

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



S.27A Landlord & Tenant Act 1985 (as amended) ("the Act")

DECISION of the Leasehold Valuation Tribunal & ORDER

Case Number:	CHI/45UB/LIS/2006/0013
Date of Application:	25 th May 2006
Property:	1 Cherry Tree Lodge Boundstone Lane Lancing BN15 9HQ
Applicant:	Mrs Angela Beck
Respondent:	Glawood Ltd Represented By David Fitness & Co
Date of Hearing:	21 st September 2006
Venue:	Richmond Room Stoke Abbott Road Worthing
Appearances:	
For the Applicant:	Mr Alan Beck
For the Respondent:	David Fitness Managing Agent
Tribunal Members:	Mr R T A Wilson LLB (Lawyer Chairman) Mr John McAllister FRICS (Valuer Member) Ms Jan Morris (Lay Member)
Date of Decision:	16 th October 2006

The Application

1. This is an Application by Mrs. Beck the leaseholder of 1 Cherry Tree Lodge, Boundstone Lane, Lancing, West Sussex for a determination under Section 27A of the Landlord and Tenant Act 1985 as to the reasonableness of advance service charge for 2005 and 2006.

Decision in Summary

- 2 The Tribunal determines for the reasons set out below, that the advance service charge of £365 per half year in each of the years 2005 and 2006 is reasonable and is recoverable in full.

Background

- 3 The subject property is a one bed-roomed flat in Cherry Tree Lodge which is a development circa 1971 of three self contained blocks each comprising of 12 self-contained flats. All the flats have been sold on leases of 99 years from the 24th June 1972. Several of the flats have been sublet. The Tribunal inspected the flat on the day of the hearing and considered it to be in a good state of repair and decorative order.
- 4 The case papers include a specimen lease which provide for the usual arrangements for the payment by the lessees of a variable interim service charge on account of the lessors' anticipated annual expenditure. The basis of the variable interim charge is described in the sixth schedule of the lease in clause 21. The items to be included within the service charge are described in the seventh schedule of the lease. The mechanism for collecting interim service charge in the lease is somewhat unusual in that the amount to be charged is not set by reference to anticipated expenditure for the forthcoming year but based on actual expenditure from the previous year as certified by an accountant.
- 5 Messrs David Fitness & Co were appointed as Managing Agents by the freeholders in 1991 and since that time have adopted a less formal procedure for collecting the service charge. The Tribunal heard that interim service charge demands are made on the basis of anticipated expenditure for the year and with a view to equalizing the amount demanded from year to year as far as possible. The Tribunal was told that the history of yearly interim charges for the property was as follows:

1999 to 2002:	£255 half yearly
2002 and 2003:	£275 half yearly
2004 to 2006:	£365 half yearly

- 6 It was the increase from £275 to £365 that Mrs. Beck objected to and which had given rise to this Application.

The Case for the Applicants

- 7 Mr Beck confirmed that Mrs. Beck's complaint did not relate to the mechanics of collection merely the amount of the interim charge.
- 8 Mr Beck confirmed that up to 2003 Mrs. Beck had accepted the interim service charge as being reasonable. However, in December 2003 she had received a letter from the Managing Agents advising that as a result of new health and safety legislation in the fields of asbestos and fire risks, reports on the estate would have to be commissioned and as a result an increase in the service charge had to be anticipated. Some three weeks later an interim service charge demand had been received for £365 on account for the half year. This represented an increase of some 30%. Mrs. Beck had monitored actual expenditure over an 18 month period and had ascertained that the capital cost of the health and safety issues was relatively minor with expenditure of just under £1000 over the 18 months. Bearing in mind the actual expenditure, she considered that to continue to demand the increased amount of £365 was not reasonable especially as no additional services had been provided. Over the same period inflation had risen by only 2% and in her opinion increased labour costs had only risen by approximately 4.5%. Health and safety legislation was a one off cost and not an ongoing expense. Therefore a permanent increase could not be justified and the interim service charge should have been reduced after the reports had been obtained.
- 9 When pressed Mr Beck considered that an increase of some 15% would have been reasonable but anything above that could not be justified.

The Case for the Respondents

- 10 Mr Fitness opening the case for the Respondent denied that the amounts collected on account in any of the years since 1991 were unreasonable. At the beginning of each year his firm reviewed each property under their management and having regard to the anticipated expenditure for the forthcoming year, set an interim demand which would as far as possible match actual expenditure. It was impossible to predict with certainty the exact amount but in this case perusal of the annual service charge accounts showed that, by and large, interim demands were fair and reasonable and consistent with actual expenditure.
- 11 Mr Fitness told the Tribunal that in the last five years there had been dramatic changes in the law in relation to Landlord and Tenant legislation. This new legislation had greatly increased the administrative time involved in

managing the properties. To comply strictly with some of the new legislation, especially in relation to fire, it would be necessary for regular checks to be made on each property and in particular its common ways. His firm was always looking for ways to mitigate the increased cost to lessees and in some cases lessees themselves could take a role in ensuring compliance.

- 12 Mr Fitness stated that the increase in the interim service charge in 2004 from £275 to £365 was not only because of the health and safety issues but was intended to cover all items of expenditure. In contrast Mr Beck's focus seemed to suggest that the increase related solely to health and safety issues, which was not the case.
- 13 Mr Fitness reiterated that the interim service charge was reviewed in each year and that in this particular case no other lessee had complained about the size of the increase.
- 14 Mr Fitness concluded by saying that in his opinion the interim charge for this development was fair and reasonable but at the end of day it was just a 'guesstimate' based on the best information available at the time. In the light of this application the freeholder had decided that in future the strict wording of the leases would be followed in respect of service charges. This meant that it would no longer be possible to equalize service charge demands from year to year, and there could be large fluctuations.

The Tribunals Deliberations

- 15 The Tribunal first noted that Mrs. Beck's complaint related not to the mechanics of collection, merely the amount being collected on account. The Tribunal began by reviewing the end of year accounts for each of the years in question and it noted that actual expenditure was broadly consistent with the amounts collected on account. This was borne out by the fact that the general reserve for Cherry Tree Lodge had not increased substantially between 2004 and 2006. The latest set of accounts indicated that the general reserve was £1,300 which could not be considered excessive bearing in mind current building / maintenance costs. This fact alone was enough to convince the Tribunal that the interim service charge demands were not unreasonable.
- 16 The cost to the lessor in complying with its repairing covenants in the lease would fluctuate each year according to the state of repair / decoration of the building. It was therefore not helpful to evaluate reasonableness based on the percentage increase from previous years as Mrs Beck had done.
- 17 The evidence put forward by Mr Beck suggested that he had concentrated on the costs of health and safety compliance. However, the lease is quite clear that the interim charges are intended to cover all expenditure to be incurred by the landlord and not just on health and safety issues. This point was correctly made by Mr Fitness. Mr Beck had not contended that the costs of providing any other services were too high and nor had he challenged any

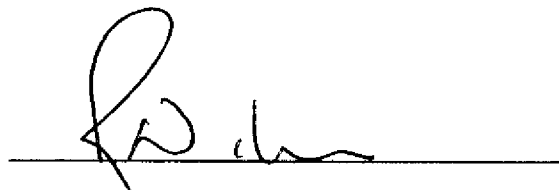
particular item in the service charge for the years in dispute. In these circumstances it was hard to see how the interim annual charges could reasonably be regarded as too high.

- 18 Moreover based on the Tribunals knowledge and experience it considered that an interim service charge of less than £750 per year to be somewhat less than could be expected for a block of this kind bearing in mind the cost of providing insurance, maintenance, cleaning, preparation of service charge accounts and other routine matters.
- 19 Having regard to the above and bearing in mind the fact that the reserve fund is not substantially in surplus, the Tribunal finds that the half yearly charge of £365 in each of the years 2004 and 2005 is reasonable.
- 20 The Tribunal noted that the lease included balancing provisions which meant that any surplus paid by a leaseholder in one year would be credited against his liability for the next year. It was this provision which had resulted in the exterior of the building being painted without a cash call being made by the freeholders.

Section 20C Application

- 21 Mrs. Beck's Application included an Application under Section 20C of the Landlord & Tenant Act 1985 for an order limiting the landlord's costs of the proceedings being charged through the service charge account in a future year. When asked by the Tribunal if the Landlord was proposing to charge any part of the costs of the proceedings through the service charge account, Mr Fitness helpfully confirmed that the landlords did not propose to make any charge. Relying on that assurance Mrs Beck did not pursue her proposed application and the Tribunal made no such order

Chairman



R.T.A.Wilson

Dated

16th October 2006

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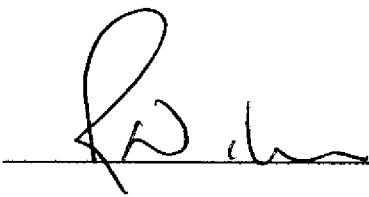
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Chairman 
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