

EASTERN LEASEHOLD VALUATION TRIBUNAL

Decision of the Eastern Leasehold Valuation Tribunal on an application under section 27A of the Landlord and Tenant Act 1985 in respect of Flat 4, Portland House, 3, West End, March, Cambridgeshire.

Tribunal	Mrs. J. H. Lancaster BA, Barrister at Law (Chairman) Mr. D. S. Brown FRICS MCI Arb Mr. G. R. C. Petty FRICS
Applicant	Ms C. M. Mozuraitis
Respondent	Parkers Property Management
Appearances	Mr. Capon, Barrister at Law for the Applicant Mr. Parker for the Respondent

INTRODUCTION

1. This is an application under section 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination of liability to pay service charges under the Lease dated 09.01.90 ("the Lease") between the Applicant as Lessee and Quirecourt Ltd as Lessor, the predecessor in title to the Respondent. Originally the Applicant had asked for a determination in respect of years 1993 to 2002 inclusive, but prior to the hearing it had been agreed by the parties that only the year 2000 was still in dispute.
2. The Applicant also asked the Tribunal to make a determination under section 20C of the Act preventing the Respondent from recovering costs incurred in connection with the proceedings before the Tribunal as part of the service charge.

THE PROPERTY

3. The subject property comprises a first-floor flat ("the Property") in a period detached building ("the Building") close to the centre of March, off a quiet road with limited vehicular access. There is a front garden with river frontage, but this is not included in the Lease. There is a rear paved courtyard, with a parking space for the Applicant's use.

4. There is a communal hall and staircase, leading to the front door of the Property, which consists of a hall, sitting room, small kitchen, double bedroom and bathroom/WC plus shower. There is central heating, but no double glazing.

THE INSPECTION

5. The Tribunal inspected the Property in the presence of the Applicant and Mr. Capon. The Applicant asked the Tribunal particularly to note the condition of the communal hall and staircase, the condition of the Building's external decorations, apart from those to the Property, which the Applicant paid to have re-decorated, and the condition of the rear courtyard.

THE HEARING

6. The Chairman asked for the representations under section 27A and section 20C of the Act to be dealt with separately.

THE APPLICANT'S CASE - SECTION 27A

7. Both parties agreed that the Applicant's share of the total service charge is one fifth.

8. Mr. Capon went through each of the separate items listed in the Respondent's breakdown of the service charge for 2000, totalling £1126.00, which both parties and the Tribunal had already seen.

a) Electricity Costs - £47.00

i) Under the terms of the Lease the service charge includes charges for electricity for the communal areas. In evidence the Applicant stated that on occasion during 2000 the Respondent had used electricity from the communal supply to provide power for works to be done in other flats in the Building, and the cottage behind the Building, when these were empty. Mr. Capon stated that this was in contravention of the terms of the Lease, and a deduction should be made to reflect this.

ii) Mr. Capon argued that the bills presented to the Tribunal did not all cover 2000; some were for 1999. Therefore it is not possible to determine the correct charge for 2000.

b) Insurance Costs - £534.00

i) In evidence the Applicant stated that she had taken out building insurance to cover the Property at the beginning of the Lease, because she understood that Quirecourt Ltd had not taken out any such insurance. She had not been charged for such insurance by Quirecourt Ltd.

- ii) She had received a letter from the Respondent dated 08.09.92 which stated that a copy of the new Building insurance policy taken out by the Respondent was enclosed, and asking for payment of the Applicant's share of the premium. As she already got her own policy she had replied by letter dated 18.09.92 that she would not be paying her share of the cost of the Respondent's policy.
- iii) In evidence the Applicant stated that she was aware of the obligation on the Lessor to take out building insurance under clause 4.5 of the Lease, and the obligation on the Lessee under clause 3.8 not to effect any policy of insurance in respect of the items set out in clause 4.5, or covering any of the risks set out in that clause.
- iv) Apart from the letter of 08.09.92 the Applicant stated that she had had no other demand for a share of the building insurance premium until 2001. Therefore in 2000 she had not known whether the Building had been insured by the Respondent, and had maintained her own policy. She had not asked for a copy of the Respondent's building insurance policy at any time after she received the letter of 08.09.92.
- v) Mr. Capon argued that in these circumstances it was reasonable for the Applicant to maintain her own building insurance policy, and unreasonable for the Respondent to pass part of the costs of his insurance policy on to the Applicant by way of the service charge.

c) Telephone and Stationary Costs - £20.00

These were accepted by the Applicant

d) Repairs and Maintenance - £373.00

In evidence the Applicant stated that;

- i) she regards the amount included in the service charge for cleaning as excessive. The communal areas are generally dirty, and rarely appear to have been cleaned. The rear courtyard is dirty and untidy, with the Respondent's rubbish left lying around, and weeds growing out of the drains. She does not know how often a cleaner came to clean the common parts during 2000, as she is out at work during the day. She does on occasion clean the communal hall and staircase herself, as she had done quite recently;
 - ii) repairs and maintenance work are often carried out by Mr. Parker, at an hourly rate of £10.00 which the Applicant regards as excessive;
 - iii) she queries how much of the invoice for rodent control applies to the Building;
 - iv) she has paid for a number of repairs to the Property herself, including repairs to the roof and guttering, and external decoration of the Property. She did not notify the Respondent that these repairs needed doing, or ask the Respondent to do them, because she did not think the work would be done properly.
- Mr. Capon stated that;

- v) he would leave it to the Tribunal to determine whether £10.00 was a reasonable hourly rate;
- vi) the total figure, £373.00, was not fully supported by documentary evidence, and the total sum should be reduced in line with the documentation.

e) Accountancy - £70.00

This was accepted by the Applicant

f) Sundry Expenses

The Applicant stated that she did not know how these were incurred. Mr. Capon stated that these should only be allowed if they were properly supported by evidence.

THE RESPONDENT'S CASE - s.27A

9. Mr Parker made the following points;

a) Electricity Costs

i) He was not sure how the electricity costs had been calculated by his Accountant. He agreed the bills produced to the Tribunal covered part of 1999 and part of 2000, but the annual bills did not vary much from year to year, and so the bills for 1999 and 2000 would have been similar.

ii) It was necessary to maintain fire alarms and frost thermostats and carry out works in other flats in the Building and the cottage behind whilst they were empty by using the communal electricity supply, as the supply to the empty properties was cut off.

b) Insurance Costs

i) The sum included in the service charge is the premium charged to the Respondent, as set out in the documents shown to the Tribunal. Insurance costs had not been charged to the Applicant since 1992 because she had said she would not pay for her share of the premium in her letter of 18.09.92.

ii) The Respondent decided that the position with regard to outstanding service charges needed to be regularised when they were informed that the Applicant wished to sell the Property.

iii) In the letter of 08.09.92 the Respondent had told the applicant that Mr. Parker would be coming to March most week-ends, or could be contacted by phone. It would therefore have been easy for the Applicant to contact the Respondent, requesting details of insurance cover.

c) Telephone and Stationary Costs - Agreed

d) Repairs and Maintenance

- i) Mr. Parker could not explain the difference between the sum included in the service charge for repairs and maintenance and the sum evidenced in the supporting documentation, although he believed costs included under this heading for 2000 were nominal, rather than resulting from in-depth accounting. He agreed that the sum supported by the documents was £327.00, and this was therefore a reasonable sum to include under this heading.
- ii) The hourly charge of £10.00 was very reasonable, when compared with the rate which would have been charged by external contractors.
- iii) The costs of cleaning are based on a very reasonable hourly rate, and are very low.
- iv) Mr. Parker regularly monitors the communal areas for cleanliness, and they are cleaned if dirty.
- v) The invoice for pest control clearly shows that only half has been allocated to the Building.

e) Accountancy - Agreed

f) Sundry expenses

Mr. Parker did not know how this sum had been calculated, although he thought some of it might relate to the Petty Cash vouchers on page 32 of the documents.

DECISION REGARDING THE SECTION 27A APPLICATION

10. Electricity Costs

- i) The Tribunal accepts that the Respondent is not entitled under the terms of the Lease to use the communal electricity supply for power to maintain alarms, frost thermostats, or carry out works to empty properties.
- ii) The Tribunal accepts that the bills produced in evidence are likely to give a reasonably accurate picture of consumption for 2000.
- iii) The Tribunal therefore determined that the figure included in the service charge statement should be reduced by £7.00, which it determined was a reasonable sum to take account of the electricity used by the Respondent outside the communal areas. Therefore the Applicant is liable to pay one fifth of £40.00

11. Insurance costs

- i) The Tribunal accepts that under the terms of the Lease the Applicant is not entitled to take out her own building insurance policy.
- ii) On 08.09.92 the Applicant was sent a copy of the Respondent's building insurance, and did not challenge its terms or the cover provided.

- iii) The Applicant had been told how to contact the Respondent to obtain further information about the insurance cover taken out by the Respondent, and therefore could have established in 2000 whether such cover was in place.
- iv) The Tribunal therefore determined that the Applicant is liable to pay one fifth of the amount included in the service charge for insurance costs, £534.00.

12. Telephone and Stationary Costs

The Tribunal determined that the Applicant is liable to pay one fifth of £20.00

13. Repairs and Maintenance

- i) The Tribunal regarded the bill submitted by Symbiotix Ltd for cleaning, clearing rubbish etc as reasonable. It is a very small bill for the whole year, £90.00, and the hourly rate is only £4.50. This covers only 20 hours work, and as the Applicant admitted, she did not know how much work had been done, as she is at work during the day.
- ii) The Tribunal determined that an hourly rate of £10.00 per hour for maintenance and repair work is reasonable.
- iii) The Tribunal accepts that only half of the invoice for rodent control was charged to the Building.
- iv) The Tribunal determined that repairs carried out by the Applicant, without notifying the Respondent, were not relevant to the calculation of the service charge for 2000.
- vi) The Tribunal agreed that only sums supported by evidence should be included in the calculation for the service charge. The Tribunal determined that the Applicant is only liable to pay one fifth of £327.00, the figure agreed by both parties.

14. Accountancy

The Tribunal determined that the Applicant is liable to pay one fifth of £70.00

15. Sundry Expenses

The Tribunal determined that the Applicant was not liable to pay any of this sum as the Respondent had not been able to show how it had been calculated.

SUMMARY

Electricity costs	£ 40.00
Insurance costs	£534.00
Telephone and Stationary Costs	£ 20.00
Repairs and Maintenance	£327.00
Accountancy	£ 70.00
Total	£991.00

The Applicant is therefore liable to pay a service charge for the year 2000 of £198.20

THE APPLICATION UNDER SECTION 20 C

16. Mr. Capon made a number of representations relating to the bill from the Respondent's solicitors to the Applicant's solicitors of 05.05.03, page 126 in the documents.

17. Mr. Parker then informed the Tribunal that the Respondent's solicitors had withdrawn this bill, but had subsequently sent the Respondent a bill dated 28 May 2004 for £750.00 plus VAT for "dealing with the application to the Leasehold Valuation Tribunal". The Respondent had not had time to submit this to the Tribunal in advance of the hearing. This bill therefore fell within the definition covered by section 20C, and should be included in the service charge, particularly as a lot of unnecessary costs had been incurred by the Respondent as a result of the way in which the Applicant has conducted this case. The Respondent would only be charging the Applicant one fifth of this bill.

18. Mr. Capon replied that the Applicant had not previously been informed of this bill. The Applicant had been forced to bring this issue to the Leasehold Valuation Tribunal, because she wished to sell the Property, would not be able to do so until this issue of the service charge had been sorted out, and could not reach agreement with the Respondent. Therefore he asked the Tribunal to make an order preventing the Respondent from recovering the legal costs set out in this new bill as part of the service charge.

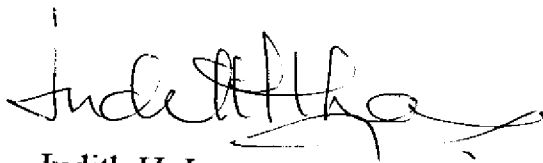
DECISION REGARDING THE SECTION 20C APPLICATION

19. The Tribunal determined that the bill for legal costs of £750.00 plus VAT referred to above would be recoverable as part of the service charge under Part 3 of the Fourth Schedule to the Lease, and would have been incurred by the Respondent, as Landlord, in connection with the proceedings before this Tribunal.

20. However the Tribunal determined that there was a significant chance that the legal costs might have been reduced and /or the hearing avoided if the Respondent had let the Applicant know earlier that he was dropping the claim for the service charges for the years 1993 to 1999, 2001 and 2002 and the Respondent accepted that there had been errors made in the calculations of the service charge account.

However, the conduct of the Applicant had contributed to the reasons for the dispute coming to the Tribunal, particularly in relation to the Respondent's insurance costs.

21. Therefore the Tribunal decided that it would be just and equitable for the Tribunal to make an order that £250.00 of the legal costs of £750.00 referred to above are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge to be paid by the Applicant to the Respondent.

A handwritten signature in black ink, appearing to read 'Judith H. Lancaster', with a stylized flourish at the end.

Judith H. Lancaster
Chairman