

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL for the  
Eastern Rent Assessment Panel**

**Ref:** CAM/22UN/LSC/2004/0037

**LANDLORD AND TENANT 1985 (as amended) ('the Act')**

**HEARING:** 21 October 2004

**TRIBUNAL MEMBERS:** Mr John Hewitt Chairman  
Mr J Raymond Humphrys FRICS  
Mr Donald Wilson

**PREMISES:** Flat 7 The Grand  
6, Esplanade  
Frinton on Sea Essex CO13 9DS

**APPLICANT:** David Michael Jones  
**Appearances:** David Michael Jones  
Neil Hepburn

**RESPONDENT:** (1) David Anthony Edward Blacknall  
(2) Gillian Blacknall  
**Appearances:** David Anthony Edward Blacknall  
Alan Rasbridge

**DECISION OF THE TRIBUNAL**

**1. Decisions**

The Tribunal decides that

- 1.1 The claim by the Respondent that £5000 was incurred in respect of the cost of management in the service charge year 2003/4 is not made out.
- 1.2 A reasonable sum for the cost of management for the service charge year 2003/4 is £1750.
- 1.3 The service charge accounts for the year 2003/4 shall be recast to show the cost of management at £1750 and shall then be re-certified. Upon

the service of the re-certified accounts on the Applicant his account shall be reconciled. Any balance due from him shall be payable and any balance due to him from the Respondent shall be paid by the Respondent.

- 1.4 A reasonable sum to budget for the cost of management for the service charge year 2004/5 is £3500.
- 1.5 An order shall be made on the application under s20C of the Act and the Respondent's costs of these proceedings (if any) shall not be regarded as relevant costs for the purposes of that section, subject to any representations which the Respondent may make by **4pm Friday 14 January 2005** and any counter representations which the Applicant may make by **4 pm Monday 31 January 2005**.

## **2. Findings and Reasons**

- 2.1 The findings of the Tribunal and the reasons for its decisions are set out below.

## **3. Background**

- 3.1 The Premises comprise a flat within a period Victorian building. This building and an adjacent property (together 'the Property') were previously used as a hotel and residential care home. The Property underwent substantial and high quality refurbishment in or about 2000-2001 and a number of self-contained flats were created. Evidently there are 12 flats in the main building and 8 in the adjoining building. The Property is run as one entity.
- 3.2 The redevelopment of the Property was undertaken by The Grand Retirement Property Company Limited ('the Company') which was evidently run by a Mr & Mrs Evans who now live in New Zealand.
- 3.3 The Company granted a number of leases of the flats and the Applicant was one of the early purchasers and one of the first tenants to move in.
- 3.4 The freehold interest was transferred by the Company to the Respondents by transfer dated 14 August 2003 (registered at HMLR 3 September 2003). It was then transferred by the Respondents as joint owners to the sole ownership of the second Respondent ('Mrs Blacknall', the wife of the first Respondent 'Mr Blacknall') by transfer dated 20 July 2004.
- 3.5 The Company was dissolved on 13 January 2004.
- 3.6 The substantive issue raised in the application is the management fees claimed by the landlord in respect of the years 2002/3 and 2003/4 and the budget for 2004/5. The service charge year runs from 1 April to the following 31 March.
- 3.7 In the light of the demise of the Company, the Applicant acknowledged that there was no purpose in seeking to review the cost of management for the year 2002/3.
- 3.8 Initially the Company appointed the well known and established company of Peverell Management Services Limited ('Peverell') to be its managing agent. Apparently the fee was agreed at £5000 per annum.

- 3.9 Mr Blacknall is an accountant. His notepaper describes him as a 'Company Accountant, F.S.C..A., a Member of The Institute of Company Accountants in Public Practice'.
- 3.10 Mr Blacknall seems to have undertaken some work on behalf of Mr Evans and/or the Company. On 20 August 2002 the Company engaged Mr Blacknall to manage the Property on its behalf, initially on a temporary basis. If the Property did not sell at auction in December 2002 Mr Blacknall was to be awarded a contract for a term of 5 years commencing on 31 March 2003 at a fee of £5000 per annum plus VAT subject to annual review. Accordingly, Mr Blacknall's first role was as an agent of the Company and the Company was itself responsible for managing the services.
- 3.11 The Property was transferred to Mr & Mrs Blacknall in August 2003. At some point Mr & Mrs Blacknall appointed Casquets Property Management Services Limited ('Casquets') to be their managing agents. We shall need to explain the role and function of Casquets in more detail later.
- 3.12 Casquets employ Mr Rasbridge as caretaker/property manager. Mr Rasbridge, a former policeman, attends the property on weekdays on a part time basis to carry out his duties. He has cover when he is away. Casquets has sub-contracted the management back to Mr Blacknall.

#### **4. The Application and the Hearing**

- 4.1 On 8 July 2004 the Tribunal received the application which is dated 6 July 2004. In it the Applicant seeks a determination, pursuant to s 27A of the Act on the reasonableness of the cost of management of the Property.
- 4.2 The Applicant also makes an application under s20C of the Act with regards to the Respondent's costs (if any) of these proceedings.
- 4.3 The hearing was held on 21 October 2004 at Esplanade Hotel Marine Parade East, Clacton-on-Sea, Essex. Prior to the hearing the Tribunal was able to inspect the Property and the common parts. It did so in the company of the Applicant and Mr Rasbridge. Mr Blacknall arrived just as the Tribunal was about to depart for the venue of the hearing. Mr Blacknall was invited to draw to the attention of the Tribunal any particular features of the Property which he wished us to take special note of, but there were not any.
- 4.4 The Tribunal noted that the Property (the common parts and the grounds) were well kept, clean and tidy. Evidently the tenants have a garden club and they take great pride in tending the small gardens. The Property has been modernised to a high standard and enjoys modern facilities.
- 4.5 At the hearing the Applicant represented himself and he was accompanied by Mr Hepburn of flat 12. Mr Blacknall said that he represented himself and his wife. He was accompanied by Mr Rasbridge.
- 4.6 Prior to and during the course of the hearing both parties produced a number of documents upon which they wished to rely.

#### **5. The Lease**

- 5.1 The Tribunal was provided with a copy of the lease ('the Lease') granted to the Applicant and Jane Preedy. It is dated 15 January 2001. It was granted by the Company but its name was incorrectly given in the Lease and two words were transposed.
- 5.2 So far as is material to the issues raised in the application the Lease provides as follows:  
 A term of 99 years commencing on 24 June 2000  
 A ground rent of £395 per annum for the first 21 years of the term and then doubling after each period of 21 years, payable by equal half yearly payments on 1 April and 1 October in each year  
 An obligation to pay 4/78ths of the service charge expenditure  
 The Service Charge is defined as  
*'the expenses and outgoings properly incurred by the Lessor in providing the services and carrying out its obligations in accordance with clauses 5.2, 5.4, 5.5, 5.6, 5.7, 5.8, 5.10, and 5.12 and taking into account the provisions of clause 3.2*  
 It is not necessary to cite any of the provisions of clause 5 of the Lease. Clause 3.2 is important. It is a covenant given by the lessee. It provides:  
*'to pay to the Lessor without any deduction...the Service Charge Proportion specified in the Particulars being part of the expenses and outgoings properly incurred by the Lessor in respect of rates services repairs or maintenance of the Buildings and the Estate and the other heads of expenditure incurred by the Lessor in the performance of its covenants contained in this Lease including the fee of its managing agents and accountants or other professional persons in respect of the foregoing matters and value added tax (if applicable) subject to the following terms and provisions.'*  
 The provisions cited may be summarised as follows:
- (a) the right to appoint a managing agent or agents
  - (b) the amount of the Service Charge is to be certified by a certificate ('the Certificate') signed by the Lessor's auditors or accountants as soon after the year end as may be practicable
  - (c) the financial year is such period as the Lessor may determine
  - (d) the Certificate is to be available for inspection
  - (e) the Certificate is to contain a summary of the expenses and outgoings incurred by the Lessor during the financial year
  - (f) the expression 'the expenses and outgoings incurred' is to include not only those actually disbursed but also a reasonable part of those expenses of a periodically recurring nature whenever disbursed
  - (g) a requirement for the lessee to pay on request such sum or sums on account of Service Charge as the lessor may specify to be a fair and reasonable interim payment
  - (h) a copy of the Certificate to be given to the lessee
  - (i) credit to be given for any interim payments made and on request by the lessor, the lessee shall pay the balance of any Service Charge due and the lessor shall repay to the lessee any overpayment

- (j) lessor not to re-enter by reason only of non-payment of interim payments or Service Charge
- (k) not relevant

## 6. The Main Issue

- 6.1 The main issue is the amount of the management fee payable in respect of the service charge year 2003/4 which runs from 1 April 2003 to 31 March 2004.
- 6.2 In essence the Applicant said that he and other tenants had difficulty in establishing who the landlord was and the role undertaken by Mr Blacknall. Evidently the proper notice had not been given with regard to the recent transfers of the freehold interest. Moreover some of the rent and service charge demands shown to the Tribunal were not compliant with s47 Landlord and Tenant Act 1987.
- 6.3 The Applicant acknowledged that something had to be paid for the services of a managing agent, but that £5000 was excessive. He said that he had been objecting to this for some time both to Mr Evans and to Mr Blacknall. He accepted, as he said in a letter dated 15 May 2003 to Mr Evans that £5000 might be a reasonable fee for the services of a company with the depth of service and backup of Peverell, but that Mr Blacknall and Casquets are not anywhere comparable. Moreover, the Applicant said that Mr Rasbridge worked at the Property on weekdays and undertook many of the daily tasks that might otherwise fall on the managing agent. Mr Rasbridge wages were fully recovered through the service charge.
- 6.4 Mr Blacknall explained the set up to the Tribunal. He said that whilst he had no direct interest in Casquets the shareholders were Mrs Blacknall and their two sons Ashley Lloyd Jonathan Blacknall and David Alexander Reece Blacknall. Mr Blacknall said that he had helped with the paper work to set up Casquets and he may have been company secretary for a short while, but he was not now an officer of Casquets.
- 6.5 Casquets notepaper describes it as '*Land Agent, Residential Development, Renovation, Restoration and Property Management*'. Evidently it has offices in Witham, Essex, Giltbrook, Nottingham and Kingston, Surrey. Mr Blacknall told the Tribunal that shortly after he and Mrs Blacknall acquired the freehold interest in the Property they employed Casquets as managing agent. At about that time Casquets awarded to Mr Blacknall personally a contract to be its managing agent in southern England. He manages 6 properties. The contract was not in writing, or at least Mr Blacknall did not have a copy with him. The current position seems to be that Mrs Blacknall contracts with Casquets for it to be the managing agent. Casquets sub-contracts that role to Mr Blacknall who carries out the day to day management. Mr Blacknall has no staff save a book keeper who is actually employed by Casquets and whom he employs on a part time

basis and the cost to him is re-charged back to Casquets. The actual contractual position seems to be quite complex. Mr Blacknall said that he also looks after Mrs Blacknall's interests. Despite the directions and the long period of notice of the hearing, Mr Blacknall did not bring many, if any of the material papers or documents with him to the hearing. Apparently they (or most of them) were with the accountants for audit and drawing up of the final service charge account and the certificate for 2003/4.

- 6.6 Mr Blacknall sought to justify a management charge of £5000 per year by saying that the charge had not increased since it was first set by Peverell and that he spent a considerable amount of time at the Property and travelling to and from it. He said that he made 40-45 visits per year to the Property, for periods from 2 hours to all day. He said he did not charge for his travelling time, just the mileage to cover costs. He said that whilst at the Property he dealt with whatever issues required attention. He managed and supervised Mr Rasbridge and took numerous calls from tenants on a wide range of issues that they raised with him. Some of these related to the Property e.g. repair issues resident disputes and right to manage issues. Whilst others may relate more to the personal circumstances of the tenant. Many tenants are elderly. The leases may only be granted to or transferred to a 'qualifying person' who is defined as a person of 55 years or above. He said that he arranged tenders for the insurance, lift maintenance, fire protection services and warden alarm service. Mr Blacknall said that he re-tendered where appropriate. However, this did not appear to apply to the contract for the services of a managing agent. Mr Blacknall told the Tribunal that this contract did not require to be re-tendered because he was satisfied that £5000 per annum was competitive. Mr Blacknall said that he also spent time on a problem with Powergen and the Waterboard, placed sundry minor contracts and organised roof repairs (minor) on 2 occasions. He said that on minor contracts there was no added management fee but on major contracts Casquets would add 15% for management.

- 6.7 Mr Blacknall presented a 3 page menu of tasks which he said he might have to undertake. Its headings were:-
- 'Resident Relations
  - Service Charge Invoicing, Collection & Administration
  - Financial Management
  - Repair and Maintenance Management
  - Landlord and Tenant Advice
  - Legal Administration'

Mr Blacknall accepted that he did not actually undertake everything on the lists and that many of the entries were duplicated.

- 6.8 Mr Blacknall told the Tribunal that he personally invoiced Casquets for his work for it as the managing agent. He was able

to produce an invoice dated 31 March 2004 which covered his services for the period 18 August 2003 to 31 March 2004 it charged:

'18 visits total 45 hours	£1350.00
Total mileage claim at 35p 1295 miles	£ 453.25
Payroll, Book keeping, Companies House, And Company Secretarial matters and the preparation of leaseholder service charge accounts'	<u>£ 500.00</u>
	<b>£2303.25</b>

Another invoice was produced dated 30 June 2004 which covered Mr Blacknall's services for the period 1 April to 30 June 2004. It charged:

'Total 45 hours	£1410.00
Mileage 750 miles at 35p	£ 262.50
Payroll etc [as above]'	<u>£ 250.00</u>
	<b>£1922.50</b>

- 6.9 Mr Blacknall also produced an invoice issued by Casquets to 'The Grand, The Esplanade Frinton on Sea C013 9DS'

It charged:

'Half Yearly Management Charge in respect of Management Charges For the half year October 1 <sup>st</sup> to March 31 <sup>st</sup> 2004'	<b>£2500.00</b>
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Mr Blacknall was not able to explain what added value was given by Casquets and it should be entitled to about £200 more than it had paid to him for the management services. No services, other than those provided by Mr Blacknall had been rendered by or on behalf of Casquets.

- 6.10 Mr Blacknall was not able to produce any invoice referable to management costs incurred by the Company in respect of its period of ownership of the freehold from 1 April until 17 August 2003. Mr. Blacknall considered that it was the responsibility of the Company to produce that and it was nothing to do with him or Mrs Blacknall. Mr Blacknall said that on buying the freehold interest in August 2003 he and Mrs Blacknall held the interim payments made by the tenants on account of their service charge liability for 2003/4. He said that as he was then acting as the managing agent to the Company he just continued to hold the funds as nothing really had changed.
- 6.11 Mr Blacknall did not have to hand the certificate of the accounts for 2003/4 as the books and papers were still with the accountants. He did however produce a spreadsheet which he said showed the actual expenditure for 2003/4 and the budget for 2004/5. He said that Mrs Blacknall as the freeholder would be seeking to recover from the lessees the actual expenditure as

shown on the spreadsheet. As regards 'management' this showed £5000 for 2003/4 and the same amount for the budget for 2004/5. It was put to Mr Blacknall that if Mrs Blacknall as landlord proposed to serve a certificate claiming expenditure of £5000 for management for 2003/4 she would need to prove that such expenditure had been incurred, had been reasonably incurred and was reasonable in amount. The starting point was evidence. If the claim to management was £2500 for the second half of the year, the arithmetic showed that there was a claim to £2500 for the first half of the year. Evidence would have to be produced to show that £2500 had been incurred by the landlord. Mr Blacknall said he did not have such evidence, he simply repeated that it was a matter for the Company, not him or Mrs Blacknall. Mr Blacknall remained adamant on this even though he was actually managing the property on a day to day basis during the relevant period.

6,12 Mr Rasbridge also gave evidence to the Tribunal. He said he was employed by Casquets on a part time basis to be the caretaker at the Property. He was contracted to work 12 hours per week on weekdays only. He generally spent about 2 hours per week day at the Property. He said that Mr Blacknall attended the Property about 3 times per week on average. Whilst there they would discuss any problems raised by tenants, maintenance and repairs, financial arrangements – sorting out the petty cash and minor sundry items. He said that on a daily basis he liaised with tenants to try and sort out any problems. Sometimes he conferred with Mr Blacknall. He had frequent contact with contractors and suppliers of goods and services to the Property and obtained quotes and estimates on the more minor matters. Any larger contracts were left to Mr Blacknall, although sometimes he might organise the estimates and pass them on to Mr Blacknall who would decide who to employ and then place the contract.

6.13 An annual management charge of £5000 equates to a unit charge of £250. In support of his argument that such a charge was reasonable, Mr Blacknall cited to the Tribunal the LVT case of Chatsworth Court London E5, a decision dated 26 March 1999. That property comprised 13 flats. The following unit charges were held by that tribunal to be reasonable and were allowed in full:

Year ended March 1995	£130.00
1996	£137.50
1997	£143.00
1998	£150.00

The decision records that Chatsworth Court is a 5 storey corner block with a retail unit and 1 flat on the ground floor and 12 flats on the 4 floors above. Externally it was noted to be of shabby appearance with poor decoration and rusting metal windows. The common parts were grubby and there was



evidence of water penetration. Paint work was cracked and flaking.

Mr Blacknall also cited the LVT case of 90 Horseferry Road, Wapping London E14, a decision dated 12 March 1999. This property comprised 24 flats owned by a housing trust. For the year ended March 1998 that tribunal held that a unit charge for management of £146 was reasonable. That tribunal inspected the property and found the common parts to be clean and tidy and it was maintained to a good standard.

- 6.14 The Tribunal found the Applicant and Mr Rasbridge to be honest and reliable persons doing their best to assist the Tribunal. Their evidence was accepted. The same cannot be said for Mr Blacknall. It was unfortunate that he had not brought all the relevant documents with him to support key parts of his evidence. On occasion his evidence was contradictory and unsubstantiated. Some of his evidence was complex and difficult to follow. His evidence on the arrangements with Casquets for carrying out the management was unsatisfactory and not overly helpful. On occasions Mr Blacknall seemed a little muddled and he did not seem to the Tribunal to be able to differentiate his role as landlord and his role as agent for the managing agent, and the manager of Mrs Blacknall's interests. The Tribunal are compelled to treat his evidence with caution. Where his evidence is at variance to that of the Applicant and Mr Rasbridge, the Tribunal prefers the evidence of those two persons.
- 6.15 In the absence of any documentary evidence whatsoever that the landlord, whether the Company or otherwise actually incurred the sum of £2500 on management for the first half of 2003/4, the Tribunal is not satisfied that such sum has been incurred, let alone reasonably incurred. The Tribunal finds that this sum has not been incurred and that it is not to be regarded as relevant costs to be taken into account in the service charge accounts for the year 2003/4.
- 6.16 The Tribunal is satisfied and finds that Casquets has invoiced the landlord the sum of £2500 for management for the second half of 2003/4 and that such sum has been incurred. However, the Tribunal is not satisfied that such sum has been reasonably incurred. The Tribunal finds that the extent of management work properly required at the Property is not as onerous as Mr Blacknall claimed. The members of the Tribunal have between them considerable experience of residential block management. To all intents and purposes the Property may be regarded as a modern block with modern facilities. Mr Rasbridge is employed as the caretaker/property manager and plainly undertakes many management tasks on a daily basis. There is therefore a need for only moderate management and supervision of Mr Rasbridge. The residents, many of whom are elderly clearly care for the Property and take great pride in it and the gardens which they tend. Doubtless the residents

contribute in a positive way to the smooth effective running of the Property. The Tribunal are grateful to Mr Blacknall in drawing attention to 2 LVT decisions. Whilst those properties are located in central London where costs generally are higher than the Essex coast and can be distinguished on other grounds, they do reinforce the Tribunals wide experience of the cost of block management.


- 6.17 The Tribunal is aware that some professional managers such as members of The Royal Institution of Chartered Surveyors and Association of Residential Managing Agents may, by reason of their expertise and professionalism and the rules and regulations under which they must operate, including carrying professional indemnity insurance, be able competitively to achieve, where appropriate, fees of £250 per unit or more. Mr Blacknall is an accountant with no property management qualifications or professional body to control or supervise his property activities. Casquets appears to the Tribunal to be a small family company with six properties in southern England. It is the view of the Tribunal that the fee rate of Mr Blacknall and Casquets should reflect this position and also the depth and level of management provided. The Tribunal finds that a locally competitive rate for the level and depth of services provided and one that is appropriate for Mr Blacknall and Casquets is £175 per unit for the good job that they do in respect of the Property. Accordingly, the Tribunal finds that a reasonable charge for management for the second half of 2003/4 is £1750.
- 6.18 It is the experience of the members of the Tribunal that management fees are fairly static at the present time. Accordingly, for the reasons set out above the Tribunal finds that a reasonable sum for management for the budget for 2004/5 is the sum of £3500.
- 6.19 According to Mr Blacknall it was intended that the service charge expenditure would be certified at £29574.02 in accordance with the spreadsheet produced by him. If that has now been done it will over state the recoverable cost of management which must be reduced from £5000 to £1750. The Tribunal directs that the account shall be recast and re-certified to reflect this decision. The Applicant is obliged to bear 4/78ths of the service charge cost. This cost is reduced to £26324.02 and 4/78ths amounts to £1349.95. The Tribunal finds that this sum is payable by the Applicant less any amounts of interim payments which may have been paid to the landlord in respect of the year 2003/4.

## **7. The S20C Application**

- 7.1 The Tribunal did not hear representations from the parties on the s20C application.
- 7.2 The Tribunal notes that Mr Blacknall represented himself and his wife. It does not appear to the Tribunal that any costs have actually been incurred by the Respondent in connection with

these proceedings. Certainly no evidence of any such costs has been produced.

- 7.3 In the circumstances the Tribunal is minded to make an order under s20C as asked by the Applicant and orders that the Respondent's costs of these proceedings (if any) are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.
- 7.4 However the Tribunal is willing to reconsider its view if the Respondent wishes to assert that they have incurred costs which are recoverable within the charging provisions in the Lease. Therefore the Tribunal directs that that if the Respondent wished to make any representations on this subject they shall do so in writing by **4 pm Friday 14 January 2005** and shall give full details of the costs said to have been incurred and their reasons why they are said to be recoverable through the service charge. Such representations shall be sent to the Tribunal and simultaneously to the Applicant. The Applicant may similarly serve written representations in answer by **4pm Monday 31 January 2005**. When submitting any representations the parties shall indicate whether or not they consent to the Tribunal determining the issue on paper and without the need for an oral hearing.



John Hewitt  
Chairman  
16 December 2004