

Address of Property : Flat 6, 14-20 Fore Street, Ipswich, Suffolk IP4 1JU
Applicant Landlord : Reel Stone Property Management Ltd, 20 Lawn
Street, Chelmsford, Essex CM1 6NR
Applicant's solicitors : Last Cawthra Feather, Airedale House, 128
Sunbridge Road, Bradford BD1 2AT
Respondent Tenant : Ronald Neil Edwards, Flat 6, 14-20 Fore Street,
Ipswich

By Order dated 13th October 2003 of the Bradford County Court the then landlord's claim against the tenant for recovery of unpaid rent and service charges (Claim No BD3 03113) was transferred to the Leasehold Valuation Tribunal. On 26th February 2004, following the transfer to itself of the landlord's intermediate reversion in the relevant premises, the present landlord submitted an application under section 27A of the Landlord and Tenant Act 1985 (as amended) seeking the Tribunal's determination in respect of the service charges levied in respect of the years 2000 to 2004 inclusive.

Tribunal : Mr G K Sinclair (Chairman), Mr E A Pennington
FRICS, & Mr D Wilson

For the Applicant : Mr Petts, counsel, instructed by Last Cawthra
Feather

For the Respondent : Mr Ronald Neil Edwards, in person

Hearing date : Monday 17th May 2004

THE DECISION OF THE TRIBUNAL

Handed down 27th May 2004

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Preliminary

1. This application concerns the recoverability of amounts levied as service charges for the years 2000 onwards by the landlord under an underlease dated 11th July 1988 of a second floor flat – one of six constructed above a restaurant on a narrow, tapering corner site at the junction of Fore Street (the address) and Lower Orwell Street (the actual entrance) in Ipswich. At all material times the Respondent was the tenant under the underlease, but in recent months he has sold up and moved away.
2. The original parties to the underlease were Lodgeday Properties Limited as landlord, and Mr Edwards as tenant. The underlease is for a term of 199 years (less the final 3 days) commencing on 29th September 1987, at an initial ground rent of £50 per year for the first 50 years, later rising by stages. In addition, the tenant is to pay one sixth of the cost to the lessor of the works and matters set out in clause 2(2). Clause 2(3) imposes a further management charge of 15% of the actual costs incurred under clause 2(2). This was a standard feature of Lodgeday leases of the period, but in the Tribunal's extensive experience of such leases no reputable landlord employing managing agents has ever considered it proper to impose such a gratuitous surcharge. That commendable stance has also been adopted by the landlords of this property. The lessor's obligations appear in clause 4(1) of the underlease, but clauses 2(19) and 5(4) draw attention to certain additional obligations imposed by the

freeholder under the head lease (which the Tribunal has not seen).

3. On a date unknown the landlord's interest under the underlease passed to a company based in Yorkshire, J H Watson Property Investment Limited, but sometime in 2003 it passed to the current landlord, Reel Stone Property Management Limited, of Springfield, Chelmsford, in Essex. The disputed service charges concern the period 2000 onwards, when J H Watson Property Investment Limited was in control of the property. The Tribunal was informed that Mr Edwards had no complaints about steps undertaken by the current landlord during the financial year 2003 and, as a condition of being able to assign his lease, that his solicitors had paid the first instalment due for the year 2004.
4. The issues which the Tribunal had to consider were :
 - a. The alleged poor quality of the cleaning service provided by the then landlord
 - b. The adequacy of that company's management of the building and its response to problems
 - c. Whether there had been proper consultation with the tenants about a major redecoration contract undertaken in the financial year 2000; andthe extent (if any) to which it was proper to make adjustments to the amounts levied.

5. A further matter which the Tribunal felt that it must deal with was costs incurred by the previous landlord in serving a section 146 notice and then the issue of a debt recovery action in the Bradford County Court, without any attempt by it first to seek either from the court or an LVT a determination of the reasonableness of the service charges levied by it. By order dated 13th October 2003 the Bradford County Court purported to transfer the matter to the LVT "for determination".
6. After much delay, and more than a degree of prompting and enquiry from the Tribunal office at Cambridge, the existence of the current landlord came to light and it (acting through the same Bradford solicitors) issued this application under section 27A of the Landlord and Tenant Act 1985 on 26th February 2004, seeking the determination of Mr Edwards' liability to pay the service charges levied in the years in question.

Inspection, hearing and evidence

7. The Tribunal inspected the subject premises at 10:00 am on the morning of the hearing. The weather was warm and sunny. Also present were Mr Clark of Reel Stone and Mr Petts, its counsel. The location and layout of the flat are as appear from the street and floor plans annexed to the underlease. Flats 4, 5 and 6 are on the second floor, reached by an entrance and staircase on the Lower Orwell Street side of the building. Flat 6 is at the broadest end of the building, furthest from the road junction, but overlooks a flat roof over part of

the ground floor restaurant on the Lower Orwell Street side. The structure is of brick, with a tiled roof curving tightly around the rounded end of the building facing up the northern end of Fore Street. The brick face of the eastern, Fore Street side of the building has been painted with cream masonry paint in recent years and appeared to be in good condition. The timber and glass exterior of the ground floor restaurant was, the Tribunal was told, the responsibility of the business tenant, and the documentation disclosed hinted at this being painted at the same time as the upper walls, and by the same contractor, in the year 2000.

8. By contrast, the western face of the building, looking on to Lower Orwell Street, was of bare brick. Where cistern overflow pipes projected from the wall, or where perhaps guttering or downpipes had been defective, long-term staining by limescale was evident. Mr Clark told the Tribunal that his company planned to paint this brickwork, thus protecting the surface from damp penetration, removing the disfiguring limescale, and unifying the appearance of the building. That, however, was a matter for the future.
9. At the top of the building a high level gutter ran the length of the Fore Street face of the building and around the corner to the Lower Orwell Street side before discharging via a downpipe, the bottom section of which was missing. Halfway along the Fore Street side there was a stretch of gutter perhaps two metres long which was clogged and in

which, from street level, grass could be seen growing. On the other side of the building there was also a downpipe outside flat 6, discharging to the flat roof below. There was evidence, from staining on the wall, that this pipe had been defective in the past.

10. Inside the building a staircase gave access, via two landings, to flats 1, 2 & 3 on the first floor and flats 4, 5 & 6 on the second. On that top floor there was a large wooden window running most of the length of the landing. It was in very poor condition, with clear evidence of rot, and a clear gap through which daylight could be seen between the frame and the base of at least one of the panes. This window was scheduled for replacement in the near future. The stairs and landings were covered in a dark red carpet of some vintage, although it looked generally in reasonable condition. Lighting was by some fluorescent tubes above the stairs, with some other light bulbs near the ground floor entrance. The base of the staircase had a narrow, gloomy appearance which Mr Clark was anxious to smarten up..
11. Flat 6 itself was occupied by decorators when the Tribunal inspected. It was in the course of extensive refurbishment for the new tenant, with new bathroom and some kitchen fittings in the course of completion. In the circumstances it was impossible to see how the flat may have looked when Mr Edwards had been in occupation. This is relevant because Mr Edwards complained of a leaking roof and also penetrating damp from the defective downpipe through the exterior

wall of his kitchen.

12. Mr Edwards attended the hearing in person. He stated that, due to illness, he had been unable to “get my head around figures”, and recognised that he should have sought advice from the CAB a long time ago – which he still had not done. He also admitted that it was only recently, presumably in the course of selling the flat, that he had actually seen the underlease and its service charge provisions.
13. With Mr Clark of Reel Stone Property Management Ltd having no direct knowledge of how the building had been managed prior to his company’s acquisition of it in 2003 the evidence adduced was largely documentary in character, plus the oral evidence of Mr Edwards on a limited number of issues. He concentrated upon the poor quality of the cleaning (a point on which Mr Clark whole-heartedly agreed – saying that after taking over he had sacked the cleaners concerned), the managing agents’ persistent delay in dealing with such matters as broken light bulbs on the landings, and the previous landlord’s unwillingness to assist the tenants with problems over late night noise from the ground floor restaurant. Apart from these, he largely agreed that work of the categories set out in the landlord’s annual statements of account had been undertaken, although he could not comment on the values shown or on the frequency that work was actually performed.

14. Insofar as the financial year 2000 was concerned, the single largest item was the contract for redecoration of the exterior, awarded to one of the R G Carter group of companies. The documentation supporting this appears at pages 71 to 73 in the hearing bundle. The net total for the flats was £2,617.85, well above the limit allowed under section 20 of the 1985 Act for undertaking works without the need for any tenant consultation. The bundle contained no correspondence or other evidence suggesting that there had been any such consultation, although Mr Edwards' evidence on this was confused. At one stage he thought there might have been consultation, then he said that the first he was aware of the work was when he returned home and found builders asking if they could secure the scaffolding by inserting a brace through one of his windows. When, previously, major roof repairs had been undertaken by the same landlord he thought, however, that he had seen copies of builders' quotations for the job. Mr Clark was unable to assist with whether J H Watson had engaged in a proper consultation exercise prior to this contract being performed. As part of the evidence justifying a major element of that year's service charge the Tribunal would have expected to see some correspondence with the tenants (or with any residents' association, if three were one).
15. The only other material issue canvassed at length was the fact that for some prolonged time the electricity bills charged to the service charge were based on estimates rather than actual readings, thus leading to a

substantial overcharge later corrected by the time Mr Edwards had sold his flat.

16. Finally, Mr Petts informed the Tribunal, and Mr Edwards confirmed this, that the figures for the year 2003 (when Reel Stone took over) had been agreed between the parties. The supporting documentation was unavailable and not in the bundle, as it was still with Reel Stone's accountants.

The relevant law

17. The Tribunal's powers to determine whether an amount by way of service charges is payable and, if so, by whom, to whom, how much, when and the manner of payment are set out in the new section 27A of the 1985 Act. The overall amount payable remains governed by section 19, which limits relevant costs :
 - 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.
18. Section 20 (which has recently been rendered even more complicated) at the material time imposed consultation requirements where the cost of the work would exceed £25 per tenant or a total expenditure of £500, whichever was the greater. By the Service Charge (Estimates and Consultations) Order 1988 these figures were doubled to £50 and

£1,000 respectively. As the 2000 painting contract well exceeded that figure the landlord's compliance or non-compliance with the consultation requirements becomes very relevant, with serious consequences. Although the Tribunal now has power, under section 20ZA of the Act, to dispense with the requirement to comply with all or any of the consultation requirements this power does not apply to works carried out before the new provisions came into effect in October 2003. The power to dispense with the need to comply with the consultation requirements in the instant case therefore still rests with the County Court under the old section 20(9).

Findings & decision

19. Both parties agreed that the standard of cleaning under the previous landlord had been poor. Mr Clark confirmed that the cost of the replacement cleaners employed by his company was comparable to the figures claimed in respect of the previous cleaners. With such consensus, but very limited evidence, the Tribunal was forced to select an appropriate percentage reduction in the amount claimed for each of the years 2000, 2001 and 2002. Taking into account the matter next discussed the Tribunal decided that the cleaning costs should be reduced by 50%, viz Mr Edwards' one sixth share should be reduced by £50.91 for 2000, £53.39 for 2001, and £54.10 for 2002. The total reduction is therefore £158.40
20. The poor cleaning standard, delay in responding to complaints about

broken light bulbs, failure to ensure that the electricity meters were read with reasonable regularity, poor level of maintenance and repairs to the fabric of the building (such as windows, drains and gutters), and the previous landlord's total lack of response to the complaints about late night noise from the restaurant (or to the restaurant's application to the local council for a late night entertainment licence) led the Tribunal to conclude that little was being done to earn the landlord's managing agent's fees. The amount claimed was reduced by one third or 33.33%, viz by £45.04 for 2000, and £47.00 for each of 2001 and 2002. The total reduction is therefore £139.04.

21. The Tribunal considered that the onus was upon the landlord to satisfy it that a proper consultation exercise had been conducted before embarking on the expensive painting contract in 2000. No documentary evidence was produced to contradict Mr Edwards' evidence, having thought about it, that he knew nothing about the contract until the workmen were on site. In the absence of such evidence the Tribunal is obliged to disallow for that contract the excess over the £1,000 recoverable, disallowing a total of £1,617.85, of which Mr Edwards' share is £269.64.
22. Although not strictly part of the service charge claims, the various statements of account served upon Mr Edwards include significant sums paid by the landlord to the firm of Last Cawthra Feather. As the Tribunal has only payment dates, and no invoices explaining the work

done, it may be presumed that the earlier payments concerned the service of a letter to Mr Edwards, the service of a very elaborately worded section 146 notice (which does comply with section 82 of the Housing Act 1996), and the prosecution of the Bradford County Court proceedings. However, the Tribunal would not, without further evidence, wish to determine the costs involved.

23. Under section 20C of the 1985 Act the Tribunal may order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant. The Tribunal considers that before embarking on a simple debt recovery action in the Bradford County Court the former landlord should have taken the step of obtaining a determination by the court or the LVT that the service charges it had demanded were reasonable and therefore recoverable. Unnecessary expense was therefore incurred by it, which the Tribunal considers should not be treated as Mr Edwards' responsibility. The same applies to the costs of preparing and serving a section 146 notice, particularly where that had to record under section 82 of the Housing Act 1996 that no right of forfeiture could be exercised unless the amount due in respect of service charges had previously been agreed, admitted or determined.

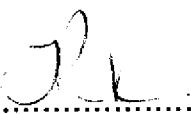
24. The landlord's costs of the Tribunal proceedings were entirely properly

incurred and would be recoverable as part of Mr Edwards' service charge.

25. In all the circumstances the Tribunal finds that the £3,610.00 figure for arrears of service charges (to be found at the head of the statement of account dated 7th May 2004 at page 178 in the bundle) must be reduced by £158.40 for cleaning, £139.04 for management fees, and £269.64 for the 2000 painting contract, leaving a net amount due of £3,042.92.

26. The Tribunal would disallow under section 20C all the costs referred to in paragraph 23 above, but not the landlord's costs of issuing, preparing for and attending the hearing of this application.

Dated 27th May 2004

PP 

Graham K Sinclair, Chairman

for the Leasehold Valuation Tribunal