



**Residential
Property**
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DIRECTIONS BY LEASEHOLD VALUATION TRIBUNAL for the
EASTERN RENT ASSESSMENT PANEL**

**LANDLORD AND TENANT ACT 1985 ('the 1985 Act')
Sections 20C and 27A
COMMONHOLD AND LEASEHOLD REFORM ACT 2002 ('the 2002 Act')
Schedule 11**

Ref :	CAM/22UB/LSC/ 2005/0025						
Property:	49 Copperfields, Basildon, Essex SS15 5RP						
Applicant:	Malcolm Boyd						
Represented by:	Mr M Boyd						
Respondent:	OM Limited						
Represented by:	Mr R Sandler						
Hearing:	21 July 2005						
Tribunal Members:	<table><tbody><tr><td>Mr John Hewitt</td><td>Chairman</td></tr><tr><td>Mr Richard Marshall</td><td>FRICS, FAAV</td></tr><tr><td>Mr John Power</td><td>FRICS, FCI Arb</td></tr></tbody></table>	Mr John Hewitt	Chairman	Mr Richard Marshall	FRICS, FAAV	Mr John Power	FRICS, FCI Arb
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Decision and Findings of the Tribunal

Decision

The decision of the Tribunal is as follows:

- 1.1 The demands for the payment of on account service charges dated 1 October 2004 and 1 April 2005 each in the sum of £365.50 were reasonable in amount, were payable by the Applicant to the Respondent on the 5th October 2004 and 5th April 2005 respectively.

- 1.2 An administration charge in the sum of £5.33 in respect of interest on unpaid ground rent and on account service charge amounting to £390.50 for the period 5 October to 30 November 2004 is payable by the Applicant to the Respondent, and it is payable now.

Reasons and Findings of the Tribunal

The findings of the Tribunal and the reasons for its decision are set out below.

Background

- 2.1 The Applicant has made an application under s27A of the 1985 Act in respect of two demands for on account service charges each in the sum of £356.50 in respect of the service charge year 1 October 2004 to 30 September 2005 sent to him by the Respondent.
- 2.2 The Applicant has also made an application under Schedule 11 of the 2002 Act in respect of three administration charges demanded by the Respondent as follows:
1. £6.69 in respect of interest on unpaid ground rent and service charges
 2. £146.88 in respect of fees said to have been paid by the Respondent to a debt collector to recover arrears of ground rent and service charges.
 3. £80 in respect of court fees paid by the Respondent in connection with proceedings to recover arrears of ground rent and service charges.

During the course of the hearing Mr Sandler withdrew the administration charge No. 2 above and said that the court fees at No. 3 above should be determined by the court in the proceedings. Accordingly, the Tribunal was only required to determine the administration charge No. 1 above in respect of interest.

- 2.3 Directions were given on 6 May 2005.

- 2.4 A hearing was held at 11.00 on 21 July 2005 at the Holiday Inn, Basildon, Essex. The Applicant represented himself. The Respondent was represented by Mr Richard Sandler, its company solicitor. Prior to the hearing a page numbered volume of relevant case papers was provide to the Tribunal, pursuant to the directions.

- 2.5 Earlier on 21 July the Tribunal inspected the exterior of the Property and the development. Mr Sandler and the estate manager Ms N Holmes were present. Mr Boyd was not present, but he had been given prior notice of the time for the inspection.

The subject Property comprises a one bedroom maisonette (on ground and first floor levels) in a block containing a total of 8 units.

The block is situated on an estate of approximately 100 properties developed in the late 1980s on the borders of Laindon and Basildon.

The properties are of traditional construction with brick walls, part rendered and part timber boarding under a pitched and tiled roof.

From the brief inspection by the Tribunal it was noted that the subject block and the adjoining developments were in good condition and set in an attractive and tidy environment.

The Tribunal was not able to inspect the interior of the Property.

The Lease

- 3.1 The Property is held under a lease ('the Lease') dated 29 August 1989 made between Beazer Homes (East) Limited as landlord, O.M. Limited as the management company and Terrence Bart Chamberlain and Claire Helen Adams as tenant.
Evidently the remainder of the term granted by the Lease was assigned to the Applicant in or about October 2004.
- 3.2 The Lease granted a term of 125 years from 25 June 1988 at a ground rent of £50 per annum (for the first 21 years of the term and thereafter subject to review) payable by equal half yearly payments on 31 March and 30 September in each year.
- 3.3 The management company covenanted to observe and perform the obligations set out in the Tenth Schedule. In essence the management company is obliged to repair and maintain the buildings on the development on which the Property is situate and provide common services. The detailed services are set out in the Sixth Schedule in Parts A to E.
- 3.4 The tenant covenanted to observe and perform the covenants set out in the Eighth Schedule.
Material to these proceedings are the following covenants:
Paragraph 1 To pay the rent reserved on the days and in the manner provided.
Paragraph 2 To pay interest at the rate of 4% above the base rate of Barclays Bank from time to time on all sums payable by way of rent and service charge from the due date until date of actual payment.
Paragraph 7 To pay to the management company the tenant's proportion of the maintenance expenses at the times and in the manner provided.
- 3.5 The Seventh Schedule sets out the proportion of maintenance expenses payable by the tenant as follows:
- | | |
|--------|--------|
| Part A | 12.50% |
| Part B | 25.00% |
| Part C | 27.14% |
| Part D | 12.09% |
| Part E | 25.00% |
- Paragraph 5 provides that an account of the maintenance expenses shall be kept for each year ending 30 September and sets out a regime for the preparation and certification of the accounts and the amount(s) payable by the tenant.
Paragraph 6 provides for the payment of sums by the tenant in advance on 31 March and 30 September in each year estimated from time to time by the management company as being the tenant's share of maintenance charges for the ensuing year.

The Law

- 4.1 It was not in dispute between the parties that the maintenance expenses detailed in the lease were service charges within the meaning of s18 of the 1985 Act; and that the demands for advance

payments were only payable to the extent that they were reasonable in amount in accordance with s19(2) of that Act.

- 4.2 Similarly it was not in dispute that interest payable pursuant paragraph 2 of the Eighth Schedule was a variable administration charge within the meaning of paragraph 1(3) of the Eleventh Schedule to the 2002 Act, and was only payable to the extent that it is reasonable in accordance with paragraph 2 of that schedule.

The Respondent's Case

- 5.1 Mr Sandler presented the Respondent's case. He informed the Tribunal that demands were sent out on 1 October 2004 and 1 April 2005 with each demand claiming;

Ground rent	£ 25.00
On account service charges	<u>£365.50</u>
	£390.50

The first demand was sent to the Applicant at the subject Property, no other or away address having been notified to the Respondent when notice of assignment of the lease was given.

The demand was not paid and debt collectors were instructed to try and recover the arrears.

Ultimately the debt collector ascertained a correspondence address for the Applicant and the arrears were brought to his notice and that of his mortgagee. The Applicant took issue with the Respondent on the amount payable by him. In the absence of any payment the Respondent issued county court proceedings on 6 April 2005 claiming arrears of £933.57. In so doing it incurred a court fee of £80. The Applicant asked the court to stay the proceedings pending him making an application to the Tribunal for a determination of the sums payable by him. Mr Sandler told us that the proceedings are stayed pending our decision.

- 5.2 Mr Sandler said that the service charge year 2003/4 the tenant's liability for service charges was £530.33 against a budget or estimated liability of £603.10
- 5.3 Mr Sandler told the Tribunal that a budget for the service charge year 2004/5 was produced and that the Applicant's share of expenditure was estimated to be £731, hence two advance payments of £365.50 each.
- 5.4 Mr Sandler took us through the budget for 2004/5 and identified those items of expenditure which had increased significantly. Principally these were the cost of cleaning and refuse removal (evidently there is an increasing problem with fly tipping and the dumping of abandoned cars on the development) and the reserve for external redecorating. Mr Sandler was not able to give precise explanations for the various increases but sought to assure us that his company and the estate manager were experienced in assessing and estimating the likely cost of services to be provided. Mr Sandler was not challenged by the Applicant on the components of the budget or the amount of his estimated potential liability.
- 5.5 Mr Sandler withdrew the claim of an administration charge of £146.88 in respect of the debt collector's fee. He also said that the court fee of

£80 should be in the hands of the court, thus he was not seeking that sum from the Applicant at this time.

- 5.6 As to the claim for £5.69 in respect of interest, Mr Sandler said that was claimed on £390.50 for the period 1 October to 30 November 2004 at the rate provided for in the lease, although he was not able to say what that rate was. Mr Sandler said he assumed that the Respondent mailed the demands on the date specified on them. He accepted that they would not be delivered to the recipient until a business day or two later. He also accepted that interest should run from the date of delivery of the demand, not the date of sending it.

The Applicant's Case

- 6.1 The Applicant told us that he did not receive the original demand of October 2004. He accepted that due to a misunderstanding somewhere along the line, the Respondent was not notified of his correspondence address when the lease was assigned to him. The Applicant resides in the USA and he usually arranges for correspondence to be sent to his mother's address. He speaks to his mother on a daily basis and she informs him of the gist of correspondence or faxes it over to him for him to deal with it.
- 6.2 The Applicant said that if he had received the October 2004 demand promptly he would have paid it by return and without question. He does not challenge that the budget is not reasonable or that his share may reasonably be estimated at £731. He has taken advice from local surveyors Hair & Son whom he respects greatly and he accepts their view that the estimate is reasonable and in accordance with the lease terms.
- 6.3 The Applicant told us that he has an issue of principal with the Respondent and it was not appropriate for him to pay the demand pending the resolution of that issue. Further he asserts a claim against the landlord for breach of covenant which he quantifies at £100 and which he claims can be set off against his service charge liability to the Respondent.
- 6.4 The issue is that the Applicant took great exception to the debt collectors letter particularly the sentence
'Accordingly, unless you let us have the sum of £516.07 which includes our costs of £146.88 (including VAT) within the next seven days, then, the Freeholder will have no option but to arrange for the lease to be forfeited.'
The Applicant considers this to be a gross misrepresentation of the law, and also breach of covenant for quiet enjoyment. The Applicant was outraged that the letter, and a letter in similar terms to his mortgage lender was sent and it vexes him greatly. He believes he is entitled to an apology and is aggrieved that he has not yet received one despite correspondence with the Respondent.
- 6.5 The Applicant said that a number of managing agents make unlawful threats of forfeiture. It is now his practice to claim £100 every time they do so to compensate for the anxiety caused to him and for his time and trouble in putting them right on the law. Evidently the Applicant encourages others to do likewise.

- 6.6 To support his claim The Applicant relies upon section 4.1 of the RICS Codes of Practice, Council of Mortgage Lenders Guideline 705, s40 of the Administration Act, s1 of the Malicious Communications Act 1988 and clause 9 of Magna Carter.
- 6.7 The Applicant said that after he had received advice from Hair & Son, he was still unable to pay the demands as to do so would have compromised his principles and money would have been paid out under duress and following a letter misrepresenting the law. Further even if he had paid something on account the Respondent would have continued writing to him for payment of the balance.
- 6.8 The Applicant is now willing to make payment of such sum as the Tribunal may determine, but he maintains that he should be allowed to deduct £100 by way of set off in respect of his claim against the landlord. The Applicant was not able to show us his claim or to provide any evidence that it was accepted by the landlord.
- 6.9 The Applicant considered that he should not have to pay interest on the October 2004 demand because he was in dispute with the Respondent on the amount payable.

Findings on the Service Charges

- 7.1 There is no real dispute between the parties that the sum of £710 is a reasonable estimate of the Applicant's service charge liability for the year 2004/5 and that it was payable by equal instalments shortly after 1 October 2004 and 1 April 2005. Accordingly, we find that the estimate is reasonable in amount and was payable by the Applicant on those dates. Those sums were and are payable to the Respondent
- 7.2 The Applicant asserts a claim for breach of covenant against his landlord arising out a letter sent to him by debt collectors instructed by the Respondent, who is not his landlord. It is not for this Tribunal to determine the validity of the Applicants claim against his landlord. We note that no evidence of a letter to the landlord asserting such a claim was produced to us, still less evidence that such a claim was accepted by the landlord. Whilst we find that that the lease does not preclude the equitable right of set off, we find that the Applicant is not entitled to set off sums claimed to be due from the landlord against service charges payable to the Respondent. The covenant to pay rent and the covenant to pay services charges are two separate covenants.
- 7.3 Accordingly, our decision is as set out in paragraph 1.1 above.

The Administration Charge

- 8.1 We find that the interest payable as set out in paragraph 2 of the Eighth Schedule to the lease is within the bracket of what may be considered reasonable. The rate of interest is not, in the experience of the members of the Tribunal, excessive.
- 8.2 We find that the Applicant did not advance any credible reason why interest should not be payable.
- 8.3 We do not accept the Respondent's calculation of the interest. We find that if the demand was mailed on Friday 1 October 2004 it was likely to have been delivered to the subject Property by Tuesday 5 October

2004 and thus interest should run from this date. We find that interest is payable on £390.50 for 57 days to 30 November 2004 at the rate of 8.75%. We calculate the interest payable to be £5.33.

The S20C Application

- 9.1 Mr Sandler gave an assurance to the Tribunal that whilst the terms of the lease empowered the Respondent to charge its reasonable costs of these proceedings to the service charge account, the Respondent did not in fact intend to do so.
- 9.2 On the basis of and in acceptance of this assurance, the Tribunal finds that it need not make a formal determination on the Application.

Fees

- 10.1 The Applicant made an application pursuant to regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 that the Respondent reimburse him the fees of £220 paid by him to the Tribunal.
- 10.2 In support of his application the Applicant said that the reason for the hearing stemmed from the debt collectors instructed by the Respondent and the Respondent has still not shown any justification for the misrepresentation of the law by them.
- 10.3 Mr Sandler opposed the application. He said that the Applicant had not made any payment towards the advance payments of service charge. The Respondent needed to be in funds to enable it to provide services. The Respondent had no alternative but to commence the court proceedings which led the Applicant to make this application to the Tribunal.
- 10.4 The Tribunal prefers the submissions of the Respondent as they accord closer to the reality of the situation. Further the Tribunal considers that the Application was devoid of any material merit and it would thus be unfair to the Respondent to oblige it contribute to the fees paid.



John Hewitt
Chairman
Dated: 27 July 2005