

Eastern Rent Assessment Panel
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REASONS FOR DECISION OF LEASEHOLD VALUATION TRIBUNAL

Landlord & Tenant Act 1985 Sections 27A and 20C
Commonhold & Leasehold Reform Act 2002 section 158

Premises: 23A Grove Road, Luton, Beds LU1 1QJ
Our ref: CAM/00KA/LSC/0020

Hearing: 18 October 2005

Applicants: H & D Property Services Limited
Managing Agents: Priority Estate Management Limited (Director Mr A M Hastings)
Represented by: Mr Hastings

Respondent: Network Property Limited (Director Mrs G Anacreonte-Cavallaro)
Represented by: Bland & Company, Solicitors

Members of Tribunal:
Mr G M Jones - Chairman
Miss Marina Krisko BSc (Est Man) FRICS
Mr P A Tunley

0. BACKGROUND

The Property

- 0.1 This property is a first and second floor apartment in a converted late Victorian or Edwardian mid-terraced house located in a mixed-use area near the town centre. The building is of brick and tile construction, originally with a slated roof, built on a steeply sloping site. The lime mortared brickwork has been cheaply re-pointed using inappropriate cement mortar. The windows of the lower apartment (ground floor and basement) are timber sashes in fair condition. The subject property has replacement double-glazed UPVC windows.
- 0.2 The accommodation comprises a basement, two main floors and attic. The subject property is reached via a shared hallway. On the first floor are a living room, kitchen and bathroom. On the attic floor are two bedrooms. The Tribunal made no internal inspection, as the subtenant was not at home and rights of access were unclear.

The Lease

- 0.3 The lease dated 4 December 1986 is for a term of 99 years from 29 September 1986 at a rent of £30.00 per annum for the first 33 years, doubling after 33 years and again after 66 years. The landlord covenanted to insure and to repair, maintain etc. the main structure, common parts and service media, the external walls, car park, security door and intercom system (if any).
- 0.4 The tenant covenanted to pay a reasonable and proper proportion of the landlord's expenses of repairing and maintaining the common parts, also of the landlord's administrative and management expenses, and other costs, expenses and outgoings incurred by the landlord in performing his obligations under the lease. There is provision for collection of estimated expenses half-yearly in advance, with a balancing charge to be made upon receipt of the annual accounts.
- 0.5 The tenant further covenanted to pay all expenses (including solicitor's costs and surveyor's fees) incurred by the lessor incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 notwithstanding forfeiture was avoided otherwise than by relief granted by the court. There is no provision in the lease for interest to be charged on outstanding amounts.

1. THE DISPUTE

- 1.1 The Respondent property company took an assignment of the lease on 18 May 2000. The apartment is sublet at a rack rent. In about April 2003 the Applicant landlord served on the tenant a section 146 notice detailing unpaid service charges. The Tribunal has not seen the notice and the landlord has not sought to rely upon it in forfeiture proceedings.
- 1.2 On 3 December 2004 the Applicant issued proceedings in the Wandsworth County Court under claim number 4WT04346 for arrears of ground rent and service charges amounting to £371.48 together with £368.79 interest (making a total of £740.27) and £125.00 costs. The Applicant exhibited to the Claim Form statements of the rent and service charges, administrative charges and interest claimed.
- 1.3 It is apparent that in practice the Applicant apportions service charges equally between the two apartments. According to the Applicant's accounts, the disputed charges related to the period January 2003 to November 2004. The outstanding balance was made up as follows: -

| | | |
|------------------------------------|---------------|----------------|
| | £ | |
| Service charges for this period | 1038.54 | |
| Ground rent | 45.00 | |
| Interest | 200.03 | |
| Administration fees | <u>170.38</u> | 1453.95 |
| Less paid | | <u>713.68</u> |
| Balance outstanding as at 24.11.04 | | <u>£740.27</u> |

- 1.3 By its Defence dated 28 January 2004 the Respondent tenant denied that there were any rent arrears at the date of issue of the claim. The Respondent said that, as no services had been performed by or on behalf of the landlord, no service charge was payable in respect of such services, or in respect of management and accounting fees relating to such services. Such costs were not relevant costs within the meaning of section 18 of the Landlord & Tenant Act 1985 as they were not reasonably incurred. The Respondent put the Applicant to proof of insurance costs.
- 1.4 The Respondent asked for the issues to be referred to the LVT, relying upon section 31C of the Act of 1985 which has, of course, been repealed by the Commonhold & Leasehold Reform Act 2002. However, that section has been replaced by paragraph 3 of Schedule 12 to the Act of 2002. By an order dated 28 February 2005 District Judge Habershon ordered that the claim be transferred to the LVT for determination of the service charges due.

2. REPRESENTATION

- 2.1 By application dated 24 March 2005 the Applicant sought a determination of the service charges payable for 2003 and 2004. The Applicant's case relied upon the documentation presented to the County Court and produced to the LVT. The Applicant was represented by its managing agent in the person of Mr Hastings, assisted by Sharon Huell, Property Manager.
- 2.2 The Respondent relied upon a brief but pithy witness statement by Mrs Anacreonte-Cavallaro. She confirmed the contents of the County Court Defence and stated that no works of any kind had been done by or on behalf of the landlord during the two years in question. She had queried the charges but had received no explanation from the managing agents. She put the Applicant to proof of costs incurred. The Respondent was represented at the hearing by Mr J C Bland, Solicitor of Bland & Co.

3. THE EVIDENCE AT THE HEARING

- 3.1 There was a lamentable failure on the part of the Applicant to make proper disclosure of the underlying documentation, to file or serve any witness evidence, or to prepare a trial bundle in accordance with the Directions Order dated 5 May 2005 or at all. In correspondence Mr Bland made it clear that the Respondent had been unable to form a considered view of the propriety of the charges because of lack of proper information. He anticipated that, if the Applicant were to provide the necessary documentation it might prove possible to resolve the application without a hearing.
- 3.2 Mr Hastings gave no satisfactory explanation for this failure. Moreover, he was unable to make good his default at the hearing; he claimed to have left the relevant file in his office. He did, however, give oral evidence and produce a selection of relevant documents which Mr Bland had not previously seen. This was particularly unfortunate in circumstances where Mrs Anacreonte-Cavallaro was unable to attend, as she had been summoned to give evidence at Luton Crown Court.

3.3 In those circumstances, the Tribunal scrutinized the evidence of Mr Hastings with particular care and gave Mr Bland time to consider new documents. Fortunately, bearing in mind the modest sums at stake, Mr Bland did not feel the need to apply for an adjournment. Moreover, it proved possible during the hearing for the parties to reach a good measure of agreement upon various issues, so that the need to make findings on disputed evidence was much reduced.

3.4 The annual summaries of service charge expenditure prepared by Residential Property Accounting Services for years ending 25 December 2001 to 25 December 2004 (the statement dated 19 April 2005 for 2004 being produced at the hearing) show how the annual expenditure is made up and apportioned. Mr Bland accepted that it was reasonable for the Applicant to apportion service charges equally between the two apartments.

Scope of Service Charges

3.5 There is, in fact, no car park or intercom system at the property. The landlord provides no cleaning or lighting of common parts. It is clear that no actual works of repair, maintenance etc. have been carried out since 25 December 1999. There is no evidence of any landlord's inspection or survey of the property during that period. The management activities of the managing agents have been to obtain property insurance and collect rents and insurance premium contributions. Mr Hastings said that, with this type of property (i.e. a small converted house) his company often had "limited involvement on a day-to-day basis". The company employ the same accountant to prepare service charge statements for all the properties they manage, thereby achieving economies of scale. The accountant works on a scale of standard fees. Interest is calculated according to the state of the account on a daily basis at 4% over bank base rate.

Insurance Costs

3.6 Mr Hastings produced the Norwich Union insurance summary for the year ending 24 March 2006. This showed the declared value of the building to be £286,650, the building sum insured £372,645 and the premium (including Insurance Premium Tax) £963.15. He could not say when the building was last valued for insurance purposes. The brokers undertook a revaluation exercise from time to time. His company was not responsible for deciding upon the level of cover. His understanding was that the building declared value was used in calculating the premium. The insurers allowed an uplift of 30% in assessing rebuilding costs. The current trend was for insurers to allocate premiums according to bands of values.

3.7 Mr Bland suggested to Mr Hastings that that the insurance costs were unreasonably high. He had obtained a "like for like" quotation from Norwich Union in October 2005. He had been obliged to use the sum insured for 2000, as he did not have copies of the later insurance documents. Using a building declared value of £209,000, he was quoted a premium of £351.12. For a declared value of £272,000, the figure would be £456.96 inc. IPT. For a declared value of £286,650, the premium would thus be £481.57. Moreover, it was surprising that the declared value was as high as £286,650, bearing in mind that his client bought the apartment in 2000 (when the lease had 85 years to run) for £42,000.

- 3.8 Mr Hastings agreed that the level of cover did seem high. He offered to give a 25% discount for the years in question and to discuss the future level of cover with the Respondent. Mr Bland accepted that offer. The Tribunal agreed to make its order accordingly.

Management and Accountancy Fees

- 3.9 Mr Hastings argued that the landlord was entitled to employ an agent and that the management fees claimed were well below market level for this part of the country. They were flat fees which would remain the same irrespective of the work involved though, naturally, the agent would charge a separate fee for managing any substantial building works. Mr. Hastings said that although there was no current management contract, his company usually followed the RICS guidelines for the management services provided. He also gave the figures for the previous year's management charges which ranged from an annual fee per unit of £190.00 + VAT in 1999-2000 to £220.00 + VAT in 2003-4. For this type of case a percentage fee at usual market rates would be too small to be worth the trouble. It was reasonable for the landlord to employ accountants to prepare service charge accounts and the fees involved were very modest. Having heard the evidence, Mr Bland did not really dispute the reasonableness of these charges.

Bank Charges

- 3.10 Mr Hastings told the Tribunal that service charge monies paid on account were kept in a global bank account; there was no separate account for this property. He thought there were annual bank charges, which were apportioned between the various properties managed by the company, though he had no relevant documents and could not recall the details. He did not assert that any bank interest charges had been incurred in respect of this property.

Interest Charges

- 3.11 Interest charges included £81.80 brought forward from 2002, as regards which no documentary evidence was produced. The Chairman pointed out that the lease contained no provision for interest charges. It appeared that the Applicant's only right to interest would be at the Court's discretion (generally from the date of issue of proceedings) under section 69 of the County Courts Act 1984. That would be a matter for the County Court, not for the LVT. After taking time for consideration, Mr Hastings agreed that there was no entitlement under the terms of the lease to charge interest. The Tribunal agreed to make its order accordingly.

Administrative Charges

- 3.12 Mr Hastings told the Tribunal that it was necessary to perform a company search at a cost of £23.50 before issuing a section 146 notice. The section 146 notice was prepared in his office and a charge of £125.00 + VAT was reasonable. Mr Bland accepted that it was reasonable to carry out a company search. In his view the cost of preparing the section 146 notice was not unreasonable, having regard to the level of charges a solicitor would make for the same service. However, the figures were not formally agreed or admitted.

4. THE LAW

Service Charges

- 4.1 Under **section 18 of the 1985 Act** (as amended) service charges are amounts payable by the tenant of a dwelling, directly or indirectly, for services, repairs, maintenance, improvement, insurance or the landlord's costs of management. Under **section 19** relevant costs are to be taken into account only to the extent that they are reasonably incurred and, 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. Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable.
- 4.2 Under **section 27A** the Tribunal has jurisdiction to determine whether a service charge is payable and, if so, the amount which is payable; also whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if so, the amount which would be payable.
- 4.3 Under **section 158 and Schedule 11 of the Commonhold & Leasehold Reform Act 2002** variable administration charges are payable by a tenant only to the extent that the amount of the charge is reasonable. An application may be made to the LVT to determine whether an administration charge is payable and, if so, how much, by whom and to whom, when and in what manner it is payable.
- Costs generally**
- 4.4 The Tribunal has no general power to award inter-party costs, though a limited power now exists to make wasted costs orders. In general, if the terms of the lease so permit, the landlord is able to recover legal and other costs (eg the fees of expert witnesses) associated with an application to the Tribunal as part of the service charge.
- 4.5 However, under **section 20C** of the Act of 1985 the Tribunal has power, if it would be just and equitable so to do in the circumstances of the case, to prevent the landlord from adding to the service charge any costs of the application. In the Lands Tribunal case *Tenants of Langford Court –v- Doren Ltd* in 2001 HH Judge Rich QC said that the LVT should use section 20C to avoid injustice.

5. CONCLUSIONS

- 5.1 In the outcome, there was little for the Tribunal to decide. The only issues not formally agreed between the parties were the management and accountancy fees, bank charges and administrative charges. The Tribunal accepts that it was reasonable for the landlord to employ an agent. Although, in this case, there is not likely to be a great deal for agents to do most of the time, there is the annual task of arranging insurance and the business of collecting rents (which, however, the landlord must do at its own expense) and insurance premium contributions. From time to time, there are likely to be substantial works of repair, in which event it will be necessary to instruct surveyors, consult tenants, put out competitive tenders and employ and supervise contractors.

- 5.2 Management arrangements must be in place continuously and the tenants must contribute in accordance with the provisions of the lease to the reasonable costs thereof. The tenants are entitled to statements of account. It is in the interests of all concerned that these should be properly prepared and independently verified. However simple the task, no competent accountant will undertake this exercise unless paid a modest fee. In the judgment of the Tribunal the charges in this case for management and accountancy were reasonable.
- 5.3 If the tenants prefer to arrange these affairs themselves, they are now entitled to claim the right to manage the property, without the need to show any default on the part of the landlord or its agent. Some tenants will prefer to leave these matters in the hands of the landlord, relying upon the landlord's covenants and their statutory rights to be consulted, to obtain information and to challenge the standard of works and services and the landlord's claims to recover contribution towards unreasonable fees, costs and expenses.
- 5.4 With some hesitation, the Tribunal accepted the evidence of Mr Hastings that that there were bank charges, a proportion of which was allocated to the service charge account for this property. The figure of £10.00 per annum is a modest figure. There is no reason to doubt that the apportionment shown in the service charge statement was reasonable.
- 5.5 The Tribunal accepts that it was reasonable for the landlord's managing agent to undertake a company search before issuing the section 146 notice. It is important to serve notices at the correct address, which is generally the registered office. Moreover, in the circumstances of this case it was reasonable to serve a section 146 notice as a means of bringing to a head the dispute over unpaid service charges. However, the notice was in standard form, taken from the databanks of the agent's computer, as Mr Hastings conceded. No fees were incurred in taking legal advice. In those circumstances, the Tribunal considers a fee of £125.00 unreasonable. The Tribunal allows a fee of £50.00 + VAT.
- 5.6 Bearing in mind the modest benefit achieved by the landlord (as to which, see below), it is far from clear whether it was reasonable to issue proceedings in the County Court. That must be a matter for the Court to consider in relation to any claim for court costs. However, it is not clear to the Tribunal why the claim was not brought directly to the LVT, which would surely have been a more economical and convenient forum.
- 5.7 The service charge account for 2004 now being available, the Tribunal proposes to disregard the interim demands and assess the final total due and owing up to 25 December 2004, which includes another half year's rent. The final figure will not compare directly with the original claim, which was based partly on demands for payment on account. In the light of the above findings, the Tribunal concludes that the service charge accounts should read as set out in **Appendix 1** to this Decision.
- 5.8 It is then necessary to adjust the statement of account accordingly. The Applicant's statement begins at 23 December 2003 with a balance of £452.59. It is necessary to make an adjustment for the deductions made by the Tribunal for the period prior to that date, in addition to the adjustments for 2004. The result appears to be as set out in **Appendix 2**.

- 5.9 The parties have permission, if so advised, to apply to the Tribunal within 14 days from publication of this Decision for a review of the above calculations. Unless such application is made within that period, the Decision of the Tribunal is that the balance due and owing by the Respondent to the Applicant as at 24 December 2004 was **£160.54**. A copy of this Decision will be sent to the County Court for final determination of the Applicant's claim and the resolution of issues as to court costs.

Costs

- 5.10 An obvious injustice would occur if a successful tenant respondent were obliged to contribute to the legal costs of the unsuccessful landlord. In the judgment of the Tribunal the Respondent has been substantially successful in the Application. There is no application under section 20C. It does not appear to the Tribunal that the Applicant has incurred any costs in relation to the Application. However, it is not entirely clear whether the landlord may seek to recover such costs through the service charge account. Accordingly the Respondent has permission, if so advised, to submit a written application under section 20C within 14 days from publication of this Decision, in which event the issue will, unless either party asks for a hearing, be determined by written submissions.

6. DECISION

- 6.1 Subject to review in the event either party makes written representations to the Tribunal within 14 days from the date hereof, the Tribunal declares that the balance due and owing by the Respondent to the Applicant as at 24 December 2004 was **£160.54**.
- 6.2 The Respondent has permission if so advised to submit a written application under section 20C of the Landlord & Tenant Act 1985 within 14 days from publication of this Decision, in which event the issue will, unless either party asks for a hearing, be determined by written submissions.

Geraint M Jones MA LLM (Cantab)
Chairman
17 November 2005



APPENDIX 1 – REVISED SERVICE CHARGE ACCOUNT

| Item | 2002-3 | 2003-4 |
|--|--------|----------------|
| | £ | £ |
| Accounting Fee | 71.00 | 71.00 |
| Bank Charges | 10.00 | 10.00 |
| Insurance premium (reduced by 25% as agreed) | 655.20 | 687.96 |
| Management Fee | 210.00 | 220.00 |
| VAT on Management Fee | 36.75 | 38.50 |
| TOTALS | 982.95 | 1027.46 |
| Proportion payable by Respondent (50%) | 491.48 | 513.73 |
| TOTAL SERVICE CHARGES (actual) | | 1005.21 |

APPENDIX 2 – REVISED ACCOUNT BALANCE

| Item | £ | £ |
|---|----------|---------------|
| Balance brought forward as at 22.12.2003 | | 452.59 |
| Less deductions from 2002-3 service charge account: - | | |
| Insurance Premium 50% of 25% of £873.60 | (109.20) | |
| Interest (5 items) up to 22.11.2003 | (95.15) | (204.35) |
| Service Charges (adjusted actual) for 2003-4 | | 513.73 |
| Ground Rent payable up to 25.12.2004 | | 30.00 |
| Search fee | | 23.50 |
| Preparation of section 146 notice | | 58.75 |
| Less paid | | (713.68) |
| NET BALANCE due and owing as at 24.12.2004 | | 160.54 |