RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00HA/LVT/2006/0002
Re: Flats 1-11 Abbey Court, Edward Street, Bath, Somerset BA2 4DX.

Between:

Bath Ground Rent Estate Limited

("the Applicant")

and

The Eleven Leaseholders of Flats 1-11 Abbey Court

("the Respondents")

An application under Part IV (section 35) of the Landlord and Tenant Act 1987 (as amended).

Panel: Professor David Clarke MA, LLM, Solicitor, (Chairman)
Mr J Reichel BSc MRICS
Mr D Wills

Appearances:
For the applicant: Mr Paul Perry and Mr Martin Perry, West of England Estate Management Co, Agents for the freeholder.

Of the Respondents: Mr Hatch, on behalf of Mrs Hazard, Flat 1
Mr Roche, Flat 2
Mr Carne, Flat 9, on behalf of self and Mrs Carne
Date of Hearing: 27 October 2006

DECISION AND STATEMENT OF REASONS

The Application

1. This is an application by the Landlord, acting through its appointed agents, under Part IV, section 35, of the Landlord and Tenant Act 1987, as amended for a variation of a clause in the second schedule to each of the eleven leases of the leaseholders in the flats in Abbey Court, Edward Street, Bath. In place of the words:

> "A sum of ten pounds shall be paid by the Lessee of each flat for each year in respect of general administration'

the variation sought is:

> "A sum of One Hundred and Twenty Pounds shall be paid by the Lessee of each flat for each year in respect of general administration together with one-eleventh of such proper surveyor's fees incurred with respect to such works required by paragraph (2) below of this schedule which also qualify for section 20 of the Landlord and Tenant Act 1985, as amended".

We were told that all eleven leaseholders had been duly served with notice of this application.

The Facts

2. Abbey Court was constructed in around 1964. We were supplied with a lease of flat 1 and were told the other ten leases were in identical form, for terms of 999 years from December 25 1964. We inspected the property prior to the hearing and found it to be in good repair with the entrance halls well decorated and tidy. Four of the flats were tenanted; the other seven were owner-occupied. It was suggested to us that the leases were poorly drafted, possibly because this was one of the first blocks constructed by a local builder at the time and the importance of drafting a long residential lease with care was perhaps not then appreciated. This application was confined to seeking to remedy the inability to recover management costs, except for the fixed fee of ten pounds, and to provide for recovery of costs incurred when section 20 of the Landlord and Tenant Act applies.

Case for the Applicant

3. The applicant argued that the sum of ten pounds was inadequate to cover the cost of administration. Mr Martin Perry produced a list of management function services covering office services including record systems, dealing with insurance and associated compliance, associated costs relating to maintenance and repairs especially lift maintenance and statutory compliances and personal services including response to enquiries and dealing with third party issues such as waste collection and abandoned vehicles.

4. The applicant sought a fixed fee replacement of £120. The case submitted did not include the possibility of a reasonable sum, which would alleviate any future application, since another valuation tribunal, dealing with an application relating to another property owned by the Applicant and managed by the same agents, had declined to make such a variation. The panel pointed out that it was not bound by another LVT decision and each case must turn on the statutory discretion applied to the particular facts. However, since the Respondents had not been presented with that possibility, the Applicant would need to ask for an adjournment and reserve its application if they wanted to proceed on the alternative basis. Mr Paul Perry indicated that he wished to proceed on the basis of a request for the substitution of a fixed sum.

5. The suggested figure of £120 per annum per flat was, it was argued, justified – indeed it would not have been unreasonable to seek more but they did not wish to ask for more. There were only eleven flats; if it had been a larger block, a smaller sum might be appropriate since some costs were incurred however many flats were in a block. As managing agents, they would not accept new business at a figure less than £1,000 per annum for a block of this size and would normally seek a sum well in excess of this figure. They could not break down the exact general administration expenditure for this block.

6. The additional request for recovery of costs associated with the procedure under section 20 of the Landlord and Tenant Act 1985 was to ensure that all the costs required by the statutory procedure, including surveyors fees, could be recovered. Since any contract exceeding £2750 for this block necessitated this work, most periodic decoration and any major repairs incurred these costs.

Case for the Respondents

7. Each of those present for the Respondents made a case. Mr Roche pointed out that, with a majority of owner-occupiers, this was a cheap block to manage. Most residents were elderly. He ran a Resident's Fund, and the payments to that fund covered internal cleaning, light bulb replacement, gardening and minor repairs. He wondered if all this would pass to the agents if the general charge were to be increased. The major burden for the agents was lift maintenance, which was a hassle. He accepted (a personal view) that 50 years was a long time on a fixed ten-pound charge.

8. Mr Carne said he had only lived in his flat for one year. He bought it partly because there was a low maintenance charge. He was now surprised that there was to be such a big rise. His previous knowledge of leasehold was very limited, as he had lived in freehold properties.

9. Mr Hatch accepted that the agents had undertaken useful unpaid work, especially when they took action to prevent one absent leaseholder making a holiday letting but considered the proposed charge of £120 too high – especially as they already paid into the residents fund.

10. The tribunal pointed out to the Respondents that the second variation requested, (namely, the specific provision for recovery of professional fees incurred under section 20 of the Landlord and Tenant Act 1985) on which they had not commented, might result in significant charges but it was accepted by those present that the law now required these costs to be incurred.

Discussion

11. In subsequent discussion, Mr Paul Perry accepted the usefulness of the Residents Fund but indicated that, where the Lessor had the major obligation, such as wall repairs, it was better if the matter was dealt with through their office. The lift calls were covered by their services - and the sign in the lift was to provide a direct line for out-of-hours emergencies. He also commented that, under the leases, the Lessor was responsible for all the repairs, even those (such as the garden wall referred to) that had been carried out by the lessees directly using their Resident's fund. However, he saw no reason to change what was a good working relationship between the parties

12. In response to a question as to when any change in the lease terms took effect, the tribunal pointed out that it was from a date determined by the tribunal. Mr Perry indicted that there was no administrative reason for a particular date to be chosen.

Decision and Reasons

13. In reaching their decision, the tribunal considered the following issues, having been satisfied that the all leaseholders had been properly served and notified of the application:

i) Should the requested variation be made as a mater of principle?
ii) If so, what should be the annual fee in the future?
iii) Should the change include the recovery of section 20 costs as proposed/
iv) Was the suggested wording acceptable?

14 On the first issue, the tribunal determined that the lease was inadequate in the manner in which it provided for the recovery of the various costs associated with managing the services provided to the leaseholders and the lease did fail to make satisfactory provision of expenditure incurred by the Lessor for the benefit of the Leaseholders within section 35 (2)(e) of the Landlord and Tenant Act 1987. The sum reserved in 1964 was now inadequate. The tribunal considered that those Respondents who had appeared did not really dispute that conclusion.

15. The Tribunal also considered and determined that the sum requested by the Applicant, namely £120 per flat per annum, was reasonable and should be substituted in the lease It so decided because even at that figure, it only provided for 26.4 hours work in a year assuming a charge of £50 per hour by the agents. An alternative approach was to consider how much might be charged by other agents and from their local knowledge and expertise, the tribunal considered that £120 per flat per annum was not unreasonable. Moreover, it seemed that this block was well managed and over a period of years, taking all things into consideration, the tribunal considered that it would cost £1320 to properly manage and administer the services to the block, especially considering the necessity to comply with increasingly complex legislation.

16. The tribunal understood Mr Carne's unhappiness at such a large increase so soon after he had bought into the block. But the power of the court, and now a tribunal, to alter terms of residential long leases has been on the statute book for some years and conveyancers should be in a position to advise clients accordingly. The tribunal also considered the impact of the Residents Fund. They considered that they could not take its existence into account in reaching their decision. However, they recognised its usefulness, and express the hope that their decision will not lead to its demise as, for example, it would cost very much more if the agents had to come and change light bulbs and their appears to be no duty in the lease on the Applicant to keep the internal common parts clean and tidy.

17. On the third issue, the tribunal accepted the Applicants request to include provision for the recovery of section 20 costs in addition to the general charge of £120 per annum. These costs could be substantial in the year in which they occur and were included by the legislature for the benefit and protection of leaseholders to ensure that works are done properly and at the best price. Professional fees properly incurred in this regard should be recoverable.

18. On the final issue, the tribunal noted that the general rule is that Valued Added Tax should be added where appropriate and considered that it would be helpful to make the point explicit; and a couple of minor grammatical changes to the suggested wording was appropriate.

Order

19. Since the application is established to our satisfaction, the tribunal, by virtue of section 38 of the Landlord and Tenant Act 1985, orders that the leases of the eleven flats in Abbey Court are varied as from 1 November 2006 as follows. In Schedule 2, the words in sub-paragraph (1), namely " A sum of Ten Pounds shall be paid by the Lessee of each flat each year in respect of general administration", are deleted and replaced with the following wording:

"A sum of One Hundred and Twenty pounds, plus any Value Added Tax if applicable, shall be paid by the Lessee of each flat for each year in respect of general administration together with one-eleventh of such proper surveyor's fees, inclusive of VAT, incurred with respect to such works required by paragraph (2) below of this Schedule which also qualify under section 20 of the Landlord and Tenant Act 1985 as amended.".

David Clarke
Chairman of the Tribunal
3 November 2006