

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

CASE NUMBER CHI/00HA/LSC/2004/0041

Re: First Floor Flat 13 Camden Crescent Bath BA1 5HY

Applicant: Deepali Gaskell

Respondent: Betterzone Property Management Limited

In the matter of Section 27A of the Landlord & Tenant Act 1985

Application for a determination of liability to pay service charges

Tribunal

Mr D R Hebblethwaite BA, Solicitor, Chairman
Mr J Reichel BSc, MRICS
Mrs J Playfair

DECISION OF THE TRIBUNAL

1. Background

1.1 The Applicant submitted an application to the Tribunal dated 12 July 2004 for a determination whether certain service charges were payable. The Applicant asked for two specific charges to be considered by the Tribunal

- The sum of £550.00 demanded in December 2003
- The increase in service charges from £50.00 a month to £150.00 a month with effect from July 2004

1.2 A pre-trial review with the parties in attendance was held on the 21 September 2004 and directions made.

1.3 The members of the Tribunal inspected the property on the morning of 29 November 2004. The Tribunal sat and heard the evidence and the submissions of the parties later that day at Central United Reform Church, Grove Street, Bath BA2 6PJ.

2. Facts/Evidence

2.1 This summary of facts has been compiled from the evidence and documents submitted by the parties; from the inspection of the Tribunal; and from the oral evidence given at the hearing by the Applicant and by Paul Jackson and Miriam Dorman on behalf of the Respondent. In addition the Applicant relied on a report in the form of a letter to her dated 15 November 2004 from Paul Newsome of County Flat Roofing. Mr Newsome was called by the Applicant as a witness at the hearing.

- 2.2 13 Camden Crescent is a Grade I listed building. It is divided into five self contained flats. These are held by the flat owners on leases of terms of 999 years from 1973.
- 2.3 Betterzone Property Management Limited, the Respondent, was formed in 1986 to manage the repair and maintenance of the property. It has five members, each representing one of the flats in the building. As a limited company the Respondent is a separate legal entity (of which the flat owners are shareholders) and is not just a committee of the flat owners. It is understood that the Respondent is the registered owner of the freehold of the building.
- 2.4 The Respondent does not employ managing agents but members carry out the necessary work themselves. Mr Jackson is the Treasurer and Mrs Dorman the Secretary and they carry out the bulk of the necessary work.
- 2.5 Until August 2003 the Respondent company was run on an informal basis. There were two or three meetings a year to which all members were invited and which dealt with all matters including those of a day to day nature and decisions were made by common consent. At the AGM in August 2003 it was decided to put the company on a more formal basis with day to day decisions to be taken by the Directors and all members to attend the AGM.
- 2.6 The minutes of meetings and the correspondence from 2003 onwards suggests a breakdown in relations between the Applicant and the other members of the Respondent. Whilst this relationship has no bearing on the Tribunal's decision it undoubtedly forms part of the background in that it appears to be one of the causes, if not the main cause, of the move away from the old informal arrangements for running the management of the building.
- 2.7 In November 2003 a decision was made by the Respondent to levy an additional service charge of £500.00 for 2003 on each member because of an overspend. The first reference to this in any papers before the Tribunal is in a letter of 15 December 2003 from Mr Jackson to the Applicant (document R28 in the Respondent's bundle). After setting out the need for extra charges Mr Jackson says *"In view of the extra costs above already incurred and likely to be incurred we have had to ask for an extra £500.00 this year the good news is that everyone else in the house has already paid this supplement"*. Mr Jackson then went on to set out the Applicant's position showing a balance due from her of £564.00. She subsequently paid £14.00 leaving outstanding £550.00. In her application she refers to this amount (£550.00) as being the additional amount demanded. In fact that was £500.00 and the odd £50.00 appears to come from a reconciliation of amounts owed and paid by the Applicant prior to December 2003.
- 2.8 Correspondence ensued after Mr Jackson's letter of 15 December 2003 in which the Applicant queried the cost of various items of work carried out during the year. Copies of these letters appeared in the bundles before the Tribunal. The matter was also aired at the AGM on 20 March 2004.
- 2.9 There was no clear evidence before the Tribunal as to when and by whom the decision was made to levy the additional charge of £500.00 for 2003. The likelihood is that the decision was made by the Directors as it came after the decision to run the Respondent

company on a more formal basis in August 2003. It had obviously been communicated to all four members other than the Applicant prior to 15 December 2003 and they had paid the amount by then. The Applicant has never paid the amount and it is **the subject of the first of her references to the Tribunal**.

- 2.10 At the AGM on 20 March 2004 a budget for 2004/2005 was considered. The minutes which were before the Tribunal set out details dividing expenditure into regular annual maintenance costs and costs for additional work/improvements, totalling £8,300.00. The minutes record:

A proposal was made that the maintenance charge be increased to £150.00 per flat per month and this was agreed upon by all members and after some discussion was decided that the date the increased payments would start was 1 July 2004.

Less there be confusion, the reference in this minute to "maintenance charge" refers to service charge. This is not to criticise the writer of the minutes because the lease uses the phrase "maintenance contribution" (see paragraph 3.1 of this Decision).

- 2.11 Prior to July 2004 the monthly payment was £50.00. The increase from £50.00 to £150.00 per month is **the subject of the Applicant's second reference to the Tribunal**. The Applicant denied that she had agreed this and stated that the minutes were inaccurate. She pointed to previous problems with minutes of meetings of the Respondent, and was able to point to two sets of minutes of an earlier meeting which were before the Tribunal and which differed from each other.
- 2.12 The Tribunal sought evidence of consultation by the Landlord with the Tenants over the cost of work to be carried out at the property. To avoid any confusion over terminology in this context the Landlord is the Respondent and the Tenants are the Applicant and the other four flat owners. There was room for confusion here because a number of the flat owners (including the two witnesses before the Tribunal on behalf of the Respondent) do not occupy their flats but let them to tenants!
- 2.13 Mr Jackson relied on the statement submitted in his bundle at pages R50 and R51. In summary on the point of the **first reference** the Respondent relied on the presence of members at meetings where the fact that a supplementary charge would be needed in 2003 (because of external decorations) was mentioned several times; members were invited to nominate external decorators to quote; members agreed to invite the Parrys to quote and it was decided to use them at the AGM in August 2003. As to the **second reference** the decision was made in the AGM in March 2004; *"best estimates were used at the meeting to establish the charge since, for many items, contractors had not at that stage been approached. These estimates have proved to be accurate"*; *"The Directors maintain that they have delegated authority from the members to manage the company on a day-to-day basis"*. Mr Jackson also specifically relied on the letter from Major and Mrs Field dated 29 October 2004 as supporting adequate consultation.
- 2.14 It was the Applicant's case that there had been no individual consultation with her at all.
- 2.15 The parties were invited to say whether they felt the Respondent had acted reasonably overall (whether or not the consultation had been carried out correctly). Mr Jackson submitted that the Respondent had done so and that it had borne in mind the interests of

all the tenants in reaching all the relevant decisions. The Applicant submitted that it had not done so; there was no evidence to support the Landlord's actions from the documents and that many of the documents which were before the Tribunal and which the Respondent claimed to show that information was being given to the Applicant had only appeared because of the Tribunal hearing.

- 2.16 Both sides presented detailed evidence concerning the cost of various items, as to correspondence that had passed between them and other matters which are contained in the bundles. Some of these formed the basis of cross examination or questions by the Tribunal. It is not felt necessary to set these out in any detail in this Decision. The parties can be assured that everything referred to was taken into account and any specific documents or points of evidence which played a part in the Tribunal's decision will be referred to later.

3. **Consideration and Decision**

- 3.1 The lease of the Applicant's flat contains a covenant by the lessee to pay a due proportion of the estimated cost and expense incurred or to be incurred by the lessor in carrying out certain obligations contained elsewhere in the lease and in respect of general administration, expenses and accounts. The lease rather confusingly refers to this as a "maintenance contribution" but for the avoidance of any doubt this is what is referred to in the statute as service charge. Accordingly the provisions of sections 18 to 29 of the Landlord & Tenant Act 1985 (as amended) apply. On another point of terminology "lessor" means the same as "landlord" and "lessee" means the same as "tenant". Thus in the present case the Applicant is the lessee and the Respondent is the lessor.
- 3.2 The 1985 Act and the Regulations made under it require the landlord to consult with the tenant. In particular if the works will require each tenant to contribute at least £250.00 there is a requirement to obtain at least two estimates for consideration. Failure to consult places a cap on the contribution that can be required from any individual tenant of £250.00 unless the Tribunal finds that the landlord acted reasonably overall. The Tribunal proceeded to consider the two references.
- 3.3 In relation to **the first reference** there is no evidence of any consultation between the Respondent and the Applicant. That relied on by the Respondent (see paragraph 2.13 of this Decision) was inadequate. The Tribunal therefore went on to consider the question of reasonableness. In doing this the Tribunal had particular regard to the 2003 accounts (at pages R7 and R8 in the Respondent's bundle) and the letter written by Mr Jackson to the Applicant on 15 December 2003 (R28). The Tribunal also took note of the survey by Save Our Heritage following an inspection of 15 October 2002 which recommended a number of priorities. The Tribunal found that the Applicant must have known that work was coming up which had not been allowed for in earlier budgets. The Applicant was present at meetings on the 10 May 2003 and 27 August 2003 where these matters were mentioned. Whilst this was not good enough as regards consultation (see earlier) the Tribunal held that it assisted the Respondent in regard to the consideration of reasonableness. In considering the figures set out in the accounts (R7 and R8) the Tribunal acted as an expert tribunal. It decided that repairs should not have been taken into account in raising an additional charge because these had been sufficiently allowed for previously. However the Tribunal found that it was reasonable for the painting to be taken into account. This had been estimated at £3,460.00 from which the Tribunal

deducted the sum of £530.00 for the Applicant's flat since this had not been painted. This left a figure of £2,930.00 which when divided by 5 gave a figure per flat of £586.00. It was the conclusion of the Tribunal that in this regard, despite the lack of formal consultation, the landlord had acted reasonably in requesting the additional sum of **£500.00**.

- 3.4 Turning to **the second reference** the Tribunal particularly considered the minutes of the AGM held on 20 March 2004 (A1 27 to 30 in the Applicant's bundle) with particular reference to the paragraphs headed "Budget" and "Improvements" and the document "2004 update on the agreed budget for 2004/5" (page R9 in the Respondent's bundle). The Tribunal had no hesitation in finding that there had been no formal consultation. Mr Jackson relied on the decision at the March AGM (see paragraph 2.13 of this Decision). According to the minutes all five members of the Respondent company were present and voted for the budget. The Applicant, however, did not accept that this was correct (see paragraph 2.11 of this Decision) but in any event the presence of members at a company meeting does not constitute formal consultation under the Act. Accordingly the £250.00 cap per item should apply unless the Tribunal considered that the landlord had acted reasonably. As an expert tribunal the Tribunal went through the items set out in the minutes (A1 28 and 29) as follows:

Budget

- (a) allow as deducted when considering the first reference.
- (b) (c) and (d) disallow as previously budgeted for though not actually carried out in 2003.
- (e) to (h) allow.
- (i) although it was reasonable to insure the figure mentioned in the minutes of £2,000.00 does not appear to be supported and in the event the actual figure paid was £1,533.00 so that is the figure that the Tribunal will allow.
- (j) and (k) allowed.

The total for these items allowed by the Tribunal is £3,363.00.

Improvements

With regard to the repainting of the hallway it was reasonable to do this. It was unfortunate that there were no better quotes at the meeting. The eventual cost was £1,200.00 (R9). The Tribunal found it was reasonable to include £1,000.00 for this in the budget.

With regard to carpeting and/or tiling the Tribunal felt that it was reasonable to decide that these needed doing. There was an "informal quote" for the carpets and nothing for tiling and members appear to have voted to allow £2,000.00 but with the directors having the ability to increase this to £2,500.00. (Quotes later obtained are said in the update (R9) to be £1,544.00 for the carpets and £1,235.00 for the tiles.) It was the finding of the

Tribunal a reasonable figure for each of these items would be £1,000.00, a total of £2,000.00.

The Tribunal allowed the figures of £100.00 each for replacement light fittings and brass plate.

The total allowed under improvements by the Tribunal was £3,200.00.

- 3.5 Accordingly the total found by the Tribunal to be reasonable to include in the service charge levy was £3,363.00 plus £3,200.00 a total of £6,563.00. When divided by 5 this gives a figure of £1,312.60 per flat which equates to £109.38 per month. Accordingly the Tribunal sitting as an expert tribunal finds that it would be reasonable for a service charge of **£110.00** per month to be levied from 1 July 2004 and that accordingly the landlord may not recover a figure in excess of that item.

4. **Further matters**

- 4.1 The Tribunal having made findings on the two references to it wishes to comment on the way that the Respondent conducts itself with a view to helping the Respondent and all the individual parties concerned for the future.
- 4.2 The Respondent is a limited company and is a separate legal entity from its members. It is bound by the consultation requirements of the Act. Informal arrangements may not be sufficient. The Tribunal did form the view that the Respondent always acted in good faith in trying to do the best for its members.
- 4.3 The Tribunal recommends the Respondent to obtain a copy of the current Management Code on Service Charges published by the Royal Institution of Chartered Surveyors (RICS) which provides practical advice for landlords on how to comply with statutory obligations.
- 4.4 The Tribunal noted that the service charge contribution in the lease of the first floor flat is stated to be one-quarter. However it appears that the Respondent has always divided the service charge equally and the Tribunal's decision is on that basis.
- 4.5 Finally the Tribunal would wish to thank the parties for their care and attention in presenting their documents and their cases to the Tribunal at the hearing.

Decision dated 7th January 2005



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David Hebblethwaite
Chairman