

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT
PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER
Section 27A LANDLORD AND TENANT ACT 1985 AS AMENDED

Applicant(s): Robert David Brock and the other applicants listed on the attached schedule

Respondent(s): Packamist Limited

Re: 113 South City Court 52 Peckham Grove London SE15
6AL("the Premises")

Hearing Date: 15 May 2008

Appearances: For the Applicant

Mr Brock, a solicitor, representing himself
Mr Newman, a co-applicant
Mr Stafford, a co-applicant
Mr Bringlee, a co-applicant

For the Respondent

Mr D. Bromilow of Counsel
Mrs S.Nurse, Head of Residential Management of White
Druce Brown
Mr I. Franklin MRICS, Director of White Druce Brown
Miss C Aitchison

Members of Leasehold Valuation Tribunal: Mrs J S Pittaway LL.B
Mr P Casey MRICS
Mr O N Miller BSc

Date of Tribunal's Decision: 8 July 2008

INTRODUCTION

1. The Application is as to the reasonableness of service charges for the service charge years 2006 and 2007.
2. White Druce Brown are the managing agents of the Respondent.
3. When Mr Brock made his application on 11 February 2008 no accounts in respect of the actual charges for either 2006 or 2007 had been supplied to the residents of South City Court. By the date of the Hearing there were actual service charge figures available for both years and Mr Brock agreed to deal with actual figures for both years, even though those for 2007 had only recently been provided on behalf of the Respondents.
4. On 11 May 2007 there had been a determination by a Leasehold Valuation Tribunal (Ref: LON/00BE/LIS/2006/0136) as to liability to pay and reasonableness of all items of service charge for the service charge years 2004 and 2005 in respect of the same Premises. ("**the 2007 Determination**")

THE HEARING

1. The Hearing took place on 15 May 2008.
2. Mr Brock, a solicitor represented himself. Messrs. Newman, Stafford and Bringloe represented themselves. No one represented the other applicants.
3. The Respondent was represented by Mr D. Bromilow of Counsel.

DETERMINATION

Of the items listed in the Scott Schedule where Mr Brock disputed the reasonableness of the charge levied after the actual service charge for 2007 was supplied

1. **Lift for 2006 and 2007**

The charges of £3,135 for 2006 and £2,361 for 2007 are reasonable. Mr Brock did not suggest that the work on the lifts had been done unnecessarily. The actual costs incurred are supported by invoices and there was no evidence provided to the Tribunal that these costs were of themselves unreasonable. It is not unreasonable for White Druce Brown to have included these costs in the service charge rather than making insurance claims where significant proportions of the costs would be irrecoverable by reason of the insurance excess, and given their considered opinion that such claims would increase the insurance premium.

2. **Cleaning for 2006 and 2007**

The actual costs charged for both 2006 and 2007 of £18,889 and £17,366 are reasonable.

The sums attributed to cleaning in the 2007 Determination were based on that Tribunal's "reasonable assessment of the total sums that should be allowed in all the circumstances disclosed by the evidence (including lack of vouchers)"

The position for the years 2006 and 2007 is different in that the present Tribunal had before it information as to the actual sums spent. In the absence of any evidence before the present Tribunal that the sums actually spent are unreasonable there is no reason for the Tribunal to ignore these in favour of the figures assessed in the absence of actual invoices, as was the case for the 2007 Determination.

3. Repairs/maintenance

As the actual sums demanded for both years are supported by invoices and the Applicants have not produced evidence that the costs incurred are of themselves unreasonable the Tribunal determine that they are reasonable.

Damage by insured risks is excluded from the landlord's obligation to repair the Common Parts of the "Block" (paragraph 6 of the Sixth Schedule of the Lease) and therefore excluded from the tenants' obligation to pay service charge (paragraph 10 of the Fourth Schedule of the Lease). However, in the absence of evidence that the repairs to the gates were necessitated by damage caused by an insured risk (vandalism), the Tribunal determine that it was reasonable for the cost of repair to be charged to the service charge.

4. Entryphone

In the absence of any evidence to the contrary the Tribunal determine that a fee of £18,374.27 for 2006 and a fee of £18,248.42 for 2007 are reasonable.

That there would be a large penalty fee for terminating the present contract for the entry phone does not make the level of charge under the contract reasonable. However the Applicant had provided no evidence that the actual level of charge in either 2006 or 2007 was unreasonable.

The Respondents in their Response to the Scott Schedule agreed that the actual charge for 2006 of £22,328.85 should be reduced by £3,267.51 on the basis that this was properly chargeable in 2007. This should therefore be added to the sum of £14,970.91, the actual charge shown in the Income and Expenditure Account for the Year ended December 2007.

5. Legal fees

Legal fees are recoverable by way of service charge. The Landlord may recover by way of service charge, under paragraph 10 of the Fourth Schedule, "any other costs charges or expenses incurred by the Landlord" which it designates as being part of the Group A Service Charge Proportion or the Group B Service Charge Proportion.

It is not for the Tribunal to determine whether the Landlord should be instructing solicitors more often than it actually does.

In the absence of any evidence to the contrary the Tribunal do not consider that legal fees of £594 in 2006 and £296 in 2007 to be unreasonable.

6. Accountancy

The cost to the Landlord of keeping accounts and certifying the total expenditure in any service charge year is recoverable by way of service charge (paragraph 4 Sixth Schedule of the Lease)

The Tribunal accepts the Respondents' contention that delay in producing accounts is not in itself a reason for disallowing the cost, although delay may go to whether the charges are reasonable. No evidence has been provided that the delay in producing the accounts was the responsibility of the accountants.

In the circumstances the Tribunal determine that the Auditor's remuneration of £1,645 for 2006 is reasonable.

7. Management fees

The Tribunal do not consider that the Respondents provided any evidence to justify increasing the level of management fee for 2006 above the level fixed by the 2007 Determination, namely £80 plus VAT per flat.

The Applicants acknowledge that the level of management service for 2007 has improved and accordingly the Tribunal determine that an increased fee of £150 plus VAT per flat is reasonable for the increased level of service.

8. Application and Hearing Fees

As the Applicants might not have had to bring this Application had the managing agents produced the service charge accounts promptly the Tribunal direct that the application and hearing fees be reimbursed to the Applicants.

9. Section 20C Costs

As at least in part the Application was necessitated by the managing agents failure to produce the 2006 Accounts in a timely fashion the Tribunal determine that only 50% of the Respondents costs be treated as relevant costs for the purposes of determining the level of service charge.

INSPECTION

There was no inspection of the Premises. In the Directions of 15 February 2008 it was determined that the matter be dealt with by an oral hearing but without an inspection. Neither party requested an inspection.

EVIDENCE

1. The Tribunal had before it a copy of the 2007 Determination and a copy of the Lease of the Premises

2. Mr Brock, Mr Newman, Mr Stafford and Mr Bringloe each gave evidence on their own behalf. Mrs Nurse gave evidence on behalf of the Respondents.

3. The Pre-Trial Directions had requested the preparation of a Scott Schedule. The Bundle before the Tribunal included a Schedule listing various heads of expenditure. For 2006 the actual charge was specified whereas for 2007 the amounts were stated to be "Budgeted". By the date of the Hearing the Respondents had been able to provide actual figures for the service charge year 2007 and Mr Brock agreed that the Tribunal should base its findings for 2007 on the actual and not budgeted figures for 2007.

4. Of the items listed in the Schedule where Mr Brock still disputed the reasonableness of the expenditure;

4.1 Lifts

Mr Brock argued that where costs were incurred by reason of vandalism these costs should be recovered by way of an insurance claim rather than through the service charge.

4.2 Cleaning

At the Hearing Mr Brock confirmed that he did not doubt that the specified amounts had been spent on cleaning and that it was done to an adequate standard. He did not query the level of charge for cleaning and window cleaning for the year 2007 set out in the Respondent's response to the Scott Schedule. Mr Brock disputed the "add-on" items under this heading of charge, namely items such as charges for the removal of large items from the grounds of South City Court on the basis that this could be done without charge by the local authority.

Mrs Nurse submitted that this service was not available to managing agents as they were not rate payers in the local authority.

4.3 Repairs/maintenance

The actual costs under this head of charge were divided into the "Residential" and "Estate Costs" for repairs and maintenance in each year.

The total actual costs demanded for 2006 were £26,395 and for 2007 were £27,593.

Mr Brock objected to the level of charge on the basis that there had been a significant increase from 2004 to 2006. He produced no evidence to substantiate that the increased level of charge was of itself unreasonable.

Mr Brock also objected to the cost of repairs to the car gates being included in the service charge. It should have been the subject of an insurance claim as the damage had been caused by vandalism which is an insured risk. [£6002.27] The Respondents contended that there is no evidence that the gates have been damaged by an insured risk and that their cost of repair, which they believe is necessitated by reason of a design fault, is therefore recoverable under this head of charge.

Mrs Nurse stated that damage caused by vandalism would be recovered from the insurers where it could be shown to have been caused by vandalism.

4.4 Entryphone

In his comments on the Scott Schedule Mr Brock took issue with a charge of £3,267.51 levied in 2006 in addition to an invoice for £18,374.27. In their Response the Respondents conceded that the second sum actually related to 2007. As to the level of charge the Respondents explained that the contract for this equipment had been entered into by the developer of South City Court. To terminate the contract would involve a penalty fee of five years' fees.

4.5 Legal fees

Mr Brock considered the legal fees to be unreasonable on the basis that the costs of recovery proceedings should be borne by the defaulter and not recovered by way of service charge.

4.6 Accountancy

Mr Brock accepted that the accountants' fee for 2007 was reasonable. He argued that they should receive nothing for 2006 by reason of the delay in producing the accounts. They were not produced until 2008.

While Mrs Nurse was unable to explain the delay in producing the 2006 accounts she did refer to the change in personnel at the managing agents which had occurred in 2006 and a change in computer in April 2007.

4.7 Management fees

Mr Brock argued that the management fees chargeable in both service charge years should be fixed on the basis of £80 per flat, being the fee allowed in the 2007 Determination. It had taken the managing agents twelve months longer than initially indicated to produce the figures for 2006. He considered that the level of service provided was not satisfactory, citing the missing lock from the door dividing the private flats from the Housing Association flats, failure to install lights in the bin store, not making insurance claims were possible and a failure to produce the service charge accounts in a timely fashion. He also considered it unsatisfactory that the agents had not taken action to recover the service charge arrears. Mr Brock conceded that there had been an improvement in the level of service provided during the six months before the Hearing but did not consider it sufficient to merit an increase in the charge per flat above that allowed in the 2007 Determination. Mr Brock had not made any enquiries of other managing agents to establish what would be a reasonable level of management charge. He conceded that if the level of service was acceptable a management charge of £235 (inclusive of VAT) per flat would not be unreasonable.

The Respondents argued that a fee of £200 per flat was reasonable on the basis that the fee was fixed at this level by the developers at the time the building was developed and had not been increased since. No evidence was provided from other

agents to substantiate their assertion that this level of charge was reasonable. They pointed to the large number of invoices as evidence of the level of management undertaken. To the contention that the managing agents had failed to make improvements in the level of service provided the Respondents replied that they were not in a position to do so by reason of the number of tenants who had failed to pay their service charge.

As to the suggestion by Mr Brock that the 55% increase in the budgeted accounts for 2007 over the actual sums expended in 2006 suggested poor management Mrs Nurse responded that the residents had been told not to pay the estimated 2007 service charge until the actual accounts for 2006 were ready.

5. Mr Newman addressed the Tribunal as to the level of management provided to the tenants. He highlighted the rubbish left by outgoing tenants, the missing lock on the door between the private and Housing Association flats, the lack of lights in the car park and the delay in producing the service charge accounts.

6. Mr Stafford also addressed the Tribunal on the missing lock.

7. Mr Bringloe addressed the Tribunal on the issue of the repairs required to the car park gates indicating that they might have a design fault resulting in the repeated need to repair them. He considered their continued want of repair evidence of poor management.

The Respondents considered the gates to be in good working order as at 18 March 2008 but the Applicants disagreed.

8. As for section 20C costs and the fees paid to make the Application Mr Brock argued that if the managing agents had not failed to produce the accounts the Hearing might not have been necessary and it was therefore unjust for the Applicants to have to bear these.

For the Respondents Mr Bromilow argued that the Applicants had brought this Application prematurely. If the Application only succeeded partially a section 20C order in relation to the Respondent's costs would not be justified.

THE LAW

Section 27A Landlord and Tenant Act 1985 as amended by **Commonhold and Leasehold Reform Act 2002** provides

- (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 amount which is payable
 - (d) the date by which it is payable; and
 - (e) the manner in which it is payable
- (2) Subsection (1) applies whether or not payment has been made

Section 19 Landlord and Tenant Act 1985 provides

- (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) when 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

Section 20C Landlord and Tenant Act 1985 provides

- (1) A tenant may make an application for an order that all or any of the costs incurred or to be incurred, by the landlord in connection with proceedings before a..... leasehold valuation tribunal.....are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

Chairman:


Mrs J S Pittaway

Date: 8 July 2008