

Southern Rent Assessment Panel

Leasehold Valuation Tribunal

Reference CL/76/04

Tribunal

A J Mellery-Pratt FRICS (Chairman)
T D George Esq
J Mills Esq

Applicant

Nicole Greenwold

Respondent

Ms D Lewis

Re: 6, TheWick, 10 Burton Rd, Poole.

1.0. Preliminary

- 1.1. This application was originally made to the Northampton County Court on 27 January 2004, subsequently transferred to the Bournemouth County Court, and finally referred to this Tribunal for a determination under the Landlord and Tenant Act 1985 ("The Act"), as amended by the Landlord and Tenant Act 1987, the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 as to the reasonableness of service charges.
- 1.2. On the 26th April 2004 directions were issued in the absence of the parties, and among other matters a target date of 23rd June 2004 was set for the Hearing.
- 1.3. In the event, the Hearing and inspection were held on 18th June 2004.

2.0. General

- 2.1. The applicant is the landlord of the premises, which are held by the respondent under a lease for a term of 99 years from 25th March 1988.
- 2.2. Under the terms of the lease (Clause 10 of the Fourth Schedule) the tenant is responsible "To keep the landlord indemnified against and to pay to the landlord by way of service charge a proportionate part of all costs charges and expenses which the landlord shall incur in connection with the block and the retained parts in or in connection with the management of the block whether in carrying out the obligations set out in the sixth schedule here to or in doing any other works on things for the improvement of the block.....".

- 2.3. Under the sixth schedule of the lease, the relevant clauses are:-
- 2.3.1 To pay all existing and future rates taxes assessments and outgoings of whatever kind or to be hereafter imposed or charged on or payable in respect of the retained parts (Clause 1).
- 2.3.2 To insure and keep insured.....the block...(Clause 2).
- 2.3.3 To keep the retained parts and all fixtures and fitting therein and additions thereto in good and tenantable repair and decorative condition (including any renewal and replacement of all worn or damaged parts)...(Clause 4).
- 2.3.4 To keep so far as is practicable the entrance entrance-hall stairways passages landing paths and roads yards and communal refuse bins properly cleaned and in good order and to keep adequately lighted all such parts of the retained parts as are normally or should be lighted and to keep the gardens and grounds forming part of the retained parts in a neat and tidy condition (Clause 6).
- 2.3.5 To keep proper books of account of all costs charges and expenses incurred by the landlord in carrying out its obligations under the schedule or in otherwise managing and administering the block and once in each year during the said term to certify (a) the total amount of such costs charges and expenses for the period to which the certificate relates and (b) the proportionate amount due from the tenant to the landlord under paragraph 10 of the fourth schedule hereto after taking into account payments made in advance under paragraph 11 of the same schedule and to send a copy of the same to the tenant (Clause 8).
- 2.4 Attached to the original application was a Schedule of Expenditure for years up to and including 2002 with an estimated expenditure for the year 2003. The schedule showed a balance owed by flat 6 on the basis of 18% of the expenditure at the end of 2003 of £1412.28, which together with the court costs is the amount claimed by the Landlord.

3.0. Inspection

- 3.1. At 10.00 hours on 18th June 2004 the Tribunal viewed the subject property, looking at the internal common parts, the basement service room, the exterior of the building, and the grounds.
- 3.2. The Tribunal found that the property comprised a two-storey detached building, constructed in the mid 1800's, which had been converted into six self-contained flats.
- 3.3. Generally, the building appeared to be maintained in quite good order, apart from a few minor items. The Tribunal noted a replacement

landing on the fire escape and were advised that the roof repair works had taken place in a hidden valley in the centre of the roof area.

- 3.4. It was also noted that the lease of flat 6 included a patio and an area of the garden, within the demise, and that the garden area is maintained as part of the communal grounds. On the other hand, flat 6 was completely self-contained and had no use of the common hallways, the cleaning of which is included in the service charge.

4.0. The Hearing

- 4.1. On the same day, following the inspection, a hearing was held in a meeting room at the Holiday Inn, Walking Fields Lane, Poole, at 11:00 hours. Present were Mr B Greenwold, as managing agent for Mrs Nicole Greenwold, and Ms D Lewis accompanied by Mr J. Viney.
- 4.2. The Chairman introduced the members of the Tribunal, explained the background to the dispute and advised on the various Acts which had relevance to the matters in dispute.
- 4.3. The parties had previously prepared a statement of claim, a defence and reply to defence and these had been noted by the Tribunal.
- 4.4. Mr Greenwold explained that he had always carried out all works to maintain and improve the property in the interests of all lessees and that as he lived away, he had a local person who looked after the property and obtained the necessary quotations when work was required.
- 4.5. With regard to the various points that Ms Lewis was disputing, his comments can be summarised as :-

Window cleaning. There had been a window cleaner previously but he had been difficult to replace and there were a few years when no window cleaning was carried out. The new cleaner was appointed during 2001 at the specific request of the tenant of the top floor whose windows were becoming very dirty.

Roof repair. The tenant of the top floor flat had reported water coming through his ceiling and the work had to be carried out as an emergency repair to prevent further damage to the flat.

Satellite dish. He had advised all tenants about the proposed installation which he considered to be an improvement to the block and something which would assist the values of all the flats.

Fire escape. The repairs, which had been carried out, had been necessary to maintain the escape and as the amount involved

was below the relevant limit, this work did not necessitate notices under the Act.

Insurance. The questions raised by the tenant had been explained by the letter from the insurance brokers.

Sinking fund. The contribution to the sinking fund had been increased substantially in the current financial year as there was virtually nothing left in this fund following the repairs to the roof, and with some further external redecoration required, it was necessary to build up this fund more quickly.

Charges for payment by instalment. There was no compulsion in this matter and the facility had been offered to lessees to assist and had been based upon the finance and administrative costs that would be incurred by the landlord if payment were made in this manner.

- 4.6. Miss Lewis reiterated the various points that she had made in her defence :-

Window cleaning. Despite the comments made by Mr Greenwold, his summary of accounts showed no expenditure on window cleaning between 1993, when the lease commenced, and 2001. She therefore felt that it was unlikely that there had been a previous window cleaner. She objected to the fact that there had been no consultation with lessees before this expenditure had been incurred.

Roof repairs. She was concerned that lessees had received no paperwork in connection with this expenditure, neither copy estimates, nor an explanation of what work was to be done.

The point was also made that although Mr Greenwold stressed that the works were carried out as an emergency, it appeared that the work had been quoted for in March but not carried out until the latter part of June.

Satellite dish. Whilst it was accepted that lessees had been informed of the proposal to install a satellite dish and had been told that they could apply to Sky for the service subject to the usual connection charge, no mention had been made of the fact that the service charge funds were to be used to pay for the installation.

She reminded the Tribunal that one other lessee had also objected to the charge for this facility and was withholding the service charge funds for the year in question. It was also notable that even 4 years after the installation of the satellite

dish, only Mr Greenwold had connected to the service. If Lessees had been properly consulted the proposal would have been overwhelmingly rejected.

Fire escape. Following the inspection with the tribunal she was now aware of the works that had apparently been carried out and accepted that the expenditure was below the relevant cost limit, but felt that lessees should have been informed of the proposed work.

Insurance. Whilst she was concerned at the level of the insurance premium, she now accepted that the cost of insurance had increased substantially after 2001.

Sinking fund. She was concerned that no details of expenditure from the sinking fund had ever been supplied to her. Moreover, she had never been sent copies of any of the accounts for those works until she received the schedule of the sinking fund and an account for the roof works, as part of the court papers.

Charges for payment by instalment. She accepted that this was a voluntary arrangement that she could ignore if she so wished.

4.7 The Tribunal in questioning the parties established the following points :-

The budget for the forthcoming year is prepared on the basis of the expenditure in the previous year with an allowance for inflation and any known special items of expenditure.

The fire in flat 1 occurred in December 2001 and the insurance company were informed of the involvement of the contractor and it was left to the insurance company to decide whether to seek reimbursement from the contractor.

The landlord did not receive any commission in respect of the insurance policy.

Neither the landlord nor her managing agent had written to any of the lessees advising them of the roof works or sending them copies of the estimates. Mr Greenwold did undertake to send copies of the estimates to the Tribunal office, with a copy to Ms Lewis, within 10 days of the Hearing.

A statement of the sinking fund was only sent to lessees occasionally.

5.0. Findings

5.1.1 Window cleaning

5.1.2. The tribunal considered carefully the terms of the sixth schedule of the lease which set out the landlord's obligations under the service charge. Whilst the cleaning of the windows to the common parts is covered by clause 6 of the schedule, it is clear that, under the terms of the first schedule, the windows of the individual flats are included in the demise to each lessee and therefore the cleaning of these windows cannot be part of the service charge.

5.1.3 The Tribunal had no information by which to assess the cost of cleaning the windows to the common parts but from their knowledge and experience it was decided that 10 percent of the annual cost shown in the accounts could be considered reasonable for this item of expenditure. This percentage would also apply to the budget for 2004.

5.2 Roof repairs

5.2.1 The Tribunal found that the requirements of section 20 of the Act had not been complied with and therefore the expenditure, which could be reclaimed from the tenants in connection with this item, was limited to the relevant limit which was £1,000 at the time.

5.2. Satellite dish

5.2.1 The Tribunal found that the installation of the satellite dish was an improvement which the Landlord was not required to undertake under the terms of the 6th Schedule. The Tribunal was concerned by the somewhat cavalier attitude of the Landlord in this matter but it was within the relevant limits and is included in the obligation of the Lessees as part of the definition of service charge. The Tribunal therefore finds this item is reasonably charged.

5.3. Fire escape

5.3.1 Whilst no estimate of the costs had been shown to the Tribunal, it was accepted that work had been carried out and the tribunal determined that the expenditure was reasonable.

5.4. Insurance

5.4.1 The tenant accepted the explanation for the increase in the costs and this matter was no longer in dispute.

5.5. Sinking fund

- 5.5.1 The tribunal accepted the basis for the landlord's estimate of the sinking fund for the current year and found that this was reasonable.

5.6. Charges for payment by instalments.

- 5.6.1 This was a matter where there was no requirement for the tenant to pay the charges and the Tribunal had no jurisdiction in the matter.

5.7. Legal costs

- 5.7.1 The Tribunal noted that after the initial letter from the Landlord's solicitors, the tenant had paid the Ground Rent and offered the balance of monies demanded, to be placed in a joint account held by the parties' solicitors.

Payment of these monies was subject to the Landlord providing certain information to which the tenant was entitled.

- 5.7.2 It appears from the papers that nearly five months elapsed before application was made to the Court, and in that time there had been no serious attempt to answer the tenant's requests.

Furthermore, a court application was, perhaps, not the most productive course to follow.

- 5.7.3. In the circumstances the Tribunal finds that the full account for legal costs is unreasonable, but allows £75 plus VAT in respect of this item.

6.0.Summary

6.1 The items found to be unreasonable in whole or in part, may be summarised as follows :-

window cleaning	unreasonable in part
roof repairs	unreasonable in part
legal costs.	unreasonable in part

6.2 The Tribunal decided that the items listed in 6.1 above should be excluded from the service charge demands except to the following extent :-

window cleaning	2001	£53.70
	2002	£10.70
	2003	£40.00
roof repair		£1000.00
legal costs		88.12

6.3 Up to 31.2.03 This effectively excludes:

window cleaning	2001	£483.30
	2002	£ 96.30
	2003	£360.00
roof repair		£1828.00
legal costs		<u>£478.23</u>
		<u>£3245.83</u>
In respect of Flat 6 @ 18%		<u>£584.25</u>

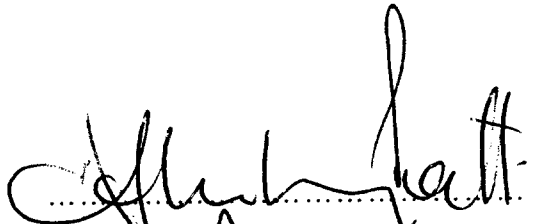
6.4 Using the Landlord's demand dated 23.03.04 this would reduce the amount owing up to 31.12.03 to £755.32 and the demand for 01.01.04 to £1020.98 giving a total outstanding up to 30.06.04 of £659.51, having taken account of the payment made during this year.

7.0 Decision

- 7.1 The Tribunal determined that the service charge owed by the Lessee of Flat 6 up to 30th June 2004 is £659.51

Chairman

Date


18th August 2004