



**Residential
Property**
TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL
LONDON RENT ASSESSMENT PANEL**

**LANDLORD AND TENANT ACT 1985 (the Act)
Sections 20C and 27A**

Ref:	LON/00AF/LSC/2005/0128	
Property:	Flats 8 & 12 Red Lodge, Red Lodge Road, West Wickham, Kent BR4 0EL	
Applicants:	Mr W J Fitzpatrick Mr E Griffin	
Represented by:	Mr W J Fitzpatrick Mr A Ingram (Lay Representative)	
Respondent:	Blencare Limited	
Represented by:	Mr R Colley Mr S Bellamy (Both of Johnson Cooper, managing agents)	
Tribunal:	Mr John Hewitt Ms Marina Krisko Mrs Margaret Colville	Chairman BSc(EstMan) BA FRICS JP LLB

DECISION OF THE TRIBUNAL

Decision

1. The Decision of the Tribunal is that:
 - 1.1 The service charges in dispute are payable as follows:

2002/3 Telephone	£1,516.27
Management fees	£9,000 (i.e. £200 per unit)
2003/4 Management fees	£9,585 (i.e. £213 per unit)
Accommodation Costs	£5,802
Sundry	£86.50
2004/5 Repairs	£7,767.96
External Decorations	£25,298.22
Wages	£22,478.71
 - 1.2 In consequence of the above the service charges payable in respect of the years in question are as set out in Appendix 1 attached to this Decision.
 - 1.3 If the Respondent wishes to contend that it is entitled to regard any costs of these proceedings as relevant costs as referred to in s20C of the Act, the Respondent shall by 4pm Friday 6 January 2006 make an application to the Tribunal for directions to be given for the disposal of the Applicant's application under s20C of the Act.
 - 1.4 If the parties are unable to agree the cash accounts for the respective tenants arising from adjustments to be made to them consequent upon this Decision, either party may apply to the Tribunal for directions to be given for settling cash accounts. Any such application shall be made no later than Tuesday 31 January 2006.

FINDINGS AND REASONS FOR THE DECISION

Background

2. The Applicants are two lessees at a development known as Red Lodge, Red Lodge Road, West Wickham (Red Lodge).
3. Red Lodge is a private retirement complex of 45 flats with provision for a resident warden. The flats are let on long leases at a ground rent. The Applicants are two of the lessees. The Respondent is the landlord.
4. By an application dated 19 May 2005 the Applicants sought a determination of service charges payable by them under s27A of the Act. Directions were given on 17 June and 26 August 2005 and the hearing was re-scheduled for 7 November 2005.
5. Mr Fitzpatrick appeared on his own behalf and was accompanied by Mr Ingram who although a lay representative has experience in residential management. Mr Griffen was unable to attend for health reasons. He sent apologies and expressed the wish that the hearing go ahead in his absence. Mr R Colley of Johnson Cooper represented the Respondent.

6. Over recent years there have been changes in the managing agents which has led to a number of issues relating to the service charge accounts. Evidently the agents were originally Sussex Management. There was then a change to Regis Group who appointed Equity Asset Management. The managing agents are now Johnson Cooper. Mr R Colley has undertaken a great deal of work on the accounts for the recent years and has been able to obtain many supporting documents and explanations (particularly about accruals and adjustments), many of which satisfied Mr Fitzpatrick and Mr Ingram. As the hearing progressed both parties were able to make further concessions and Mr Fitzpatrick withdrew further challenges. In the event the number of contentious issues for the Tribunal to resolve were much fewer than was originally the case. The Tribunal observes that where information and explanations are given to lessees so that they understand the nature of the service charges claimed, the number of contentious items is often reduced.

The Leases and Service Charge Regime

7. The Tribunal was given a copy of the lease of flat 12. We were told that all the leases were granted in common form.
8. The Sixth Schedule of the Lease sets out a number of covenants entered into by the lessee. Part 1 sets out covenants entered into with the landlord. Part 11 sets out covenants entered into with the landlord and with the lessees of other flats within Red Lodge.
9. Paragraph 9 of Part 11 of the Sixth Schedule is a covenant to contribute 1/45th part of all the costs and expenses incurred by the landlord in carrying out its obligations under the Seventh Schedule to the lease. The Seventh Schedule sets out a number of covenants on the part of the landlord, many of which go to the upkeep, repair and redecoration of Red Lodge and the provision of the services of a warden. In this case nothing turns on the nature and extent of the services and it has not been necessary for the Tribunal to construe the lease.
10. The service charge year runs from 1 April to the following 31 March. Provision is made for the Respondent to prepare a budget for each year and for the lessee to make an advance payment on account of service charges on 25 March in each year. Following the provision of year end accounts an adjustment is made to each lessee's individual account depending upon whether there is a debit or credit balance.

The Service Charges in Issue 2002/2003

Telephone £1516.27

11. The total sum claimed is made up of a number of invoices issued by BT. The Applicants challenged the sum of £180.04 on the basis that the invoice was unavailable. Mr Colley explained that the ledger entries show that an invoice dated 9 April 2002 in this sum was received and paid. The ledger entries record it as referable to

telephone numbers 020 0208 777 0155 and 0146. Mr Colley explained that the previous managing agents did not always keep the paperwork in good order. Despite a thorough search and enquiry Mr Colley told us that he has not been able to obtain a copy of duplicate invoice. In many cases Mr Colley had been able to obtain supporting invoices which he said showed the ledger entries to be accurate.

12. Mr Fitzpatrick told us that he did not have any reason to believe that there was any interruption in the BT telephone service provided or that the invoice had not in fact been paid.
13. We find that on the balance of probabilities the invoice was paid. It was reasonably incurred and reasonable in amount. Ideally all expenditure should be supported by invoices. In this instance we accept Mr Colley's evidence as to the ledger entries. Accordingly we find that the sum of £180.04 is payable.

Management Charge

2002/3 £12,236.90 (£272 per unit)

2003/4 £12,790.00 (£284 per unit)

14. The gist of the Applicant's complaint was that in these two years the quality of management was very poor and thus the charge unreasonably high. Mr Fitzpatrick gave a number of examples. The Applicant contended that a reasonable charge would be in the region of 65% of that claimed. Mr Colley accepted that in general terms the quality of management by his predecessors was not up to scratch and he conceded that a discount was appropriate. His view as that 75% was nearer to the mark. Neither party provided a formula for arriving at their respective discounts, just a general feel.

The rival contentions are as follows:

	Applicants	Respondent
2002/3	£7,954	£9,178
2003/4	£8,313	£9,592

15. The Tribunal noted the lack of a specification for management services and the absence of convincing invoices.
16. The Tribunal accepted, from its general experience that management of a private retirement complex will be more labour intensive, and hence more costly, than in a conventional block. Ordinarily for a conventional block in south east London the Tribunal would expect the lower end of the range to be £130 - £150 per unit. But, Red Lodge is not a conventional block. The Tribunal accepts and finds that management was taking place, but that it was not good management. Bearing in mind the evidence and the Tribunal's broad experience it considers and finds that a fair and reasonable management charge is as follows:

2002/3	£9,000.00	(£200 per unit)
2003/4	£9,585.00	(£213 per unit)

House Manager's Flat

2003/4 £7,328.49

2004/5 £7,328.64

17. The lease obliges the landlord to provide a resident house manager and it is entitled to a notional rent in respect of the accommodation provided. In 2002/3 the charge was £3,708. In 2003/4 it went up to £7,328. Included was the council tax payable in respect of the occupation of the flat. The Applicant's argued that such an increase was unjustified and unreasonable.
18. Mr Colley was unable to explain why and on what basis the notional rent increased so dramatically as he was not the manager at the time. He had undertaken research and tried to find comparable rental evidence. He accepted that it was not easy and that helpful comparable evidence was hard to come by.
19. The flat in question is a 1980s 1 bedroom flat flay with central heating. The Tribunal was told that it was fitted out with rather dated furniture, carpets and curtains. Mr Colley accepted that VAT was not properly chargeable on the notional rent.
20. The Applicants contended that a reasonable notional rent would be £500 per month, plus an appropriate sum for council tax.
21. Having regard to the very limited valuation evidence produced by the parties the Tribunal members drew on their considerable experience in residential lettings. The Tribunal decided that the starting rent would be at £150 per week. But the location of the flat within a retirement complex would require a discount. Further the Tribunal finds that it has to look at the net loss to the landlord in providing the accommodation. Given the circumstances, the landlord will not incur letting fees, or voids and the redecoration and repair costs are chargeable to the service charge. Taking all of these matters into account the Tribunal finds that for the year in question a fair and reasonable notional rent for the flat is £5,265. Mr Colley accepted that an adjustment in respect of the council tax claimed should be made. The Tribunal finds that £537.49 is an appropriate sum for council tax. Accordingly the Tribunal finds that the sum of £5,802 is payable for the year 2003/4 The Tribunal finds that for the year 2004/5 a modest increase is reasonable and appropriate. We find that the notional rent is determined at £5,824 and that the sum of £1,150 should be allowed to reflect council tax, making a total of £6,974.

Sundry £486.50

22. Mr Colley conceded that this claim should be reduced to £86.50 as an invoice had been duplicated inadvertently. The reduction was agreed by the Applicant.

2004/5

Repairs £7,887.95

22. Within this sum the Applicants challenged:

£49.35	The ledger refers to an electricians charge for a call out to replace a faulty lamp. Mr Colley was unable to produce a supporting invoice, but he had faith that the work was done.
£41.13	Again a ledger entry with no supporting invoice. Mr Colley was again confident that the work was done. He said the contractor was reliable and

there was no history of over charging. His experience was that the ledger entries on the account were reliable and accurate and in the vast majority of cases supported by invoices.

In neither case did the Applicants assert that the work or service was not provided, they relied upon the absence of any supporting invoice. On these two matters the Tribunal prefers the evidence and submissions of Mr Colley. The Tribunal accepts that even in the best of regulated accounts offices invoices do go missing from time to time. The Tribunal finds that these two sums were reasonably incurred, are reasonable in amount and are payable by the lessees.

£119.99 This sum related to the cost of replacement of a stolen TV set. Mr Colley conceded that the item should be withdrawn from the service charge account.

23. In the light of the above the Tribunal finds that the sum payable under this heading should be reduced to £7,767.96.

External Decorations £25,298.22

24. The Applicant's challenge was on two grounds. First, that the work was not undertaken to a good standard, largely because many windows were painted whilst in the closed position. Secondly that VAT was included and the Applicant's were not satisfied that a proper VAT invoice had been issued.
25. Overall the Applicant's contended that a fair charge for the work is £15,000 plus VAT if payable. Mr Ingram did not have any detailed calculations to support his figure, but he relied upon his experience in other block. He accepted that the design of Red Lodge was such that quite expensive scaffolding was required for the works. Mr Fitzpatrick gave anecdotal evidence to the Tribunal about the way the works were carried out, and said that in many instances windows had not been opened and the painting had not been properly carried out. He mentioned a petition signed by many of the residents.
26. Mr Colley argued that a proper s20 consultation process had been carried out and the job had been competitively tendered. He accepted that he had no first hand knowledge of what had occurred. Drawing on his general experience he said he would have been surprised if all flat windows has been painted whilst shut. He was also ware that sometimes it is just not possible to gain entry to a flat to open windows. He explained that the work was overseen by a supervising surveyor. He accepted that some peeling paint required investigation and said that this would be undertaken.
27. The Tribunal had the opportunity to inspect the exterior of the building during the course of its site visit. The members focussed on the external decoration knowing that it was a contentious issue. The

Tribunal , using its expertise in this area came to the view that the works had not been carried out to the highest of standards, but that the contract sum was at the lower end of the scale, given the design of the complex and the scaffolding that would have been required. In the experience of the Tribunal a contract sum in the region of £40,000 may well have been appropriate for a through job. Taking these matters into account the Tribunal formed the view that the work was carried out to a reasonable standard commensurate with the contract sum.

28. As to VAT, the Applicants asserted that the first invoice produced by the contractor S. W. Decorators was dated 9 July 2004 in the sum of £19,950 plus VAT. It did not bear a VAT registration number. The copy provided to the Tribunal bears a stamp which states

'Payment approved	
Account	Red Lodge
Cost Heading	Section 2
Special Instructions	Ext Decs
Authorised by	[??illegible]
Date	16/07/04
Amount	£23,441'

The Tribunal notes that £19,950 plus VAT at 17.5% amounts to a total of £23,441.25

29. Mr Colley said that following a previous directions hearing, he requested S.W. Decorators to provide a VAT invoice. They did so and he produced it to the Tribunal. It bears a VAT registration number of 760 8876 88. Mr Fitzpatrick remains sceptical that the VAT was ever paid over to Customs and Excise.
30. The Tribunal is satisfied that that a proper VAT invoice has been issued to the Respondent. The Tribunal is also satisfied that the Respondent has paid the VAT inclusive sum to the contractor. The Tribunal does not consider it to be part of its remit in these proceedings to investigate whether the contractor has or has not accounted to Customs and Revenue for the VAT element of its invoice.

Wages £23,828.71

31. The landlord is obliged to provide a warden. Usually a full time employee is recruited at a cost of around £15,000 per annum. During the year in question there was difficulty in recruitment and agency staff were employed at a greater cost than would normally be the case. In broad terms Mr Fitzpatrick accepted that sometimes it is necessary to use agency staff and that they are more expensive than permanent staff. He suspected that the delay in appointing a full time person was related to a proposal by the lessees to exercise the right to manage. Mr Fitzpatrick also complained that some of the time sheets were not properly filled out or checked independently.
32. Mr Colley accepted that some invoices were missing. He said that the agency staff self certify the hours worked and in the absence of

an immediate supervisor on site there was simply no-one who could verify the hours claimed. Mr Colley said that he had no reason not to trust the staff concerned. He also denied that the delay in a permanent appointment was due to possible RTM.

33. Having heard all of the evidence the Tribunal finds that the landlord took an unreasonable length of time to recruit permanent staff. We find that a permanent person should have been appointed 3 months earlier than was the case. We find the additional cost was £450 per month. Thus we find that an adjustment of £1,350 should be made to this item. The total cost therefore reduces to £22,478.71.

The S20 Application

34. During the course of the hearing Mr Colley intimated that the Respondent did not propose to seek to put through the service charge account any costs incurred in respect of these proceedings. If this is correct the Tribunal need not make a formal determination on the application. If however, the Respondent does wish to assert the right to treat costs of these proceedings as relevant costs for the purpose of the service charge account it must so notify the Tribunal and the Applicants by 4pm Friday 6 January 2006 whereupon the Tribunal will give further directions for the hearing of the s20 application.



John Hewitt
Chairman
19 December 2005

Expenditure Heading	2002/3	2003/4	2004/5
Bank Charges	£ 43.00	£ 90.00	£ 90.00
Bank Interest Received	-£ 51.00	-£ 31.88	-£ 22.09
Cleaning	£ 1,918.51	£ 1,930.48	£ 2,245.23
Electricity/Lighting	£ 2,903.52	£ 6,195.47	£ 4,265.08
Emergency Monitoring Svce	£ 435.64	£ 772.45	£ 669.48
Fire Alarm			
Repairs/Maintenance	£ 1,212.13	£ 613.20	£ 2,021.40
Gardening	£ 2,393.04	£ 2,619.58	£ 2,172.00
Guest Suite Hire	-£ 63.50	-£ 140.00	-£ 152.50
House Manager's Flat	£ 3,708.00	£ 5,802.00	£ 6,974.00
Insurance	£ 2,773.94	£ 2,624.14	£ 1,118.67
Lift Repairs/Maintenance	£ 998.72	£ 1,167.92	£ 998.72
Management Charges	£ 9,000.00	£ 9,585.00	£ 12,790.00
Refuse Collect/Palladin Hire	£ 310.39	£ 75.00	£ 60.00
Repairs & maintenance	£ 5,483.48	£ 10,863.71	£ 7,767.96
Reporting Accountants	£ 625.00	£ 411.25	£ 1,426.74
External Decorations			£ 25,298.22
Sundry	£ 171.79	£ 86.50	£ 296.96
Telephone	£ 1,516.27	£ 166.63	£ 1,368.46
Wages	£ 9,244.00	£ 5,020.26	£ 22,478.71
Warden Call & Door Entry	£ 82.57		£ 501.20
Water	£ 66.52	£ 399.81	£ 719.49
Window Cleaning	£ 2,178.49	£ 2,178.46	£ 1,633.86
Internal Accounts Charge		£ 176.25	
Trust & Estate Tax	£ 249.33	£ 40.85	
Total	£ 45,199.84	£ 50,647.08	£ 94,721.59
2.222% payable by each lessee	£ 1,004.34	£ 1,125.37	£ 2,104.71

