

**LEASEHOLD VALUATION TRIUNAL**  
**OF THE**  
**MIDLAND RENT ASSESSMENT PANEL**

BIR/OOCR/LSC/2005/0013

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**  
**ON AN APPLICATION UNDER S27A & S20C OF THE LANDLORD AND TENANT**  
**ACT 1985**

Applicants	Ms P. Screen, Mr D. Clarke and Ms L. Smith (leaseholders)
Respondent	Mr J. Wallace-Jarvis (freeholder) and Mr R. T. Macfarlane of MD Properties (managing agent)
Subject property	Stockton Court Mason Street Coseley West Midlands WV14 9SY
Application to LVT	Dated 16 September 2005
Hearings	11 May 2006 and 15 November 2006

Appearances:

For the Applicants	Ms P. Screen, Mr D. Clarke and Ms L. Smith
For the Respondent	Mr J. Wallace-Jarvis
Members of the LVT	Mr D B Power FRICS Mr P J H Waller

Date of determination 15<sup>th</sup> November 2006

## **Introduction**

1. An application under section 27a of the Landlord and Tenant Act 1985 was made by Ms Screen, dated 16<sup>th</sup> September 2005, seeking a determination of liability to pay service charges in respect of flat 21 Stockton Court Coseley for the periods November 1999 - October 2000, November 2000 - October 2001, November 2001 - October 2002, November 2002 - October 2003, November 2003 - August 2004 and August 2004 - September 2005. An application was also made under section 20C of the same Act requesting an order preventing the landlord from recovering costs incurred in connection with the proceedings before the LVT. Subsequently Ms L. Smith of flat 10 and Mr D. Clarke who owns leasehold interests in five flats in Stockton Court applied to join the application and this was accepted. Miss R. Yeomans of flat 8 also applied to join the application but subsequently withdrew as she had sold her leasehold interest.
2. The Respondent was named as Mr R. T. Macfarlane of MD Properties and the Landlord Mr J. Wallace-Jarvis.
3. Mr Wallace-Jarvis sought to be recognised as an Applicant as he maintained he had no involvement in the management of Stockton Court but had an interest in establishing the reasonableness and payability of the service charge as he was in control of a number of the flats in respect of which he had not sold leasehold interests.
4. Directions were issued as a result of which statements were received from Ms Screen and from Mr Clarke only

## **Inspection**

5. The committee carried out in an inspection of the property prior to the first hearing and noted there was considerable disrepair, particularly to the common areas. Exterior cladding panels were damaged and there was considerable vandalism damage. The central heating boiler was not functional. The garden areas however appeared to be regularly maintained

## **Hearings**

6. Mr Macfarlane declined to attend the first hearing and had not submitted any response to the directions. Oral evidence was taken from Ms Screen, Mr Clarke and Mr Wallis-Jarvis from which it became apparent that there is a long history of conflict over the management of Stockton Court and the payment of service charges. This may be summarised as follows;

A Residents Association took the initiative to take over the responsibility for undertaking the freeholder's responsibility for maintenance and the service charge account by applying to the Leasehold Valuation Tribunal for the appointment of a manager as a result of which Nock Deighton were appointed by that Tribunal. Because of disputes, Nock Deighton resigned.

As there was now no arrangement for the maintenance of the building, an ad hoc group of residents decided to appoint another agent, Mr R. T. Macfarlane of MD Properties. Mr Wallace-Jarvis, the freeholder, did not accept this appointment and conflict continued with disputes relating to the validity of service charge demands raised.

7. Evidence has been provided of minutes of meetings of the Residents Association and summary accounts of income and expenditure on the

building as a whole over a number of years, but not the detailed liability in respect of individual flats. The Tribunal had insufficient evidence before it at this first hearing to proceed and adjourned with the further directions requiring the Respondent to provide certificates of expenditure in compliance with the terms of the leases and s21 of the Landlord and Tenant Act 1985. No communication providing this information was forthcoming from the Respondent and the resumed hearing was convened on the 15th of November 2006. Mr Macfarlane was unable to attend.

8. No further information was available to assist the Tribunal in determining the applications. Conflict between Mr Wallace-Jarvis and Mr Macfarlane has continued with proceedings before Harlow County Court initiated by Mr Macfarlane for the recovery of service charges claimed to be due from Mr Wallace-Jarvis.
9. Ms Screen reiterated that the service charge had always been in dispute and that those managing the property had failed to comply with the terms of the lease. She confirmed she had never received a properly certified statement of accounts, only a summary for the whole building showing amounts received and paid. Mr Clarke pointed out that two thirds of the leaseholders were paying the service charge and in his opinion it had been managed efficiently.

#### **Contractual and statutory obligations**

10. The lease dated 30 April 1979 in respect of 21 Stockton Court which the Tribunal believes is in common form applying to all the flats, provides at paragraph 3 (3), with regard to the payment of the service charge the following:

To pay to the Lessor without any deduction by way of further and additional rent a proportionate part of the expenses and outgoings incurred by the Lessor in the repair and maintenance renewal and insurance of the said building and the provision of services therein and the other heads of expenditure as the same are set out in the Fourth Schedule hereto such further and additional rent (hereinafter called "the service charge") being subject to the following terms and provisions: -

- (a) The amount of the service charge shall be ascertained and certified by a certificate (hereinafter called "the certificate") signed by the Lessor's auditors or accountants or managing agents (at the discretion of the lessor) acting as experts and not as arbitrators annually and so soon after the end of the Lessor's financial year as may be practicable and shall relate to such year in manner hereinafter mentioned.
- (b) The expression "the Lessor's financial year" shall mean the period from the First day of April in each year to the Thirty-first day of March of the next year or such other annual period as the Lessor may in its discretion from time to time determine as being that in which the accounts of the Lessor either generally or relating to the said building shall be made up.
- (c) A copy of the certificate for each such financial year shall be supplied by the Lessor to the Lessee on the written request and without charge to the Lessee
- (d) The certificate shall contain a summary of the Lessor's said expenses and outgoings incurred by the Lessor during the Lessor's financial year to which it relates together with a summary of the relevant details and figures forming the basis of the service charge and the certificate (or a copy thereof duly

certified by the person by whom the same was given) shall be conclusive evidence for the purpose hereof of the matters which it purports to certify.

- (e) The annual amount of the service charge payable by the Lessee as aforesaid shall be **(blank space)** the total expenses and outgoings incurred by the Lessor for the year to which the certificate relates
  - (f) The Lessee shall if required by the Lessor with every half-yearly payment of rent reserved hereunder pay to the Lessor such sum in advance and on account of the service charge as the Lessor or its accountants or managing agents (as the case may be) shall specify at their discretion to be fair and reasonable interim payment
  - (g) As soon as practicable after the signature of the certificate the Lessor shall furnish to the Lessee and account of the service charge payable by the Lessee for the year in question due credit being given therefor for all interim payments made by the tenant in respect of the said year and upon the furnishing of such account showing such adjustment as may be appropriate there shall be paid by the Lessee to the Lessor the amount of the service charge as aforesaid or any balance found payable or there shall be allowed by the Lessor To the Lessee by way of interim payment as the case may require
11. Under the terms of the lease, at clause 4 (a) in summary, the lessor is required to maintain the structure of the building, sewers etc passenger lifts, maintain the passages landings staircases, the gardens and grounds, and to insure the building.
12. The extract set out below from section 21 of the Landlord and Tenant Act 1985, details the requirements which apply to the provision of service charge accounts: -
- (1) a tenant may require the landlord in writing to supply him with a written summary of the costs incurred -
    - (a) if the relevant accounts are made up for periods of 12 months, in the last such period ending not later than the date of the request, or
    - (b) if the accounts are not so made up, in the period of 12 months ending with the date of the request,and which are relevant costs in relation to the service charges payable or demanded as payable in that or any other period.
  - (2) ....
  - (3) ....
  - (4) ....
  - (5) the summary shall ..... set out the costs in a way showing how they have been or will be reflected in demands for service charges and, in addition, shall summarise each of the following items, namely -
    - (a) any of the costs in respect of which no demand for payment was received by the landlord within the period referred to in subsection (1) (a) or (b)
    - (b) any of the costs in respect of which -
      - (i) a demand for payment was so received, but
      - (ii) no payment was made by the landlord within that period, and
    - (c) any of the costs in respect of which -
      - (i) a demand for payment was so received, and
      - (ii) payment was made by the landlord within that period,and specify the aggregate of any amounts received by the landlord down to the end of that period on account of service charges in

respect of relevant dwellings and still standing to the credit of the tenants of those dwellings at the end of that period.

(5A) ....

(5B) ...

(6) if the service charge in relation to which the costs are relevant costs as mentioned in subsection (1) are payable by the tenants of more than four dwellings, the summary shall be certified by a qualified accountant as -

(a) in this opinion a fair summary complying with the requirements of subsection (5), and

(b) being sufficiently supported by accounts, receipts and other documents which have been produced to him.

13. There are therefore both contractual and statutory requirements for the issue by the freeholder or a legally appointed manager of properly detailed accounts for Stockton Court and for demands in respect of the individual flats

### **Determination**

14. From evidence provided by the Applicant, the Tribunal notes summary income and expenditure accounts for Stockton Court for the period in question, prepared either by Nock Deighton or MD Properties. A tenant's statement of account in respect of flat 21 for various periods has also been provided. This statement shows a monthly amount assessed to be payable and certain specific charges, for example insurance (27 November 2000) and drains (17 July 2000) but no attempt to indicate, for any service charge period, the amount payable in respect of any individual flat, taking into account any interim payments made. The Tribunal has given generous opportunity for the required accounts to be produced, but none have been forthcoming. The issue of a proper account and demand by the landlord or a properly appointed managing agent is a condition precedent to the liability of the Lessee to make payment of the service charge. The amount claimed has not been substantiated and the Tribunal makes a determination that no service charge is payable for the years in question by the Applicants.

15. As indicated in paragraph 11 above, the lease specifies that the landlord is responsible for maintenance and repair of Stockton Court and the administration of the service charge albeit subject to the payment by the Lessee of the rents and service charge and provided that the Lessee has complied with all the covenants agreements and obligations on his part to be performed and observed. Should the landlord so wish, he may appoint a managing agent whose fees are recoverable through the service charge. Under section 21 of the Landlord and Tenant Act 1987, tenants have the right to make application for the appointment of a manager to the tribunal and indeed they have exercised this right previously when Nock Deighton was appointed. However the appointment of Mr Macfarlane of MD Properties does not conform with either of these options and his power to manage is therefore in doubt.

16. No representations were made by the Respondent in connection with the application by the tenant to request to the Tribunal that an order should be made under section 20C of the Landlord and Tenant Act 1985 to prevent the landlord to recover costs incurred in connection with these proceedings before the LVT as part of the service charge. As the Respondent has not appeared before the Tribunal nor provided evidence to assist in determining

the application, should the Respondent's costs in connection with these proceedings be recoverable under the terms of the lease, the Tribunal determines that no costs should be recovered.

### **Decision**

17. The decision of the Tribunal is that, as the service charge accounting is contrary to the provisions of the lease and statute, the service charge payments demanded for the periods November 1999 - October 2000, November 2000 - October 2001, November 2001 - October 2002, November 2002 - October 2003, November 2003 - August 2004 and August 2004 - September 2005 are not payable by the applicants.

18. The Tribunal also orders that no costs incurred by the Respondent in connection with these proceedings before the Tribunal may be recovered through the service charge.

Signed



**21 NOV 2006**

Date .....