

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

LON/OOBJ/NSI/2003/0063  
LON/OOBJ/NLC/2003/0020

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON  
APPLICATIONS UNDER SECTION 19(2B) AND 20C OF THE LANDLORD  
AND TENANT ACT 1985**

Property: 54 Warriner Gardens  
London SW11 4DU

Applicant: Mr S Parkes (top flat)  
Ms R Bailey (first floor flat)  
Ms N Kapur (ground floor flat)

Respondent: Longmint Limited

Application received: 26 June 2003

Oral Pre-Trial Review date: 21 August 2003

Hearing date: 14 October 2003

Appearances: Mr S Parkes and Ms R Bailey (Applicants)  
Mr P Ingram of Haywards Property Services Ltd

Members of the Leasehold Valuation Tribunal:  
Mrs V T Barran  
Mr M Mathews DMS FRICS MIMgt  
Mr D Wills ACIB

Date of Tribunal Decision: 27 October 2003

## 1. DECISION

- 1.1 £950 would be a reasonable premium for the insurance of the property for the year ending 1 March 2004.
- 1.2 £599 would be a reasonable management fee for the property for the period 1 January 2003 to 31 December 2003.
- 1.3 The Tribunal Order that not more than £250 plus VAT can be regarded as relevant costs to be included in the service charge for the property that may be payable by the applicants (being costs incurred by the landlord in connection with these proceedings).
- 1.4 No Order for the reimbursement of fees is made.

## 2. INTRODUCTION

- 2.1 These were two applications made by three tenants, who hold flats in the property under long leases. The applications were made to the Tribunal under section 19(2B) of the Landlord and Tenant Act 1985 ("the Act"):

*An application may also be made to a Leasehold Valuation Tribunal by a tenant by whom, or a landlord to whom, a service charge may be payable for a determination -*

- (a) whether if costs were incurred for services, repairs, maintenance, insurance or management of any specified description they would be reasonable,*
- (b) whether services provided or works carried out to a particular specification would be of a reasonable standard, or*
- (c) what amount payable before costs are incurred would be reasonable.*

and under section 20(C) of the Act:

*A tenant may make an application for an 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, or the Lands Tribunal, or in connection with arbitration proceedings, 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 or any other person or persons specified in the application.*

*The application shall be made -*

- (a) .....*

*(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the .....*

*The Court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.*

- 2.2 A pre-trial review was held attended by Mr Parkes and by Miss D O'Reilly on behalf of the respondent. Directions were then issued by the Tribunal recording agreement that the application relates in practice to two issues within the service charge year to 31 December 2003, namely the insurance premium demanded in the sum of £1,249 and the management fee demanded in the sum of £599. The directions also required both parties to provide certain information to each other. The applicant was also to provide a bundle which was then used at the final hearing.
- 2.3 In practice, this Tribunal found that insurance is arranged on a yearly basis ending on 1 March 2004. The service charge year is the same as the calendar year. The Tribunal however accepted that the cost would be incurred within the service charge year 2003.
- 2.4 The property is a large Victorian house in Battersea converted into three flats. The ground floor flat has a living room, one bedroom, kitchen and bathroom with cellar and sole use of rear garden. The first floor flat comprises a living room, one double and one single bedroom and a bathroom and kitchen. The second floor flat comprises living room, two bedrooms, kitchen and bathroom. It is not an attic/mansard flat. There is a common entrance to all three flats and a small front garden. The Tribunal did not consider it necessary to inspect the property.

## **2.5 The Lease**

*The landlord covenants to insure the building:*

*5c) i) To insure the Building and keep in insured against loss or damage by fire and such other risks as are included in a Flat Owner's Comprehensive Policy with such insurance company of repute as the Landlord may decide and through such agency as the Landlord may nominate in an amount equal to the full replacement value thereof plus surveyor's and architect's fees and to insure against such other risks as the Landlord shall consider necessary and to produce to the Tenant on demand a copy of such policy of insurance and a copy of the receipt for the current premium.*

*In the event of the Building or any part thereof being damaged or destroyed by fire or any other insured risk as soon as reasonably practicable to lay out all insurance monies received by it in respect of the Building for the repair rebuilding or reinstatement of the Building.*

- 2.6 The management expenditure allowable under the lease is defined at clause 9 of the Fourth Schedule which should be read in conjunction with clause 5 (landlord's covenants) and clause 7 defining service charge:

*The proper and reasonable fees, costs, charges, expenses and disbursements (including any VAT payable thereon) of the Landlord's surveyor, accountant and any other person employed or retained by the Landlord for or in connection with surveying or accounting functions, or the performance of the services and any other duties in and about the Building or any part of it relating to the general management, administration, security, maintenance, protection and cleanliness of the Building.*

*The proper and reasonable fees and expenses (to include overheads) of the Landlord in connection with the management of the Building and any of the functions and duties referred to in this paragraph that may be undertaken by the Landlord.*

### **3. INSURANCE: FACTS**

3.1 Details of insurance for the past three years were as follows:

<i>Period of Cover</i>	<i>Sum insured</i>	<i>Premium</i>
To 1 March 2002	£262,713	£799.96
To 1 March 2003	£285,179	£1,085.46
To 1 March 2004	£299,438	£1,142.86

The claims history for the past three years has been as follows:

Period

31 December 2001	£865.00
31 December 2002	£1,285.00
31 December 2003	£185.08

3.2 During the year to 1 March 2003, the property had been insured with AXA mistakenly in the name of Cambridge Property Services, who were the previous managing agents. Mr Ingram informed the Tribunal that this mistake had now been rectified. The Tribunal had the benefit of a summary of cover for the year to 1 March 2003 prepared by Haywards Insurance Services Ltd. Cover this year to 1 March 2004 is also being effected by AXA. The insurance is arranged by a Broker, namely Hanover Insurance Services. This company together with the respondent Longmint Ltd, Haywards Insurance Services Ltd and Haywards Property Services Ltd are all part of the Erinaceous Group.

3.3 There were no details of any previous insurers and it was not known for how long AXA had covered the property. The sum insured was index linked and had increased annually on this basis.

3.4 Mr Ingram had no precise knowledge of the claims made in the past three years for the property (other than the amounts given above). The tenants

considered that the claim of £1,285 in 2002 had resulted from water damage leading to claims in respect of the decoration of all three flats. In their original application the tenants had considered that the insurance premium included a commission of 20%. Mr Ingram stated that his firm received no commission but that the respondent would take an insurance commission (amount or percentage unknown). The insurance of this property was arranged on a block policy, but each property within the block policy is individually insured.

- 3.5 The tenants had obtained two alternative estimates for insurance. The estimate which the Tribunal found to be the most persuasive as a comparable had been obtained in September 2003 from HW Wood Ltd, provisionally accredited Lloyds Brokers. They had been shown the summary of cover provided by Haywards Insurance Services Ltd and had based their quotation on a sum insured of £299,438 (i.e the same amount as proposed by the landlord). They had obtained an indication of a premium of £707.42. The quotation was subject to a number of conditions, including that a Corgi approved plumber should inspect all the domestic plumbing apparatus and confirm that they were in a sound state of repair and all that the local fire regulations are met. £150 excess would apply to each and every claim. The insurance would be underwritten by HSBC (Ireland) Ltd.
- 3.6 The tenants had obtained a previous quotation based on a lower sum insured from the same Brokers. They had also however obtained a telephone quote from the Bank of Ireland. This gave an estimate of a premium of £769.50p based on a sum insured £285,000, which had been the sum insured to March 2003. No specific details for this quote however were provided and it was therefore only of background interest to the Tribunal.
- 3.7 Mr Ingram contended that the quotes were not like for like. For example the quotation from HW Wood Ltd made no mention of insurance cover for rent which occupiers may have to pay in the event of the property being uninhabitable. He was also concerned that the excesses were different. The Tribunal noted that the policy excess on the AXA cover was indeed lower at £100 but this was qualified so that there was an excess of £250 for water damage claims and £2,500 for subsidence/heave/landslide claims. Mr Ingram was also concerned that terrorism may not be covered by the tenant's alternative quote, whereas the AXA policy gave cover up to £2.5m for residential properties.
- 3.8 The tenants report possible insurance claims to the managing agent who then provides them with a dedicated telephone number at AXA with whom they then deal directly. If there had been a major problem such as subsidence then Haywards would deal with the claim, and it is likely that a loss adjuster would be involved.

## 4. INSURANCE: DECISION

- 4.1 The Tribunal considered that the sum insured (£299,438) was on the face of it not unreasonable for a Victorian house converted into three flats in Battersea. Although at the hearing the Tribunal had been shown a rough plan of the property, provided by a surveyor who had carried out a structural survey when one of the tenants had purchased their flat, this did not give accurate calculations. The Tribunal had not been provided with particulars of the detail of the buildings, such as the level of fitting out or decorations etc. The Tribunal therefore were not inclined to disturb the sum insured, which in its opinion was not out of line with that for properties of this type in this part of London.
- 4.2 However the directions had asked the respondent to supply **full** details of the insurance on the property, including claims history, recent valuation and index linking. Although the amounts claimed had been provided there were no other details. Mr Ingram at the hearing had stated that it was the policy of his company to retender for insurance annually, but there was no evidence or knowledge on his part of retendering either by the Broker, the Landlord or his company. Although Mr Ingram criticised the basis of inspection of the tenant's surveyor, he was unable to confirm when the respondent or its agent had last visited the property for the purposes of an insurance revaluation.
- 4.3 The Tribunal accepted that as a member of RICS, Haywards Property Services Ltd would be bound by its Residential Management Code. This provides:

*8.2 You should routinely monitor the cost effectiveness of contracts, aiming always to maintain services to provide value for money.*

and at

*16.12 When so instructed, you should arrange various insurances in accordance with tenancy agreement. You should periodically review the extent of cover and level of premiums.*

Haywards had accepted that placing insurance was part of their duties as managing agents, albeit the services of a Broker, who is part of the Landlord's holding group were also available. The Tribunal noted however that for whatever reason, no arm of the landlord's holding company had attempted to review the level of insurance cover or premium.

- 4.4 The Tribunal agreed with Mr Ingram that premiums had risen sharply in the insurance market generally over the past two to three years. However it would appear that the baseline for the premium had been set some years back. The individual claims history on this property was not indicative of the need for premium loading. Mr Ingram had confirmed that none of the claims had been made for any major structural damage such as subsidence or heave etc.

4.5 Because there was no evidence before the Tribunal that the landlord had either investigated the sum insured or more importantly, sought alternative quotations for this property, and in the light of the comparable evidence produced by the tenant, the Tribunal considered the level of the insurance premium proposed to be too high. The Tribunal accepted Mr Ingram's argument however that the alternative quotation from HW Wood Ltd may not be exactly like for like. It was however with a company of repute as required under the lease. Therefore taking a broad brush approach the Tribunal considered that a premium of £950 for the year ending 1 March 2004 would be reasonable.

## **5. MANAGEMENT: FACTS**

5.1 The proposed management fee for the property in a budget issued by Haywards Fineman Lever for 2003 is £599. This had been calculated on the basis of a fee of £170 plus VAT per flat.

5.2 In previous years the management fee incurred had been

2000 - £546.38

2001 - £564.00

2002 - £581.63

Accountant's fees are a separate item in the service charge accounts and have been budgeted at £140 for 2003. These are not at issue.

5.3 The tenants' main dispute was not with the cost of management, but with the standard of management. Mr Parkes had stated in the application that the level of service was practically non-existent. The common parts are tired and the stair carpet worn. At the hearing he graphically likened requests to the managing agents for minor repairs to "pulling teeth". The front gate has been in disrepair for years, having first been brought to the attention of the managing agents in or around December 2001. The tenants clean the common parts themselves, change the light bulbs on the stairs and tend the front garden. They obtained an estimate for pruning the tree in the front garden and have obtained an alternative quote for the repair for the roof. The tenants, as mentioned above, also have to deal directly with the insurance company over minor insurance claims.

5.4 As directed following the Pre-Trial Review, Mr Parkes had obtained an alternative quotation for management from a local firm Belgaurum. This had been "in the order of £150 plus VAT per flat per annum" and the Tribunal were provided with a summary of services that this firm would abide by. It is perhaps noteworthy that whilst these terms included advice on insurance, they did not specifically mention dealing with claims etc.

5.5 Mr Parkes candidly stated he had had difficulty obtaining this alternative quote and that having contacted ARMA for a list of managing agents, most did not want to give a quote. Many agents had stated that they did

not work for less than £400 per flat, although these may have been for blocks where a higher level of service was required. Mr Parkes did not think £200 per flat would be excessive, assuming that the work was carried out.

- 5.6 Mr Ingram explained that his firm carries out the management of this property for a specific and large client. This year his firm's management department had obtained estimates for repairs to the roof and to the gate and fence and had arranged for the tree to be removed from the front garden. His firm also arranged for the insurance and prepared the service charge estimates in accordance with the lease. His firm is a member of ARMA and abides by the RICS Code of Management. The latter comes with a premium. Rachel Bent is the day to day property manager and this year she has been involved in a considerable amount of correspondence. Her team look after 1,800 units and there are four and a half management surveyors in the team supported by the accountancy department. Normally a property such as this would have a four to five year external maintenance and decoration programme and around a seven year cycle for decoration of the internal common parts.
- 5.7 Mr Ingram considered that there was a "catch 22" situation here. The tenants require repair works, but then had asked for these to be put on hold pending their possible acquisition of the freehold and meanwhile they do not pay the service charges. There are arrears of approximately £4,500. He acknowledged that Rachel Bent should visit the property approximately once per quarter. She had visited the property in the course of the last year with a contractor to obtain a quotation for the roof, but in the light of the current application to the LVT, she may not have been to the property recently.
- 5.8 In reply to a question from the Tribunal, both parties stated that no attempts to settle the current dispute had been made.

## **6. MANAGEMENT: DECISION**

- 6.1 The Tribunal found that the standard of management offered during 2003 was minimal. The landlord does need to manage the property in accordance with its obligations under the lease and has delegated that function to the managing agents. They do pay for the electricity to the common parts, organise the insurance and work with the accountants on the accounts. This year they have obtained a quotation for the roof repairs and have eventually arranged for the tree to be removed. It would appear that they have not arranged for the front gate/fence to be fixed. The RICS Code (14.7) advises prompt dealing with tenant's reports of disrepair which is the landlord's responsibility, in a manner appropriate to their urgency. The management of minor repairs here could be described as reactive, not proactive.
- 6.2 The Tribunal however do not wish to be unduly critical of the managing agents. Their normal five and seven year repair/decoration cycles is a



service that is currently on hold at the tenant's request. This is in the light of the current negotiations re acquiring the freehold, although no notice under the Leasehold Reform Housing and Urban Development Act 1993 has yet been served. How long this normal service can be kept on hold will be for the managing agents to decide in the light of the landlord's obligations under the lease.

- 6.3 The Tribunal determined that the management fee of £170 + VAT per flat would be reasonable. It is at the lower end of the band of charges, (from £150 to £195 per annum) that Haywards adopt for properties such as this and is also in line with the Tribunal's own experience and knowledge of charges for similar properties in this part of London. The Tribunal are aware of the slightly lower quote from Belgarum but note that this firm does not appear to be a member of ARMA, ARLA or the RICS. The Tribunal accept Mr Ingram's contention that membership of professional organisations, reasonably entitles a firm to charge slightly higher management fees. In particular membership of RICS imposes detailed and extensive duties under its Code.

## **7. SECTION 20(C) APPLICATION**

- 7.1 The applicants have asked that the landlord's costs incurred in responding to these Tribunal proceedings should not be passed on to them in service charges. Mr Ingram, when questioned by the Tribunal, indicated that he had spent some 3 to 4 hours on this case, at an hourly rate of £120. His costs are unlikely to exceed £480 to £500.
- 7.2 As can be seen above the applicants have succeeded in persuading the Tribunal to reduce the cost of the insurance premium but not the cost of the management fee. The Tribunal has also made some criticism of the standard of the management. In the spirit of the RICS Code (21.5) and in view of the relatively small sums of money involved it would have been desirable for an attempt to resolve the dispute informally to have been made. In the circumstances the Tribunal consider it to be just and equitable for the respondent to bear some of its own costs in these proceedings.
- 7.3 The Tribunal accordingly determine that no more than £250 + VAT of the respondent's costs incurred in connection with these proceedings can be in theory regarded as a relevant costs to be included in any service charge payable by the applicants. In practice however whether such costs are recoverable will depend upon terms of the lease, specifically in accordance with clause 4(s) on pages 12-14 of the lease. At present this Tribunal has no jurisdiction to decide issues of recoverability.

## **8. REIMBURSEMENT OF FEES**

- 8.1 The tenants had not requested that the landlord should reimburse the fees of £300 they have paid for the application and hearing but direction

number 12 had indicated that the Tribunal might consider reimbursement. No doubt the application/hearing fee has been shared between the three tenants

8.2 The application involved a relatively small amount of money and the tenants would have been aware of the risk that the fees paid may not be reimbursed. Furthermore no attempt to settle the matter had been made. The Tribunal in this case do not consider it appropriate to order the respondent to reimburse the fees, either in whole or in part.

Chairman: W. T. Barran  
V T Barran

Date 27 October 2003