

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00HN/LSC/2007/0093

BETWEEN:

18 MANOR ROAD BOURNEMOUTH LIMITED

Applicant

- and -

MR M KELLMAN

Respondent

PREMISES:

Flat 11
Beverley Hall
18 Manor Road
Bournemouth
Dorset
BH1 3HN ("the Premises")

TRIBUNAL:

MR D AGNEW LLB, LLM (Chairman)
MR T E DICKINSON BSc FRICS

HEARING:

30th January 2008

DETERMINATION AND REASONS

DETERMINATION

The demand for payment on account of service charges for the year 1st January 2007 to 31st December 2007 in the following sums are reasonable namely:-

Sinking fund contribution:	£144.00
Service charge on account:	£1,000.00

	£1,144.00

The administration fees of £234.98 the Tribunal finds to be reasonable but these are chargeable to the service charge account payable by all lessees of Beverley House and not just the Respondent. The Tribunal considered it just and reasonable to require the Respondent to reimburse the Applicant the Tribunal fees of £350 and to pay in addition the costs of the Applicant in respect of the Tribunal proceedings in the sum of £425.94 inclusive of VAT.

REASONS

1. Background

- 1.1 By an application dated the 22nd October 2007 the Applicant through their Managing Agent Rebbeck Brothers made an application to the Tribunal under Section 27A of the Landlord & Tenant Act 1985 for a determination as to the reasonableness of the sum demanded on account of the service charges for the year 1st January to 31st December 2007.
- 1.2 Directions were issued on the 16th November 2007 requiring the parties to file and serve statement of case by the 10th December 2007 on the part of the Applicant and, if the Respondent intended to contest the application, by a date 21 days from the receipt of the Applicant's statement of case.
- 1.3 The Claimant submitted a statement of case with supporting documents on the 5th December 2007. The Respondent did not submit any evidence to the Tribunal.

2. Inspection

- 2.1 This took place immediately prior to the hearing on the 30th January 2008. The Tribunal was unable to gain entry to the Respondent's flat and the Respondent did not attend on the inspection.

3. The Premises

- 3.1 Beverley Court comprises two blocks of purpose built flats constructed in about the 1960s comprising 6 flats in each block. Additionally in the grounds there is a detached house called "The Lodge" which does not contribute to the service charges in respect of the flats save for making a contribution towards the maintenance of the tarmac driveway.

3.2 The blocks of flats appeared to be in good condition. The grounds were well maintained. About 50% of the original wooden framed windows had been replaced by upvc double glazed units. The blocks were of brick construction under a tiled roof and there was tile hanging to the upper part of the external elevations.

3.3 The communal hallways and staircase of the rear block in which Flat 11 is situated was clean, well carpeted and well decorated.

4. The Lease

4.1 By Clause 5 of the Lease dated the 25th October 1977 made between Stour Developments Limited (1) 18 Manor Road Bournemouth (Management) Limited (2) and Paolo Gianese (3) the tenant covenanted with 18 Manor Road Bournemouth (Management) Limited and also with the landlord to pay seven and nine-thirteenths per cent of the cost to the aforesaid company of carrying out its obligations under the Lease which said obligations are set out in Clause 4.(1)(A) to (I) and include the obligation to insure the buildings, to keep the foundations main walls timbers roofs main drains and sewers and the exterior of the building and every other building on the estate and the interior and exterior of all outbuildings ... and the staircases halls passages and other internal parts of the building and every other building on the estate in good and substantial repair and in clean and proper order and condition and properly lighted, to paint the outside of the building on the estate every three years, and to pay gas and electricity costs of running apparatus and equipment used for common amenities.

4.2 By Clause 5(2) of the Lease the lessee also covenanted to pay the aforesaid proportion of Managing Agents' fees and pay "towards any reserves properly and reasonably required for the running of the Company's business (including the provision of a reserve on account of anticipated or future expenditure)" and that payment of the service charge was to be made in advance by two equal estimated instalments on the 1st January and the 1st July in every year.

5. The Law

5.1 Section 27A of the Landlord & Tenant Act 1985 ("the 1985 Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

- (a) the person by whom it is payable
 - (b) the person to whom it is payable
 - (c) the amount which is payable
 - (d) the date at or by which it is payable
 - (e) the manner in which it is payable.
- 5.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.
- 5.3 By Paragraph 2 of Schedule 11 of the Commonhold & Leasehold Reform Act 2002 "a variable administration charge is payable only to the extent that the amount of the charge is reasonable."
- 5.4 Paragraph 5 of the 11th Schedule of that Act gives jurisdiction to the Leasehold Valuation Tribunal to determine the reasonableness of administration charges in the same way as for service charges under Section 27A of the 1985 Act.

6. The Applicant's case

- 6.1 This was presented by Mr Matthew Strong and Ms Tina Stewart of the managing agents.
- 6.2 It was the Applicant's case that the budget for the service charges for 2007 had been discussed at an Annual General Meeting of the Management Company of whom all the Lessees are members. The budget was finally approved as the same figure as for the previous year. It was agreed that the amounts to be paid during that year would be £144.00 contribution from each flat towards the sinking fund and £1,000 per flat towards the service charge. Both the payments were to be paid in two instalments: the first on the 1st January 2007 and the second on the 1st July 2007.
- 6.3 The sinking fund had a balance as at the 29th September 2007 of £5,620. This was to help towards the cost of external decorations which were due to be carried out in 2008.

- 6.4 The service charge demands were issued on the 12th December 2006 for the first half year and on the 14th June 2007 for the second half of the year.
- 6.5 The Respondent has not paid anything towards either of the demands. This had involved the Managing Agents in having to send reminders to the Respondent and, ultimately, to instruct solicitors to collect the sums due. The Claimant claimed the administration charges involved in this additional work from the Respondent. Mr Strong produced a copy of the Agreement between the Management Company and his firm and also a copy of the demands for payment which on the reverse contained the warning to the Lessees that administration charges would be levied if payments were not made timeously. These administration charges totalled £234.09 inclusive of VAT.
- 6.6 The Applicant sought reimbursement from the Respondent of the Tribunal fees that they had had to pay totalling £250 and also sought an Order for costs against the Respondent of the maximum of £500 the Tribunal has jurisdiction to award albeit that they estimated that their true costs of dealing with the Tribunal application were £881.68 plus VAT.

7. The determination

- 7.1 The Tribunal decided that the requested contribution of £144 towards the sinking fund was reasonable. In fact, it was probably lower than it ought to have been in order to provide a reasonable payment towards the major costs of external decoration which are likely to be incurred in 2008. The Tribunal also decided that the amount demanded on account of the service charge for the year in the sum of £1,000 was reasonable, particularly as this included a sum for the water charge. A high proportion of anticipated expenditure was to cover annual fixed costs over which the Applicant had little or no control. The variable expenditures were restricted to repairs and renewals.
- 7.2 As far as administration charges were concerned, the Tribunal sympathised with the Applicant in seeking to recover these solely from the Respondent as it was the Respondent who was responsible for those charges being incurred. Unfortunately, however, the lease does not make provision for the recovery of such administration charges from the Lessee responsible for them having been incurred. The Tribunal

considered that the administration charges levied by the Managing Agents totalling £234.09 were reasonable but these would need to be charged against the service charge account payable by all the Lessees at Beverley Hall and not just the Respondent.

7.3 With regard to the refund of fees, the Tribunal noted that the Respondent had never given any reason for the non-payment of the service charge and had not responded in any way whatsoever to the Managing Agents' communications to him. There would seem therefore no justification for the Respondent's actions and the Tribunal considered that it was only just that the Respondent should bear the cost of the applications to the Tribunal in the form of the Tribunal fees totalling £250 and in covering the Applicant's reasonable costs of the Tribunal proceedings themselves. The Tribunal has jurisdiction to award up to £500 in costs against a party who has acted "frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings." (Paragraph 10 of Schedule 12 to the Commonhold & Leasehold Reform Act 2002). In this case by failing to respond to the proceedings in any way in order to seek to justify his non-payment of the service charges for 2007 the Tribunal considered that the Respondent had acted "otherwise unreasonably" in connection with the proceedings and that it would be wrong to expect the other Lessees to bear the full brunt of the cost of having this matter determined by the Tribunal. The Tribunal therefore determines that a reasonable amount for the Respondent to pay would be £262.50 plus VAT.

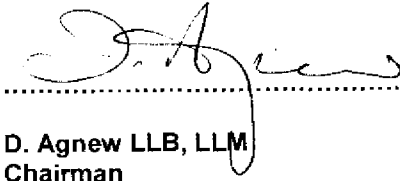
8. Conclusion

8.1 The Tribunal determines that the Respondent is liable to pay the following payments with regard to reasonable service charges for service charge year 2007:-

Contribution to sinking fund:	£144.00
Service charge for the year on account:	£1,000.00
Administration charges (one-twelfth of £234.98):	£19.58
Reimbursement to Applicant of Tribunal fees:	£250.00
Applicant's costs including VAT:	£425.94

Dated this 12th day of February

2008



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D. Agnew LLB, LLM
Chairman

**AMENDED UNDER REGULATION 18(9) OF THE LEASEHOLD VALUATION TRIBUNALS
(PROCEDURE) (ENGLAND) REGULATIONS 2003**

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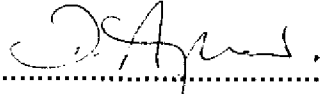
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8. Conclusion

- 8.1 The Tribunal determines that the Respondent is liable to pay the following payments with regard to reasonable service charges for service charge year 2007:-

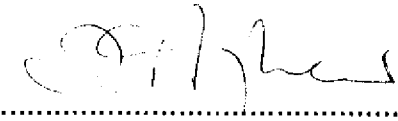
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Service charge for the year on account:	£1,000.00
Administration charges (one-twelfth of £234.98):	£19.58
Reimbursement to Applicant of Tribunal fees:	£250.00 £350.00
Applicant's costs including VAT:	£425.94

Dated this 13th day of February 2008


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D. Agnew LLB, LLM
Chairman

Amended this 6th day of March 2008


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D. Agnew LLB, LLM
Chairman