

SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL  
RESIDENTIAL PROPERTY TRIBUNAL SERVICE

S. 27A Landlord and Tenant Act 1985 (as amended)

**DECISION AND REASONS**

Case Number: CHI/29UH/LIS/2004/0022/24/25/41

Property: Flats at Ruth House, Claire House  
Carrie House & Daniel House  
Lesley Place  
Buckland Hill  
Maidstone Kent ME16 0SG

Applicant: **G & O Rents Ltd**

Respondent: **Mrs. J E Wilson  
& several joined Respondents**

Date of Application: 5 August 2004

Date of Hearing: 24 June 2005

Date of Decision: 8 July 2005

Appearances: Mr Rab Dallas of Urbanpoint Property Management Ltd  
for the Applicant  
Mr John Hunter of Chainé Hunter Managing Agent on  
behalf of the joined respondents  
Mr M Stevens a joined Respondent  
Mr P J Hitchcock a joined Respondent

In Attendance: Ms Lesley Polly (representing the Rt. Hon.  
Ann Widdecombe MP)  
Various lessees and observers

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Chairman)  
Mr R P Long LLB (lawyer member)  
Mr. T J Wakelin (lay member)

**Summary of Decision**

The Hearing continued in respect of these remaining joined Respondents. The Tribunal determined that the charges to be made for gardening and external cleaning, audit and accountancy fees, and insurance premiums should be reduced. The Tribunal determined that it was reasonable to make a reserve of £14,000 in the accounts each year for major works.

## INTRODUCTION

1. On 5 August 2004 the Applicant applied under S.27A Landlord & Tenant Act 1985 for a determination of the liability for the Respondents to pay service charges in respect of several flats at Ruth House, Claire House and Carrie House at Lesley Place, Buckland Hill, Maidstone, Kent.
2. Following directions issued on 8 October 2004 a Hearing was held on 16 February 2005. The applicant had reached agreement with several lessees and withdrew the applications in respect of Mrs Wilson's flats, 4,7,11 & 12 Claire House, 4,7,8 & 12 Carrie House and 3,4,8 & 11 Ruth House. The applicant also withdrew the application in respect of Ms Coope's flat at 9 Claire House and for Miss Honeyset's flat at 4 Daniel House. The case in respect of the remaining joined Respondents was not able to proceed and was adjourned with further Directions.
3. A resumed Hearing took place on 12 April 2005 and further agreements were reached. The Applicant withdrew the application in respect of Ms J Banbury of Flat 10 Claire House. The applicant withdrew the application in respect of Miss S Heathfield of Flat 5 Carrie House subject to her reserving rights to challenge the application if she remained liable for any service charges incurred prior to her purchase. The parties were not in a position to proceed to a conclusion at that Hearing which was adjourned with further Directions.
4. In accordance with the further Direction the respondents had provided a detailed statement and the applicant had had an opportunity of responding to that.

## INSPECTION

5. Members of the Tribunal had visited the property prior to the hearing on 16 February 2005 and were accompanied by the Applicant and the Respondent together with various joined Respondents. The exterior was inspected together with the interior common ways of one of the blocks. The tribunal was informed that the interior common ways of the other three blocks were similar in all material respects.
6. The development comprises a terrace of three blocks of flats namely Ruth House, Claire House and Carrie House and a detached block, Daniel House. The buildings have brick elevations under pitched, tile-covered roofs. In addition there is a two storey car park incorporating a small shop, an electricity sub-station and a dustbin storage area.
7. Lesley Place is a cul de sac terminating in a further car parking area and a development of houses which do not form part of this determination.
8. The upper level parking area is in need of cleaning. There is a build-up of litter generally on the site and evidence of fires having been set in the underground parking area and the bin store.

## LEASE PROVISIONS

9. The Tribunal was provided with copies of leases of two of the flats and was advised that the leases for all the flats are in a similar form.
10. Clause 3 provides that, in addition to the rent, a maintenance charge is paid by each tenant at 1.78% of the estimated expenditure to be incurred by the landlord each year. At the end of each financial year the accounts are balanced and the tenants make-up any deficit. Any surplus is carried forward to the credit of future costs. As part of the calculation of the maintenance charge (clause 3(4)(i)) the landlord is permitted to take into account expense it considers may be incurred up to seven years in the future in order to avoid excessive fluctuations in the charge from year to year. The amount taken into account for future expenditure has become known as the reserve fund.
11. Clause 5 sets out the expenditure for which the landlord can make the maintenance charge and this includes repairs and maintenance of the building structure, decorating, cleaning and lighting the common parts and gardens, insurance management and keeping proper accounts.

## THE HEARING

12. The adjourned hearing resumed at 10.45 a.m. on Friday 24 June 2005 at The Salvation Army Hall, Union Street, Maidstone.

### Preliminary

13. The original application included the year ending 31 December 2004. No accounts were available for this year. Mr Dallas agreed that he could not pursue the application in respect of 2004 and agreed that this part of the application would be withdrawn. The Tribunal noted that any party could make another application to the Tribunal in respect of the year ended 31 December 2004 if it wished.
14. At the Hearing on 12 April 2005 the Respondents had identified five headings which were required to be addressed at the resumed Hearing, namely:
  - Major building works
  - Fly tipping
  - Insurance premium
  - Management fees
  - Discounts given to the applicant but not credited in the service charges
15. The Respondent's statement addressed the question of insurance premiums but also introduced new issues regarding the cost of gardening and outside maintenance, and audit and accountancy fees. On questioning Mr Hunter, for the Respondents, confirmed that there was no dispute about the cost of the building works currently made known to them and that the only fees that they wished to address were those for audit and accountancy. The question of discounts was not to be addressed. In addition Mr Hunter wished to refer to the arrangements for the reserve fund. Mr Dallas had not addressed this in his statement.

16. Mr Dallas was content to proceed with the case in accordance with the information already presented.
17. Mr Hunter wished to introduce further documents including details of the rubbish removal service operated by Maidstone Borough Council. Mr Dallas had no objection to these additional documents being introduced and the Tribunal received them.
18. It was agreed that each item would be dealt with separately with both parties addressing the points.

#### **Gardening and Outside Maintenance Including External Cleaning**

19. The question of cleaning had been partly addressed at the April Hearing. A new RTM company had now taken over management of the property and had instructed a contractor Mr L White of Sheerness to carry out the work of internal cleaning of common ways, external cleaning of the car parks and grass cutting. This work would be carried out at an annual cost of £3,673.92 for both internal and external work. Mr Hunter suggested that an average cost of £90 per week would be more reasonable for internal cleaning and outside gardening and maintenance which he believed equated to approximately 15 hours per week at £6 per hour.
20. A schedule of proposed charges to be made in substitution for those levied by the Landlord showed a range of charges for gardening and outside maintenance between £1,374.75 to £1,550 for the years in question. The internal common way cleaning was agreed at the figures shown in the accounts.
21. Under questioning Mr Hunter, with help from Mr Hitchcock and Mr Stevens confirmed that there was a litter problem in the past and there had been difficulties with fly tipping. Mr White's estimate did not include an amount for removal of illegally dumped material. Mr Hunter suggested that some of the litter was generated by the shop which was on site and that suggestions about better and more appropriate sited litter bins had gone unheeded.
22. Mr Hunter felt that a lot of the fly tipping problem could have been dealt with by the Local Authority as Lesley Place was a publicly maintained highway.
23. Mr Dallas considered that a price of £70 per visit was quite reasonable. The arrangements for removal of dumped items by the Borough Council are only available to householders and not to managing agents. Fly tipping and litter has been a constant problem on site and only a weekly visit by a contractor would keep the matter under control.

#### **Audit and Accountancy Fees**

24. Mr Hunter referred the Tribunal to an advertisement by Residentsline showing a fixed annual fee of £100 for providing management accounts without an audit. The Respondents acknowledge that the service charge accounts must be certified by a qualified accountant and suggested that a charge of £150 per annum would be more reasonable.

25. Mr Dallas produced the invoices from Mansukh V.Makwana Chartered Certified Accountants for the years in question. The invoice had dealt with responding to queries from the Leaseholders and the Landlord and reconciling property balances in light of unpaid Leaseholders' accounts in addition to certifying the accounts.

### **Insurance Premiums**

26. The Respondent considered that the premiums were totally unreasonable. Mr Hunter advised the Tribunal from his own experience that a rate of £1.20 per £1,000 sum insured was sufficient to obtain proper insurance cover for the building. This is the rate offered by Zurich Insurance and a copy of the current insurance policy and schedule was produced. He had made an allowance for the premiums to increase in each year in line with increases in rebuilding costs but he had been advised that premium rates for purpose built blocks of flats had not risen in any of the six years to which the application applied.
27. The type of policy that Mr Hunter was suggesting was a typical block policy used by his firm on the blocks of flats that were managed. It included all the usual perils and property owner liabilities that were required. He was satisfied that he was comparing like with like. Terrorism cover could be purchased at an additional premium and Mr Hunter had provided the quotation for that at a little under £400 premium.
28. Mr Dallas was concerned that the policy that was being presented as an alternative was not equivalent to the cover that was required. Many of the units within the four blocks are sublet and therefore insurance cover should be on a commercial basis which was more expensive. Mr Hunter had agreed that the claims record had not been disclosed to the insurer as he was not aware of the details and Mr Dallas felt that this would produce a higher premium if the claims record was known.
29. Proper cover was provided during the years in question and notwithstanding the Leaseholders withholding of service charge payments the Landlord had paid the premium shown in the service charge accounts and the Leaseholders had had the benefit of the comprehensive cover.
30. Both Mr Hunter and Mr Dallas confirmed that they received commission for arranging the insurance and this was not refunded to the service charge account.

### **Reserve Fund**

31. Mr Hunter was concerned that although allocations to the Reserve Fund of £14,000 were made for the years ended 31 December 2001, 2002, and 2003, there had been no proper application of the amounts in reserves against the cost of major works. The Landlords had made too high a provision towards reserves.
32. Mr Dallas agreed that a prudent allocation to reserves was required and felt that the figure of £14,000 was a reasonable sum. The contract for major works of £57,000 plus VAT had been placed and the reserves would be needed to cover this cost.

33. Mr Hunter also wanted the Tribunal to determine the amount that should be transferred from the Landlord to the RTM company. Mr Dallas pointed out that as the accounts for the year ended 31 December 2004 had not yet been prepared the appropriate figures were not available.

## **THE LAW**

34. The application is brought under S.27A of the Landlord & Tenant Act 1985 (as amended). The purpose of the application is for the Tribunal to determine 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 at or by which it is payable; and
  - e) The manner in which it is payable.
35. When considering whether a service charge is payable, the Tribunal will have regard to all relevant sections of the Act but in particular S.19 which says, amongst other things, that 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) 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.

## **DECISION**

### **Gardening and Outside Maintenance**

36. The Tribunal is satisfied in the light of evidence about litter dropped by customers using the shop, statements by Mr Stevens and Mr Hitchcock and its own inspection that there was a difficulty keeping the outside areas clean and tidy. More frequent intervention by the managing agents may have helped maintain a better standard.
37. No evidence has been presented to show that £6 per hour was a reasonable charge for this type of work and from its own knowledge and experience the Tribunal considered that this hourly rate would be insufficient for a contractor to provide the service needed. In addition to the wage for the employees the contractor would need to provide insurance and also transport material tools etc.

38. The estimate from the new contractor Mr L White significantly allows for the costs and specification to be revisited to ensure that the hours allowed will be sufficient. The quotation clearly says that other maintenance is to be charged separately and the Respondents had made no provision in their figures for rubbish removal or other non recurring costs.
39. The Respondents had concentrated on the current situation and gave the Tribunal little assistance in trying to assess a regional charge for the years in question. The applicant had produced invoices for the work and had clearly paid the contractor for the services charged in the service charge account.
40. The Tribunal considered that Mr White's proposal to cut the grass only twelve times per year would be insufficient for proper maintenance. In the absence of any specific evidence the best the Tribunal could do was to assess from its own knowledge and experience an hourly rate of £12. A weekly allocation of 5 hours as proposed by the Respondent's seemed reasonable which produces a weekly cost of £60 or £3,120 for each of the years in question. VAT brings this to £3,666 per year which the Tribunal determines is the reasonable amount chargeable for gardening and outside maintenance.

#### **Audit and Accountancy Fees**

41. The charge made by the landlord's accountant included some services which would usually be carried out by the managing agent as part of their fee. The Tribunal did not find the advertisement provided by the Respondent of assistance. The Tribunal regularly sees a charge made by accountants for providing a certificate at £250 and considers that this is a reasonable figure to allocate for each year in these accounts.

#### **Insurance Premium**

42. Mr Hunter had relied heavily on the new policy obtained for this block. It was clear that there had been no disclosure of a claims history and the Tribunal was not satisfied that all the circumstances had been revealed to the insurer when the new quotation had been received. An insurance excess appeared in the accounts for 2002 and 2003 and an examination of the detailed analysis sheets provided by the Applicant shows claims made in 2002 and 2003 were relatively modest but the Tribunal considered that some adjustments should be made to the basic premium to allow for the adverse claims history.
43. The Tribunal received no assistance on the calculation of the adjustment of a premium to take account of the claims history. The best estimate that could be made, using the Tribunal's collective knowledge and experience, having taken in to account the limited information available in the papers before it on the claims history, is to adjust the premium upwards by 10%. Terrorism cover was required and the cost of this shown by the estimate given in evidence is rounded to £400 in each year.

44. The Tribunal therefore determines that a reasonable insurance premium for each of the years in question is calculated at the rate of £1.20 per £1,000 insured. This is the figure the Tribunal would expect to see and was given in evidence by Mr Hunter and the rate currently being applied to the premium calculation. The Respondent had carried out calculations of a premium based on this premise including an inflation index increase of the sum insured each year and the Applicant raised no objection to these calculations. The Tribunal used the Respondent's calculations of the premiums to which it added £400 for terrorism cover and increased the total by 10% to make an allowance for the claims record.

### **Reserve Fund**

45. As summarised at paragraph 10 above the Tribunal is satisfied that the lease allows for the accumulation of a reserve fund.
46. The Tribunal had evidence from the quotation from Wyatt Wright dated 1 July 2002 that the specified major works would cost in the order of £57,000 plus VAT. Although the landlord had agreed to phase the work over several years this quotation gives the Tribunal a useful guide to the likely total cost of the repairs and decorations. A reserve of £14,000 a year over the four year period in question would be less than the total sum of the total quotation and was therefore considered to be a reasonable amount. The Tribunal determines that the Landlord may make a reserve for future expenditure in the sum of £14,000 in each of the years 2001, 2002, 2003 and 2004.
47. The Reserve Fund should be used to pay for major works and the allocation already made in 2003 accounts is determined as reasonable. It is expected that a further allocation from the reserve will be made in the 2004 accounts but no figures were available to the Tribunal. The Tribunal could therefore not make any further adjustments.

### **Conclusion**

48. No further applications were in front of the Tribunal and it therefore determines that the service charges payable in each of the five years are as follows:

Year ended 31 December 1999	£24,339.74
Year ended 31 December 2000	£26,695.49
Year ended 31 December 2001	£39,140.23
Year ended 31 December 2002	£59,273.23
Year ended 31 December 2003	£33,611.81

The revised service charge accounts incorporating the Tribunal's determination can be summarised as follows:



**LVT Determined Service Charge Expenditure - Flats at Lesley Place Maidstone**

<b>Year ended 31 December</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Audit & Accountancy Charges	250.00	250.00	250.00	250.00	250.00
Cleaning of Internal Common Parts	2,135.55	3,431.00	3,389.88	3,472.13	3,489.75
Gardening & External Cleaning	3,666.00	3,666.00	3,666.00	3,666.00	3,666.00
Electricity - Common Parts	484.69	662.62	660.19	321.46	485.18
Insurance Premium	5,131.59	5,319.25	5,514.42	5,717.39	6,049.87
Repairs & Maintenance	5,650.09	5,998.24	4,962.24	20,386.61	10,184.55
Trade Refuse Collection	324.32	597.09			
Car Park Maintenance		73.79			158.11
External Cleaning	0.00	0.00	0.00	0.00	0.00
Legal & other professional Fees				4,662.15	334.41
Contribution from Reserve Fund					-11,853.57
General Reserve			14,000.00	14,000.00	14,000.00
Insurance Excess				99.99	150.01
Management Fee	<u>6,697.50</u>	<u>6,697.50</u>	<u>6,697.50</u>	<u>6,697.50</u>	<u>6,697.50</u>
<b>Total Payable</b>	<b>£24,339.74</b>	<b>£26,695.49</b>	<b>£39,140.23</b>	<b>£59,273.23</b>	<b>£33,611.81</b>

Dated 8 July 2005

*signed*

Brandon H R Simms FRICS MCIArb  
Chairman

**Landlord & Tenant Act 1985 – Section 27A(3)**  
**Ruth House, Claire House, Carrie House and Daniel House**  
**Lesley Place, Buckland Hill, Maidstone, Kent ME16 0SG**

1. Your letter dated 3 August requesting permission to appeal against the Decision of the LVT has been referred to the Chairman and the Tribunal for its consideration.
2. The request for permission to appeal is refused for the following reasons.
3. The parties were given ample opportunity to prepare their case prior to the Hearings and to introduce any evidence in support of their case at the Hearings.
4. The evidence that is now sought to be introduced is such that could have been adduced had the landlord chosen to do so at the Hearings.
5. The Tribunal is entitled reasonably to draw the conclusions that it did from the evidence that it had before it at the Hearings.
6. Notwithstanding this Tribunal's refusal of permission, an application may be made to the Lands Tribunal directly for permission in the face of this Tribunal's refusal.

signed

Mr B H R Simms FRICS MCI Arb

Date 8<sup>th</sup> August 2005