

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF FLAT 4 122 ST JAMES STREET, NEWPORT, ISLE OF WIGHT
AND IN THE MATTER OF S 27A LANDLORD AND TENANT ACT 1985

CASE No: CHI/00MW/LSC/2006/0107

B E T W E E N :-

MRS H. J. McGOVERN
(Director of 122 Management Co Ltd)

APPLICANT

AND

MISS A. MOYLE

RESPONDENT

DETERMINATION AND ORDER

1. Background

1.1 On 14th October 2006 the Applicant applied to the Tribunal for a determination under S 27A of the Landlord & Tenant Act 1985 (the 1985 Act) as to the reasonableness of service charges in respect of Flat 4, 122 St James Street, Newport, Isle of Wight (the Premises) and for a determination as to the Respondent's liability to pay the same for the service charge years 2003 – 2006 inclusive.

1.2 The Respondent, it was said, had ceased paying a monthly contribution of £35 per month paid by the other lessees in respect of 122 St James Street and the Applicant, who had recently purchased Flat 3 and had become a Director of the Management Company (122 Management Company Limited) required a determination from the Tribunal in order to seek payment from the Respondent or her mortgagee.

2. Inspection

2.1 The Tribunal inspected the premises prior to the hearing. 122 St James Street is a three storey terraced property situated on a busy main road near to the centre of Newport. The front door is right on the pavement. This leads to a communal hallway and staircase which serve the four flats comprising 122 St James Street. The property was built probably at the beginning of the 20th century but was in reasonable condition for its age. There was no communal cleaning organised by the Management Company. The lighting to the hallway was working and was on a timer switch when the Tribunal inspected the premises.

3. The hearing

3.1 This took place at the Quay Arts Centre, Sea Street, Newport, Isle of Wight on 12th January 2007.

3.2 In attendance were the Applicant Mrs McGovern, the Respondent Miss Moyle and Miss Moyle's partner, Mr Wedge.

4. Evidence

4.1 Mrs McGovern was at a disadvantage in producing written evidence as she had only recently taken over the management of the block and had inherited very little if anything in the way of paperwork and records. She had, however, done her best to piece the evidence together with the assistance of the accountant who had prepared the company's accounts over the past few years.

4.2 Mrs McGovern produced a statement of amounts owed and paid by the Respondent since January 2003. Miss Moyle confirmed that this statement was accurate. This showed that regular monthly payments of £35 per month had ceased in August 2003 and, apart from one payment of £140 in January 2005 and one of £105 in February 2005 nothing had been paid. This left an "arrears" situation of £1,155 as at end of December 2006.

4.3 Miss Moyle was asked why she had stopped paying. She said that since she ceased managing the affairs of the management company, for personal reasons, in 2003 there had been no meetings of the shareholders, the fire equipment had not been serviced since about 2004 and the hall lighting had not worked for some time. She agreed that in 2005 she had promised solicitors who had written to her about the situation to resume paying the £35 per month plus £20 per month off the arrears but she had not maintained this due to the fact that the lighting was not working.

4.4 The Tribunal reviewed the expenditure as revealed from the accounts that had been prepared for the various years from 2003. The Respondent said she had no reason to doubt that the insurance had been effected and she had no representations to make about the amount. As far as electricity was concerned she agreed that if the lighting had not been working the residents were not being charged for the consumption of electricity, although a standing charge will have been made. The Respondent did not challenge the fact that payments had to be made to Companies House in respect of the annual returns and in some cases that a fine was levied due to the fact that no returns had been made or they had been late. She did object to the amount of the Accountant's fees for preparing the accounts. These fees were £164.89 plus VAT rendered in 2003, £250 plus VAT in 2004 (for the year 2002) and £270 in 2004 (for the year 2003) and £270 plus VAT in 2005 (for the year 2004). Mr Wedge said that he was self-employed and his accountant charged much less than that. He conceded however that he did

much of the work himself to present the figures to his accountant, but that in this case, with little or no effective management, the task was probably more time-consuming. She also objected to paying for the fire equipment being serviced as the date for the last inspection or noted on the equipment was, she thought, some time in 2003.

5. The law

5.1 Section 27A of the Landlord & Tenant Act 1985 ("the 1985 Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

- (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 at or by which it is payable
- (e) the manner in which it is payable.

5.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

6. The Lease

6.1 By Clause 4.1 of the lease the lessee covenants "to contribute and pay a one equal fourth part of the costs expenses outgoings and matters outlined in the Fourth Schedule hereto".

6.2 By the Fourth Schedule to the lease the costs expenses outgoings and matters in respect of which the lessee is to contribute are stated to be:-

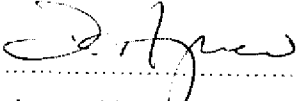
- "1. All reasonable costs and expenses incurred by The Management Company for the purpose of complying or in connection with the fulfilment of its obligations pursuant to Clause 6.1, 6.2 and 6.3 of the lease.
- 2. The cost of cleaning and lighting the main entrances and passages landings and staircases of the building and refuse area
- 3. All rates taxes and outgoings (if any) payable in respect of the grounds and other parts of the building used in common by the owners and lessees of the other flats.
- 4. All other expenses (if any) incurred by the Management Company in and about the maintenance and proper and convenient management and running of the building.
- 5. The fees and disbursements paid to the Managing Agents (if any) appointed by The Management Company in respect of the building and all reasonable fees and costs in respect of the Annual Certificate and of accounts kept and audits made for the purpose thereof.

- 6.3 Clause 6 of the lease contains a covenant by the Management Company to insure the building and to maintain and keep in good and substantial repair and condition the main structure, foundations, roof, gutters and rain water pipes of the building, the paths, main entrances passages landings and staircases, decorate the exterior of the building and enforce the performance of covenants by lessees of other flats in the building.
7. The determination
- 7.1 The Tribunal found that all the expenditure incurred by the Management Company as set out in the accounts from 2003 to 2005 and on the sheet analysing the expenditure for 2006 from the bank account produced by the Applicant was reasonable. The only items that the Respondent challenged were the electricity charges, the cost of the fire equipment check and the accountancy charges. The Tribunal found that the Respondent was liable to contribute equally with the other tenants to the standing charge for electricity and that if the lighting had not been working, no electricity would have been consumed. As for the fire equipment check, the written evidence was that this was checked in 2005 and where it had not been checked there was no charge made during that year to the lessees. As far as the accountant's fees were concerned, the Tribunal did not consider them to be unreasonable. They represented about two hours of a professional person's time and the Tribunal considered that this was not an unreasonable time charge. Although the amount of the insurance premium had not been challenged, the Tribunal considered that the cost of between £881 and £923 charged over the various years for the building was reasonable bearing in mind the type of building it is and its location.
- 7.2 The Tribunal recognised that it was not satisfactory for there to have been no meetings of shareholders or budgets discussed and voted on, or that returns had not been made to Companies House and that financial information was not forthcoming but this is a small block of only four flats. Each flat owner is a shareholder in the Management Company. If things are not done the remedy lies in the shareholders' own hands. It did not seem to the Tribunal a difficult task for the residents to sort out the problem with the lighting, for example. All the other lessees had maintained their contributions of £35 per month towards the costs of running the company and maintaining the building and there was no good reason for the Respondent not to have paid her contribution. The Tribunal found that £35 per month was a reasonable sum for the Management Company to seek on account from the lessees as in the past years expenditure has almost matched the annual aggregate of this monthly amount per flat.
- 7.3 The Tribunal were encouraged by the fact that Mrs McGovern seemed to be doing what was necessary to get the management of the block on a proper footing, although it also noted that she was intending to put her property on the market for sale shortly.

8. Order

- 8.1 The Tribunal determines that service charges amounting to £1,155 as at end of December 2006 are reasonable for the Respondent to pay and that the Respondent is liable to pay this sum to the Applicant forthwith.

Dated this 23rd day of January 2007

A handwritten signature in black ink, appearing to read 'D. Agnew', written over a dotted line.

D. Agnew LLB LLM

Chairman