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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
NORTHERN RENT ASSESSMENT PANEL**

**Leasehold Valuation Tribunal
Ref: MAN/00DA/LSC/2009/0136**

Decision of a Leasehold Valuation Tribunal on an application
under Section 27A Landlord and Tenant Act 1985

Applicant: Mr. Michael David Bennett (1)
Mr. Paul John Beckwith (2)

Respondent: Freehold Managers (Nominees) Ltd.

Re: Flat 2, Tower Mews, Tower Lane, Leeds, LS12 3SA (1)
Flat 6, Tower Mews, Tower Lane, Leeds, LS12 3SA (2)

Date of Application: 16th December 2009

Date of Hearing: 7th May 2010

Date of Further Submissions: 17th May and 1st June 2010

Date of Reconvened Tribunal: 16th July 2010

Venue: SSCS Leeds, York House, York Place, Leeds, LS1 2ED

Appearances for the Applicant: Mr. Michael David Bennett and
Miss H.L. Bennett

Mr. Beckwith did not attend and was not represented.

Appearances for the Respondent: Mr. R.J. Sandler for Freehold Managers (Nominees) Ltd
Mr. S. Fentem on behalf of Premier Estates Ltd (Managing Agents)

Members of Leasehold Valuation Tribunal: Mrs. J.E. Oliver (Chairman)
Mr. P. Livesey (Valuer Member)
Mrs. C. Hackett (Lay Member)

Decision

1. The Tribunal determined that the service charge payable for the year ended 31st December 2008 is as follows:-

Cleaning	£ 2,346.00
Repairs	£ 922.00
Electricity	£ 355.00
Gas	£ 3,228.00
Water Rates	£ 2,073.00
Bad Debt Collection fees	NIL
Rubbish removal	£ 588.00
Land Registration fees	£ 15.00
Accountancy charges	£ 150.00
Management charges	<u>£ 1,527.00</u>
Total:-	<u>£11,204.00</u>

2. The Tribunal determined that the service charge payable for the year ended 31st December 2009 is as follows:-

Cleaning	£ 1,168.00
Repairs & Maintenance	£ 793.00
Electricity	£ 376.00
Gas	£ (2,178.00)
Water Rates	£ 2,600.00
Bad Debt Collection fees	NIL
Rubbish Removal	NIL
Land Registration fees	NIL
Accountancy charges	£ 164.00
Management charges	<u>£ 1,559.31</u>
Total:-	<u>£ 4,482.31</u>

The Application

3. By an application dated 16th December 2009 (the Application) Mr. Bennett and Mr. Beckwith seek a determination under Section 27A of the Landlord & Tenant Act 1985 in respect of service charges payable for Flat 2 and Flat 6 Tower Mews (the Properties) for the period 30th May 2008 to 31st December 2008 and 1st January 2009 to 31st December 2009 and for the year ended 31st December 2010.

Directions

4. The Tribunal Chairman issued directions to the parties on 25th February 2010. The Directions were subsequently varied providing for an extension of time and an oral hearing was subsequently fixed for Friday 7th May 2010.

The Lease

5. Mr. Bennett is the owner of the leasehold interest in the property at Flat 2 Tower Mews created by a Lease dated 6th January 2005 and made between Morris Properties (UK) Limited (1) and Darren Jacob Morris (2). Mr. Beckwith is the owner of the leasehold interest in the property at Flat 6 Tower Mews created by a Lease dated 6th January 2005 and made between Morris Properties (UK) Limited (1) and Melina Ardolino (2).
6. Mr. Bennett acquired his interest in the property by assignment on 16th July 2008 and Mr. Beckwith on 28th September 2009.
7. Paragraph 2 of the Lease provides for the payment of the service charge being "the aggregate of all sums payable by the tenant pursuant to the Eighth Schedule".

The Lease further provides that the proportion payable by the tenant in respect of each property is 7.69%.

8. The Respondent Freehold Managers (Nominees) Limited have acquired the Landlord's interest in the Lease (the Landlord).

Inspection

9. The Tribunal inspected the development, of which the properties form part, on 7th May 2009 in the presence of Mr. Fentem of Premier Estates Limited.
10. The development comprises of two blocks, referred to as Block A, of which the properties form part (Flats 1 to 6) and Block B (Flats 7 to 14). There are in total 13 residential flats within the development.
11. Block A is situate on two floors and has a communal entrance with a staircase to Flats 1 to 5. Flat 6 has its own entrance and, as such, does not benefit from the common parts.
12. Block B extends to four levels and has a communal entrance and hallway with stairs leading to two further floors. There are two flats situate in the basement, each having their own entrance.
13. The flats each have the benefit of a parking space. There is, within the curtilage of the property a refuse storage area and small garden area.
14. The Tribunal noted, during the course of their inspection, that remedial work was required to a flagged area at the property where the paving slabs had been stolen, some of the external lights were broken and the garden area was in need of some maintenance.

The Hearing

15. At the date of the application, new Managing Agents had recently been appointed for the Properties, the previous Managing Agents, Countrywide Managing Agents being replaced by Premier Estates Limited on 1st December 2009.

16. At the date of the hearing, the Tribunal had the benefit of Accounts prepared by Countrywide Estates for the year ended 31st December 2008. In respect of these Accounts there were no supporting invoices. At the hearing, the Respondents produced Accounts for the year ended 31st December 2009, those Accounts only becoming available on the day of the hearing. The Applicant had the opportunity to consider the Accounts prior to the commencement of the hearing.
17. It was stated, on behalf of the Applicant that there was some considerable difficulty in dealing with the service charges for the years ended 2008 and 2009 because not all the information necessary to give a clear indication as to how the charges had arisen had been provided by Countrywide Managers Limited. It was conceded, on behalf of the Respondents, that they were unable to produce any invoices to support the charges made in the Accounts ending December 2008.
18. The Applicants, in referring to the Accounts for 2008 and 2009, made the following comments:-

Cleaning

19. The charges made for the provision of cleaning services were excessive. The cleaning in Block A extended to mopping the floor and hoovering the staircase, the visit usually taking between 5 and 10 minutes. It was not known whether the cleaning services were carried out regularly but the Applicants stated that no cleaning was undertaken after December 2008; there was no provision for cleaning in 2009.
20. The Respondents advised that they were unable to comment as to when the cleaning services ended. They had invoices indicating that cleaning was charged until January 2009. The Respondents were able to provide copy invoices from the cleaning provider, Barr Industrial Cleaning, for the period July 2008 to January 2009 inclusive, at a total cost of £1,820.00. However, those cleaning charges formed part of the Accounts for the year ended December 2009 on the basis that all the invoices were paid in July 2009. The Respondents confirmed that they had now re-established the provision of a cleaning service in respect of the common parts, with effect from April 2010. The quotes which they had obtained for the cleaning services was either £40.00 per week or £50.00 per fortnight. The cleaning services are currently attending the property on a fortnightly basis.

Repairs and Maintenance

21. The Applicants maintained that this charge was excessive and there was no information as to what the charge related. However, Mr. Bennett conceded that he had only taken an assignment of the leasehold interest in July 2008 and therefore could not be aware of any works undertaken prior to that date. It was accepted that in September 2008 there had been the removal of rubbish and debris from the car park and there was an invoice available showing a charge for this at £587.50.
22. The Respondents confirmed that they could not produce any other invoices to show how the figure of £922.00 had been calculated but submitted that, for the development, this was not an unreasonable charge.

23. In respect of the Accounts for the year ended 2009, this charge amounted to £793.00.
24. The Applicants confirmed that a pane of glass had been repaired to the communal area and a key had been fitted to the electricity cupboard in Block A. Further, rubbish had been removed from the car park area.

This expenditure was supported by invoices produced by the Respondents.

Electricity

25. The Applicants submitted that the charge for electricity was excessive given that there was only one internal light in both Block A and Block B. The external lighting to the property has worked sporadically.
26. The Respondents confirmed that no invoices were available for the provision of electricity in the year ended 2008 but there was an invoice dated 9th January 2009 based on an estimated reading. Therefore, the Respondent submitted that all the charges could be based on estimated readings.
27. Mr. Fentem, on behalf of the Managing Agents, further confirmed that the meters at the property appear to have been changed but not registered with the electricity provider and this would need resolving. Any adjustment would be made in the Accounts for 2010.
28. The charges for electricity in the year ended 2008 were in the sum of £355.00 and for the year ended 09 were in the sum of £376.00.

Gas

29. The Applicant again maintained that this charge was excessive, the gas boiler in Block B never having worked.
30. The Respondents confirmed that there is no gas supply to Block A. There is a central heating boiler which provides heating to the common parts of Block B, the boiler being situate in flat 14. The meter for the provision of gas is fitted to the outside of the property. The Respondent stated that the boiler is broken and there have been issues regarding the maintenance of the boiler because of where it is situate and gaining access to flat 14. The gas was disconnected on 15th May 2009.
31. In the Accounts for the year ended December 2008, the charge for gas is £3,228.00 but, in the Accounts for the year ended 31st December 2009, there is a credit for £2,178.00, giving a net charge for 2008 of £1,050.00.

Water Rates

32. The Applicants submitted that the charges for water rates in both the year ended 2008 and 2009 were excessive.
33. The charge for water rates in 2008 was in the sum of £2,073.00. In the year ended December 2009 the charge was £6,018.00.

34. The Respondents confirmed that there is a single water meter for the property and consequently, the charge for water forms part of the service charge.
35. The Respondents conceded that the charges for December 2009 appear excessive, equating to a charge for each property of £462.92 per annum. Mr. Fentem, on behalf of Premier Estates Limited confirmed that his estimate for water rates would be in the sum of £200.00 per unit per annum.

Bad Debt Collection fees

36. In the year ending 2008 this charge was £646.00 and in December 2009 was £2,727.00.
37. At the hearing, Mr. Sandler produced an invoice from Countrywide Managing Agents dated 13th October 2009 in the total sum of £1,107.50 representing administration charges for the recovery of arrears of service charges. Mr. Sandler conceded that those charges should not form part of the service charge and should be charged to the individual leaseholder. It was therefore conceded by the Respondents that this amount should be deducted from the charge in the Accounts for December 2009, thereby reducing this charge to £1,619.50.
38. Subsequent to the hearing, the Respondents provided further invoices relating to the charges made for bad debt collection.

Rubbish Removal

39. The Applicants confirmed that the work referred to in the invoice had been undertaken but that it was still excessive. The Contractors had only been at the property for approximately three hours.

Land Registration Fee and Accountancy Charges

40. The Applicants did not submit that either of these charges made in both the year ended December 2008 and 2009 were unreasonable.
41. In his written submissions to the Tribunal Mr. Bennett raised an issue regarding replacement windows at his property, Flat 2, Tower Mews. At the time he purchased the property in July 2008 there were two broken windows which required replacement at a cost of £960.00.
42. In July 2009 there was damage to a bathroom window and although Mr. Bennett had claimed this under his insurance policy, he had paid an excess of £200.00. It was submitted that these charges were payable by the Respondent, under the provisions of the lease.
43. The Respondents maintained that there was no documentary evidence to support Mr. Bennett's assertion that he had paid an excess of £200.00 and they would not concede to reimburse the cost of any repairs, other than those carried out upon the Respondent's own instructions.

The Law

44. Section 18 of the Landlord and Tenant Act 1985 provides:-

- (i) 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}, insurance or the Landlords costs of management and;
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (ii) 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.
- (iii) For this purpose:-
 - (a) "Costs" include 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.

45. Section 19 of the Landlord and Tenant Act 1985 provides:-

- (i) Relevant costs shall be taken into account in determining the amount of the 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.

46. Section 27A of the Landlord and Tenant Act 1985 provides:-

- (i) An application may be made to the 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 amount which is payable.

Tribunals Determination

- 47. The Tribunal noted the difficulty experienced by the Respondent in producing sufficient information to enable the Tribunal to make a determination arising from the change in the Managing Agents for the development. In making their determination the Tribunal did not have the benefit of all the invoices to support the charges made for the years ending 2008 and 2009.
- 48. The Tribunal determined that the charges payable by the Applicant would be as follows:-

Cleaning

In the year ended 2008, this charge was in the sum of £3,520.00. The Tribunal did not have the benefit of any supporting invoices but noted from those produced and payable within the 2009 Accounts, a charge of £260.00 per month was being made for cleaning of the common parts. This is equivalent to a weekly charge of £60.00. It was noted that there was no charge for cleaning services in the year ended 2007 and the Accounts therefore suggest that cleaning invoices in 2007 were charged to the Accounts for year ended 2008 and some of the charges for 2008 fell into the Accounts for the year ended 2009. It was accepted by all parties that no cleaning had been undertaken to the development since December 2008.

The Tribunal determined that the charges made for the provision of cleaning services was excessive. In his evidence, Mr. Fentem confirmed that he had recently secured a cleaning contract charged at either £40.00 per week or £50.00 per fortnight. The Tribunal therefore determined that a reasonable charge for the provision of cleaning services would be £40.00 per week and as such, reduced the charge for cleaning services as follows:-

2008	£2,346.00
2009	£1,168.00

49. Repairs and Maintenance

The Tribunal determined that the charges of £922.00 made in the year ended 2008 and £793.00 for the year ended 2009 were reasonably incurred.

50. Electricity

The Tribunal determined that the charges for electricity for the year ended 2008, in the sum of £355.00 and for the year ended 2009 in the sum of £376.00 were reasonably incurred approximating to a cost for the whole development of approximately £7.00 per week.

51. Gas

The Tribunal noted that the gas supply to Block B had been disconnected on 15th May 2009. The charges for the year ended 2008 in the sum of £3,228.00 appeared excessive but, taken in conjunction with the credit of £2,178.00 in the Accounts for the year ended 2009 made the real charge for gas of £1,050.00. The Tribunal determined that this charge, for the provision of gas, was reasonably incurred.

52. Water Rates

The charge of £2,073.00 for the year ended 2008 equated to a charge of £159.46 per unit. The Tribunal determined that such charges were reasonable.

The Tribunal determined that the charge for water rates in the sum of £6,018.00 for the year ended 2009 appeared excessive. Mr. Fentem, in his evidence, stated that, in his experience, a charge of £200.00 would be more appropriate for the individual properties within the development. The Tribunal therefore determined that the water rates payable for the year ended 2009 would be in the sum of £2,600, equating to an annual charge per unit of £200.00.

53. Bad Debt Collection Fees

The Tribunal had the benefit of the further documentation provided by the Respondents following the hearing. However, within that documentation none of the invoices relating to the collection of bad debts were for the year 2008.

The Tribunal considered those invoices which had been produced for the year 2009 and noted that those related to other properties within the development with the exception of the subject properties. Those which did relate to one of the subject properties namely Flat 6 Tower Mews appeared to relate to the period prior to the ownership of Mr. Beckwith, the Applicant.

The Tribunal determined that all charges relating to the collection of bad debts should be the responsibility of the individual leaseholder and should not form part of the service charge payable by all the leaseholders. The invoices produced clearly showed the properties to which the charges relate.

Whilst no invoices had been produced for 2008 the Tribunal determined that the same procedures would have applied and those fees charged to bad debt collection should have been charged to the individual leaseholders.

The Tribunal therefore determined that the provision in the account for bad debt collection fees should be disallowed. This is the sum of £646.00 for the year 2008 and £2,727.00 for the year 2009.

54. Rubbish Removal

The Tribunal determined that the amount due for 2008 is reasonably incurred.

55. Land Registration Fee and Accountancy Charges

The Applicants conceded that these charges were reasonable and the Tribunal therefore determined that the amounts payable in the Accounts for the year ended 2008 and 2009 were reasonably incurred.

Dated this ~~18th~~ day of ~~August~~ 2010

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Mrs. J.E. Oliver (Chairman)