessive noise and vibration from surrounding properties/neighbours for two reasons. First, the Tribunal did not consider that in fact the property suffers from this and second, such noise and vibration, even if it exists, does not affect the services provided by the Respondents.
16. The Tribunal therefore concluded that the reasonable service charge for the Property for the period from 1st April 2009 to 31st March 2010 is £9.91 per week and for the period 1st April 2010 to 31st March 2011 is £10.23 per week.


Section 20(C) Application

17. Some leases allow a landlord to recover costs incurred in connection with proceedings before the LVT as part of the service charge. The Applicant has made an application under s20C of the Act to disallow the costs incurred by the Respondent of the application in calculating service charge payable for the

Property, subject, of course, to such costs being properly recoverable under the provisions of the tenancy agreement.

18. The Tribunal determines that, as it has found that the service charges for the period in question are reasonable, it would not be reasonable to make such an order, and therefore no order is made.

Dated 19th August 2010


.....
Geoffrey C. Freeman
Chairman

Appendix

[Budgets]

Scheme name :

Hazelwood

Scheme code 30-10-713

Weekly
Charge for

Charge Band AAAA

2009/10

HB Eligible Services -

Cleaning of common parts		1.94
Window cleaning - common parts & hard to reach areas		1.39
Landscaping		0.59
Heat and light of common parts		0.69
Fire Protection		0.45
Door entry / Gate entry system		0.08
Communal TV Ariel		0.35
PAT Testing		0.53

Renewals & Replacements

Door entry / Gate entry system		0.71
Other - Carpets		1.70

Audit fee		0.19
Void loss @	0 %	0.00
Management charge @	15 %	1.29

total charge (HB Eligible Services) 9.91

total charge (HB Ineligible Services) 0.00

'B'

Scheme name :

Hazelwood, 51-53 Alness Rd

Scheme code

30-05-482

Weekly

Charge

2010/11

Rent

Input Fig

HB Eligible Services -

Heat and light of common parts		0.73
Cleaning of common parts & Refuse Collection		2.11
Window cleaning - common parts & hard to reach areas		1.45
Landscaping		0.50
Fire Risk Assessment		0.53
Fire Protection		0.53
Door entry / Gate entry system		0.09
Repairs		0.30
Renewals & Replacements		
Communal TV Aerial		0.42
Fire Protection		1.62
Door entry / Gate entry system		0.22
Street lighting		0.26
Audit fee		0.23
Management charge @ <i>Service costs</i>	15 %	1.03
Management charge @ <i>Sinking fund.</i>	10 %	0.21
Total charge (HB Eligible Services)		<u><u>10.23</u></u>