RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Property	:	183 Church Street, Bocking, Braintree, Essex CM7 5LH
Applicant	:	Jean Grace Demuth
Respondent	:	Braintree District Council
Case No.	:	CAM/22UC/LSC/2004/0014
Members of Tribunal	:	Mr. Bruce Edgington (Chair) Mr. David Brown FRCS (Valuer)

DECISION

Introduction

1. This is an application by Jean Grace Demuth ("the Applicant") made pursuant to Section 27A of the Landlord and Tenant Act 1985 for the Tribunal to determine the payability of service charges demanded for 2003/4 and 2004/5 in respect of the property.

2. Upon closer examination of her application form it seems clear that all she is asking the Tribunal to determine is the reasonableness of the management fee for 2004/5. She says:-

> *"I wish to appeal the increase in management fee from £58.02 to £259, for no change in services provided. Whilst I acknowledge an inflationary increase is justified I consider an increase of 300% to be excessive and as a retired widow living on my own I find the increase lowers my ability to manage"*

3. As this is, on the face of it, a small area of dispute, both parties have consented in writing to the Tribunal dealing with this matter on the basis of written representations without the need for a hearing.

4. The property is a two bed roomed flat in a block of two held by the Applicant on what appears to be a 99 year lease from Braintree District Council, the Respondent. The other flat in the block and two flats in an adjacent block are said to be 'council owned' and the Tribunal infers from this that they are let to secure weekly or monthly council tenants.

The Lease

5. The Tribunal only had the benefit of an undated copy of a draft lease but it seems to be in standard 'right to buy' terms and the Tribunal therefore accepted that this document represents the terms of the agreement between the parties. The Respondent has seen this document and has not suggested that it is not the correct form of Lease.

6. Under Clause 4.2 of this document ('the Lease') there is an obligation on the part of the tenant (the Applicant) to pay the landlord (the Respondent) a proportion of the total service charges which are set out in a certificate to be signed by the finance officer of the Respondent. The proportion is to be calculated in accordance with Schedule 5 i.e. either by reference to rateable value or, if that no longer exists, by floor area.

7. Service charges are defined at Clause 1.25 as being:-

> *"...all those costs and expenses incurred or to be incurred by the Landlord in connection with the management and maintenance of the Building and its grounds"*

8. There is then reference to categories of charges being "A", "B" and "C" but these do not change the limitation set out in Clause 1.25. For example, Category A charges include *"management"* and *"other matters specified in the nature of a management or maintenance*

service..." but only in so far as they relate to the building and its grounds.

9. The building is defined in Schedule 2 as being *"...the Flat and Common Parts and the following other flat known as 185 Church Lane, Braintree, Essex..."* as defined on a plan. There is no definition of the 'grounds' as such although there are definitions for 'the private garden', 'the communal store', and 'the common parts'.

The Landlord's Case

10. In her very helpful statement dated 10th June 2004, Andrea Bennett, the Leasehold Services Manager describes how Braintree District Council discovered that the amounts being recovered from its tenants did not cover the *"full cost of providing services to leaseholders"*. These costs are defined and detailed in "AJB3" and appear to be the overhead and servicing costs of maintaining the Respondent's housing stock and common parts such as grass verges. The projected costs amount to £104,280 for the year 2004/5.

11. A report dated 11th November 2003 to the relevant decision making body within Braintree District Council exhibited as "AJB4" states that 384 Leasehold properties pay a maximum of £100 each i.e. a maximum of £38,400 towards the total. This report then says *"The shortfall in funding is borne by the Housing Revenue Account, so in effect, tenants subsidise Leaseholders who have already benefited from discounted sale prices..."*.

12. The Council's decision following this report is minuted in "AJB5" and is that the Leasehold Service Management Fee shall increase to £259 per unit per annum from 1st April 2004 i.e. the amount now claimed from the Applicant (para.2 above). As "AJB4" also states that the number of Leasehold properties in 2004/5 will be 402 units, it can be readily deduced that the charge of £259 is intended to cover almost all of the general maintenance costs for this local authority (402 x £259 =

£104,118) with only a relatively small amount falling to be paid by the Housing Revenue Account.

13. It therefore seems, by inference, that those people called Leaseholders (presumably long leaseholders including the Applicant) are being charged with all the costs of managing all tenanted properties including those occupied by "tenants" which this Tribunal assumes is intended to refer to local authority secure tenants paying weekly or monthly rents.

14. The new Section 27A of the Landlord & Tenant Act 1985 was introduced by the Commonhold and Leasehold Reform Act 2002 and, for the first time, imposed a duty on a Leasehold Valuation Tribunal to consider the payability of service charges as well as their reasonableness. With this in mind, the Tribunal chair caused a letter to be written to the Respondent pointing out that the lease did not appear to enable the Respondent to recover these costs except in so far as they related to this building and its grounds.

15. The Respondent's response dated 15th July seemed to understand the point but asked "...that these difficulties be taken into account".

16. Bearing in mind that the Respondent asked for this determination to be undertaken without a hearing, the Tribunal chair felt that the position ought to be clarified and a hearing offered. He therefore caused a further letter to be written which referred to the Court of Appeal decision in **Gilje v Charlgrove Securities Ltd [2002] 3 L & TR 537** in which there was a dispute about whether general words in a lease enabling a landlord to charge for the upkeep of a caretaker's flat in a block of flats entitled the landlord to charge a notional rent for that flat.

17. The following words, used by Mr. Justice Laws in that case were put to the Respondents:-

> *"At the end of the day, I do not consider that a reasonable tenant or prospective tenant, reading the underlease which*

was proffered to him, would perceive that paragraph 4(2)(1) obliged him to contribute to the notional costs of the landlord providing the caretaker's flat. Such construction has to emerge clearly and plainly from the words that are used. It does not do so. On that short ground I would uphold the Judge below and dismiss the appeal"

18. The letter went on to say that the chair was struggling to see how this service charge could be recovered because there was nothing in the wording of the lease to suggest to a reasonable prospective tenant that he/she would be liable to pay service charges relating to anything other than the building in which this flat is situated. The letter encouraged a response and suggested a hearing.

19. The reply from the Respondent is dated 27th August 2004 and states:-

"Having considered the judgment of Lord Justice Laws and taken instructions from my client officer, I acknowledge that there is nothing 'clear and plain' in the lease that allows recovery of this particular management fee. In the circumstances, a hearing will not be required. I look forward to receiving the Tribunal's formal decision on this determination in due course"

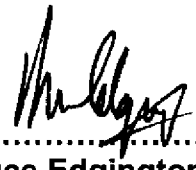
Decision

20. For the reasons set out above and, in particular, the helpful guidance on interpretation given by the Court of Appeal in **Gilje**, the decision of this Tribunal is that the Respondent is only entitled to recover from this Applicant tenant a proportion of the costs of maintaining the building as defined in the Lease and its grounds. The Tribunal interprets these words as meaning the grounds in the immediate vicinity being the paths and the garden indicated on block plan 9787 attached to the Lease.

21. It is clear that the Respondent is unable to provide a calculation of the proportion (if any) of the total projected cost of £104,280 which relates to this building and grounds. This Tribunal cannot hazard a guess at what the proportion might be and indeed the wording of the letter from the Respondent dated 27th August could be interpreted as saying that none of this service charge is applicable to this building and its grounds.

22. It also seems probable that part of the figure of £259 may relate to the cost of servicing properties occupied by this local authority's own secure tenants from whom it does not appear that the Respondent is proposing to ask for a contribution.

23. The Tribunal determines that the sum of £259 is neither recoverable nor reasonable and is therefore not payable by the Applicant.



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Bruce Edgington
Chair
01 September 2004