

LON/00AR/LIS/2005/0032

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTIONS 27A OF
THE LANDLORD AND TENANT ACT 1985, AS AMENDED.

Address

Kingsmead Mansions, Victoria Road, Romford
Essex, RM1 2BU

Applicants

Fairfield Rents Ltd

Respondents

Mr M Hebden & Miss K Amos
Miss S Moghal
Mr H U Yaqoob
Mr R Ahmed
Mr D Morrison

The Tribunal

Mrs F Silverman
Mr J C Avery
Mrs A Moss

Hearing:

4th & 5th July 2005

Date of Decision

29th September 2005

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DECISION

The Tribunal declares that the service charges for the accounting years 1999-2000, 2000-2001, 2001-2002 and 2002-2003 are not recoverable by the Landlords since the Landlords have failed in each case to serve on the Tenants a demand for service charge in accordance with section 47 Landlord & Tenant Act 1987 and section 20B Landlord & Tenant Act 1985.

In respect of the service charges for the year 2003-4 the Tribunal declares that the items and amounts shown in Schedule A below are recoverable by the Landlords but only after such time as they have complied with section 47 Landlord & Tenant Act 1987. The Tenant(s) of each flat is liable for one twelfth of the total sum due as shown on that schedule.

In respect of the service charges payable for the year 2004-5 the items and amounts shown in Schedule B will become payable by the Tenants on or after 31 July 2005 and after the Landlords have served a proper demand in compliance with section 47 Landlord & Tenant Act 1987 and have provided a proper auditors' certificate in relation to these sums. The Tribunal cannot certify the total amount due for this year as the year is as yet incomplete. In so far as the Tribunal has seen figures for this current year, the Tenant of each flat is liable for one twelfth of the total sum shown in the Schedule.

The Tribunal grants the Tenants' application under section 20 (C) Landlord & Tenant Act 1985 which prevents the Landlord from adding the costs of this litigation to the Tenants' service charge.

REASONS

1 THE ISSUES

The Landlords made seven applications under s 19(2) (A) and (B) Housing Act 1985 seeking in each case a declaration as to the reasonableness of service charges incurred and to be incurred .

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During the course of the hearing the Tenants made an application under section 20 (C) of that Act for a limitation on the recovery of Landlords' costs incurred in litigation.

2 THE PROPERTY

The property (Kingsmead Mansions, Victoria Road, Romford RM1 2BU) comprises two three story blocks of flats probably constructed in the 1930's. Each block contains six flats .Pedestrian access to the blocks can be obtained via a footpath from a side street behind Victoria Road or via a footpath from Victoria Road itself. There is no direct vehicle access to flats 7-12 but flats 1-6 can be approached via a side road . There is no provision for parking at the property and on street parking in the locality would not be easy. The blocks are situated immediately behind commercial premises in Victoria Road and consequently suffer from noise, odours, and rubbish emanating from those premises. The ground floor render on the front of the block containing flats 7-12 had been re-painted on the morning of our visit. This had been done by the local council in order to remove graffiti of which there was considerable evidence along the boundary fence to the property . The rear of the two blocks face inwards towards each other overlooking a small paved courtyard which is badly maintained and has broken slabs and blocked drains. There is a broken manhole cover over the main sewage outlet . The exteriors of the blocks were in a state of neglect with peeling paint, broken glass, weeds growing out of the down pipes and general disrepair. The common parts of both blocks showed similar signs of lack of repair with badly fitting windows, carpet peeling back from the edges of stairs , rubbish on the communal balconies , lack of cleaning and a general air of neglect and desolation.

3 INSPECTION

We inspected the exterior and common parts of the property as detailed above.

4 THE APPLICATIONS

All the applications concerned Kingsmead Mansions Victoria Road Romford RM1 2BU The relevant accounting years are 1999-2000, 2000-2001, 2001-2002 and 2002-2003 2003-2004 and 2004-2005. The accounting year runs from 1 August to the following 31 July.

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The flats concerned are numbers 1,3,4,7,8 and 11. The issues are identical in each case and the Tribunal heard all seven applications together and this decision relates to them all.

5 THE LAW

In order to recover service charges from a tenant the Landlord must have served on the tenant a demand in accordance with section 47 Landlord & Tenant Act 1987. Further, that demand must be served within 18 months of the charge becoming due (section 20 B Landlord & Tenant Act 1985). Section 19 Landlord and Tenant Act 1985 gives the Tribunal power to investigate the reasonableness of service charges and to make a declaration as to what amount is payable by a tenant. Section 20(C) of that Act allows a tenant to make application to the Tribunal for an order that the Landlord is prohibited from adding the costs of litigation to future service charge accounts.

6 SERVICE CHARGES FOR YEARS 1999-2000, 2000-2001, 2001-2002 and 2002-2003 .

The Landlords were unable to demonstrate to the Tribunal that they had served valid demands for service charge under section 47 in respect of any tenant for any of the years 1999-2000, 2000-2001, 2001-2002 and 2002-2003 . The Landlords said that they had served proper demands but had not produced them in response to an order to do so contained in Directions issued by the Tribunal , nor were they included in the bundle prepared by the Landlords for the hearing. The Landlords said that they could produce the demands to the Tribunal and the Tribunal therefore adjourned early on the first day of the hearing to enable the landlords to find the relevant documents and to produce them to the Tribunal on the following day. On the second day of the hearing the landlords produced a supplementary bundle of documents , most of the contents of which were repetitive of documents already contained in the trial bundle and which did not include any demands which would satisfy section 47. We therefore conclude that no such demands were served on the Tenants . That being so, and since it is now too late

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for demands to be served retrospectively in relation to any of these years (section 20(B)) none of the unpaid service charges for these years is now recoverable and there is no need for the Tribunal to consider their reasonableness.

7 SERVICE CHARGES FOR YEAR 2003-2004

The Landlords were unable to satisfy us that a valid section 47 Landlord & Tenant Act 1987 notice had been served on any of the Tenants in respect of the accounting year 2003-4 .

No part of the expenditure incurred for that year can be recovered unless valid notices under section 47 Landlord & Tenant Act 1987 are served on each tenant within the prescribed time limit.

Subject as above, our observations on that year's expenditure (pages 146-7) are as follows.

- 7.1 We disallow the audit and accountancy charges because we have no evidence that these were ever paid. The purported invoice on page 148 relates to the wrong year.
- 7.2 All Tickadeeboo accounts for cleaning are disallowed. The Landlords agreed with the Tenants' statement that the cleaning had not been done (August-November 2003).
- 7.3 In relation to cleaning accounts for January –June 2004 (pages 176-178) we accept the Tenants' evidence that the cleaning could have been done less expensively (see below).
- 7.4 Tickadeeboo's accounts for external cleaning/gardening are also disallowed on the grounds that the work invoiced was not carried out . In relation to the remaining invoices for external cleaning/gardening we accept the Tenants' evidence that the work could have been carried out less expensively (page 456). Using the figures given on page 456 we therefore allow £412.38, inclusive of VAT to cover both internal and external cleaning/gardening .
- 7.5 The electricity accounts were not disputed by the Tenants and so we allow those in full giving a total for this item of £108.80 .

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7.6 We allow the entryphone repair at £473.75. The tenants agreed that this work had been done.

7.7 Similarly we allow the insurance premium of £3606.09 as this item was not disputed by the Tenants.

7.8 The Tenants agreed that work had been done on several occasions to unblock drains at the property and therefore we allow £541.31 in respect of repairs.

7.9 We disallow the managing agent's fee for this year (£1290.57) because no invoice or receipt was produced for it. We also disallow the fee since it is evident from the state of the property that little, if any, maintenance had been done during this period.

7.10 This gives a total allowable for this year of £ 5142.33 (£428.52 per flat).

8 SERVICE CHARGES FOR YEAR 2004-5 (page 183)

These sums have not yet become due (accounting year ends on 31 July 2005). Our views on those accounts which were presented to us are as follows.

8.1 The audit and accountancy fees are disallowed for the same reasons cited in 7.1 above.

8.2 We allow a total of £824.76 inclusive of VAT to cover both internal and external cleaning for the year, based on the estimate on page 456. This gives a total under this head of £824.76.

8.3 We allow £289.05 for entryphone buzzer repairs (page 196). We also allow the sum of £250 for the other entryphone repairs. The balance of this item appears to have been recovered from an insurance claim. This figure (£250) covers the excess on the insurance which would be otherwise irrecoverable. No further or additional charge should be made to the Tenants arising out of the same incident.

8.4 We allow the electricity bills of £110.33. This was not disputed by the Tenants.

In relation to repairs and maintenance we allow £135 for rubbish clearance (page 214) and £65 for repairing a broken lock (page 215). We allow the sum of £800 for 'remedial treatment' (pages 523/4) since the Tenants agreed that some work had been done but disputed the quality of that work. Much of this work was carried out under the floors of the flats and we were not therefore able to inspect it. It does appear however that the work had to be re-done which supports the Tenants' assertion that the work was probably not initially of an acceptable standard. We allow £80, a figure proposed by the Tenants, as being a reasonable charge for the blocked downpipe (page 223). We did inspect this area and are of the opinion that the landlord's charge of £264.38 was excessive for the amount of work done. This gives a total under this head of £1080.

8.5 We disallow the legal and professional fees. Had the landlords carried out their duties responsibly this application would almost certainly have been unnecessary. There is no reason why the tenants should be made to pay the costs of defending an application which could have been avoided by proper management of the property.

8.6 We also disallow the management fee. Mr Kotecha, the managing agent said that he had only visited the property twice, one occasion being the day of the Tribunal's inspection. The property was in a disgraceful condition and any management of it had been at best neglectful.

8.7 This gives a total for the year 2004-5 of £2554.14 (£ 212.84 per flat).

8.8 This sum will be payable provided that the landlords comply with section 47 Landlord & Tenant Act 1987. They must also be prepared to produce both invoices and receipts to the tenants if requested by the tenants to do so.

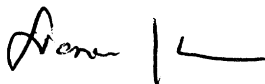
9 RECEIPTS

No receipts were produced for any of the items of expenditure claimed by the landlords. At the end of the first day of the hearing we asked the Landlords to produce receipts to us on the second day of the hearing but they failed to do so. We accept, on the balance of probabilities that items such as the insurance premium must

have been paid (otherwise no claim on the policy could have been made). Similarly the electricity bills must have been paid otherwise the supply would have been disconnected. The Tenants agreed that certain works had been done and a number of items were undisputed. We were therefore prepared to accept that some of the invoices must have been paid and have accordingly allowed them in whole or in part as above. We do however stress that the Tenants have the right to see both invoices and receipts and that normally a Tribunal expects to see evidence of payment of the charges being claimed.

10 LITIGATION COSTS

During the course of the hearing the Tenants made an application to under section 20(C) Landlord and Tenant Act 1985 to prohibit the Landlords from adding the costs of the application to the Tenants' future service charge. We have no hesitation in allowing this application. The Tenants' defence of the application has largely been successful. Had the Landlords managed the property in a professional manner their applications to the Tribunal would probably have been unnecessary. The need for the application derives from their own unsatisfactory conduct. .



Frances Silverman

Chairman

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SCHEDULE A

Summary of allowable expenditure for 2003-4

Internal and external cleaning/gardening £412.38.

Electricity	£108.80
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Entryphone repair	£473.75.
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Insurance premium	£3606.09
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Drain /repairs	£541.31
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Total	£5,142.33.
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divide by 12= £428.52 per flat

SCHEDULE B

Summary of allowable expenditure for 2004/5

Internal and external cleaning/gardening	£ 824.76.
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Buzzer repair	£289.05
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Insurance excess on entryphone	£250.00
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Electricity	£110.33
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Repairs	£1080.00
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Total	£2554.14
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divide by 12 = 212.84 per flat