

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

SECTION 27A LANDLORD AND TENANT ACT 1985

Case Number: CHI/OOMS/lis/2004/0038 and 63

BETWEEN:

Danesdale Land Ltd

Landlord

- and -

Mrs Bernstein and Mr Marsh
The Lessee of apartment No.2
Mrs Collins
Mr George
Ms Kellie
Mr Stokes and Mr Bowman

Tenants

Premises: Quay 2000, Horseshoe Bridge, Southampton

Tribunal: Mr D Agnew LLB, LLM (Chairman)
Mr M Horton FRICS
Mr D Wills

Hearing: 15th April 2005

REASONS FOR DECISION

1. Introduction:-

1.1 The landlord on the one hand and Mr Marsh and Mrs Bernstein of Apartment 6, Quay 2000, Horseshoe Bridge, Southampton (the Premises) on the other hand had each made application for the determination by the Tribunal of the reasonableness of service charges and at a pre-Trial Review it was established that the only service charge the subject of the application was for the year to 31st May 2003. There was also an application by the tenants for an order under Section 20C of the 1985 Act for the costs of the application to the Tribunal not to be added to the future service charge.

1.2 The Tribunal inspected the premises prior to the hearing on 15th April 2005.

2. Premises

- 2.1 Quay 2000 is a modern block of 50 apartments on the bank of the River Itchen in Southampton. About one half of the apartments have pontoons for the mooring of boats. The whole site is in grounds of relatively small areas of garden, garages and parking spaces. Entry to the grounds is via a security gate.
- 2.2 On the day of inspection the site appeared well kempt, the gardens tidy and relatively weed free.

3. The Hearing

- 3.1 Mr Marsh and Mrs Bernstein were the only tenants who appeared at the hearing.
- 3.2 The landlord was represented by Mr Robson and Mrs Moss of Remus Management, the Managing Agents.
- 3.3 Mr Marsh confirmed that there were four items on the service charge account for the year in question which were in dispute. They were:-
- (1) The insurance premium charged at £4607 for the whole block compared with the budgeted figure of £3120
 - (2) Window cleaning charged £5376 for the whole block
 - (3) Gardening charged at £4350 for the whole block and
 - (4) Lift Maintenance charged at £7538 whereas £6000 had been the budgeted figure.

The Tribunal therefore examined each item of expenditure in turn

3.4 Insurance

Mr Marsh did not contend that the insurance cover was inappropriate, nor did he have any evidence that the premium was too high. His complaint was that the amount of the premium should have been known when the budget was sent out to the tenants and that by under-budgeting this had led to false expectation on the part of the tenants. The landlord, he maintained, should not be allowed to recover the difference between the actual cost of the insurance cover and the figure that appeared in the budget. Mr Robson explained that the budget was prepared in late March/early April each year but his firm did not get to know the amount of the premium until the invoice came in in July. The Landlord renegotiated the

insurance each year. The budget contained estimated figures only for expenditure during the year and that provided the Tribunal was satisfied that the amount of the insurance premium payment was reasonable then the Tribunal could take the matter no further and the Landlord was entitled to recover that sum in the service charge account submitted for the year in question.

3.5 Window Cleaning

Mr Marsh's case under this heading was that the Managing Agents had produced invoices showing that windows had purportedly been cleaned on 28th May 2002, 15th August 2002, 28th September 2002 and 28th February 2003. He disputed that the window cleaner had attended to clean the windows on these occasions and therefore sought a reduction in the charge for window cleaning of £1816. He queried the Managing Agents' system of checking that work had been done as invoiced. He said that the Managing Agents should not pay any invoice until they had checked that the work had been carried out. He mentioned that the ARHM Code of practice to which Remus Management adhered required them to do this. He did not produce a copy of the code for the Tribunal to look at the wording of the code.

Mr Robson said that they did have a system of inspection as Mrs Moss visited the premises once every 5-6 weeks, some visits being unannounced. The window cleaners in question had been used by them for a number of years and were still the contractors used in respect of the premises today. He said that it was totally unreasonable to expect the Managing Agents to check after every item of work was done at the premises. There is something happening there almost every day. They had to have a certain amount of trust in the contractors. There were invoices for the dates in question and he had no reason to believe that the window cleaners had not attended as claimed. He had received no complaints from any other resident about the non-attendance of the window cleaners.

3.6 Gardening

Mr Marsh claimed that the state of the gardens in the year 2002/3 was appalling. He produced photographs to show the poor state of the grass and in particular the weeds in both the grass and borders. These photographs bear the date of processing as August 2003. He also referred to several letters in which he had complained to the Managing Agents about the state of the gardens during this period and the Agents' response acknowledging that the gardens were not in the state they should be and that a new gardener was appointed as from 1st August 2003.

Mr Robson accepted that when his firm took over the management of the premises in 2001 the grounds were in a poor state but that they had improved in 2002/3. Although they had

replaced the gardener in August 2003 and the gardening could have been better prior to that, he did not accept that Mr Marsh's photographs could have been taken in August 2003. He himself produced photographs which he said had been taken in May 2003 showing a much better state of affairs. He told the Tribunal that the current cost of the gardening comes to approximately £3,000 per annum.

3.7 Lift Maintenance

Mr Marsh's complaint was that the budget figure had been woefully inadequate and that the Managing Agents should have known the figure for the previous year and budgeted accordingly. He argued that the Landlord should not be allowed to recover the difference between the budgeted figure of £6,000 and the actual cost of £7538. The previous year's figure for lift maintenance had been £6976.85.

Mr Robson accepted that the figure for lift maintenance in the budget had been set at too low a figure and apologised for that but repeated his arguments as for the insurance premium estimate in the budget, namely that if the Tribunal found the expenditure to have been reasonable then the whole amount should be allowed.

4. The Lease

4.1 By Clause 1 of the tenants' lease the tenants covenanted to pay the service charge in accordance with the Fourth Schedule to the leases.

4.2 By Clause 1.1 of the Fourth Schedule to the lease, the expenditure on services which the Landlord may claim from the tenants is defined as the sum that the Landlord "spends in complying with his obligations set out in the Sixth Schedule" to the lease.

4.3 The Sixth Schedule to the lease sets out the Landlord's obligations which include:

- (i) to keep the gardens of the Estate neat and tidy (Para 8)
- (ii) to have the exterior windows of the block regularly cleaned (Para 11)
- (iii) to insure the block and any other buildings on the estate (Para 12)
- (iv) to arrange for specialists regularly to inspect and service any plant and equipment in the block and to repair modernise and replace it where necessary (Para 2).

5. The Law

5.1 Under Section 27A of the Landlord and Tenant Act 1985 the Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

- (a) the person by whom it is payable
- (b) the person to whom it is payable
- (c) the amount which is payable
- (d) the date at or by which it is payable
- (e) the manner in which it is payable.

5.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

6. Consideration

6.1 Taking each of the disputed items in turn the Tribunal decided as follows:-

- (a) Insurance premium.

The figure in the estimate was no more than just that, an estimate. The budget had to be prepared before the figure for the annual premium was known. The Tribunal considered that the Managing Agents could not reasonably have known the figure before the budget was prepared as it was reasonable that this was prepared some four weeks or so before it had to be delivered. In any event, Mr Marsh had not challenged the reasonableness of the figure for the insurance premium and all that the Tribunal could be concerned with in accordance with Section 19 of the Landlord & Tenant Act 1985 was whether the expenditure had been reasonably incurred. Accordingly, the figure of £4607 would be allowed as charged.

- (b) Window Cleaning

The Tribunal considered it unreasonable to expect the Managing Agent to check every time that its contractors charged for window cleaning that the contractor had done what he said he had done. The Tribunal was of the view that if the window cleaner had failed to clean the windows as suggested by Mr Marsh there would have

been complaints from other residents. The Tribunal therefore decided that the charges for window cleaning were reasonable and would be allowed as charged in full in the sum of £5376.

(c) Gardening

There was a clear conflict of evidence about this, particularly with regard to the photographic evidence. However, it was clearly the case that Mr Marsh was complaining about the state of the gardens throughout the 2002/3 period and the Managing Agents, in correspondence, were accepting that the gardening was unsatisfactory. Mrs Moss negotiated a discount on two invoices as soon as she was appointed and very shortly after the end of the service charge year in question namely on 1st August 2003, the contractor was changed. The Tribunal took the view that the Managing Agents would not have gone to such lengths had the gardening been anything like satisfactory. The cost of gardening is now considerably cheaper than it was under the unsatisfactory contractor.

The Tribunal therefore decided that the charge for gardening was unreasonable and should be reduced by an overall figure of £500 for 2002/3.

(d) Lift Maintenance

The Tribunal decided that as Mr Marsh was not challenging the reasonableness of the charges but simply saying that the Landlord should not recover the difference between the budgeted cost and the actual cost, this was not a legitimate reason for disallowing the actual cost of the work done for the same reasons as set out at 6.1 (a) above. The Tribunal would therefore allow the lift maintenance charge in full at £7538

- 6.2 With regard to the application under Section 20C of the Act, the tenants had not succeeded on three out of four of their items in dispute and in respect of the fourth, the Tribunal's decision was to reduce this charge by only £500 instead of the £4350 claimed by the tenants. The contribution of Flat 6 to the service charge is 2%. Consequently, the tenant's challenge to the service charge has resulted in a reduction of their service account by only £10. The Managing Agents would propose to charge £300 – £400 for the cost of dealing with the application. This did not equate to the time cost of the proceedings to the Managing Agents which would be considerably in excess of this figure. In all the circumstances the Tribunal decided not to make an Order under Section 20C of the Act and therefore it would be in order for the Managing Agents to add a charge of £300-400 to the service charge for the year 2004/5 provided that their contract with the Landlord does not include such work within the annual management fee which is currently £100 per unit per annum.

6.3 The Applicant did not require the Tribunal to make a determination as to the liability of Mr Marsh or Mrs Bernstein to pay a particular amount. Mr Robson believed that once the Tribunal had determined whether or not the particular matters in dispute were properly claimable or not that Mr Marsh and Mrs Bernstein would pay their appropriate share.

7. Decision

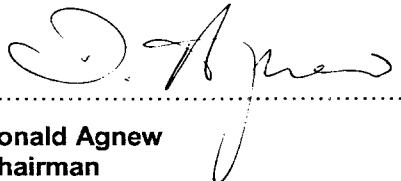
7.1 The Tribunal therefore determined that the following items contained in the service charge account for 2002/3 are reasonable and are claimable from the tenants:-

- | | | |
|----|-------------------|-------|
| a) | Insurance Premium | £4607 |
| b) | Window Cleaning | £5376 |
| c) | Gardening | £3850 |
| d) | Lift Maintenance | £7538 |

7.2 The Tribunal also determined that it would not make an Order under Section 20C of the Landlord and Tenant Act 1985.

Dated this 22nd day of April 2005

Signed:


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Donald Agnew
Chairman