

RESIDENTIAL PROPERTY TRIBUNAL SERVICE**NORTHERN RENT ASSESSMENT PANEL****Decision of the Leasehold Valuation Tribunal****LANDLORD & TENANT ACT 1985 – SECTION 27A(1)
LANDLORD & TENANT ACT 1985 – SECTION 20C**

Applicants:	Laura Halsall	Flat 1
	Paul Kidney	Flat 3 & 17
	David Heselton	Flat 4
	Michael McGowan	Flat 5
	Andrea Eastham	Flat 6
	Dr Lopamudra Winters	Flat 7
	Trevor Jackson & Alex Weldon	Flat 8
	John Kelly	Flat 11
	Andrew Snell	Flat 12
	Alistair Brabner	Flat 13
	Paul Cullen	Flat 14
	Christopher Jones	Flat 15
	Jane Windle	Flat 16
	Paul O'Malley	Flat 18
	David Corless	Flat 19
	Thomas Moezer	Flat 20
	Edmond & Margaret Murphy	Flat 21
	Margaret & John Brennan	Flat 24 & 26
	Steve Lindsey & Fiona Looney	Flat 25
	Joseph & Teresa Davies	Flat 28

Respondent: Trinity Estates Property Management Ltd**Property:** First National Bank Building, 24 Fenwick Street and
2-8 James Street, Liverpool L2 7NE**Date of Hearing:** 9 March 2010
Blackburne House, Off Hope Street, Liverpool**Committee:**
L J Bennett, Chairman
E Thornton Firkin BSc, MRICS
C Roberts

Application:

The Applicants apply:

1. Under section 27A of the Landlord and Tenant Act 1985 for determination of liability to pay service charges in respect of First National Bank Building, 24 Fenwick Street and 2-8 James Street, Liverpool L2 7NE, Merseyside (the Property).
2. Under section 20C of the Landlord and Tenant Act 1985 for an Order that the Respondent's costs in connection with the proceedings shall not be recoverable as service charge.

Attendance:

3. Mr Graham Weldon and Mr Trevor Jackson of Flat 8 attended the hearing on behalf of the Applicants.
4. Miss Rachel Sorenson, Solicitor/Legal Manager with Trinity Estates Property Management Ltd represented the Respondent. Its witnesses were Mr Jonathan Smith, Director and Mr Ian Dalton, Head of Accounts.
5. Mr Jonathan Astle, Divisional Manager Peverell OM successor managers of the Property was present at the hearing.

Preliminary:

6. The parties provided submissions and documentary evidence in compliance with directions made by the Tribunal.
7. In accordance with further directions made after the hearing the parties submitted supplementary information in the form of a Scott Schedule and documentary evidence. Neither party requested a further oral hearing. The Tribunal convened on two occasions without the parties for its deliberations.

2007 determination:

8. A Tribunal consisting of the same members determined an application heard during February and April 2007 in respect of the Property. Details of the Property, the relevant Lease terms and Law remain unchanged. The Tribunal's 2007 findings of fact and observations relating to the physical and practical management arrangements for the Building were found accurate in this determination. The 2007 decision document is annexed and should be referred to in respect of the topics mentioned.
9. During the period of this application a further application was made by various leaseholders under Section 24 of the Landlord and Tenant Act 1987 for the appointment of a manager of the Property. The application was unopposed and an order was made appointing Peverell OM as Managers.
10. The parties advised that the practical transfer of management took place on 1 December 2009 although administrative aspects of the handover are not fully complete. The Respondent is a party to the Lease and as final accounting transfers

have not taken place we consider the parties to this application are appropriate. No submission was made to the contrary.

11. During the appeal period but prior to the Tribunal's determination the parties agreed elements of the disputed service charges within the application. The Tribunal notes and accepts those agreements. The Tribunal has limited its determination to those issues identified by the parties in a Scott Schedule updated 29 March 2010. The numbering in that Schedule is adopted in this decision.
12. The application was amended to include service charge years ending 2007, 2008, 2009 and 1 April to 30 November 2009 which is the period to the practical handover to Peverell OM.

Facts and Submissions: Issues:

13. Paragraph 2: VAT on fuel/Oils and Oil procurement:
We note the parties agreement to a reduction of the sum originally charged.
14. Paragraph 3: Disputed Fuel Costs attributed to heating for May-September:
The Applicants submit that the radiators in the common parts were needlessly on during the period throughout May-September when heating was not necessary. They further state that heat is not retained in the Property because defective window seals and windows left open and not closed by the cleaners or caretaker. As there is no central control, they state that the radiators should individually be switched off at relevant times. The Applicants have calculated the cost they attribute to this issue based on heat output and standing fuel data.
15. The Respondent points out that system design does not make it possible to separate the supply of hot water from provision of heating. The Lease contains an obligation to supply hot water from the central system as the flats do not have individual heaters. The Respondent's Property Manager understands that the caretaker has on occasions turned off radiators and closed windows in the common parts but tenants must have switched them on. Some radiators do not have operable valves. They submitted that it was not possible to take further steps to reduce heating during the period as it is a regrettable consequence of the old heating design.

Conclusion:

16. We bore in mind our direct observations of the heating installations and the Property. We note the obvious age of the system and the Lease obligations to provide hot water and space heating. The Respondent has not explained why it has failed to maintain radiator valves in working order but we accept this may involve significant cost which may not be justified in isolation to other heating system upgrades. The deductions requested by the Applicants should be seen against the total cost of fuel for this period (taking into account the now agreed reduction). We do not consider it possible to calculate with any accuracy an appropriate deduction for the results of the inefficiency of this unsatisfactory system and consider any excess cost within a margin that must be payable. Accordingly, we make no reduction and determine the charges requested reasonable.
17. Paragraphs 4/5: Buildings Insurance Charges/Tendering Dispute

Premia for the years in question have increased significantly year on year. The Respondent arranges insurance via brokers OAMPS Special Risks Ltd who in turn utilise "an insurance intermediary PKN Ltd." Whilst PKN is outside the Trinity Group and is registered in the Isle of Man, it has common shareholders. The Respondent stated it acts as an intermediary/administration company arranging insurance solely on behalf of the Respondent

18. The Applicants consider that cover has been renewed with AXA Insurance plc without a transparent open market tender and charged out at 40% above the premium paid to AXA. They have not found cogent reasons for the involvement of PKN and submit that the total premium includes charges by both PKN and OAMPS.
19. Messrs Peverell OM has recently obtained quotations from Zurich Insurance plc totalling £21,656.29 for the current year in contrast to the £29,754.09 for AXA Insurance. The Respondent does not consider the Zurich cover equivalent with higher excesses inappropriate for the Property's city centre location. They referred to the difficulty in obtaining cover because of the claims history and details of several substantial insurance companies which have refused to quote and a quotation from NIG at around £50,000.
20. The Tribunal requested further information regarding the role and function of the intermediaries involved in the arrangement of cover for the years under consideration. From the details provided by the Respondent we conclude that Trinity has little involvement in the management/administration of the policies but engages PKN to do so, in turn PKN engages OAMPS as brokers. This arrangement does not appear inappropriate save that in the circumstances it would be unreasonable for the Respondent to be remunerated for management/administration of insurance as these functions have been subcontracted. The issue of the level of charges within the premium that falls to the intermediaries remains. The Respondent did not refute the stated 40% proportion of the premium calculated by the Applicants. Whilst we accept the Respondent's underlying premia for the years under consideration are in line with expectation, although not the lowest possible, we do not consider the 40% charge appropriately reflects remuneration for the administrative work involved. We conclude this should be reduced by one half so that the addition to the basic premium should be 20% to reflect our determination of an appropriate administrative cost to be included within the premium. For the avoidance of doubt by reference to the Scott Schedule, the total deduction will be £13,844.50.
21. Paragraph 6: System Failure due to ineffective management
We note the agreement reached.
22. Paragraph 7: Charging Interest on Service Charge Loan:
The service charge accounts include interest which the Respondent states arose from a bank overdraft incurred by continuing management expenditure upon the Property despite significant arrears of service charge. The Respondent considers that Clause 2(12) of the Fifth Schedule to the Lease allows recovery of interest as "Costs and Expenses incurred by the management company of or incidental to the performance of its obligations....." The breakdown of debtors shows cumulative service charge arrears as at 16 June 2010 at £175,735 increasing from £68,193 noted in the March 2007 accounts. We note that these 2007 accounts did not include identifiable arrears of the commercial tenant, First

National Wine Bar. This is surprising as other information provided indicates the commercial tenant was stated to be in arrears from March 2005.

Conclusion:

23. Analysis shows that on broad average the commercial tenant has been liable for half of the arrears for each of the years now under consideration. Some residential debtors have individual arrears of around 10% of the total. These arrears are longstanding, have been significant over the years and we find no evidence of decisive action. The overall position has deteriorated significantly from an already poor position at the start of the period under consideration.
24. We accept that the Lease permits recovery of the interest charges incurred. However, it is clear that the arrears situation is out of hand and we do not consider that appropriate and timely action as expected from reasonable and responsible management has been taken. We are aware that it is no means certain that any action taken by management would necessarily result in receipt of monies and that throughout the period in question there were other management considerations including the earlier application to the Tribunal and activity by the Leaseholders leading to a change of manager. We are particularly concerned that the position of commercial tenant was not resolved despite our determination in April 2007. We make similar comments in respect of the residential Leaseholders owing the most significant amounts. In the circumstances we do not consider all the interest is reasonably recoverable as it reflects shortcomings in management and not solely requirements of the Leaseholders. The Leaseholders have clearly benefitted from the Respondent's willingness to enter into borrowing covenants to continue management. We assume that any interest recovered from individual debtors will benefit the service charge funds. Nevertheless, we conclude a deduction from interest recoverable by way of service charge reflecting the Manager's inefficiency or lack of appropriate attention particularly in relation to service charge arrears from the commercial tenant should be made. Accordingly, we determine the interest charges reasonably recoverable shall be 75% of the sum requested (£9,547.50) for each of the periods under consideration.
25. Paragraph 8: General Maintenance Issues:
We note this is agreed.
26. Paragraph 9: Clarification of the Final Balance of Accounts at 30 November 2009:
At the time of the Tribunal's determination we were not in possession of final accounts for the period to 30 November 2009 although copy of draft accounts was submitted. It follows we are not able to make a final determination for that period but they should be adjusted to take into account the determinations above and agreements reached between the parties in respect of other issues. We decline to order in respect of the demands for payment on account for that service charge year in view of the imminence of completion of the accounts and the new management arrangements.

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27. We refer to our comments at paragraph R of our 2007 conclusions. Despite those proceedings the circumstances are similar and we reach the same conclusion. The current application has resulted in the resolution of significant issues between the parties and the effect of our determinations is also significant.

28. Neither party applied or mentioned the recovery of the fees involved in the application. Despite this and bearing in mind our previous determination in 2007 and the evidence indicating that management has not improved, in our view inevitably giving rise to these proceedings and resulting reductions in service charge, we determine that the Respondent shall refund the application and hearing fees paid by the Applicants.

Order:

29. We determine that the service charges reasonably payable for years 2006/2007, 2007/2008, 2008/2009 and 1 April to 30 November 2009 shall be as demanded by the Applicants reduced by:

- One-half of the additional charge to the insurance premia, cumulative reduction £13,844.50
- 25% of the banking interest and fees cumulative reduction £3,182.50

30. The Tribunal notes and does not vary the parties' agreement to reductions under the Scott Schedule headings:

- Paragraph 2: £6340.25
- Paragraph 2: £8,519
- Paragraph 6: £4,708
- Paragraph 6: £5,757.50
- Paragraph 8: £915
- Paragraph 8: £2,318

31. Taken together with the Tribunal's determination we observe the total reduction in service charges for the years under consideration amounts to £45,584.75.

Date: 14 September 2010

Signed:

Chairman: L J Bennett