

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
AND LEASEHOLD VALUATION TRIBUNAL**

**STATEMENT OF REASONS FOR THE
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
FOLLOWING AN INSPECTION AND HEARING
ON THE 19TH JUNE 2003**

Case Number: CHI/43UJ/NSI/2003/0014

Members of the Tribunal:-

**Mr D Agnew, LLB, (Chairman)
Mr D M Nesbit, JP FRICS FCI Arb
Mr D Wills**

**Property: 45 James Road
Camberley
Surrey**

Applicant: Surrey Heath Housing Association

Respondent: Mr & Mrs P J Green

**Appearances: Mr P Moulder
Counsel for Applicant
Mr & Mrs P J Green**

Inspection and Hearing Date: 19th June 2003

1. Introduction

- 1.1 This was an application made by the Landlord under Section 19(2A) of the Landlord and Tenant Act 1985 for a determination of reasonableness of service charges where the costs had already been incurred for the service charge years 1998/1999, 1999/2000, 2000/2001 and 2001/2002.

2. Inspection

- 2.1 The Members of the Tribunal inspected the property at 45 James Road, Camberley, Surrey, prior to the hearing in the presence of Mr and Mrs Green..
- 2.2 The premises comprise a ground floor flat in a two-storey block of four. There are no communal parts. Each flat has its own front door, those for the upper flats being situated at each side of the block.
- 2.3 The block is situated on a large corner plot and set in gardens that are well maintained by the lessees.
- 2.4 The block has been well maintained and appears to be a satisfactory condition.

3. The Lease

- 3.1 The service charge provision is contained in clause 3 of the lease and requires the tenant to pay “such annual sum as may be notified to the Lessee by the Lessor from time to time as representing the due proportion of the reasonably estimated amount required to cover the cost and expenses incurred or to be incurred by the Lessor in carrying out the obligations or functions contained in or referred to in this clause and clauses 4 and 6 hereof and in the covenants set out in the Ninth Schedule hereto.”
- 3.2 In summary and to paraphrase those obligations of the Landlord, they are:
 - (1) to keep the main structure of the property including foundations, exterior and party walls and walls dividing the flats from common halls staircases landing steps and passages and the walls bounding the same and all electrical and other fittings and windows in the block save for internal plaster, windows and electrical and other fittings in the individual flats, in good and substantial repair and condition;
 - (2) to keep cisterns tanks sewers drains gutters pipes wires cables ducts and conduits (save where solely installed or used for any particular flat) in good and substantial repair and condition;
 - (3) to keep any wireless and television mast aerial and cables erected on the property in good and substantial repair and condition;
 - (4) to insure the property;
 - (5) to keep communal parts adequately lighted, clean and tidy;
 - (6) to repaint common parts periodically in accordance with the Lessor’s repainting cycle;

- (7) to manage the property to keep it in a similar state as it was then originally let.

4. The Law

4.1 Section 19 of the Landlord and Tenant act 1985 states:-

.... “(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) 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.”

4.2 Section 19 (2A) of the said Act states:-

“A tenant by whom, or a landlord to whom, a service charge is alleged to be payable may apply to a Leasehold Valuation Tribunal for a determination:-

- (a) whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred;
- (b) whether services or works for which costs were incurred are of a reasonable standard; or
- (c) whether an amount payable before costs are incurred is reasonable.”

5. The Hearing

- 5.1 This took place at High Cross Church, Knoll Road, Camberley, Surrey, on 19th June 2003. In attendance were Mr P Moulder, Counsel for the Landlord, Miss Rebecca Watters and Mr Ray Ryan of Surrey Heath Housing Association and the tenants, Mr and Mrs Green. Miss Watters deals with administration to do with the service charge and Mr Ryan is responsible for maintenance of the Landlord’s estate. There is no specific department within the Landlord’s organisation for dealing with its leasehold estate, although the Tribunal was informed that this was in course of being set up. The tenants gave evidence and cross-examined the Landlord’s witnesses although they had not previously complied with Direction 3 of the Tribunal’s Order of 26th March 2003 by sending a written statement to the Tribunal by 2nd May 2003. The Landlord also produced further written evidence at the hearing as to its analysis of management fees

6. The Evidence

- 6.1 Miss Watters explained that the Management fee had been fixed in 1993 and had not increased since then. However, she referred to the analysis of

Management fees chargeable that had been produced by her Association which indicated that the true cost of management per leasehold flat was £165 per flat per annum.

- 6.2 Under cross examination from Mr and Mrs Green, who required to know what they received for the management fee of £100, Miss Watters was unable to give any evidence as to whether there had been any visits by the Landlord to inspect the premises. She was able to say that one statement of account and two invoices per year would be sent out to the tenants and there would be someone available to answer any queries tenants had about the management or the charges. In answer to the Tribunal's question as to what information was given to the lessees about insurance, Miss Watters stated that if they had paid their premiums and requested information they would be given it otherwise they were just told what the premium was for the year and asked for payment.
- 6.3 The Tribunal adjourned for a period to allow the Landlord's Counsel to furnish evidence of what was done to inspect premises as Mr and Mrs Green maintained that they had never had a visit from any inspector or surveyor on behalf of the Landlord in 2½ years.
- 6.4 Mr Ray Ryan, who is responsible for maintenance matters for the Landlord, was called to give evidence. He told the Tribunal that Mr and Mrs Green may not have had a specific visit but their inspectors always keep a look-out for repair requirements whilst they are out and about on the estate responding to tenants' specific requirements and will inspect premises by driving by and not necessarily stopping to call at the premises. Passing visits would not be recorded. The Surrey Heath Housing Association's estate comprises 3,000 units. 162 flats are on long leaseholds.
- 6.5 The service charges for which a determination of reasonableness was sought by the Landlord were as follows:-

1998/1999	Insurance Premium	£ 15.23
	Management fee	£100.00
1999/2000	Insurance premium	£ 15.23
	Management fee	£100.00
2000/2001	Insurance premium	14.27
	Management fee	£100.00
2001/2002	Insurance premium	£16.50
	Management fee	£100.00

- 6.6 In giving their evidence Mr and Mrs Green explained how they had been totally confused by the statements and invoices issued by the Landlord, some of which were patently wrong. They produced a series of conflicting and contradictory statements. Miss Watters accepted that some of the statements contained inaccurate information but the documents contained in the tribunal's bundle which had been copied to the Respondents were correct.

- 6.7 Mr and Mrs Green felt that they received very little, if anything, for the management fee of £100. They had never had a visit to inspect the premises and had never had any correspondence with the Landlord other than the confusing service charge statements. They did not consider that it was fair for them to have to pay the same management fee as other flat owners where there were communal parts and it could be expected that a greater amount of management would be required. They had never received any information about the insurance of the block. They did not know with whom the insurance was placed, the amount of cover or what they should do if they needed to claim.
- 6.8 Mr and Mrs Green had a particular objection to a charge of £50 as a contingency against future repairs, although they may not have understood what this was. As this item was not included in the service charges for costs actually incurred for the years under consideration, this was not a matter for determination by the Tribunal.
- 6.9 Summing up for the Landlord, Mr Moulder maintained that the service charges were reasonable. There had been no dispute about the insurance charge. There were no charges for communal expenditure or repairs. That left the management fee of £100 per annum. The analysis of management fees showed that the true cost was £165 and therefore £100 was a reasonable charge. It was not necessarily unfair not to differentiate between those properties with and those without communal parts.

7. The Decision

- 7.1 As far as the charges for the insurance premium were concerned for each of the years from 1999 to 2002, the Tribunal decided that they were reasonable and accepted that savings had been made by the Landlord being able to negotiate a premium on the basis of a block policy.
- 7.2 As far as management charges were concerned, however, the Tribunal decided that for the amount of management involved this flat in this particular block of flats, £100 per annum was not reasonable. The Tribunal stresses that this decision only concerns this particular property (45 James Road) and the block in which it is situated. Here there are no communal areas. No repairs and no building maintenance has been required. No cleaning or lighting, no caretaker or grounds maintenance are required. The only service provided by the Landlord has been to provide service charge statements and invoices and those appeared to have been inaccurate and misleading.
- 7.3 The Tribunal hoped that, having accepted that it was responsible for having confused the tenants in this way, the Landlord would make time to meet with Mr and Mrs Green to rectify any errors that may have been made in the past and clearly explain to them the current situation and the request for £50 on account of possible future expenditure on repairs for which there is provision in the lease.

7.4 The Tribunal agreed with Mr and Mrs Green that it is unfair of the Landlord to treat them in the same way as other leaseholders who, due to the nature of their properties, place a greater demand on the Landlord's services for management. The tribunal decided that in all the circumstances a management fee of £50 per annum from 1999 to 2002 would be reasonable in this particular case.

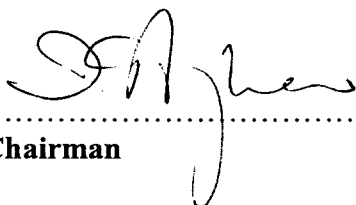
7.5 In summary, therefore, the Tribunal's decision is that the following service charges were reasonably incurred and payable by the tenants of 45 James Road, namely:-

1998/1999	Insurance premium	£15.23
	Management fee	£50.00
1999/2000	Insurance premium	£15.23
	Management fee	£50.00
2000/2001	Insurance premium	£14.27
	Management fee	£50.00
2001/2002	Insurance premium	£16.50
	Management fee	£50.00

7.6 A sum of £10 per annum appears on each of the Leasehold Statements. This is for ground rent which is payable by the tenants under the lease. This is not a service charge item and therefore has not been part of the Tribunal's jurisdiction for determination.

Dated this 3rd day of July 2003

Signed:


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Chairman